IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR, Case No. SC95720
[TFB Case No. 1999-32,169(07A)(CRE)]

IN RE: WALTER BENTON DUNAGAN,
Petitioner.
_____/

THE FLORIDA BAR'S ANSWER BRIEF AND INITIAL BRIEF ON CROSS-PETITION FOR REVIEW

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SYMBOLS AND REFERENCES

In this brief, the complainant, The Florida Bar, shall be referred to as "The Florida Bar" or "the Bar."

The transcript of the reinstatement hearing held on November 30, 1999, shall be referred to as "T" followed by the cited page number.

The Report of Referee on Petition for Reinstatement dated January 12, 2000, will be referred to as "ROR" followed by the referenced page number(s) of the Appendix, attached (ROR-A____).

The Bar's exhibits will be referred to as B-Ex.___, followed by the exhibit number.

The petitioner's exhibits will be referred to as P-Ex. _____, followed by the exhibit number.

STATEMENT OF THE CASE

Petitioner filed his petition for reinstatement on June 4, 1999, after having been suspended from the practice of law by this Court for ninety-one days as a result of representing clients with conflicting interests. On June 9, 1999, this Court directed the Chief Judge of the Fourth Judicial Circuit to appoint a referee and on June 11, 1999, the referee was appointed. The final hearing was held on November 30, 1999, and the referee entered his report on January 12, 2000, recommending petitioner not be reinstated to the practice of law. The referee found that the Bar reasonably incurred $4,603.33 in costs and recommended that petitioner be assessed at the minimum the court reporter costs of $1,232.00 and the administrative costs of $750.00 for a total of $1,982.00. The referee left it to this Court to determine whether petitioner should be assessed the Bar's full costs of $4,603.33.

The Executive Committee of The Florida Bar's Board of Governors considered the referee's report and voted to seek review only of the referee's recommendation as to costs. Petitioner served his petition for review on February 4, 2000, and the Bar served its cross-petition for review on February 11, 2000. Petitioner served his initial brief on March 3, 2000.

STATEMENT OF THE FACTS

Petitioner was suspended for a period of ninety-one days by this Court in The Florida Bar v. Dunagan, 731 So. 2d 1237 (Fla. 1999), as a result of representing a client whose interests conflicted with those of a former client where petitioner used information gained as a result of the representation to the disadvantage of the former client. Petitioner was given thirty days to close out his law practice and thus the effective date of his suspension was March 13, 1999. After his suspension, petitioner held himself out as an attorney in good standing by remaining as counsel of record in five cases (ROR-A2). He took no steps to be removed as counsel of record until after the Bar brought the problem to his attention during its investigation in connection with the reinstatement process (ROR-A2). Petitioner had practiced law for some twenty-nine years yet failed to appreciate that once he appeared on behalf of a client before the court he would remain as counsel of record until released by order of the court or by stipulation of the parties to a substitution of counsel (ROR-A2).

The Bar notified petitioner on March 24, 1999, that during his suspension he could not have direct contact with any clients and could not handle trust funds (ROR-A2). Despite this, petitioner wrote to his client, Ted Creamer, to have him ratify actions that petitioner and another attorney took in Mr. Creamer's legal matter (ROR-A2). Petitioner also allowed his name to appear as an attorney in Marquis Who's Who

in American Law, Edition Eleven (ROR-A2; P-Ex. 2, Part 7A). Petitioner also failed to notify Lorman Education Services of his impending suspension and thus denied the company the opportunity to decide whether it wished to continue using him as a seminar speaker on Collections Law (ROR-A3).

Petitioner presented no evidence of community involvement or community service work during his suspension period (ROR-A3). His testimony demonstrated that he did not believe this Court's decision to suspend him was correct (ROR-A3). Further, despite having had a secretary embezzle funds in the past and having been advised by the Bar that his record keeping was not in substantial minimum compliance with the rules, it was not until his review by the Law Office Management Assistance Service (hereinafter referred to as LOMAS) in November, 1999, that petitioner demonstrated any understanding of the Rules Regulating Trust Accounts (ROR-A3). Further, petitioner was not forthright in his testimony concerning the reason he underwent the LOMAS review (ROR-A3).

SUMMARY OF THE ARGUMENT

The burden of proof in reinstatement cases rests with the petitioning attorney, not with the Bar. Petitioner failed to present a prima facie case that he had been sufficiently rehabilitated to warrant being reinstated to the practice of law. Therefore, the referee correctly exercised his discretion in granting the Bar's motion to involuntarily dismiss petitioner's petition for reinstatement. Rather than proving he had the professional competence and ability to resume the privilege of practicing law, petitioner demonstrated through not only his testimony, but the items he placed into evidence, that he was unable to independently determine if his conduct was compatible with the Rules Regulating The Florida Bar. He repeatedly had to rely on others to advise him as to his responsibilities under the rules and took corrective action only when a problem was pointed out to him by someone else (ROR-A4). For example, he failed to take the proper steps in some five cases to be removed as counsel of record before the effective date of his suspension, or within a reasonable time thereafter, and took corrective action only after being advised as to what he needed to do by Bar counsel (ROR-A4; T p. 77). He had impermissible direct contact with a client regarding the client's legal matter after the effective date of his suspension (ROR-A2). Further, he failed to bring his trust account record keeping into compliance with the rules and failed to demonstrate any real understanding of the

requirements despite having been audited by the Bar years ago (T pp. 63-64). A Bar audit, followed by a LOMAS review, seem to have confused petitioner even more (T p. 66). Petitioner failed to understand that he could not use the designation "attorney-at-law" on his checks during his suspension until the Bar so advised him (T pp. 29-30).

The Bar prevailed in this matter and the referee found the Bar's costs to have been reasonably incurred. Petitioner did not object to the Bar's costs. Therefore, the Bar is entitled to be reimbursed in full for its costs incurred in this matter. To do otherwise would unfairly place the burden of absorbing the costs on the membership of the Bar.

ARGUMENT
POINT I
THE REFEREE CORRECTLY EXERCISED HIS DISCRETION IN GRANTING THE BAR'S MOTION FOR INVOLUNTARY DISMISSAL

The referee properly granted the motion for involuntary dismissal herein because the evidence offered by petitioner, considered in the light most favorable, did not establish a prima facie case that he was entitled to reinstatement to the practice of law. In Bar disciplinary proceedings, a referee has the discretion to rule on motions and that ruling will not be overturned unless it can be shown that the referee abused his or her discretion. The Florida Bar v. Roth, 693 So. 2d 969, 972 (Fla. 1997).

The referee found that petitioner failed to make a prima facie case establishing the basic elements required to prove rehabilitation, to wit: a) full compliance with the conditions imposed in the previous disciplinary judgment; b) demonstrable professional ability; c) unimpeachable character and good moral character; d) strong sense of repentance for his prior misconduct and a genuine lack of malice toward those responsible for the previous disciplinary action; e) intention of proper conduct in the future; and f) restitution to any persons harmed by the earlier misconduct. The Florida Bar in re Inglis, 471 So. 2d 38, 39 (Fla. 1985). The referee also found that petitioner failed to sustain his burden of proving by clear and convincing evidence his fitness to practice law in terms of his integrity and in terms of his professional

competency. In a Bar reinstatement case, it is the petitioning attorney who carries the burden of proving by clear and convincing evidence that he or she is rehabilitated and deserves to be reinstated to the practice of law. Petition of Wolf, 257 So. 2d 547 (Fla. 1972). The evidence revealed that petitioner did not have a clear understanding of his obligations as an attorney (T pp. 29-31, 74-79, 90, 92, 109-115). He did not understand that it was a privilege to practice law and that while suspended he could not hold himself out as an attorney even if no one was harmed or no one knew (T p. 79). Petitioner also demonstrated a lack of professional ability (T pp. 65-70, 77-79, 90, 92).

In analyzing a petitioner's character, this Court may consider the petitioner's good moral character, personal integrity, general fitness to assume a position of trust and confidence, professional competence, and ability. The Florida Bar re Grusmark, 662 So. 2d 1235 (Fla. 1995). During his suspension, petitioner had direct client contact, in violation of his suspension, in an attempt to get the client to ratify action taken by him and Collette Heck, another attorney (P-Ex. 6). He also took affirmative steps to keep his name before the public by allowing his name to appear as an "attorney" in Marquis Who's Who in American Law, Edition Eleven. During these proceedings he bragged about what an honor such was, obviously not realizing that he did not have privilege to hold himself out as an attorney (T pp. 21, 92-93). Despite

having the opportunity to inform the publisher that he was not allowed to practice as an attorney, petitioner failed to do so. This lack of integrity is further shown by petitioner's failure to inform Lorman Education Services (hereinafter referred to as "Lorman") of his impending suspension and by his lecturing before legal practitioners and lay persons on the ins and outs of Collections Law (T p. 102; P-Ex. 2, part 12). Additional evidence calling into question petitioner's professional ability was his own testimony that clearly showed he had not reviewed the trust accounting rules since his suspension, even after undergoing a Bar audit, and despite his history of an employee stealing funds (T pp. 63, 65-69). His lack of moral integrity and fitness to resume a position of honor and trust among the ethical practitioners of the Bar is evidenced by his lack of candor during these proceedings about his reasons for undergoing a LOMAS review (T pp. 24, 32-36, 65).

Petitioner presented no evidence of personal community conduct to justify a conclusion that he repented of his misdoings. He presented no evidence to show community involvement or community service work to establish present good character. His argument that his suspension prevented him from "benevolent activities" is without merit as there are numerous volunteer opportunities not requiring the practice of law.

The referee stated at the close of the reinstatement hearing that he would

review all the evidence petitioner presented before making a decision regarding the Bar's motion for involuntary dismissal (T p. 121). After considering petitioner's evidence and reviewing written arguments of petitioner and the Bar, the referee specifically found petitioner's evidence was insufficient to prove rehabilitation, that he had not made a prima facie case for reinstatement, that he was not fit to resume the practice of law, and that his reinstatement would impede the administration of justice, the purity of the courts and the confidence of the public in the profession. R. Regulating Fla. Bar 3-7.10(n)(4); (ROR-A1-A2). Petitioner has not shown that the referee abused his discretion in any way.

POINT II
THE REFEREE'S FINDINGS OF FACT ARE SUPPORTED BY THE RECORD

This court's review of a referee's report in a reinstatement proceeding is governed by the same rules and procedures as are reports submitted in disciplinary proceedings and a referee's findings of fact are presumed to be correct and will not be overturned unless they are found to be unsupported by competent, substantial evidence in the record. Inglis, 471 So. 2d at 40. The party seeking review of a referee's report bears the burden of demonstrating the report was erroneous, unlawful, or unjustified. Inglis, 471 So. 2d at 40.

During a suspension, an attorney, although still a member of The Florida Bar, does not have the privilege of practicing law. R. Regulating Fla. Bar 3-5.1(e). It is a violation of the Rules Regulating The Florida Bar and this Court's order of discipline for a suspended attorney to continue holding himself or herself out to the public as an attorney at law. Petitioner held himself out as an attorney in the eyes of the public after the effective date of his suspension by remaining as attorney of record in at least five cases (T pp. 79, 92, 114115). This was a violation of the terms of his suspension order. Petitioner, who has been a practicing attorney for twenty-nine years, failed to understand the basic concept that once he appeared as attorney of record before the court, he remained the attorney of record for the case until either being released by

court order or by filing a stipulation for substitution of counsel (T pp. 78-79, 90, 92). This showed a disturbing lack of professional ability and the referee closely questioned petitioner regarding this issue (T pp. 88-92). Petitioner took no action to obtain substitutions of counsel until Bar counsel pointed out the problem to him during the reinstatement investigative process (T p. 76). Petitioner's argument in his Initial Brief shows he still does not understand that a suspended attorney cannot remain as counsel of record because he or she cannot either engage, or give the appearance of engaging, in the practice of law. Petitioner seems to forget his duty to the court and to the legal system as a whole. It is impossible to understand petitioner's argument that remaining as counsel of record while suspended protected his clients because such reasoning is an oxymoron. Further evidence that petitioner did not understand the concept of not holding himself out as an attorney while suspended was shown by his testimony regarding his having to change his designation as attorney at law on his trust account and business account checks (T pp. 29-31).

One of the essential elements of rehabilitation is clear and convincing evidence of professional competence and ability. Inglis, 471 So. 2d at 39. Petitioner consistently looked for others to advise him of his responsibilities under the Rules Regulating The Florida Bar and the law. He took action only when a problem was pointed out to him by someone else. He continued using the attorney at law designation on his checks and

had to be told by the Bar that this was improper (T pp. 29-30). Likewise, he had to be told by the Bar that he needed to file stipulations for substitution of counsel in the five pending cases in order to be removed as counsel of record for his clients (T p. 77).

A further example of petitioner's lack of compliance with his suspension order and his lack of personal integrity and general fitness to resume a position of trust and confidence as set forth in Inglis, 471 So. 2d at 39, was his direct contact with a client, Ted Creamer. By letter dated March 24, 1999, The Florida Bar notified petitioner that he could not engage in the unauthorized practice of law, that he should not have direct client contact, and that he should not handle trust funds or other client property (P-Ex. 2, Part 2). Despite this clear warning, petitioner contacted Mr. Creamer some five months after the effective date of his suspension (ROR-A2; P-Ex. 6). He contacted this client to have him ratify actions taken by petitioner and attorney Collette Heck on Mr. Creamer's behalf (P-Ex. 6).

Petitioner also failed to timely notify Mr. Creamer of his suspension (ROR-A4; T pp. 48, 74). Although standing alone this would be insufficient to warrant denying petitioner's reinstatement, when viewed in conjunction with petitioner's

other actions during his suspension, it shows a course of conduct whereby petitioner failed to fully abide by this Court's order. Petitioner decided because he intended to close this client's file, he did not need to send the suspension order to him (T pp. 74-75). However, there was no testimony that Mr. Creamer agreed the matter should be closed. Further, petitioner performed additional services subsequent to the date he advised Mr. Creamer he was going to close the file (T p. 75). Obviously, Mr. Creamer was a current client at the time of petitioner's suspension. Rather than providing Mr. Creamer with this Court's order of suspension issued on February 11, 1999, and allowing the client to decide if he wished to continue pursuing the matter with other counsel, petitioner took it upon himself to find another attorney for him, namely Collette Heck, the attorney with whom petitioner was affiliated during his suspension (T pp. 29, 44, 46, 49, 75).

Petitioner also failed to establish his personal integrity and general fitness to resume a position of trust and confidence as set forth in Inglis, 471 So. 2d at 39, by allowing his name to appear as an "attorney" in Marquis Who's Who in American Law, Edition Eleven (P-Ex. 2, Part 7A). Petitioner eliminated all customary listings of his name as a practicing attorney (T pp. 31-32) but could not resist the lure of appearing in this national publication. He had the opportunity to tell the publisher that he was not allowed to practice as attorney, but he failed to do so (T p. 22). However,

he jumped on the opportunity to tell the publisher that his address had changed (T p. 22). Petitioner wanted the accolades of being an attorney but was not willing to take on the responsibilities and duties required of one who enjoys the privilege of being an attorney. Petitioner's argument in his Initial Brief on this point best demonstrates his lack of understanding that a suspended attorney is not licenced to practice law and cannot do anything to give the impression that he or she is so licensed. The form in the publication indicated that if "one was a practicing attorney," one should check the appropriate codes to indicate areas of practice. The Bar submits that this language should have put petitioner on notice that this listing was intended for licensed, practicing attorneys, not suspended attorneys. How is public confidence in the legal system encouraged by a suspended attorney’s name appearing in a national publication of practicing attorneys? The Bar would submit that it is not and, in fact, it is a travesty and an embarrassment.

Petitioner failed to bring his trust account records into compliance with the rules, despite having been given instruction as to what needed to be corrected, and despite the fact that petitioner has maintained a trust account since the 1970's (T pp. 62-63) and had a secretary embezzle funds, leading to a Bar audit at that time (T p. 63). The Bar's audit conducted after petitioner applied for reinstatement, revealed record keeping deficiencies, which were brought to petitioner's attention (T p. 65).

Petitioner then underwent a LOMAS review which revealed problems with his record keeping (T p. 67). Despite proclaiming that he knew what needed to be done to correct his trust account records, petitioner admitted he had not made any corrections to his records (T p. 67). Although he assured the referee that he intended to bring his trust accounting records into full compliance with the rules once he is reinstated (T p. 70), the Bar would submit that such reassurance under the circumstances does not meet petitioner's burden to show that he intends to bring his conduct into alignment with the Rules Regulating The Florida Bar.

Petitioner's testimony concerning the reasons for undergoing a LOMAS review calls into question his character (ROR-A3-A4). Petitioner first testified that he voluntarily underwent the review to ensure that he was in compliance with the rules governing trust accounts (ROR-A3; T pp. 24, 32), then, on cross-examination, admitted that he had undergone the review only after the Bar audited his records and found they were not in substantial minimum compliance with the rules (ROR-A3-A4; T p. 65). Petitioner wished for the referee to believe he had undergone the LOMAS review prior to the Bar becoming involved rather then revealing he underwent the review in an attempt to correct deficiencies found by the Bar's examination of his records.

Petitioner also presented no evidence of his community involvement or

community service work engaged in during his suspension to establish good character. The evidence he presented spoke only to activities engaged in prior to his suspension (T p. 22). Petitioner did nothing during his suspension period other than go through his mail, check his telephone messages and eat lunch in a local restaurant surrounded by his fellow attorneys and judicial assistants (Petition for Reinstatement at page 3; T pp. 55). In his Initial Brief, he argues that it was his suspension that curtailed his community involvement because he was no longer able to provide pro bono services. Certainly petitioner was able to find other areas of service that did not involve the practice of law. To blame the Bar for his inability to provide community service does not demonstrate a lack of malice and ill will toward the Bar for having been involved in the disciplinary proceeding that led to his suspension.

Petitioner's failure to notify Lorman Education Services of his impending suspension prior to the scheduled date of his seminar also reflected poorly on his character. Petitioner failed to recognize that perhaps Lorman would choose not to use his services in light of his impending suspension. The referee, in reviewing the materials Lorman published concerning the upcoming seminar, noted that petitioner was listed as a sole practitioner (T p. 102). Although a true statement at the time, it was potentially misleading to the attorneys who attended the seminar as they would have been under the impression petitioner was a practicing attorney and they would be

able to rely on the legal information given by petitioner during the seminar (T p. 105). Petitioner was hired by Lorman for this seminar because of his legal experience in Collections Law (T p. 113; P-Ex. 2 No. 12). Petitioner admitted that attorneys attending would receive continuing legal education credit (T pp 108-109). The seminar was held only days before the effective date of petitioner's suspension (T p. 117). Yet, until the referee pointed it out to petitioner, he failed to appreciate the fact that attorneys attending the seminar and Lorman may have thought it relevant to know that, at the time of the seminar, petitioner was looking at an impending suspension from the practice of law. When petitioner withheld this information from Lorman and those attorneys who attended the seminar, he deprived them of the right to make a choice of how to proceed.

As the referee so aptly noted at the final hearing, much of petitioner's misconduct over the years has involved not allowing others to make the choices that are rightfully theirs to make (T p. 116). See The Florida Bar v. Dunagan, 509 So. 2d 291 (Fla. 1987), where petitioner entered into a business transaction with a client without first advising the client to obtain the advice of independent counsel; The Florida Bar v. Dunagan, 565 So. 2d 1327(Fla. 1990), for charging clients interest on the unpaid balance of their fees without having advised them at the outset of the representation that he would charge interest on unpaid balances and for taking actions,

without the clients' knowledge or consent, to ensure that his fees would be paid out of the proceeds of a loan they obtained; and Dunagan, 731 So. 2d 1237, where petitioner represented a long time client in a dissolution matter where the client's interests conflicted with those of the wife, who petitioner had represented in the past jointly with the husband, without first obtaining the wife's consent to the representation. In this proceeding, petitioner failed to show he has changed this attitude.

Petitioner certainly provided evidence that he has a long history of notable accomplishments and it may be that his personal ethics are above reproach. The issue, as in In re: Petition of Dawson, 131 So. 2d 472, 474 (Fla. 1961), is whether "the errant lawyer has so conducted himself personally and in the life of his

> community to justify a conclusion that he has repented of his misdoings, that the disciplinary order has impressed him with the vital importance of ethical conduct in the practice of law, and that he is morally equipped to resume a position of honor and trust among the ethical practitioners at the Bar."

Petitioner repeatedly made decisions for others when it was not his place to do so. He decided for five clients that it was in their best interest that he remain counsel of record in their cases rather than giving them the option to choose anther attorney. He decided for the publishers of Who's Who in American Law that including his name was appropriate, despite being suspended from the practice of law at the time. The decision to include

petitioner rested with the publisher and withholding the fact of his suspension deprived the publisher of the option to not include petitioner or include him in some other form. His failure to inform Lorman of his impending suspension deprived it of its option to republish its seminar materials to alter petitioner's professional information or to elect to seek another seminar speaker. Petitioner's attitude that he knows what is best for others has not changed during his suspension period.

The license to practice law is a privilege, not a right, and a lawyer who has been removed from the practice of law must sustain the heavy burden of proving his or her fitness in terms of integrity as well as professional competency. It is not enough to show that the attorney has served a sufficient term of punishment. Wolf, 257 So. 2d 547. This is what petitioner seeks to do. Although petitioner may have solicited sympathy to demonstrate that he is a "nice guy," if the concept of discipline and the protection of the public, as well as the image of The Florida Bar, are to have any meaning at all, this case must be viewed in an objective light and without regard to personal sympathy. Viewed in this light, the instant record does not justify reinstatement of petitioner as a member in good standing of The Florida Bar. Petitioner failed to show by clear and convincing evidence that he is equipped to resume a position of honor and trust among the ethical practitioners of the Bar. Dawson, 131 So. 2d 472.

POINT III
THE REFEREE ABUSED HIS DISCRETION IN FAILING TO AWARD THE BAR ITS FULL COSTS

Rule 3-7.10(o)(2) of the Rules Regulating The Florida Bar provides that "the referee shall have discretion to award costs and absent an abuse of discretion the referee's award shall not be reversed." Rule 3-7.10(o)(3) further provides that "when the bar is successful, in whole or in part, the referee may assess the bar's costs against the petitioner unless it is shown that the costs of the bar were unnecessary, excessive, or improperly authenticated." The referee recommended petitioner not be reinstated because he had not proven rehabilitation. Petitioner made no objection to the Bar's costs in this matter after being served with the Bar's Affidavit of Costs on January 7, 2000. Therefore, the Bar submits it was erroneous for the referee to assess only a portion of the Bar's costs against petitioner. Because the Bar's costs were reasonably incurred, they should be passed on to petitioner. "Where the choice is between imposing costs on a bar member who has misbehaved and imposing them on the rest of the members who have not misbehaved, it is only fair to tax the costs against the misbehaving member." The Florida Bar v. Miele, 605 So. 2d 866, 868 (Fla. 1992). In a reinstatement proceeding, this Court has, in dicta, stated that the Bar's costs can be taxed against a petitioner because such an attorney has, by definition, been found guilty of misconduct. The Florida Bar v. Williams, 734 So. 2d 417, 420 (Fla. 1999).

It is unclear whether the referee's reluctance to assess full costs is based upon petitioner's inability to pay. However, such should not be a consideration. This Court found in The Florida Bar v. Lechtner, 666 So. 2d 892, 894 (Fla. 1996), that it was an abuse of the referee's discretion not to assess costs against a lawyer due to the lawyer's inability to pay the costs. This Court has the final discretionary authority in assessing costs in Bar disciplinary proceedings, Lechtner, 666 So. 2d at 894, and it has long held that where the choice is between imposing costs on an attorney who has engaged in misconduct and imposing them on the rest of the Bar membership who have not misbehaved, it is only fair to impose the costs against the errant attorney. The Florida Bar v. Kassier, 730 So. 2d 1273, 1276 (Fla. 1998). Herein, the petitioner should be assessed the full amount of the Bar's costs totaling $4,603.33.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact and recommendation of denial of reinstatement and payment of no less than $1,982.00 in costs and instead assess the Bar's total costs of $4,603.33 against petitioner and uphold the referee's recommendation that reinstatement be denied at this time.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Brief and Appendix have been sent by Priority U.S. Mail to Debbie Causseaux, Acting Clerk, The Supreme Court of Florida, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by regular U.S. Mail to the petitioner, Walter Benton Dunagan, 1141 S Ridgewood Avenue, Daytona Beach, Florida, 32114-6149; and a copy of the foregoing has been furnished by regular U.S. Mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this _____day of March, 2000.

Respectfully submitted,

_____
Frances R. Brown-Lewis
Bar Counsel

CERTIFICATE OF TYPE, SIZE AND STYLE and ANTI-VIRUS SCAN

Undersigned counsel does hereby certify that the Brief of The Florida Bar is submitted in 14 point proportionately spaced Times New Roman font, and that the computer disk filed with this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

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APPENDIX TO COMPLAINANT'S INITIAL BRIEF

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