

IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. SC08-250

v.

The Florida Bar File No
TFB File Number 2008-
51,119(17G)FRE

MICHAEL HOWARD WOLF,
Respondent,

_____ /

REPORT OF REFEREE ON
PETITION FOR REINSTATEMENT

This Cause came before this referee for hearing on the Petitioner Michael Howard Wolf's Petition for Reinstatement. The Petitioner was well represented by Michael Gelety and the Bar was well represented by Michael Soifer. The Respondent, pursuant to Fla. Bar Rule 3-7.10(f) has the burden of proving by clear and convincing evidence that his license should be reinstated because he is rehabilitated, and fit to resume the practice of law.

I. SUMMARY OF PROCEEDINGS

Mr. Wolf was admitted to practice in Florida in 1977. He had a general sole litigation practice with a strong emphasis on "gaming / amusement" law. He received a public reprimand with a one year probation and was assessed costs on December 6, 2001 in The Florida Bar File Number 1998-

70,629(171); Supreme Court Case Number SC 001521. The case arose as a result of some criminal activity related to Mr. Wolf's gambling issues at that time. He successfully completed probation and paid costs. In 2005, Mr Wolf was suspended for two years from the practice of law pursuant to a Bar Complaint. He was required to pass the ethics portion of The Florida Bar Exam and required to pay costs in Supreme Court Case Number 04-1374. This Referee found Mr. Wolf had placed client funds in trust in an operating account and had not complied with trust account requirements of the Rules Regulating the Florida Bar. Specifically, Mr. Wolf failed to follow the proper record keeping procedures commingled his monies with those of his clients and had misappropriated client monies by failing to deliver to clients the funds to which they were entitled. His suspension started May 1, 2006.

II. FINDINGS OF FACT AND LAW

Pursuant to Fla. Bar Rule 3-7.01(f)(3), the essential elements of proof for reinstatement are:

- (1) strict compliance with the disciplinary order.
- (2) evidence of unimpeachable character and moral standing in the community.
- (3) clear evidence of a good reputation for professional ability

- (4) lack of malice
- (5) evidence of future exemplary conduct
- (6) restitution
- (7) positive action such as civic service.

During the hearing, the Petitioner argued he had accomplished all of the elements. The evidence revealed that since his suspension Mr. Wolf had worked as a paralegal / consultant with two separate attorneys both of whom had contacted the Bar, sought advice from the Bar about the scope of the work allowed by Mr. Wolf and taken seriously the suspension restrictions and requirements. Both testified he was an excellent source of both legal and business knowledge in the area of arcade/amusement law and that he was high in integrity and sound in character. Mr. Wolf called several other people including a Judge, friends, family and clients to testify about his good reputation, his remorse and his community service. He spent ten to fifteen hours a week in season coaching and assisting in management of a children's basketball league where many of the children were disadvantaged. At time of hearing, Mr. Wolf had passed the ethics bar exam and had paid the required costs to the Florida Bar. However, there was evidence that his financial situation was not stable as he was under financial stress due to the suspension. Substantial income tax monies are owed to the IRS.

The Florida Bar called no witnesses of their own. The Bar implied they were placed at a disadvantage due to the speed at which the Petition was filed by Mr. Wolf. They also claimed Mr. Wolf had been reluctant to hand over documents. However, the Bar did not ask for a continuance. Mr. Wolf had hired his own investigator to do a background check and assist in supplying the Bar with any documentation necessary for the Petitioner to be heard quickly. This Referee finds that both Mr. Wolf and his counsel were very open in supplying documents and assisting the Bar. There is no doubt Mr. Wolf is extremely eager to be reinstated. .

The Bar attorney argued mainly three areas why Mr. Wolf should not be reinstated. First, he had been practicing law while suspended and had not strictly complied with the Courts order or suspension. Second, he had incorrectly handled money thus showing a lack of future exemplary conduct in this area and third, that his finances were still a mess.

The best thing professionally that happened for Mr. Wolf during his suspension was working with attorney De Young. Her legal practice showed this Referee strong business and financial management practices. The evidence revealed Mr. Wolf has little natural ability in this area. His private accounts in the prior Bar action were often overdrawn as they were still. The evidence in this case was that Mr. Wolf allowed a check written as

a direct retainer for another attorney to be written to him. He cashed a check made out to him which was paying for legal services of another attorney. One check clearly noted “for legal services” on it. Another noted “legal consult” and was made out to him. Mr. Wolf is behind in filing and paying income taxes. He signed up for LOMAS (Law Office Management Assistance Service) but did not take the course. He failed to keep good financial records about his “gaming” consultation business.

Although the Bar tried to show Mr. Wolf practiced law while suspended, the evidence presented did not support this. The Bar knew of Mr. Wolf’s acts and never charged him with this violation. The Bar allows paralegal work while suspended (See Fla. Bar Rule 3-6.1). The law is unclear as to the scope of legal work allowed for a suspended attorney acting as a paralegal. Clearly Mr. Wolf is extremely well versed in the laws relating to “gaming” and as he argued, defining advice as legal or business is difficult. He admitted to being paid regularly and at times substantial sums for his private consulting business dealing with arcades. Under a contract with the Florida Arcade Association, Inc Mr. Wolf was paid \$1000.00 a month for this service. Mr. Wolf gave advise on opening arcades, reported on law changes in this area, reviewed leases and researched ordinances that would apply to new arcade cites. At one point Mr. Wolf consulted with a

State Attorney on the “proper interpretation” of “gaming law” for another attorney’s criminal client.

The Bar pointed out that two clients and one judge were not notified by Mr. Wolf of the bar action of suspension as was required by the Supreme Court. (Exhibit 44). This referee did not find that significant. The great majority of people were informed and Mr. Wolf’s witnesses all testified that he was open with them about the suspension. Mr. Wolf is obviously well liked and a contributing citizen to our society. He is very knowledgeable and respected in his legal field. He is everything one would want of a bar member except he is horrible at financial management. There is no evidence of Mr. Wolf’s acting with any malicious intent. He appeared remorseful. He likes to help people.

The Florida Supreme Court has stated:

“. . .Sanctions imposed upon a member of the Bar for ethical misconduct must (1) be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing a sanction.” The Florida Bar v. Dove, 985 So 2d 1001 (Fla. 2008).

An important part of being an attorney is the correct handling of clients' funds. The public deserves that from the legal profession and the law demands it. Therefore, as long as Mr. Wolf can do that he should be reinstated as a practicing attorney in Florida. Reinstatement with conditions can accomplish this goal. [See The Florida Bar v. Hernandez, 690 So2d 1270 (Fla. 1997).]

III. CONCLUSIONS / RECOMMENDATIONS

Based on the forgoing facts this court finds:

1. Michael Howard Wolf is qualified to resume the practice of law in the State of Florida.
2. Mr. Wolf should be reinstated as a member in good standing of the Florida Bar.
3. He must attend LOMAS within one year and provide proof to the Florida Bar that he successfully completed the financial management course.
4. He shall pay the cost of this action pursuant to Fla. Bar Rule 3-

7.6. The Costs are as follows:

Administrative Costs, (pursuant to Rule 3-7.10(M)(1)(I), Rules of Discipline)	\$1,250.00
Court Reports Costs	\$2,319.10

Bar Counsel Travel Costs	62.97
Investigative Costs	376.07
SUBTOTAL	<u>\$4,008.14</u>
Less Cost Deposit	- 500.00
TOTAL COSTS DUE	\$3,508.14

The Petitioner shall have sixty days after the Judgment has become final to pay the costs unless a wavier is granted by the Board of Governors of The Florida Bar. If the costs are not timely paid, a Final Judgment as to cost shall be entered that shall accrue interest at the legal annual statutory rate.

5. Mr. Wolf shall employ another who is qualified to handle his professional finances and / or work in an office that provides such financial assistance and oversight for a period of one year and provide proof thereof to the Bar.

Dated this 7th day of November, 2008.

_____/S/_____
KATHLEEN J. KROLL
Circuit Judge / Referee

Certificate of Service:

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been sent certified mail to THE HONORABLE THOMAS D. HALL, Clerk Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32301; by email to THE HONORABLE THOMAS D. HALL,

Clerk, Supreme Court of Florida, E-file@flcourts.org; and copies were mailed by regular U.S. Mail to: Michael D. Gelety, Attorney for Respondent, 1209 Southeast Third Avenue, Fort Lauderdale, Fl 33316 and Staff Counsel, The Florida Bar 651 East Jefferson Street, Tallahassee, Fl 32399-2300 and Michael David Soifer, Bar Counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 900, Fort Lauderdale, Fl 33309