

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR

Case No. SC07-548

TFB File No. 2007-00,962(4A)NRE

IN RE:
PETITION FOR REINSTATEMENT OF
MICHAEL ALAN CEBALLOS,

Petitioner.

_____ /

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to hear, conduct, try, and determine matters presented in this case, a hearing was held on December 5-6, 2007. The pleadings, notices, motions, orders, transcripts, and exhibits, all of which are forwarded to the Supreme Court of Florida, constitute the record in this case.

The following attorneys appeared as counsel for the parties: For The Florida Bar: James N. Watson, Jr. Esquire; For the Petitioner: Daniel N. Brodersen, Esquire.

II. SUMMARY OF PROVEN FACTS - ESSENTIAL ELEMENTS

Rule 3-7.10(f)(3), Rules Regulating The Florida Bar, sets forth the elements of rehabilitation that petitioner is required to prove by clear and

convincing evidence to establish he is entitled to resume the privilege of practicing law. A description of those elements and a summary of the proven facts relating to those elements is as follows:

A. Strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order.

(1) Petitioner has complied with the conditions of the Supreme Court's order of suspension that suspended Petitioner from the practice of law for three years effective November 21, 2001. The Petitioner has presented unrefuted evidence that all restitution has been paid.

(2) In February of 2006, Petitioner failed to strictly comply with another Court's order. Based upon the testimony of Petitioner (Transcript, pp. 51-52) and the Honorable Russell Healey (Transcript, pp. 204, 212-214), it has been established that Petitioner violated certain conditions of Judge Healey's order releasing Petitioner on his own recognizance after he was arrested for DUI in December, 2005. See B(3) and B(6) below. Petitioner's noncompliance resulted in his release order being revoked and him being placed back into jail. He was ordered released from custody again the next day with certain additional conditions of release including wearing the previously ordered ankle monitor.

B. Evidence of unimpeachable character and moral standing in the community. At issue is whether the petitioner has conducted himself in a fashion that would appear to justify the restored confidence of his professional contemporaries, the general public and the Supreme Court. Evidence of lack of good moral character is not restricted to acts reflecting moral turpitude, but rather, includes acts and conduct which would cause a reasonable man to have substantial doubts about an individual's honesty, fairness and respect for the rights of others and for the laws of the state and nation.

(1) Petitioner established, through testimony of himself and several witnesses, that (after living at Riverside Tradition House, a rehab center for recovering alcoholics/drug abusers, from June 1, 2001 to June 2, 2002) he continued to do volunteer work for the Tradition House and its clients by helping arrange for two times per week speakers for an entire year, and by serving on the Board of Directors from 2003 through 2005.

(2) Petitioner also testified and presented evidence and testimony that after he left Tradition House in June, 2002 and to date that he has provided and continues to provide assistance, encouragement and has served as an AA sponsor to several individuals experiencing struggles with substance abuse problems, some of these persons being residents of

Tradition House and others not connected with the Tradition House program.
(Transcript, pp. 190-194, 350.)

(3) As was described in A(2) above and is further described below, Petitioner was arrested for the criminal charge of DUI in December 2005 and (after a plea) was convicted of such charge in March 23, 2006.

(4) While still in custody after the DUI arrest, Petitioner made representations to a Jacksonville police officer suggesting that he was a practicing attorney and member of The Florida Bar and gave this same officer a telephone number he represented as being the number of his law office. At the time both statements were made, Petitioner was under suspension and not a member in good standing and did not have a law office.
(Video/CD-R of Petitioner's DUI arrest.)

(5) During the summer of 2004 and again in the summer and fall of 2005, Petitioner borrowed monies totaling in excess of \$50,000.00 from an acquaintance and friend, John Camlin. Petitioner had remarried in the summer of 2004. The money was used by Petitioner and his wife for a down payment on a home and to purchase furniture. He has paid \$2000.00 toward this debt (paid in September of 2005)). Petitioner issued a (worthless) check to John Camlin, for \$15,000 on January 23, 2006. At the time Petitioner wrote this check, he was unemployed and was hoping to

borrow money to make the check good. He testified he gave him the check in an effort to let Camlin know that his desire and intention was to do his best to pay the debt off as soon as was possible. Mr. Camlin was told the check was not good at the time it was tendered and Petitioner told him he'd call him to let him know when he had enough money in the account to cover it. The debt owed was reduced to a (consent) Judgment in the amount of \$57,019.00 plus 11% interest in February, 2007. Petitioner testified that he hasn't yet been able to afford to pay anything toward his debt and the Judgment but fully intends to pay off the debt or the Judgment as soon as he can.

(6) After his release on ROR on the DUI charge (B(3) above) Judge Healey testified in effect that Petitioner violated his release order by not making himself available to be fitted with an ankle monitor as ordered. He testified that Petitioner had arrived at an office of a court official to be fitted with the monitor but then left without being so fitted (and didn't return). Petitioner apparently gave this official a reason for having to leave which Judge Healy found to be not credible. Judge Healy further testified that Petitioner thereafter again violated his order when he failed to show up for another scheduled appointment with a Salvation Army worker (who had come in on their day off for such appointment) for the specific purpose of

fitting Petitioner with the ankle monitor. Apparently Petitioner's explanation to Judge Healy for that failure was not credible and/or acceptable and Petitioner's release order was revoked and he was remanded to custody until the next day.

(C) Good reputation for professional ability.

(1) Petitioner has been effectively suspended from the practice of law since November 26, 2001. No testimony or other evidence was presented as to whether or not Petitioner has done anything to stay abreast of the law and otherwise maintain his professional abilities since his suspension.

(2) However, it has been established that Petitioner graduated from Georgetown Law School in May, 1980 with a law degree, and was admitted to the Virginia and Washington DC Bars in 1980 and 1981, as well as the Florida Bar in 1982. It has also been established that Petitioner worked for a DC law firm from 1980 until February, 1983 and after moving to Jacksonville, worked as a Federal Prosecutor from 1983 through 1988, and then in private law practice from 1988 until his suspension. Petitioner served for several years as a member of the Florida Bar Grievance Committee and served for one year as its chairman. The Petitioner distinguished himself as an assistant District Attorney in Jacksonville by

successfully prosecuting a number of complex high profile cases. Petitioner introduced in evidence the transcript from his November 21, 2001 suspension hearing, which included testimony relating to his legal abilities before his suspension. Three Judges and a private practitioner from Jacksonville testified and attested to his excellent reputation in the legal community for ethics and legal ability, both as an Assistant District Attorney and as a private practitioner prior to his succumbing to the throes of alcoholism in 2000. Petitioner also enjoyed an AV rating from Martindale Hubbell in 2001 prior to his suspension.

(D) Lack of malice and ill feeling toward those who brought discipline proceedings.

(1) Petitioner never expressed any malice toward anyone connected with the disciplinary system. There was no other evidence of any such malice or ill will.

(E) Personal assurance of future exemplary conduct.

(1) Petitioner testified that he desired to have the opportunity to regain some of the lost respect and do a better job if he was allowed to practice law again.

(2) In corroboration, Myer Cohen, Executive Director of Florida Lawyers Assistance Program testified at the hearing on the

Petitioner. He stated in substance that the Petitioner has exhibited an exemplary compliance history (with all FLA, Inc. requirements) both during his DUI probation and thereafter to date once his probation was successfully terminated. That compliance included attending daily AA meetings for 180 days as a condition of his DUI probation and providing all negative UAs during his probation and thereafter to date.

Mr. Cohen also testified in substance that since Petitioner has not used alcohol or drugs in the nearly two years since his relapse, and has shown since his relapse a commitment to his ongoing treatment requirements, that Petitioner's prognosis to be successful in staying sober is favorable. Mr. Cohen testified he supports the application for reinstatement, and recommends that there be a probationary period of (a minimum of two to three years) following reinstatement to include and require continued strict compliance with his FLA program requirements.

(F) Restitution.

(1) Petitioner completed restitution to those clients named in the disciplinary order of suspension.

(G) Positive action showing rehabilitation by such things as a person's occupation, religion, or community or civic service.

(1) As was previously stated, Petitioner produced witnesses

and introduced written statements of witnesses who testified to his having helped many persons, (through speeches to groups at Tradition House, and personal counseling and encouraging, and being their AA sponsor), who were struggling with addictions. Although many of these occasions were prior to his late 2005 relapse, the evidence shows that he has continued to invest in the lives of others who are struggling with personal set backs or addictions since then. He also served on the board of Directors at Tradition House from 2003 to 2005.

(2) Petitioner also testified to the service he provided to his wife who became severely depressed and incapacitated and unable to work for nearly a year after the death of her son in an auto accident the summer of 2006. Testimony was presented that in 2006 even in the midst of those family struggles and in the midst of struggling with his failing eyesight (See G(3) below) and in the midst of maintaining his own recovery Petitioner continued to counsel one or more others who were suffering with addictions.

(3) Petitioner has established that he has maintained stable employment since his suspension. Specifically, he testified and presented corroborating evidence that he began work as an automobile salesman in June 2002. He worked continuously until he lost his eyesight to the point that he could not read. (For a period of over a year he became unable to

work due to the gradual loss of much of his eyesight from a deteriorating eye disease. He was unable to work during the latter part of 2004 and continuing in 2005 until the Spring of 2006 when new treatment options started restoring his eyesight.) In December of 2006, he returned to work and has continued to work since. Evidence presented established that he was a top salesman at Atlantic Infinity for two years until he was recruited and hired by Osteen Automotive. He currently works for Osteen Volvo.

(4) Petitioner testified and as stated in E(2) above has shown with corroborating evidence that since he was placed on probation in March, 2006 for the offense of DUI, he has remained clean, has faithfully attended (nearly daily) AA/NA meetings, and frequently random UAs, fulfilled all requirements of his probationary and his FLA Inc. contracts both during and after his probation and to date.

III. SUMMARY OF PROVEN FACTS - POTENTIALLY DISQUALIFYING CONDUCT

Rule 3-7.10(f)(1), Rules Regulating The Florida Bar, states that a record manifesting a deficiency in honesty, truthfulness, diligence or reliability may constitute a basis for denial of a petition for reinstatement. The rule specifies certain conduct which may be considered disqualifying. A brief summary of the evidence which has been presented relating to any such

conduct is as follows:

(A) Unlawful conduct. As stated in B(3) above Petitioner was arrested in December 2005 for DUI and (after a plea was entered) was convicted of the DUI offense on March 23, 2006 and placed on probation.

(B) Academic misconduct. None.

(C) Making a false or misleading statement. As stated in B(4) above in December, 2005, Petitioner made representations to a Jacksonville police officer, while in custody for his DUI arrest, suggesting that he was a practicing attorney and member of The Florida Bar, and gave the officer a telephone number he represented as being his law office. Testifying about this incident at the hearing, Petitioner stated he had been drinking and he didn't remember saying he was a member of the Florida Bar nor that such number was that of his law office. He testified he probably meant to say that the phone number he was providing was that of his attorney, Mr. Curtis Fallgatter.

(D) Misconduct in employment. None.

(E) Acts involving fraud, deceit, dishonesty or misrepresentation.

None. See B(4) and III(C) above.

(F) Abuse of legal process. None.

(G) Financial irresponsibility. In 2004 and 2005 Petitioner received numerous loans from Mr. and Mrs. John Camlin totaling \$50,500.00. He has only paid \$2000.00 towards the debt. His failure to payoff such loans resulted in a lawsuit and eventual judgment against Petitioner in excess of \$57,000.

(H) Neglect of professional obligations. None.

(I) Violation of an order of a court. As stated in A(2), B(3) and B(6) above Petitioner violated the conditions of his court-ordered release on his 2005 DUI charge. His conduct resulted in his bond being revoked and him being placed back into jail for the night.

(J) Evidence of Mental or emotional instability. None.

(K) Evidence of drug or alcohol dependency. His relapse in late November 2005 ultimately resulting in his December 2005 DUI arrest and subsequent conviction evidenced a renewed dependency at that time.

(L) Any other conduct that reflects adversely upon the character or fitness of the Petitioner.

(1) There were some proven deficiencies in the Petition for Reinstatement filed by Petitioner. The Bar has argued that those deficiencies are such that they warrant a denial of the Petition. The undersigned has considered the testimony presented by Petitioner and his then attorney Curtis

Falgetter regarding those claimed deficiencies and has reviewed the Rule and the arguments of the Bar. It appears the Rule does not require, although allows the attachment of Tax Returns and Civil Judgments. Also, a reasonable interpretation of the rules does not require that Petitioner include the fact that his bond was revoked and he was remanded to custody for violation of his release order. Even if the Rule does require inclusion of these matters in the Petition, the undersigned has determined that those deficiencies and the others argued by the Bar that were present were not such that they sufficiently reflect adversely on the character or fitness of the Petitioner nor are they otherwise disqualifying.

(2) Consideration has been given to the Bar's arguments relating to the evidence presented of Petitioner's alleged contacts, actions, or statements to Misty Powell relating to her legal representation by the Johnson law firm. Based on the more persuasive and more credible evidence presented the undersigned does not find any of Petitioner's contacts, actions or statements to have been improper nor did they otherwise reflect negatively on his character, integrity or fitness.

(3) Consideration has also been given to the Bar's arguments relating to Petitioner's August 2007 visit to Judge Healy's office to apologize for his conduct during the DUI case. Although an argument can

perhaps be made that this visit was inappropriate and ill advised, the undersigned finds no reasonable basis for finding that this visit should disqualify Petitioner from being reinstated.

(4) Consideration has also been given to the Bar's arguments relating to the evidence presented by Petitioner's assisting attorney, Richard Gorey (in understanding procedures in the practice of Criminal law) in late 2004 and 2005 and whether Petitioner provided notice to the Bar of such assertion. The undersigned does not find that such assistance to attorney Gorey nor any failure to notify the Bar as being disqualifying conduct.

III. RECOMMENDATIONS AS TO WHETHER OR NOT PETITIONER SHOULD BE REINSTATED TO THE PRACTICE OF LAW IN FLORIDA:

The rule provides that if potentially disqualifying conduct has been proven certain other factors relating to the conduct are to be considered and weighed in determining whether the conduct warrants a denial of the petition. The factors include Petitioner's age at the time of the conduct, the recency of the conduct, the reliability of the information concerning the conduct, the seriousness of the conduct, the factors underlying the conduct, the cumulative effect of the conduct, any evidence of rehabilitation, positive social contributions since the conduct, candor in the discipline and reinstatement procedures, and materiality of the omissions or

representations. In determining whether or not Petitioner should be reinstated, I have carefully reviewed the evidence in this matter, the Petition itself, and the arguments of counsel. The burden of proof is on the Petitioner to establish fitness in terms of integrity as well as professional competency. Based on the foregoing reasons, the undersigned finds that the Petitioner has shown by clear and convincing evidence that he possesses the requisite character and integrity and fitness and has shown the level of rehabilitation required to resume the privilege practice law in Florida. In so recommending the undersigned has put great weight on the following factors:

1. Some of the potentially disqualifying conduct was quite serious. However, it occurred during Petitioner's temporary relapse back to alcohol dependency, and prior to the Petitioner being placed on probation for DUI on March 23, 2006.

2. Considering the lack of recency of the potentially disqualifying conduct, the strong evidence of rehabilitation since, and the positive social contributions of Petitioner since the conduct, and Petitioner's candor in the discipline and reinstatement procedures, and specifically his candor in testifying before the undersigned, the undersigned finds the conduct does not disqualify Petitioner's reinstatement.

3. During the Petitioner's probationary term on the DUI he called in each day to see if he needed to provide a UA, he otherwise completed random weekly drug screenings when required, attended daily AA meetings, and otherwise fully complied with all aspects of the Florida Law/Florida Bar assistance program.

4. Furthermore, since being terminated from probation on August 28, 2006, Petitioner has continued to fully comply with the Florida Bar assistance (FLA, Inc.) program requirements including but not limited to daily calls for, and submitting to, any required random UAs and attending all required AA meetings.

5. Petitioner has been regularly investing time in the encouragement and support of others who are struggling with serious personal problems and/or setbacks including but not limited to those struggling with alcohol abuse since his suspension in November, 2001, and specifically since his termination from probation in March, 2006 to date.

6. There is no evidence that Petitioner's conduct has been any less than exemplary since he was placed on probation in March, 2006.

7. The potentially disqualifying conduct that occurred when he made misrepresentations to the officer while under arrest for DUI, and when he violated Judge Healey's order, were all a byproduct of his

temporary relapse to alcohol dependency that had resurfaced in late 2005.

In addition and conclusion the undersigned finds that the Petitioner 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.” In re: Petition of William B. Dawson, III, 131 So.2d 472. Petitioner has shown through clear and convincing evidence, the requisite level of rehabilitation since his relapse to justify reinstatement.

Accordingly, the undersigned recommends Petition to be reinstated to be an active member of the Florida Bar. Upon reinstatement, the undersigned recommends that Petitioner be placed on probation for a period of two to three years with the special conditions that he continue under the terms of his FLA, Inc. contract and that he submit quarterly reports of the status of his trust account along with copies of his client ledge sheets, cash disbursement journal, and monthly reconciliations.

IV. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Age: 52 years old

Dated admitted to the Bar: November 5, 1982

Prior Discipline:

Respondent received a 30-day suspension, with probation, in

Case Nos. SC94-962, SC95-466, SC96-085, SC94-961, and SC00-72, effective September 18, 2000, by court order dated August 17, 2000.

Respondent received an indefinite suspension, effective March 5, 2001, in Case No. SC00-2430 by court order dated January 31, 2001 until he complied with the Supreme Court's order of August 17, 2000.

Respondent receive a 3-year suspension in Case Nos. SC01-716 and SC 01-1268, effective *nunc pro tunc* November 26, 2001, by court order dated November 14, 2002.

Respondent was placed on the incapacity list in Case Nos. SC01-1268, SC01-1522, effective August 13, 2001, by court order dated July 11, 2001.

Respondent received an admonishment by the grievance committee in TFB File No. 2004-00,747(4A) effective August 1, 2005.

V. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred:

Administrative Costs, pursuant to Rule 3-7.10(m)(1)(I), Rules of Discipline	\$ 1,250.00
Court Reporter Fees and Transcripts	1,607.00
Bar Counsel Travel Expenses	741.49
Investigative Costs and Expenses	<u>2,276.03</u>
Subtotal	\$ 5,874.52
LESS Cost deposit	<u>-500.00</u>
TOTAL	\$ 5,374.52

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses, together with the foregoing itemized costs, be charged to Petitioner, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment of this case becomes final unless deferred by the Board of Governors of The Florida Bar.

DATED this ____ day of _____, 2008.

/S/

John W. Watson, III, Referee
Volusia County Courthouse Annex
125 E. Orange Avenue
Daytona Beach, Florida 32114-4420

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee regarding Supreme Court Case No. SC07-548, TFB File No. 2007-00,962(4A)NRE, has been furnished by regular U.S. mail to The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; James N. Watson, Jr., Bar Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and Michael Alan Ceballos, Petitioner, c/o Daniel N. Brodersen, Counsel for Petitioner, at his record Bar address of 390 N. Orange Avenue, Suite 2500, Orlando, Florida 32801-1683, on this _____ day of February, 2008.

/S/

Sheri M. Sallade, Judicial Assistant