

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

SC Case No. SC07-548

v.

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

MICHAEL ALAN CEBALLOS,

Respondent.

REPLY BRIEF

James N. Watson, Jr., Bar Counsel
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5845
Florida Bar No. 0

Kenneth Lawrence Marvin, Staff Counsel
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600
Florida Bar No. 200999

John F. Harkness, Jr., Executive Director
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600
Florida Bar No. 123390

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF CITATIONS.....	iii
ARGUMENT	1
CONCLUSION	6
CERTIFICATE OF SERVICE	7
CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN.....	8

TABLE OF CITATIONS

Page No.

Cases

The Florida Bar In re Timson, 301 So.2d 448 (Fla. 1974)3

Rules Regulating The Florida Bar

3-6.1 1, 2, 3

ARGUMENT

Petitioner raises the issue of the Bar having raised a violation of Rule 3-6.1, Rules Regulating The Florida Bar, by Petitioner in its brief and claims such issue was not argued at the final hearing. This particular issue was addressed in the Bar's post-hearing submission to the Referee since there was no final arguments made at the hearing.

Petitioner further asserts that this issue of providing legal assistance to Richard Gory was not addressed in the Bar's response to the Petition filed with the Referee. The Bar is not limited to only those issues filed in such a response. The burden is on the Petitioner to prove rehabilitation and not on the Bar to disprove such. There was also an instance of Petitioner providing legal assistance to another of his witnesses, Earl Johnson, that only came to light on cross-examination of Mr. Johnson. Such information is pertinent and should be considered even though not included in the filed response of the Bar.

The no probable cause finding included in Petitioner's brief makes no statement of the underlying facts of the complaint and the mere assertion that it covers the entirety of Petitioner's relationship with Mr. Gory is inaccurate. There is no evidence

that the document in Petitioner's Appendix 1 directly pertains to the issue of Petitioner's failing to abide by the reporting requirements of Rule 3-6.1.

A. Strict Compliance with the Specific Conditions of any Disciplinary Judicial Administrative or other Order.

Petitioner now argues that his failure to comply with his release order in the DUI matter was a result of his relapse. There was no testimony given by Petitioner that he was abusing alcohol when he disobeyed Judge Healey's order that resulted in his bond being revoked. Judge Healey testified that the bond revocation was a result of several attempts to get Petitioner to comply with the requirement of a tracking monitor. Petitioner's release was also conditioned upon re-entry into rehabilitation which he complied with while awaiting sentencing.

Petitioner's attempt to blame his disobedience of a court order on a relapse would have to fail in light of his concurrent argument that he was in full compliance with the balance of his release conditions.

Petitioner's noncompliance with Rule 3-6.1 in connection with not just Mr. Gorey but also Mr. Johnson is a violation of Bar rules. As such, it must be viewed as disqualifying conduct. The finding to the contrary by the Referee is error and should be reversed.

C. Good Reputation for Professional Ability.

Petitioner offered no evidence of any attempts on his part to keep abreast of the law during his suspension. The burden of proving such ability is on the Petitioner. The Florida Bar In re Timson, 301 So.2d 448 (Fla. 1974).

The only evidence presented was transcripts from Petitioner's suspension hearing over six years ago. Such testimony is irrelevant in that it does not take into account subsequent misconduct or Petitioner's lack of effort to maintain his legal ability while suspended.

Petitioner makes an attempt to show that his limited assistance to attorneys Gorey and Johnson should now be reviewed as evidence of his keeping abreast of the law and of his professional ability. As pointed out earlier, such points were only presented through cross-examination and not by Petitioner in an effort to meet his burden of proof. To now claim such actions in a positive argument begs the point that such must be seen as an admission of disqualifying conduct by violating Rule 3-6.1.

Also, without the pertinent facts relating to Petitioner's Appendix 1 and the applicable Bar complaint, any argument that it excuses a Bar violation is groundless.

G. Positive Action showing Rehabilitation by such things as a Person's Occupation, Religion or Community or Civic Service.

In regards to the Camlin loans, there is no basis to support the statements made by Petitioner that a lawsuit resulted only when Petitioner became legally blind and

was temporarily unemployed. There was no testimony as to a repayment schedule ever having been implemented. Likewise, there was no testimony that the Camlin's lawsuit was served only after learning they were to be sued by Petitioner's wife.

Petitioner asserts in his brief that the loans from Mr. Camlin were initiated by Mr. Camlin. Such an assertion is either a mistake or a misstatement of the record. Petitioner initiated such loans as was supported by Mrs. Camlin's testimony.

Petitioner argues that the Bar omitted several salient facts about the Camlin loan and proceeds to attack Mr. Camlin's character. Mr. Camlin was not a witness and no evidence was introduced about his criminal or fraud problems. How such information is pertinent to Petitioner's failure to repay such loans and how this impacts his financial irresponsibility is not discernible. Petitioner describes Mr. Camlin as a close, personal friend but is willing to attack his credibility on an issue of owing money on numerous loans.

Petitioner continues to blame his shortcomings on the Bar and a perceived failure of the Bar to place Petitioner on notice of potential problems. The rules provide that any judgments are to be listed in the Petition for Reinstatement. The Camlin judgment was entered before the Petition was filed. Petitioner's failure to check the court records cannot be blamed on some misperception that it was the Bar's duty to inform him to do so.

Petitioner argues that the only problems attendant to his reinstatement are the result of his relapse from sobriety. Such an argument ignores the other issues presented at the final hearing and established in the Report of Referee.

It cannot be argued that such relapse was responsible for Petitioner's failure to establish his professional ability as required by this Court. Petitioner's financial problems cannot be limited to this short period of time. His failure to follow Bar rules regarding working for attorneys while suspended was not attributed to this relapse nor was his failure to adequately provide information required in his Petition for Reinstatement.

CONCLUSION

Petitioner's misconduct and failure to establish his fitness to resume the practice of law disqualifies him from reinstatement. The recommendation of the Referee herein should be reversed and the Petition for Reinstatement should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief regarding Supreme Court Case No. SC07-548, TFB File No. 2007-00,962(4A)NRE, has been mailed by certified mail #7006 0100 0003 1035 5731, return receipt requested, to Michael Alan Ceballos, Respondent, whose record Bar address is c/o Daniel N. Brodersen, 390 N. Orange Avenue, Suite 2500, Orlando, Florida 32801-1683, on this 28th day of May, 2008.

James N. Watson, Jr., Bar Counsel
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5845
Florida Bar No. 0

Copy provided to:
Kenneth Lawrence Marvin, Staff Counsel

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

Undersigned counsel does hereby certify that the Initial Brief is submitted in 14 point proportionately spaced Times New Roman font, and that the brief has been filed by e-mail in accord with the Court's order of October 1, 2004. Undersigned counsel does hereby further certify that the electronically filed version of this brief has been scanned and found to be free of viruses, by Symantec AntiVirus.

James N. Watson, Jr., Bar Counsel