

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR

CASE NO: SC 10-1316

RE: JOEY DEAN OQUIST

TFB No. 2011-10, 044(6D) (HRE)

REPORT OF REFEREE RECOMMENDING REINSTATEMENT OF JOEY D.
OQUIST TO THE FLORIDA BAR AS A MEMBER IN GOOD STANDING

I. SUMMARY OF PROCEEDINGS

On July 7, 2010, Joey D. Oquist filed a Petition for Reinstatement pursuant to Rule 3-7.10, Rules Regulating The Florida Bar. The Supreme Court of Florida suspended Mr. Oquist on October 11, 2007, for a period of two years, following his entry of a Condition Guilty Plea for Consent Judgment on August 3, 2007. His plea acknowledged violations of Rules 4-1.15, 4-1.5, 5-1.1, 5-1.2 and 5-2.1, Rules Regulating The Florida Bar. These violations relate to the handling of all trust account matters that he was responsible to oversee for all clients and also specific issues regarding a personal injury client. It appears that Chapter 5, Rules Regulating The Florida Bar, was not followed in the keeping of records at Mr. Oquist's firm. Following the filing of the Petition for Reinstatement, the undersigned was duly appointed as referee and conducted a hearing on January 7, 2011. All pleadings filed herein, a transcript of the hearing with exhibits, and this Report of Referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement.

Petitioner, Joey D. Oquist, was a member of The Florida Bar at the time of his suspension on October 11, 2007, and his Petition for Reinstatement is subject to the jurisdiction and Rules of the Supreme Court of Florida.

B. Summary of Facts

This matter came before the undersigned on January 7, 2011, for a hearing on the Petition for Reinstatement of Joey D. Oquist. The Florida Bar was represented by Ms. Karen Boroughs Lopez, and Mr. Oquist was represented by Mr. David R. Ristoff. In addition to Mr. Oquist, eight witnesses were called by both parties. The undersigned having considered the requirements of Rule 3-7.10, Rules Regulating The Florida Bar, the witnesses, the pleadings, and argument of counsel, hereby makes the following findings based upon the clear and convincing evidence presented:

Mr. Oquist was admitted to The Florida Bar in 1991. He worked for several firms practicing in the areas of workers' compensation law and personal injury law for both the plaintiff and defense. In 1999 or 2000, he opened his own firm focusing on workers' compensation law for claimants, with some plaintiff personal injury clients. His wife, Diane Oquist, acted as his office manager and bookkeeper. He also had other employees and associate attorneys from time to time. He worked hard, purchased his own office building, and established a successful practice. Mr. Oquist acknowledges that he relied on his wife to handle all accounts, both his personal accounts and those of the law firm, and admits he did not engage in an appropriate level of oversight. Even after his suspension in 2007, his trust in his wife remained undiminished until 2009. It was in mid-2009 that Mr. Oquist was informed by James Hack that Diane Oquist was and had been stealing funds for her own use.

Mr. Hack, an attorney, was a friend of Mr. Oquist and had affiliated with him in the past to conduct legal work. Mr. Hack had his primary office in the Florida Keys and did mostly criminal law. However, he also represented claimants in workers' compensation cases and would work with Mr. Oquist as needed for

these clients. When Mr. Oquist was suspended in 2007, Mr. Hack agreed to take over his practice for those clients who were interested in his services. Mr. Hack would travel to Pinellas County, Florida, as many as five days a week, and would stay with Mr. Oquist and his wife, Diane, in order to represent Mr. Oquist's former clients and to practice law at the office building owned by Mr. Oquist. Mr. Hack also used Diane Oquist as his office manager and his bookkeeper after he took over the representation of Mr. Oquist's former clients.

In July 2009, Mr. Hack received a call from a client in a personal injury case notifying him that the check drawn on the firm trust account had been returned for lack of sufficient funds. Mr. Hack started to examine the accounts of the firm, handled by Diane Oquist, and noticed numerous irregularities. His investigation eventually led him to conclude that Diane Oquist stole or converted just over \$397,000 for her own use. He fired Diane Oquist and reported the matter to the St. Petersburg Police Department.

During August 2009, Mr. Oquist discovered problems with his personal accounts, including a large (\$264,000+) federal tax lien. Mr. Oquist was under the impression that he had limited debt and that his wife was current on all his obligations. He was notified that the bank wanted to talk to him. He then discovered that he was in arrears on his loans and that the IRS was about to levy on his property to satisfy a tax lien. He placed all his assets up for sale and attempted to work with all of his creditors. He confronted his wife about these issues and she told different stories about the source of the confusion and the problems. It was not until December 2009 that Mr. Oquist became aware of the full extent of his wife's dishonesty. It was at that time that he asked for financial assistance from Mike Murburg.

Mr. Murburg is a lawyer and friend of Mr. Oquist. He has his own firm specializing in Social Security law. After Diane Oquist was terminated by Mr. Hack, she approached and was hired by Mr. Murburg. She requested assistance for her husband, and Mr. Murburg, after initially being unable to assist, gave her a \$40,000 loan. Several weeks later, when Mr. Oquist contacted him about assistance, Mr. Murburg advised that the only amount he could give was the \$40,000 already provided. Mr. Oquist said he was unaware of any money given to his wife. Mr. Murburg then reviewed his records and found that even though

Diane Oquist was not the bookkeeper, only a secretary, she had engaged in acts of dishonesty. Mr. Murburg fired Diane Oquist and contacted law enforcement to press charges.

By the end of 2009, Mr. Oquist realized that his wife had taken advantage of him and his friends, and decided that he needed a divorce. Mr. Oquist filed for divorce in January 2010. The divorce was final in April 2010 and Diane Oquist left their domicile in July 2010. To resolve his personal financial problems, Mr. Oquist sold his home and a rental property. He negotiated a loan with a private individual and restructured his finances. He has satisfied his IRS liens.

Even in hindsight, Mr. Oquist was not aware of any substance or other addictive issues that Diane Oquist manifested. James Hack, who saw Diane Oquist during his stays with them, said that Joey and Diane Oquist did not live an extravagant lifestyle. The witnesses who were familiar with Mr. Oquist's lifestyle noted that it was modest.

In considering the Petition for Reinstatement of Joey Oquist, this background is important since it provides a legitimate basis for the Bar to question whether Mr. Oquist took timely action to warn his friends about his wife and to prevent her from further acts of defalcation. Trust and faith in one's spouse is not a character flaw. However, blind faith in an employee is fraught with issues, as this case demonstrates. While there is no question that Joey Oquist did not engage in the level of oversight needed to appropriately oversee every detail of his practice, including trust account records, the actions of Diane Oquist have harmed him and his friends far more than members of the public.

With regard to the factors listed in Rule 3-7.10(f), Rules Regulating The Florida Bar, the following is noted:

1. Disqualifying Conduct:

As noted above, Mr. Oquist's plea acknowledged violations of Rules 4-1.15, 4-1.5, 5-1.1, 5-1.2 and 5-2.1, Rules Regulating The Florida Bar. He did not provide the necessary oversight to the handling of trust funds, or other funds. However, all of his clients did receive those funds due to them. This conduct does not fall within any of the listed areas of

“disqualifying conduct” that would manifest a deficiency in the honesty, trustworthiness, diligence, or reliability of the petitioner.

2. Determination of Character and Fitness:

- a. At the time of his suspension, Joey Oquist was 51 years old.
- b. Mr. Oquist did not provide oversight of his firm’s finances prior to his suspension in 2007. His reliance on his wife to handle his firm accounts, including the trust account, was misplaced. While he participated in LOMAS after his suspension, he did not become fully aware of or accept the full extent of his wife’s actions until he filed for divorce in January 2010. He now understands that his obligation to oversee all aspects of his practice, including bookkeeping, is of critical importance.
- c. There is no dispute concerning the cause of the suspension nor Mr. Oquist’s failure to comply with Chapters 4 and 5, Rules Regulating The Florida Bar.
- d. The failure to oversee one’s law firm and all of its activities, especially client funds, is serious. However, it is difficult for any attorney to foresee criminal conduct by a trusted employee.
- e. The factors giving rise to Mr. Oquist’s suspension are outlined above. Again, while Mr. Oquist did not provide adequate oversight, his trust in his wife is understandable.
- f. Mr. Oquist’s misplaced trust in Diane Oquist has caused him to suffer personally and has harmed his friends. His clients were not materially harmed. Had Mr. Oquist provided the oversight required by Chapters 4 and 5, Rules Regulating The Florida Bar, Diane Oquist may have been prevented from harming all these individuals.
- g. As outlined below, Joey Oquist has provided clear and convincing evidence of rehabilitation.
- h. Mr. Oquist has volunteered as a laborer with Habitat for Humanity. Jack Sutfin, a construction supervisor with Habitat for Humanity, testified to Joey Oquist’s active and helpful participation in constructing residences.

- i. Mr. Oquist was cooperative and candid at the hearing. The Bar raised two issues regarding his candor. First, the Bar questioned whether he had fully complied with Rule 3-6, Rules Regulating The Florida Bar, with regard to his updates to a software program (Client Profiles) used in the workers' compensation practice and his presence at the office approximately 37 days after commencement of the suspension. Mr. Oquist explained that prior to his suspension he had contracted to have a construction company expand and renovate the office building and that he made frequent trips for that purpose. Also, he would update Client Profiles with current forms so he would be ready to use it upon his return. He noted he was not compensated by the firm other than as a landlord. These activities do not appear to be in violation of Rule 3-6, Rules Regulating The Florida Bar. Second, Mr. Oquist did not list a loan from his parents (\$10,000) or a loan from Mr. Hack's firm (\$26,000) in his Petition for Reinstatement. The loan by Mr. Oquist's parents was volunteered by Mr. Oquist at the hearing and is considered by the undersigned to be an oversight. The loan by Mr. Hack's firm should have been listed in the petition since it involves Mr. Oquist's former firm. Neither loan was to be paid monthly nor by any type of recurring payments. Further, there was no evidence that either loan was documented.
- j. As just noted, the loan from Mr. Hack's firm should have been disclosed. Mr. Oquist acknowledged at the hearing that this loan should have been listed in his Petition for Reinstatement. The failure to disclose this loan in the petition is a material omission.

3. Elements of Rehabilitation

- a. Joey Oquist has strictly complied with the terms of his suspension. His actions to update Client Profiles, a software program, are not in violation of the terms of suspension or Rule 3-6, Rules Regulating The Florida Bar. Also, his presence at an office building he owned, especially during construction, is not a violation.
- b. All witnesses that appeared testified favorably about Joey Oquist's unimpeachable character and moral standing in the community. He is

genuinely liked, respected, and trusted. Even James Hack and Mike Murburg, who were both victims of Diane Oquist's dishonesty, continue to speak highly of Joey Oquist as a friend and respected colleague.

- c. Gary Frazier, Dennis Palso, Mike Murburg, and James Hack, all members of The Florida Bar, each spoke to Joey Oquist's good reputation for his professional ability. He was considered an expert in workers' compensation law. He helped other members of the Bar by providing insight, guidance, and mentoring. He was active in discussing legal issues and law changes with his colleagues. He was a well-regarded member of the Bar during his years of practice.
- d. Joey Oquist lacks malice and ill feeling regarding his discipline. No witness has heard him speak ill of the Bar for his suspension. On the contrary, Mr. Oquist acknowledges his own failure of oversight as the cause of his suspension.
- e. Joey Oquist has acknowledged his shortcomings and has stated his intention to be rigorous in overseeing his law office. He admits that he must strictly comply with the Rules Regulating The Florida Bar, particularly those relating to trust account oversight. More importantly, he has suffered personally, as have his friends, as a result of his failure to oversee the bookkeeping of Diane Oquist. He has learned a hard lesson about trust in the workplace.
- f. The costs due to The Florida Bar have been paid.
- g. Joey Oquist has shown rehabilitation and has undertaken a constructive place in society. Mr. Oquist has done those positive actions needed for rehabilitation. He has engaged in community service and followed through on all terms of his suspension. He has kept current on the law. Most significantly, he has come to terms with the actions of his former wife. His friends who were victimized by Diane Oquist have remained loyal to him. He has suffered personally as a result of his misplaced trust. Yet, all witnesses seem to respect Mr. Oquist for his ability to overcome his wife's actions and his resolve to take the high road.

III. RECOMMENDATION AS TO REINSTATEMENT

I recommend Joey D. Oquist be reinstated to The Florida Bar as a member in good standing pursuant to Rule 3-7.10, Rules Regulating The Florida Bar. He has overcome much in the past three years and has demonstrated the strength of character that the Bar expects of its members. He has taken positive actions to demonstrate that he is a constructive and useful member of society. On balance, the factors in favor of reinstatement outweigh the main deficiency – the failure of Mr. Oquist to list his loan from Mr. Hack’s firm in the Petition for Reinstatement. After review of all factors, the clear and convincing evidence presented supports the reinstatement of Joey D. Oquist.

This Report of Referee is hereby submitted this ____ day of February, 2011.

Herbert J. Baumann Jr., Circuit Judge
Thirteenth Judicial Circuit
800 East Twiggs St., Room 521
Tampa, FL 33602

Copies to:

The Honorable Thomas D. Hall, Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1927

David R. Ristoff, Esquire
Williams, Ristoff & Proper, P.L.C.
4532 U.S. Highway 19
New Port Richey, FL 34652
Counsel for Joey D. Oquist

Karen B. Lopez, Esquire
The Florida Bar
4200 George J. Bean Parkway, Ste. 2580
Tampa, Florida 33607-5958
Counsel for The Florida Bar

Ken Marvin, Esquire
Staff Counsel
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300