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The Florida Bar v. James Manuel Heptner

PLEASE RISE. PLEASE BE SEATED.

LAST CASE ON THE COURT'S DOCKET THIS MORNING IS FLORIDA BAR VERSUS JAMES HEPTNER.
YOU READY TO PROCEED?

GOOD MORNING. I'M BILL THOMPSON , ASSISTANT STAFF COUNSEL TO THE FLORIDA BAR. THE ONLY MATTER BEFORE THE COURT THIS MORNING IN THIS CASE IS THE FLORIDA BAR'S PETITION FOR REVIEW OF THE RECOMMENDATION OF THE REFEREE ON DISCIPLINE IN THIS CASE. THE REFEREE'S FINDINGS IN THIS CASE WERE THAT THE BAR HAD PROVEN ALL OF THE ELEMENTS OF ITS PETITION FOR ORDER TO SHOW CAUSE , ITS AMENDED PETITION. AND THE COMPLAINT THAT WAS FILED IN THIS CASE.

WHAT WAS THE RELIEF ASKED FOR BY THE BAR BEFORE THE REFEREE? TELL US ABOUT THAT.

THE BAR HAD ASKED FOR DISBARMENT JUSTICE ANSTEAD.

SO WE ARE DOWN TO REALLY THE REFEREE HAS RECOMMENDED A TWO YEAR SUSPENSION WITH A PROBATION OR CONDITIONS?

IN FACT WHAT HE HAS RECOMMENDED IS A TWO YEAR SUSPENSION REMEMBER RO RETROACTIVE TO JULY 2002. IN EFFECT , IF THE COURT WERE TO ACCEPT THAT RECOMMENDATION , MR. HEPTNER WOULD BE ABLE TO PETITION FOR REINSTATEMENT , READMISSION TO THE FLORIDA BAR TWO OR THREE WEEKS FROM NOW.

BUT HE'S BEEN UNDER SUSPENSION?

IN A SEPARATE MATTER , YES. A 1 DAY REHABILITATIVE SUSPENSION.

WHICH HE WAS NOT GRANTED REINSTATEMENT AS OF THIS DATE?

HE HAS NOT PETITIONED , NO , YOUR HONOR.

WELL IF YOU COULD GET RIGHT TO THE CRUX OF THE REFEREE SEEMED TO BE VERY THOUGHTFUL AND REFLECTIVE AND AS A MATTER OF FACT , HE SAID THAT , YOU KNOW, BUT FOR THE DEMONSTRATION AT LEAST TO HIM , TO HIS SATISFACTION , OF THE EFFORTS TOWARDS REHABILITATION AND HE MADE A VERY SPECIFIC STATEMENT I BELIEVE IN HIS ORDER THAT HE TOO WOULD HAVE RECOMMENDED DISBARMENT. BUT THAT IN VIEW OF THOSE THINGS THAT EXISTED IN THE CASE. SO WOULD YOU GET RIGHT TO THE CRUX HERE OF WHY DESPITE THE REFEREE'S CONSIDERATION OF THESE THINGS IN RECOMMENDING THE SUSPENSION , WOULD YOU GET RIGHT TO THE CRUX OF WHY THE BAR BELIEVES OTHERWISE AND WHAT THE BAR ASKS FOR HERE.

THE HEART OF THE MATTER IS THAT IN THE PAST , THIS COURT HAS FOUND THAT IN ORDER FOR THE USE OF DRUGS TO BE USED AS A MITIGATOR IN DISCIPLINE CASES , THE RESPONDENT SHOULD HAVE TO SHOW THAT IT HAS IMPAIRED HIS ABILITY TO PRACTICE LAW. AND THE FINDING BY THE REFEREE AT OUR CASE HAS FOUND ONLY THAT MR. HEPTNER ATTENDED REHAB AND WAS DOING WELL IN REHAB. THERE WAS NO CONNECTION BETWEEN THE PRACTICE OF LAW

AND HOW HIS DRUG USE HAD AFFECTED HIS PRACTICE OF LAW. THERE WAS NO FINDING TO THAT EFFECT.

WASN'T IT IMPLICIT IN TERMS OF ATTENDING THE REHABILITATION AND PARTICIPATING I N THAT , THAT THE ADDICTION WAS CAUSING A SUBSTANTIAL DISRUPTION TO THE PERSON'S LIFE T O BEGIN WITH? AND TELL ME WHAT , WHAT WE DO HAVE IN THIS RECORD ABOUT THAT. IN OTHER WORDS , IS THERE NOTHING IN THE RECORD T O SAY WHAT EFFECT THE DRUG USAGE HAD ON THE RESPONDENT?

WHAT WE HAVE IS THE TESTIMONY OF A , SOMEONE WHO WORKED VERY CLOSELY , AN ATTORNEY WHO WORKED CLOSELY WITH MR. HEPTNER , JOLLEY TRUF HEF , JOL TRUEHEF SAID HE HAD SEEN MR. HEPTNER PRACTICING LAW MORE THAN TWO HUNDRED OCCASIONS AND NEVER KNEW MR. HEPTNER EVEN USED DRUGS. NEVER SAW HIM IMPAIRED. AND TESTIFIED TO THE EFFECT THAT HE RAN A STELLAR PRACTICE. THE CLIENT SAID CLIENTS HE REFERRED TO MR. HEPTNER WERE ALL VERY SATISFIED.

WOULD YOU TAKE THAT AS A NEGATIVE OR A POSITIVE THEN?

WELL , IT DEFINITELY DOES NOT SHOW THAT MR. HEPTNER WAS IMPAIRED TO THE EXTENT IT AFFECTED HIS ABILITY TO PRACTICE.

WE WERE AT THE TIME THAT MR. HEPTNER WAS ALREADY UNDER SUSPENSION , CORRECT , FOR SOME PRIOR , SOME PRIOR PROBLEM. WERE ANY OF THOSE PRIOR PROBLEMS LINKED TO DRUGS? IN OTHER WORDS , HAD THEY BEEN AGREEMENTS BETWEEN THE BAR AND MR. HEPTNER TO A SUSPENSION?

IT IS THE LATTER. THERE WAS NO ISSUE OF DRUG USE.

THERE WAS NO INDICATION , YOU HAVE POINTED OUT A HISTORY OF ALMOST A TEN YEAR HISTORY OF REPEATED ACTS OF MISCONDUCT.

THAT'S CORRECT.

NOW UNDER SUSPENSION AND THE BAR BASIS FOR REQUESTING DISBARMENT WERE , I AM GOING TO SAY IS TWOFOLD. OR THREE-FOLD. ONE IS THAT HE DID NOT D O WHAT THE REQUIREMENT OF THE SUSPENSION ORDER WAS , WHICH I S TO STOP PRACTICING LAW.

THAT'S RIGHT.

DID NOT CONTINUE TO BE COUNSEL OF RECORD IN BANKRUPTCY I MEAN COULD YOU JUST GIVE THAT PICTURE? BECAUSE TO ME THAT IS WHAT , I AM GOING TO B E ASKING COUNSEL ABOUT , IS THAT THIS ISN'T JUST A SITUATION WHERE SOMEONE'S HAD A ACT OF MISCONDUCT , NOWWE ARE LOOKING WHETHER DRUGS MITIGATED IT. WE HAVE THAT PART , THE PART OF HIM BUYING DRUGS FROM A CLIENT THAT HE WAS REPRESENTING , AND YOU KNOW, AND THEN THE FELONY ISSUE ON TOP OF PRACTICING LAW WHILE HE'S SUSPENDED.

I'LL START WITH THE LAST PART FIRST. THAT WAS THE FIRST TIME IT WAS DISCOVERED THAT MR. HEPTNER WAS USING DRUGS.

THAT THE PURCHASE FROM THE CLIENT?

WITH THE ARREST , THAT'S RIGHT. NOW GOING BACK , THERE WAS A 60 DAY SUSPENSION AND MR. HEPTNERDID CONTINUE TO PRACTICE LAW. HE IN FACT FILED A , PERSONALLY FILED A MOTION WITH CIRCUIT COURT JUDGE ROBERT FOSTER , PERSONALLY WENT TO THE JUDGE'S CHAMBERS TO FILE THAT MOTION. AND A NOTICE O F HEARING. NEVER ANNOUNCED THAT HE WAS , AT THAT

TIME SUSPENDED. THAT MOTION AND NOTICE OF HEARING CONTAINED A SIGNATURE BLOCK THAT BORE HIS NAME , BAR NUMBER, ETCETERA. IN ADDITION TO THAT , THERE WAS -.

LET'S EXAMINE THAT FOR A MINUTE, JUST TO ARE WE TALKING THERE ABOUT AN ISOLATED INCIDENT THAT THE RESPONDENT ATTEMPTED TO EXPLAIN? OR ARE WE TALKING ABOUT THAT HE IGNORED HIS SUSPENSION AND JUST CONTINUED WITH THE PRACTICE OF LAW? ARTICULATE THAT FOR ME INSOFAR AS THE MILEAGE OF THE KNOWLEDGE OF THE BAR IS CONCERNED.

JUDGE A RAMSBERGER'S FINDING IS THE BAR HAS PROVEN THAT BY CLEAR AND CONVINCING EVIDENCE. THIS WAS NOT SIMPLY SOMETHING THAT COULD BE EXPLAINED AWHAT . HE WAS I N FACT PRACTICING LAW. JUDGE FOSTER TESTIFIED HE BELIEVED MR. HEPTNER WAS STILL A LICENSED ATTORNEY , O R APPEARED TO BE ANYWAY. IN ADDITION TO THAT , HE HADSEVERAL CLIENTS THAT HE FAILED TO NOTIFY ABOUT HIS SUSPENSION , AT LEAST A FEW. AND THEY WERE THE KEY CLIENTS IN THIS CASE. DANNY NOVA , THE PERSON THAT HE WAS BUYING DRUGS FROM , DANNY NOVA'S GIRL FRED RICOS , AND THEN THERE WAS WILLIAM VALENT ALSO. THE KEY CHARACTERS IN THIS CASE WERE NOT NOTIFIED. THEY WERE ALSO IN FACT LEFT OFF AN AFFIDAVIT ACCORDING T O RULE 3-5.31 G .

WHAT WAS THE NATURE OF THE REPRESENTATION OF THIS CLIENT HE PURCHASED DRUGS FROM?

DANNY NOVA , MR. HEPTNER WAS REPRESENTING HIM IN A DIVORCECASE. IN FACT , DANNY NOVA AND HIS GIRLFRIEND WERE BOTH BEING DIVORCE AND AND BOTH BEING REPRESENTED BY MR. HEPTNER.

WASN'T THERE ALSO SOME ALLEGATION MADE BY THE BAR AND WAS IT PROVEN THAT HE STILL MAINTAINED HIS NAME AS ATTORNEY OF RECORD IN A NUMBER OF CASES IN THE BANKRUPTCY COURT. SO THAT COURT WAS NEVER ACTUALLY NOTICED OF THE FACT THAT HE WAS ON SUSPENSION?

THAT'S RIGHT. HE REMAINED , DURING THE PERIOD OF HIS SUSPENSION , REMAINED ATTORNEY OF RECORD ON MORE THAN ONE HUNDRED CASES I N THE BANKRUPTCY COURT.

LET ME ASK YOU ABOUT THAT BECAUSE HE WAS SUSPENDED FOR 60 DAYS , CORRECT?

CORRECT.

AND OBVIOUSLY HE CANNOT FILE ANY PLEADINGS IN THOSE COURTS WITHIN 60 DAYS. BUT IS AN ATTORNEY WHO IS SUSPENDED FOR A FINITE PERIOD OF 60 , 30 DAY , 90 DAYS , IS HE REQUIRED THEN TO OBTAIN , TO GIVE AWAY ALL THOSE CLIENTS T O OTHER ATTORNEYS AND GET SUBSTITUTION OF COUNSEL IN ALL THOSE CASES? IS THAT WHAT WE'RE SAYING?

AND HE HAS 30 DAYS TO DO THAT. 30 DAYS BEFORE THE BEGINNINGOF THE EFFECTIVE DATE OF HIS SUSPENSION IN. THIS CASE MR. HEPTNER DIDN'T EVEN NOTIFY THE CLERK OF THE BANKRUPTCY COURT TO LET THE CLERK KNOW.

DID HE ACTIVELY PARTICIPATE IN THOSE FILES? WERE THOSE FILES SITTING THERE? WAS THE NATURE OF THE EVIDENCE WITH REGARD TO THAT?

THE NATURE OF THE EVIDENCE , I DON'T HAVE ANY MORE THAN EVIDENCE THAN THAT.

SO HE REMAINED ON THE RECORD. SO THE BAR'S POSITION WOULD BE THAT HE IS SUPPOSED TO G O IN AND HAS TO WITHIN THAT 30 DAYS GET LAWYERS TO COME IN ON A HUNDRED CASES AND THAT'S THE WAY THIS OPERATES? DO WE IMPOSE THAT IN OTHER SITUATIONS? WE ACTUALLY DO THAT?

THE WAY , PRESUMABLY THE WAY IT'S DIFFICULT TO ENFORCE THIS ASPECT OF IT. WE RELY ON AN AFFIDAVIT FROM THE RESPONDENT INDICATING THAT HE'S NOTIFIED ALL OF HIS CLIENTS . WE DON'T HAVE THE RESOURCES OBVIOUSLY, PERHAPS NOT EVEN THE AUTHORITY TO GO OUT AND CHECK , MAKE SURE THAT EACH , EVERY SUSPENDED ATTORNEY'S CLIENTS HAVE BEEN NOTIFIED. AND THAT THEY HAVE PROPER REPRESENTATION DURING THE PERIOD OF HIS SUSPENSION.

IS THIS GENTLEMAN A SINGLE PRACTITIONER?

YES.

AND DO WE TREAT SINGLE PRACTITIONERS DIFFERENTLY THAN THOSE WITH THESE LARGE LAW FIRMS THAT HAVE OTHER PEOPLE THAT CAN COME IN AND TAKE OVER THOSE FILES?

NOT THAT I'M AWARE OF.

SO IF H E SIMPLY NOTIFIED THE CLERK AND NOTIFIED THE HUNDRED CLIENTS THAT HE WAS UNDER SUSPENSION , BUT NOTHING WAS EVER DONE TO ACTUALLY WITHDRAW FROM THOSE HUNDRED CASES, WOULD THAT BE WOULD THAT SATISFY THE BAR'S REQUIREMENT? HE'S NOTIFIED THE CLIENT , THE CLERK OF THE COURT KNOWS , WOULD THAT BE SUFFICIENT?

I CAN'T ANSWER THAT. I'M NOT SURE THAT THAT WOULD BE SUFFICIENT.

WHAT HAPPENED HERE , WHAT CAME TO THE BAR'S ATTENTION WAS HIS ARREST DURING THE PERIOD OF A SUSPENSION FOR A DRUG ARREST , CORRECT?

THAT'S CORRECT.

BUT WERE THE COUNTS THE THING HE WAS WHAT WAS HE UNDER SUSPENSION FOR FOR THAT 60 DAYS? BECAUSE THAT IS NOT THE THERE WAS SEVERAL OTHER COUNTS THAT THE BAR WAS ALSO ACTIVELY PURSUING, CORRECT?

RIGHT.

GIVE US THAT SCENARIO BECAUSE AGAIN I'M TRYING TO GET THE FEEL FOR THIS , IT WASN'T A SINGLE 60 DAY SUSPENSION THAT WE ARE TALKING ABOUT.

THAT'S RIGHT.

AS FAR AS WHAT WE HAVE TO CONSIDER.

HIS PRIOR DISCIPLINARY HISTORY INCLUDES FIRST A PRIVATE REPRIMAND , THEN PUBLIC REPRIMAND AND THEN 60 DAY SUSPENSION. 60 DAY SUSPENSION WAS IN PART FOR NOT RESPONDING TO THE BAR. FOLLOWING THAT, AND STILL WHY THE CASE BEFORE YOU WAS PENDING WAS ANOTHER CASE FOR FAILURE TO RESPOND TO THE FLORIDA BAR , WHERE HE GOT THE 91 DAY SUSPENSION.

THAT'S STILL PENDING?

AND HE IS CURRENTLY SUSPENDED UNDER THAT , THAT'S CORRECT. BUT EVEN WHILE HE WAS SERVING SUSPENSION FOR FAILURE T O RESPOND TO THE FLORIDA BAR , THE NEW CASE CAME UP WHERE HE FAILED TO RESPOND T O THE FLORIDA BAR AND HE GOT A SECOND SUSPENSION.

WELL WERE ANY OF THOSE THAT ALL COULD BE EXPLAINED BY SOMEBODY THAT HAD A SIGNIFICANT DRUG PROBLEM . AND THAT IS GOING BACK TO THIS ISSUE ABOUT WHETHER THIS COULD BE SUFFICIENTLY MITIGATING TO CHANGE THE PRESUMPTIVESANCTION. AND I THINK JUSTICE ANSTEAD WAS ASKING YOU EARLIER , TAKING THE EVIDENCE IN THE LIGHT MOST

FAVORABLE TO THE RESPONDENT , WERE THESE THE ISSUE OF HIS DRUG USE AT THE HEARING BEFORE JUDGE RAMSBURG RAMSBERGER LINKED TO , HIS FAILURE TO KEEP ON RESPONDING LINKED TO THE FACT THAT HE HAD A SIGNIFICANT DRUG PROBLEM? IS THERE TESTIMONY IN THE RECORD THAT PROVIDES THAT LINK? YOU MENTIONED THE PART PEOPLE DIDN'T KNOW HE WAS ON DRUGS. BUT I'M TALKING ABOUT WHETHER THAT WOULD BE AN EXPLANATION FOR WHY SOMEBODY WOULDN'T KEEP ON RESPONDING , IS THAT THEY HAVE A DRUG PROBLEM?

THAT'S WHAT JUDGE RAMSBERGER BELIEVED. YOU WILL SEE IN THE TRANSCRIPT THAT WAS SUBMITTED AS A RESPONDENT'S EXHIBIT ACTUALLY. FOR PURPOSES OF PRESENTING TIM SWEENEY'S TESTIMONY , TIM SWEENEY FROM HEALTH CARE CONNECTIONS. HE AND I HAD A , DURING HIS CROSS-EXAMINATION , A DISCUSSION ABOUT THE MAILBOX AVOID DANCE RULE OR THEORY THAT HE HAD. AND THAT WAS ATTRIBUTED TO HEPTNER'S OR MR. SWEENEY ATTRIBUTED IT TO MR. HEPTNER'S DRUG USE. DURING THAT CROSS-EXAMINATION, MR. SWEENEY SAID IT WAS INCONSISTENT WITH THIS THEORY THAT HE'S AVOIDING OPENING HIS MAIL AND AVOIDING THE FLORIDA BAR , THAT MR. HEPTNER CONTINUED TO PRACTICE , HAVE A THRIVING PRACTICE , OPENING 40 NEW CASES A MONTH. IF YOU'LL LOOK BACK TO THE .

DURING HIS SUSPENSION , HE WAS OPENING 40 NEW CASES A MONTH?

NO, MA'AM. NOT DURING THE SUSPENSION , NO.

YOU WERE TALKING ABOUT THE OTHER BAR CASES WHERE FAILURE TO RESPOND, SOME OF THE BAR CASES WERE FAILURE THERE WERE COMPLAINTS COMING IN ABOUT HIM?

THAT'S RIGHT YES.

AND THE BAR WAS TRYING TO FIND OUT WHAT WAS GOING ON , THEY'D WRITE , THAT'S WHAT THEY DO WHEN A COMPLAINT COMES IN. AND H E WASN'T RESPONDING.

HE WAS NOT RESPONDING.

DURING THAT SAME PERIOD , HE WAS ACTIVELY HAVING NEW CASES COMING IN AND THIS IS DURING THE SAME PERIOD THAT.

AND IF YOU LISTEN TO THE AUDIO TAPE OF THE WIRE WHEN DANNY NOVA WENT INTO HIS OFFICE AND WEARING THE WIRE FOR THE TAMPA POLICE DEPARTMENT, YOU WILL HEAR MR. HEPTNER BRAGGING ABOUT HOW GOOD BUSINESS IS. THIS IS DURING THE SAME PERIOD HE ALLEGES HE HAS A DRUG PROBLEM THAT IS AFFECTING HIM SO MUCH. HIS BUSINESS WAS THRIVING. IT WAS DOING SO WELL HE TOOK DANNY NOVA INTO HIS NEW LARGER OFFICE BECAUSE HIS BUSINESS WAS GROWING AND HE TALKS ABOUT HIS HOUSE ON THE LAKE AND HE TALKS EVEN IN FACT WHY HIS BUSINESS IS GROWING SO MUCH AND HE IS REFERRING TO A CREDIT COUNSELING BUSINESS THAT IS OWNED BY A FRIEND OF HIS. HE IS REFERRING BANKRUPTCY CASES TO HIM.

SO THAT THE IDEA THAT WOULD BE AN IMPAIRMENT IN TERMS OF RESPONDING TO THE BAR'S INQUIRY OR THESE OTHER ISSUES OR PROBLEMS , IS TOTALLY INCONSISTENT WITH THE ACTUAL PICTURE OF HIM BEING ABLE TO PRACTICE LAW AND AS A MATTER OF FACT , BUILD IT UP EVEN TO A THRIVING BUSINESS?

EXACTLY.

ESSENTIALLY THE BAR'S POSITION IS THAT THIS IS A FABRICATED DRUG KIND OF DEFENSE THAT COMES UP AFTER THE FACT , AFTER YOU'RE CAUGHT AND SO HOW CAN I DEFEND AGAINST THIS? I CAN CLAIM A DRUG PROBLEM. THAT IS ESSENTIALLY WHAT YOU'RE SAYING?

YES.

MARSHAL HAS TURNED ON THE LIGHT TO REMIND YOU. THAT'S UP TO YOU , TO SAVE YOUR REBUTTAL TIME.

AND I WILL.

THANK YOU VERY MUCH. GOOD MORNING.

GOOD MORNING , SCOTT TOZIAN ON BEHALF OF MR. HEPTNER, WHO IS BEFORE THE COURT. MICHAEL COHEN FROM FLA INTENDED TO BE HERE BUT HEALTH .

IT APPEARS YOUR CLIENT HAS A HARD ROW TO HOE , EVEN BEFORE THE REFEREE. IT SAYS BUT FOR THE RESPONDENT'S SUCCESSFUL COMPLETION OF RESIDENTIAL TREATMENT AND COUNSELING , SUCCESSFUL COMPLETION OF THE PRE-TRIAL INTERVENTION PROGRAM , AND THE FACT THAT HE'S CURRENTLY DOING WELL WITH HIS AFTER-CARE, THE RESPONDENT'S DISCIPLINARY HISTORY WOULD HAVE WARRANTED DISBARMENT. NOW , I READ THAT VERBATIM FROM THE REFEREE'S FINDING. SEEMS TO ME THE WHOLE UNDER PINNING OF THAT IS A N ACCEPTANCE OF THE FACT THAT I T WAS THIS DRUG PROBLEM THAT CAUSED THE PROBLEMS , THE BAR , THE DISCIPLINARY PROBLEMS THAT YOUR COUNSEL WAS HAVING. ULTIMATELY THE CRIMINAL CHARGES.

YES, SIR.

THAT WERE BROUGHT. AND IT SEEMS TO ME THAT THE BAR IS SAYING THAT THAT , THAT IS NOT THE PICTURE THAT WAS PRESENTED AT THE HEARING BELOW AND THERE IS REALLY NO EVIDENTIARY BASIS TO SUPPORT A CONCLUSION THAT ALL OF HIS PROBLEMS WERE CAUSED BY HIS ABUSE OF DRUGS. SO, WOULD YOU HELP US.

SURE.

BECAUSE THIS IS OBVIOUSLY , AND THAT'S PART OF THE REASON WE'RE HERE IN THIS COURTROOM TODAY , THAT THIS IS A VERY , VERY DIFFICULT CASE.

IF YOU LOOK AT THE BAR'S CHARACTERIZATION OF HIS DRUG USE , THEY USE THE WORD A COUPLE TIMES IN THEIR BRIEFS , RECREATIONAL USE. THERE IS NO RECREATIONAL USE OF COCAINE. THIS MAN GETS , HE IS DEALING WITH A DRUG DEALER. HE GETS ARRESTED IN JUDGE HOLDER'S CHAMBERS. HE GOES TO REHABILITATION , IN HOUSE , RESIDENTIAL REHABILITATION FOR FIVE MONTHS. %%--ypHE SPENDS \$40,000 FOR REHABBING HIMSELF.

WELL AT THAT POINT HE HAD A CRIMINAL CHARGE. I MEAN, YOU KNOW , I AM NOT VERY SYMPATHETIC TO SOMEONE'S DRUG USE. THE ISSUE IS THAT THERE WAS MOTIVATION AT THAT POINT TO GO AHEAD AND DO THIS IF YOUR , YOU NOW HAVE YOUR CRIMINAL , YOU KNOW, AS A CONDITION TO GET YOUR CRIMINAL CHARGE DISMISSED. WHAT HAPPENED WITH THAT CRIMINAL CHARGE?

THE CRIMINAL CHARGE HE WAS PLACED IN PRE-TRIAL INTERVENTION, DRUG COURT.

SO WHERE A CONDITION WOULD BE SUCCESSFUL COMPLETION O F WHATEVER THEY THOUGHT WAS APPROPRIATE FOR HIM , SO HE HAD TO DO THAT.

THAT'S TRUE. BUT THE REALITY OF LIFE IS A LOT OF PEOPLE DON'T COMPLETE THAT.

BUT WHERE IS THE EVIDENCE OF IMPAIRMENT? THAT IS , WE HAVE ALL SEEN THE CASE, THE OLDEN DAYS AND I N THE MODERN DAYS WHERE ALCOHOLMAY HAVE BEEN. AND SO WITNESSES ARE BROUGHT IN AND THE FAMILY AND PHYSICIANS, AND THEY ALL SAY , YOU KNOW , IT IS TERRIBLE TRAGEDY THAT THIS ADDICTION AROSE , BUT , AND HERE IS WHAT HAPPENED TO HIM.

HE WASN'T SPENDING HIS MONEY ON FOOD FOR THE FAMILY , HE WAS SPENDING IT A T THE BAR. AND HE ALLOWED HIS APPEARANCE TO SLIP , AND HE LOOKED LIKE HE SLEPT IN HIS CLOTHES EVERY TIME HE SHOWED UP IN COURT. YOU KNOW, I'M TRYING WHEREIS THAT IN THIS CASE?

THAT IS NOT I N THIS CASE. I WOULD SUBMIT TO YOU THAT ITIS NOT IN EVERY CASE FOR PEOPLE ADDICTED. SOME PEOPLE HIDE IT VERY WELL.

WELL THE BAR HAS SAID THAT AS OPPOSED TO THAT , THAT THAT NOT ONLY I S THAT NOT HERE , BUT THAT THERE IS EVIDENCE T O THE CONTRARY THAT WHILE HE WASN'T RESPONDING TO THE BAR'S NOTICES AND THINGS , OR IN THE INSTANCES OF SOME O F HIS CLIENTS , THAT HE , THAT HIS BUSINESS WAS THRIVING. AND THAT HE , YOU KNOW , WAS OPENING NEW FILES AND NEVER MAKING MORE MONEY OR MORE SUCCESSFUL IN HIS PRACTICE. AND I NEED TO , FOR YOU T O POINT SOMETHING OUT T O ME IN THIS RECORD THAT DEMONSTRATES THAT, THAT THIS ADDICTION OR IMPAIRMENT WAS THE ROOT OF THE CAUSES OF HIS IGNORING THE BAR AND THESE OTHER PROBLEMS HERE. SO TELL ME WHERE THAT IS IN THIS RECORD.

YES, SIR.FIRST OF ALL, I TAKE ISSUE WITH THE RECORD SHOWING HIS BUSINESS WAS THRIVING. THE RECORD DOES SHOW HE HAD A HIGH VOLUME PRACTICE. A HIGH VOLUME LOW FEE PRACTICE. HE'S HEARD TALKING T O A DRUG DEALER OVER THE TELEPHONE , BRAGGING ABOUT HOW HIS PRACTICE IS DOING. AND THAT IS THE EXTEND OF THE THRIVING PRACTICE THE BAR REFERS TO.

WELL WHERE IS THE AFFIRMATIVE EVIDENCE THAT THIS WAS INTERFERING WITH HIS ABILITY TO RESPOND TO THE BAR AND TO SERVE HIS CLIENTS AND ALL THAT? WHERE IS THAT?

MR. SWEENEY TESTIFIED ABOUT THAT. MR. SWEENEY IS A LAWYER , RECOVERING LAWYER WHO WORKS FOR HEALTH CARE CONNECTIONS, A REHAB CENTER IN TAMPA. AND TESTIFIED THAT HE'S HELPED THREE OR FOUR HUNDRED PROFESSIONALS AND THAT THIS MAN'S BEHAVIOR MET THE PROFILE OF PEOPLE WHO ARE ADDICTED TO DRUGS OR ALCOHOL. HE SAID THE WAY HE BEHAVED HIMSELF WAS CONSISTENT WITH THAT TYPE OF PERSON.

AND WHAT WAS THAT? WITH THE WAY HE BEHAVED?

THE AVOID DANCE OF THE BAR. YOU UNDERSTAND , SOME OF THESE CASES ONE OF THE COUNTS IN THE PRESENT CASE IS THAT HE RESPONDED 11 DAYS LATE. AND THE BAR INITIALLY FOUND NO PROBABLE CAUSE. THEN AFTER THE DRUG ARREST THEY THREW THAT BACK ON , A LOG ON THE FIRE.

I AM HAVING PROBLEM WITH YOU POINTING THOSE THINGS OUT OR WHATEVER WITHOUT POINTING AFFIRMATIVELY TO THERE BEING EVIDENCE IN THIS RECORD THAT SAID YOU KNOW , THESE DRUGS DESTROYED HIS LIFE. YOU KNOW , THIS IS THE ROOT OF THE CAUSE OF ALL OF HIS PROBLEMS HERE WITH THE BAR. WHERE IS THAT TESTIMONY?

HE TESTIFIED A S SUCH. THAT HE WAS A BINGE USER. THAT HE WOULD NOT USE FOR A WHILE AND THEN HE WOULD GO ON A 48 HOUR BINGE. AND WHEN HE'D COME TO WORK , HE WOULDN'T BE AT HIS BEST. AND THE TYPES O F PROBLEMS HE WOULD HAVE WERE NEGLECT PROBLEMS, WHICH IS CONSISTENT WITH DRUG USE , CERTAINLY FOR SOME PEOPLE.

WAS IT SELECTIVE NEGLECT? YOU KNOW, WHEN I'M GIVE YOU THE BIGGEST PROBLEM I HAVE IS THAT HE'S UNDER SUSPENSION AND THAT HE IS REPRESENTING A CLIENT AND THEN THAT'S THE CLIENT THAT HE ENDS UP BUYING DRUGS FROM. SO YOU HAVE GOT THAT IS NOT THE CASE?

THAT'S NOT CORRECT.

IT WAS ANOTHER CLIENT HE WAS REPRESENTING?

THAT'S CORRECT , JUSTICE.

HE WAS NOT A CLIENT?

THE DRUG DEALER CLIENT , HE NEVER MADE AN APPEARANCE FOR HIM. THEY TALKED ABOUT HIM HANDLING HIS DIVORCE. HE NEVER FILED A PLEADING. HE NEVER WROTE A LETTER. HE SIMPLY AGREED TO REPRESENT HIM BUT NEVER .

AND THAT'S THE CLIENT THOUGH, I MEAN THAT WAS THE PROPOSED CLIENT AND THEN THERE WAS ANOTHER CLIENT HE WAS REPRESENTING?

NO , I DON'T THINK HE WAS REPRESENTING QUITE HONESTLY.

WHY WAS THIS PERSON I N HIS OFFICE?

ON WHICH OCCASION?

I THOUGHT T HE DRUG DEALER , WAS WIRED.

HE CAME IN WITH THE WIRE ON AFTER THE 60 DAY SUSPENSION HAD ENDED. 60 DAY SUSPENSION WAS U P ON JUNE 30 O F 2001.

SO HE WAS ONLY I N HIS OFFICE ONCE?

HE WAS IN THERE BEFOREHAND BUT NOT DURING THE PERIOD OF SUSPENSION.

LET ME GIVE MINE , EVERYBODY IS STATING WHAT THEIR CONCERNS ARE. LET ME GET MY CONCERNS HERE. HERE WE HAVE A LAWYER WHO WAS REPRIMANDED BY THE BAR UNTIL 1990. CAME BACK AND WAS REPRIMANDED AND PUT ON 18 MONTHS PROBATION IN 1994. WAS SUSPENDED IN 2001. AND NOW HAS BEEN FOUND TO HAVE VARIOUS CLIENTS , IN FIVE COUNTS, GUILTY OF ETHICAL EIGHT VIOLATION OF EIGHT DIFFERENT RULES OF ETHICAL VIOLATIONS. AND ISN'T THAT REACH A THRESHOLD WHERE THIS LAWYER HAS DEMONSTRATED THAT HE'S NOT ENTITLED TO HAVE A LICENSE TO REPRESENT ANYBODY ELSE IN FLORIDA?

NO, SIR. DOES NOT.

AND THAT THE WHOLE MATTER OF WHETHER HE'S GOING THROUGH DRUG REHABILITATION IS LEFT TO WHENEVER THAT DISBARMENT IS FINISHED AND HE GETS TO GO THROUGH PROVE THAT HE'S BEEN REHABILITATED?

IT DOESN'T REACH THAT THRESHOLD , JUSTICE WELLS , BECAUSE THE 91 DAY SUSPENSION THAT HE'S UNDER RIGHT NOW ANDHAS BEEN FOR THE PAST TWO YEARS , WAS STRICTLY FOR TARDYRESPONSES TO THE BAR. I WOULD AGREE WITH YOU , IF YOU .

BUT THESE ARE NOT. THESE ARE NOT. HE HAS BEEN SUSPENDED BECAUSE HE DIDN'T RESPOND TO THE BAR.

YES, SIR.

HE IS BEEN FOUND GUILTY OF ETHICAL VIOLATIONS HERE IN RESPECT TO FIVE DIFFERENT CLIENTS.

YES, SIR.

AND EIGHT ETHICAL VIOLATIONS AFTER HE WAS SUSPENDED , AFTER HE WAS REPRIMANDED

TWICE. NOW THAT'S WHAT MY CONCERN IS.

LET ME EXPLAIN THOSE FIVE. TWO OF THEM ARE TARDY RESPONSE TOSS THE BAR. NOW YOU'RE DOWN TO THREE. A THIRD ONE IS FAILING TO GET A NAME CHANGE FOR A DIVORCE CLIENT IN AN EXPEDIENT FASHION. NOW YOU'RE DOWN TO TWO. FOURTH ONE IS FAILURE TO RETURN A RELEASE TO INSURANCE COMPANY. NOW YOU'RE DOWN TO ONE. NUMBER FIVE IS THE DRUG ARREST. THERE IS NOT A SIGNIFICANT AMOUNT .

HAVEN'T YOU LEFT OUT THE PRACTICING OF LAW WHILE UNDER SUSPENSION, WHICH IS A VERY , VERY IMPORTANT ASPECT HERE BECAUSE WE HAVE IN FACT AREN'T THERE CASES OUT THERE WHERE PEOPLE HAVE BEEN DISBARRED FOR PRACTICING LAW WHILE THEY ARE UNDER SUSPENSION?

YES , JUSTICE QUINCE , THERE ARE CASES TO THAT EFFECT. IF YOU LOOK AT WHAT HE DID IN THIS CASE , HE PHYSICALLY APPEARED AT JUDGE FOSTER'S CHAMBERS IN STREET CLOTHES. THE JUDGE .

AND HE WAS REPRESENTING A CLIENT, NO MATTER HOW HE LOOKED RIGHT?

HONESTLY I TAKE ISSUE. I KNOW THE JUDGE DID A VERY BRIEF FINDING OF FACT , BUT HE APPEARED THERE , ASKED ABOUT A CASE MANAGEMENT CONFERENCE.

HE HADN'T SIGNED HE HADN'T SENT ANY PLEADINGS IN?

ABSOLUTELY NOT. ASKED ABOUT A CASE MANAGEMENT CONFERENCE, WHICH WAS THE DAY BEFORE. JUDGE TRUE HAUF TESTIFIED HE WAS GOING TO ATTEND THAT CASE MANAGEMENT CONFERENCE BUT IT WAS MISS CALENDARED. WHEN THE PLEADINGS WAS HAND-DELIVERED, IT WAS SIGNED BY MR. TRUE WHO HAD SAID I DRAFTED IT AND I THOUGHT BECAUSE HIS REINSTATEMENT WAS AUTOMATICALLY, I WAS GOING TO PUT HIS NAME AND APPEAR IN THE VOID IN BETWEEN. AND I DRAFTED IT THAT WAY. MOST RESPECTFULLY , THIS IS NOT THE CASE WHERE A LAWYER SHOWED UP IN COURT AND STOOD BEFORE THE COURT , ACTED AS A LAWYER , MADE ARGUMENT. DIDN'T COUNSEL CLIENTS.

DID HE NOT HAVE A NUMBER OF CLIENTS THAT HE NEVER INFORMED OF HIS SUSPENSION?

THE BAR REFERS TO THREE. MR. WALENT , MISS REYOS, THE GIRLFRIEND OF THE DRUG DEALER AND THE DRUG DEALER HIMSELF.

HOW ABOUT THE BANKRUPTCY HUNDRED BANKRUPTCY CLIENTS?

THE RECORD IS VERY CONFUSING BECAUSE MANY OF THE RECORDS IN THE BANKRUPTCY COURT WERE BY HEPTNER , WHICH IS HIS EX-WIFE. I'M NOT SURE HOW MANY OF THOSE CASES WERE MR. HEPTNER'S. HE DID HAVE RESPONSIBILITY TO SEND NOTICE. I AM NOT DISPUTING THAT.

SOME OF THOSE HUNDRED CASES WERE IN FACT HIS?

YES, SOME OF THEM WERE HIS. WE ARE NOT SURE WHAT THE NUMBER WAS. SO IT IS A NOTICE PROBLEM. IF YOU LOOK AT THE CASES WE CITED IN OUR BRIEF, FAILING TO COMPLY WITH 351 NOTICE REQUIREMENTS DOES NOT GET YOU DISBARRED. THE BAR CITES CASES WHERE PEOPLE, ONE CASE WHERE A LAWYER SHOWS UP IN COURT UNDER SUSPENSION, JUDGE SAYS YOU'RE UNDER SUSPENSION , I'M HOLDING IN CONTEMPT. HE TURNS AROUND AND DOES IT AGAIN. ANOTHER CASE WHERE A LAWYER WHO HAS BEEN DISCIPLINED SIX TIMES , WENT TO COURT ON FOUR DIFFERENT OCCASIONS. AND TOLD THE BAR I WANT TO RESIGN. DIDN'T DEFEND. AND AS A RESULT WAS DISBARRED. IT'S VERY EXTREME FOR DISBARMENT TO BE THE PENALTY IF YOU LOOK AT THE CASES CITED BY THE BAR. AND WE CITED MANY MORE CASES WHERE THERE IS NOT

PROPER NOTICE, WHERE A SUSPENSION RESULTED. IF YOU LOOK AT THE NOTICE ASPECT , NOTICE WAS GIVEN IN JUNE. IT WAS LATE TO THE BANKRUPTCY COURT.

THE CASES WHERE A SUSPENSION WAS APPROPRIATE , AGAIN , IT IS ALWAYS HARD LOOKING AT DIFFERENT CASES , BUT YOU HAVE GOT YOU DO HAVE A PRIOR CUMULATIVE ACTS OF MISCONDUCT. AND YOU HAVE , YOU HAVE GOT THE , THEN BEING UNDER SUSPENSION , THEN HAVING THE 91 DAY SUSPENSION. SO ARE THOSE CASES IT IS NOT JUST THE QUESTION OF HE IS UNDER A 60 DAY SUSPENSION ANDWE ARE GOING TO SAY IN ALL CASES WHERE SOMEBODY PRACTICES UNDER THE 60 DAY SUSPENSION , THAT THEY'RE DISBARRED. BUT ISN'T THIS THE TOTALITY OF THESE CIRCUMSTANCES ARE , SEEM VASTLY DIFFERENT THAN I GUESS THE CRUX BECOMES HOW MUCH THE DRUG IMPAIRMENT IS , WAS THE EXPLANATION FOR EVERYTHING.

YEAH , I AGREE WITH THAT QUITE HONESTLY. I AGREE THAT IF YOU ACCEPT JUDGE RAMSBERGER'S FINDING THAT THE DRUGS WERE THE CAUSE .

FOR HOW LONG?

THE TESTIMONY WAS THAT HIS DRUG USE WENT BACK SEVERAL YEARS. THE RECORD REFERS TO DRUG USE BACK FOUR OR FIVE YEARS. AS YOU CAN SEE , THE VAST MAJORITY OF THE PROBLEMS ARE IN THE 2001 RANGE IN THERE , WHERE HE'S REALLY NOT DOING THE NOTICE THING. THE 2001 CASE , HE FAILS TO EXCUSE ME , NOT NOTICE FAILS TO RESPOND A COUPLE TIMES TO THE BAR IN THE 2001 CASE.

WHAT WAS THE THING WITH NOT RETURNING THE RELEASE? TELL ME HOW THAT , HOW THE DRUGS WOULD AFFECT THAT PARTICULAR PROBLEM. HE ENDORSES SETTLEMENT CHECKS AND DISBURSED SETTLEMENT PROCEEDS BUT FAILED TO PROVIDE THE RELEASE. HOW IS THAT A DRUG PROBLEM? THAT WAS IN 1999.

I THINK THAT TYPE OF THING WASN'T A PRIORITY TO HIM , QUITE FRANKLY. IT WAS THE CLIENT HAD GOTTEN HIS MONEY. THE RELEASE SOMEHOW WAS LOST. THE ADJUSTER WAS CALLING AND HE WAS NON-RESPONSIVE TO THE ADJUSTER. I WILL POINT OUT THAT WE HAD TESTIMONY AT THE REFEREE'S TRIAL WHERE WE ATTEMPTED T O FIND THE CLIENT IN ORDER TO PROVIDE THAT RELEASE. THERE WAS REMEDIAL ACTION TAKEN AND THE CLIENT HAD MOVED TO PORT TO RICO.

HAVE YOU FOUND ANY CASES THAT CITED TO US IN WHICH THERE HAVE BEEN PREVIOUSLY TWO REPRIMANDS AND TWO SUSPENSIONS IN WHICH THE NEXT ONE WAS NOT DISBARMENT?

WELL , THE GREENE CASE CITED THIS THE BAR'S BRIEF , WILL BE GREENE WAS DISCIPLINED SIX TIMES BY THE COURT. AND ON TIME NUMBER SIX , HE WAS UNDER SUSPENSION , HE JUST KEPT PRACTICING LAW GOING INTO COURT AND ACTING LIKE A LAWYER. THAT WAS THE CASE WHERE MR. GREENE TOLD THE BAR , YOU CAN APPOINT A REFEREE , THAT IS OKAY WITH ME. THEN HE SAID I'D LIKE TO RESIGN.

WHEN WAS GREENE?

THE GREENE CASE WAS I DON'T HAVE THE DATE RIGHT HERE. I APOLOGIZE.

IF YOU WOULD BRING IT T O A CLOSE.

WELL ,.

YOUR TIME I S UP .

THAT'S PRETTY MUCH THE CLOSE.

MR. MARSHAL , HOW MUCH TIME DOES THE BAR HAVE?

ALL RIGHT, THANK YOU ALL VERY MUCH. WE WILL AT THAT TIME UNDER ADVISEMENT FROM
HERE. COURT WILL NOW STAND IN RECESS UNTIL TOMORROW MORNING.