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The Florida Bar v. Andrew James O'Connor

SC03-1738

CHIEF JUSTICE: GOOD MORNING.

ONCE AGAIN, BEFORE CALLING THE NEXT CASE, I WANT TO WELCOME THE, A GROUP THAT JUST ARRIVED FROM TRINITY CHRISTIAN ACADEMY.

ARE THEY IN THE COURTROOM NOW?

YES, WITH THEIR TEACHERS, MS.^PAMELA PETERSON AND MRS.^CHRISTINE BROWN.

THIS IS YOUR GOVERNMENT CLASS, AND WE WELCOME YOU.

WE, ALSO, HAVE FROM THE CITY UNIVERSITY OF WESTIN, ACCOMPANIED BY JOEL SPAAS, THE GROUP FROM DOWN IN THE WESTIN AREA.

WE HAVE GOT ANOTHER GROUP COMING IN.

SO I AM NOT SURE WE WILL HAVE ENOUGH ROOM IN THE COURTROOM.

THE NEXT CASE ON THE COURT'S DOCKET IS THE FLORIDA BAR VERSUS ANDREW JAMES O'CONNOR. MR. O'CONNOR.

MAY IT PLEASE THE COURT.

ANDREW J. O'CONNOR PRO SE.

CHIEF JUSTICE.

MEMBERS OF THE FLORIDA SUPREME COURT.

I HAVE COME A LONG WAY TO BE HERE TODAY, BOTH IN DISTANCE IN TIME.

I HAVE TRAVELED HERE FROM SANTA FE, NEW MEXICO, AND IT HAS TAKEN ME OVER 14 YEARS TO COME BEFORE YOU, AND I THANK FOR YOU GRANTING ME ORAL ARGUMENT IN THIS CASE AND FOR AFFORDING ME THE OPPORTUNITY TO STATE MY CASE IN RESPONSE TO THE REFEREE'S

REPORT.

THE FINDINGS IN THE REPORT ARE
ERRONEOUS, UNLAWFUL AND
UNJUSTIFIED, AND I SUGGEST THAT
THE COURT CONSIDER QUASHING THE
REFEREE'S REPORT IN THIS CASE
AND DISMISS THE DISCIPLINARY
PROCEEDINGS BASED UPON THE
FOLLOWING.

JUSTICE: LET'S

START WITH THE WHOLE NOTION OF
WHETHER OR NOT YOU WERE A
MEMBER IN GOOD STANDING OF THE
FLORIDA BAR, AT THE TIME THAT
YOU APPLIED FOR THE LIMITED
ADMISSION IN NEW MEXICO.

YES.

JUSTICE: YOU WERE ACTUALLY
ON INACTIVE STATUS, RIGHT?
THAT'S CORRECT, YOUR HONOR.

JUSTICE: AND PRIOR TO THAT
YOU HAD BEEN PLACED ON
EMERGENCY SUSPENSION BY THIS
COURT.

THAT'S CORRECT, YOUR HONOR.

JUSTICE: AND SO WHY WERE NOT
THOSE TWO ACTIONS, WHY DID THEY
NOT MAKE YOU A MEMBER IN GOOD
STANDING OF THE BAR OF THE
STATE OF FLORIDA?

WELL, RESPECTFULLY, JUSTICE
QUINCE, THE EMERGENCY
SUSPENSION WAS DISSOLVED IN
1993.

JUSTICE: BY WHOM?

THE FLORIDA SUPREME COURT.
I, THEY ARE IN THE PLEADINGS.
WHEN THE MOTION FOR THE
PETITION FOR INACTIVE STATUS
FOR INCAPACITY NOT RELATED TO
MISCONDUCT, WAS GRANTED BY THIS
COURT, I BELIEVE IT WAS ON
JANUARY 13 OF 1993.

THAT OPERATED TO DISSOLVE THE EMERGENCY
SUSPENSION.

JUSTICE: WHAT RULE IS THAT?

WHAT RULE WAS THE ORDER?

JUSTICE: WHAT RULE WOULD
THAT SAY THAT THAT OPERATED TO
DISSOLVE THE SUSPENSION?

WELL, I CAN'T CITE A RULE,
YOUR HONOR.

I JUST KNOW THAT, BY ORDER OF
THIS COURT, I WAS NO LONGER

UNDER EMERGENCY SUSPENSION.
JUSTICE: THERE WAS NO ORDER
ENTERED BY THIS COURT
DISSOLVING THE SUSPENSION.
I UNDERSTAND WHAT YOU ARE
SAYING, YOUR HONOR.
JUSTICE: ACTUALLY WE ARE
ASKING YOU TO TRY TO FIND OUT
YOUR PERCEPTION.
THERE IS NO ORDER DISSOLVING --
MY UNDERSTANDING WAS, YOUR
HONOR, WHEN THIS COURT GRANTED

ME INACTIVE STATUS FOR
INCAPACITY NOT RELATED TO
MISCONDUCT, THAT OPERATED TO
DISSOLVE THE EMERGENCY SUSPENSION.
THAT WAS MY UNDERSTANDING.

JUSTICE: BUT YOUR
UNDERSTANDING BASED ON WHAT?
ON THE STATEMENT --
BASED ON WHEN THIS COURT
GRANTED ME INACTIVE STATUS FOR
INCAPACITY NOT RELATED TO
MISCONDUCT.

THAT WAS MY UNDERSTANDING THAT
THAT TOOK CARE OF THE EMERGENCY
SUSPENSION.

THERE WAS A RULE THAT I CITE,
THE FLORIDA BAR HAD 60 DAYS
FROM WHEN THE EMERGENCY
SUSPENSION WAS ENTERED ON APRIL
30 OF 1992, TO FILE A COMPLAINT
IN THIS CASE.

THAT WAS NEVER DONE.
THAT WAS NOT DONE WITHIN THE 60
DAYS.

AND IT WAS IN VIOLATION OF
RULES REGULATING THE FLORIDA
BAR.

I THINK THAT, ALSO, OPERATED,
IF IT PLEASE THE COURT, TO
DISSOLVE THE EMERGENCY
SUSPENSION AT THAT POINT AS
WELL.

JUSTICE: WHAT DOES THE
ACTUAL LANGUAGE OF THE
SUSPENSION, ITSELF, SAY?
DOESN'T IT SAY, BASICALLY, THAT
THE EMERGENCY SUSPENSION WILL
BE IN EFFECT UNTIL THIS COURT
ENTERS SOME FURTHER ORDER?

FURTHER ORDER OF THIS COURT.

THAT'S CORRECT.

AND MY INTERPRETATION, YOUR HONOR, AGAIN, WAS ONCE THE EMERGENCY SUSPENSION, ONCE THE INACTIVE STATUS WAS GRANTED FOR INCAPACITY NOT RELATED TO MISCONDUCT, THAT WAS A FURTHER ORDER OF THE COURT THAT DISSOLVED THE EMERGENCY SUSPENSION.

JUSTICE: THE PAPERS THAT YOU FILED WITH THE NEW MEXICO COURT, ACTUALLY TOLD THAT COURT THAT YOU WERE ATTACHING A CERTIFICATE INDICATING THAT YOU WERE IN GOOD STANDING, AND OF COURSE THE CLERK OF THIS COURT REGULARLY ACTUALLY ISSUES CERTIFICATES LIKE THAT FOR USE BY LAWYERS THAT ARE IN GOOD STANDING, FOR VARIOUS PURPOSES.

BUT THAT ATTACHMENT WAS NOT THERE.

THAT IS THAT, WHEN YOU SAID ATTACHED HERE TO IS A CERTIFICATE, DEMONSTRATING MY GOOD STANDING WITH THE FLORIDA BAR, THAT ATTACHMENT, LIKE EXHIBIT A, EXHIBIT A WASN'T THERE, WAS IT?

WELL, JUSTICE ANSTEAD, I WOULD LIKE TO RESPOND TO THAT. I WAS NOT AWARE THAT THERE WAS AN ACTUAL GOOD STANDING CERTIFICATE ISSUED BY THIS COURT.

I WAS IN SANTA FE, NEW MEXICO, AT THE TIME THAT I APPLIED FOR THE LIMITED LICENSE BACK IN 2003.

AND WHAT I DID IS, I ATTACHED A COPY OF MY FLORIDA BAR CARD, THE FRONT AND BACK AS THE RECORD REFLECTS, AND THAT SHOWED ME TO IN INACTIVE STATUS.

MY INTERPRETATION OF THAT WAS THAT THAT SHOWED ME TO BE IN GOOD STANDING, BECAUSE AGAIN, ONCE THIS COURT GRANTED ME INACTIVE STATUS FOR INCAPACITY NOT RELATED TO MISCONDUCT, I BELIEVED THAT I WAS NOT UNDER

EMERGENCY SUSPENSION.

I THINK THAT THE COURT WOULD AGREE WITH ME, TOO.

IT APPEARS THAT YOU DID HAVE CORRESPONDENCE AND PLEASE CORRECT ME IF I AM WRONG, THAT, IN 1992 TO TRY TO BE REINSTATED OR TO BECOME ACTIVE.

WOULD YOU EXPLAIN ABOUT THAT?

YES, YOUR HONOR.

I WAS RETURNING BACK FROM BOULDER, COLORADO, AT THE TIME, TO RETURN TO TALLAHASSEE TO WORK, AND I WANTED TO

REACTIVATE MY BAR, AND MY --

JUSTICE: DID THE BAR LET YOU KNOW AT THAT TIME THAT YOU WOULD HAVE TO PETITION THIS COURT?

NO, SIR.

WHAT I WAS TOLD --

JUSTICE: DID THEY RETURN YOUR PETITION AND MONEY?

WHAT I WAS TOLD IS I CALLED THE FLORIDA BAR AND I TALKED TO AN ADMINISTRATIVE ASSISTANT THERE AND SHE LOOKED UP MY ACCOUNT AND TOLD ME ALL YOU HAVE TO DO IS SEND US A CHECK, AND SHE CALCULATED THE AMOUNT OF MONEY, AND JUST FILL OUT THIS APPLICATION, AND WE WILL REACTIVATE YOU, AND THAT IS WHAT I WAS TOLD TO DO, AND I DID THAT, AND YOU ARE CORRECT, YOUR HONOR, IT WAS RETURNED TO ME WITH A CHECK. YES.

CHIEF JUSTICE: AND ALSO A LETTER THAT ADVISED YOU THAT YOU HAD TO PETITION THE COURT FOR REINSTATEMENT PURSUANT TO RULE 3-710 AND A COPY OF THE FLORIDA BAR MANUAL WAS ENCLOSED.

ISN'T THAT CORRECT?

YES, YOUR HONOR.

I WOULD LIKE TO RESPOND TO THOSE IF I COULD.

CHIEF JUSTICE: SO DID YOU READ THE MANUAL?

NO, YOUR HONOR.

I WOULD LIKE TO RESPOND.

WHAT I WOULD LIKE TO SAY IS

THAT I KNOW THAT THE BAR'S POSITION IS THAT IS WHAT SUPPOSEDLY PUT MY ON NOTICE, BUT I BELIEVE THAT I AM ALLOWED TO, BECAUSE I WAS INACTIVE FOR INCAPACITY NOT RELATED TO MISCONDUCT, THAT I AM ALLOWED TO APPLY FOR THE SUMMARY PROCEDURE TO REACTIVATE MY BAR, JUST AS ANY INACTIVE MEMBER WOULD BE ALLOWED TO DO. THAT IS MY UNDERSTANDING OF THE RULE.

CHIEF JUSTICE: WELL, YOU JUST, LET'S JUST, THIS ISSUE ABOUT WHAT HAPED IN 1992, TO CAUSE THE BAR TO FILE A PETITION FOR EMERGENCY SUSPENSION WITH THE COURT? ALLEGATIONS PRETTY SERIOUS ALLEGATIONS.

YES, YOUR HONOR.

CHIEF JUSTICE: THEY WERE SERIOUS ALLEGATIONS. THE ALLEGATIONS WERE SERIOUS, YOUR HONOR, THEY WERE.

THEY INVOLVED AN EX-GIRLFRIEND THAT I LIVED WITH AT THE TIME, AND SHE HAD GOT A DOMESTIC RESTRAINING ORDER AGAINST ME, AND THAT IS BASICALLY, SUMS UP THE ALLEGATION, AND THAT IS WHY THE EMERGENCY SUSPENSION CAME DOWN ON APRIL 30, 1992.

CHIEF JUSTICE: IT WOULD APPEAR THAT THE COURT, BECAUSE YOU WERE IN THIS SERIOUS CAR ACCIDENT THAT INCAPACITATED, RATHER THAN CONTINUE AT THAT TIME WITH THE EMERGENCY SUSPENSION AND THE UNDERLYING ACTION, IT WAS A GRANTING OF THE PLACEMENT ON THE INACTIVE LIST, FOR INCAPACITY.

BUT DID YOU THINK AT THAT TIME THAT THE UNDERLYING PETITION THAT ALLEGED THESE VERY SERIOUS ACTIONS WAS JUST GOING TO BE FORGOTTEN? I WOULD LIKE TO ANSWER THAT IN TWO PARTS.

THE FIRST PART WAS THAT, WHEN THE, THE SHORT ANSWER, YES, I DID.

WHEN I WAS GRANTED INACTIVE

STATUS FOR MEDICAL INCAPACITY NOT RELATED TO MISCONDUCT, MY UNDERSTANDING WAS THAT THAT TOOK CARE OF THE EMERGENCY SUSPENSION, AND IN FACT MY FORMER LAWYER WAS HERE THIS MORNING, MR. TOZIAN, AND THAT IS WHO TOLD ME OR I UNDERSTOOD IT FROM HIM, THAT I WAS NO LONGER UNDER EMERGENCY SUSPENSION.

CHIEF JUSTICE: DID HE TESTIFY IN THIS CASE?

HE DID NOT.

CHIEF JUSTICE: WELL, AGAIN, I THINK THAT YOU ARE REPRESENTING YOURSELF. RIGHT NOW YOU ARE, YOU OBVIOUSLY PASSED THE BAR. YOU KNOW THAT WE CAN'T CONSIDER EVIDENCE THAT WASN'T IN THE RECORD.

I APOLOGIZE.

I WAS JUST TRYING TO ANSWER YOUR QUESTION, YOUR HONOR.

CHIEF JUSTICE: LET'S ANSWER IT WITH WHAT IS IN THE RECORD. THE ANSWER IS, YES, THAT I UNDERSTOOD THAT, ONCE THE EMERGENCY, ONCE THE INACTIVE STATUS WAS GRANTED, THE PETITION FOR INACTIVE STATUS, AGAIN FOR INCAPACITY NOT RELATED TO MISCONDUCT, IN 1994, THAT THAT DID AWAY OR INVOLVED THE EMERGENCY SUSPENSION, YES.

JUSTICE: THE GIST OF THE PROCEEDINGS BEFORE US NOW ARE WHY SHOULD WE NOT APPROVE THE FINDINGS OF THE RECORD?

YES, I UNDERSTAND THAT, JUSTICE ANSTEAD, AND I HAVE SOME CASE LAW I WOULD LIKE TO CITE.

BASICALLY THE RECOMMENDED DISCIPLINE IN THIS CASE IS FAR IN EXCESS OF ANY PRIOR DISCIPLINE EVER IMPOSED FOR A CASE OF THIS NATURE.

IN FACT, THE RECOMMENDED DISCIPLINE IN THIS CASE SUN PRECEDENTED UNDER FLORIDA DISCIPLINARY CASE LAW.

THERE IS SIMPLY NO PRECEDENT OR

AUTHORITY IN THE LAW TO DISBAR
AN INACTIVE MEMBER OF THE
FLORIDA BAR FOR ONE SINGLE
SPURIOUS ALLEGATION OF A
MATERIAL MISREPRESENTATION, AND
LET'S BE CLEAR, HERE, YOUR
HONOR, THERE WAS NO MATERIAL
MISREPRESENTATION.

JUSTICE: WERE YOU ALSO
PROVIDED A COPY OF THE
SUPPLEMENTAL REPORT OF THE
REFEREE?

YES, YOUR HONOR.

AND I WANT TO ADDRESS THAT
RIGHT NOW.

I WANT TO SINCERELY APOLOGIZE
TO THE COURT, JUDGE DEKKER,
THE FLORIDA BAR COUNSEL FOR MY
VERY INTEMPERATE REMARKS, AND I
AM SINCERELY SORRY I SAID
THOSE.

THEY REFLECT MY FRUSTRATION
AT THE TIME.

I FELT LIKE I WAS BEING TREATED
UNFAIRLY, AND IF I COULD TAKE
THAT BACK, JUDGE, I WOULD.

AGAIN, I APOLOGIZE FOR THOSE
INTEMPERATE REMARKS.

JUSTICE: MR. O'CONNOR, IT
SEEMS TO ME THAT THIS IS
SOMETHING THAT SPUN OUT OF
CONTROL.

INITIALLY --

I AM SORRY.

JUSTICE: IT SEEMS AS IF THIS
IS SOMETHING THAT HAS SPUN OUT
OF CONTROL, AND IN LOOKING
BACK, THERE MAY BE SOME BASIS
TO DISCUSS SOME OF THESE
THINGS, BUT THE TROUBLESOME
PART IS A CONTINUOUS AGGRESSIVE
STAND WITH REGARD TO THINGS
SUCH AS THE RULE ON INACTIVE
STATUS, IS REALLY PRETTY CLEAR
THAT YOU HAVE TO BE
DUES-PAYING.

IT DOES NOT INCLUDE INACTIVE.
THOSE KINDS OF THINGS.

SO IT SEEMS ALMOST AS THOUGH
THIS HAS BEEN, BECOME A BATTLE
RATHER THAN TRYING TO RESOLVE A
PROBLEM, AND I AM CONCERNED
ABOUT THAT, BECAUSE APPARENTLY
YOU DO HAVE SOME GOOD

INTENTIONS SOMEPLACE IN TRYING TO BE A PUBLIC DEFENDER IN NEW MEXICO, AND YOU HAVE DONE SOME THING WITH KIDS, BUT THAT DOESN'T EXCUSE THE REPRESENTATION TO THE NEW MEXICO COURT.

COULD YOU ADDRESS THAT, PLEASE. YES, YOUR HONOR.

I WOULD LIKE TO.

WELL, THE FIRST THING I WANT TO SAY IS THAT WHAT I WAS CHARGED WITH, I GUESS YOU ARE REFERRING TO THE BATTLE BETWEEN MYSELF AND THE FLORIDA BAR.

IS THAT --

JUSTICE: RIGHT.

AS THE THING HAS ALL DEVELOPED AND IT HAS

ESCALATED, AND IT SEEMS UNNECESSARILY.

I BELIEVE BOTH SIDES WERE INVOLVED IN THAT.

IT WAS PROTRACTED AND IT DRAGGED ON AND ON AND THERE WAS A LOT OF ANIMUS IN THIS CASE.

ALL I CAN SAY IS BECAUSE THIS HAS GONE ON FOR 14 YEARS, I FELT LIKE I HAD BEEN UNFAIRLY TREATED BY THE BAR AND I FELT THAT I HAD TO FIGHT WITH EVERYTHING I HAD AND DO THE BEST I COULD, TO COUNTER WHAT I FEEL TODAY IS A FALSE ALLEGATION.

I WOULD LIKE TO READ YOU THE CHARGE IF I COULD.

CHIEF JUSTICE: WHAT I MIGHT SUGGEST, SINCE YOU HAVE LIMITED TIME, AND YOU ARE IN YOUR REBUTTAL.

OF COURSE WE HAVE THE CHARGE, AND YOU MAY WANT TO SAVE THE REST OF YOUR TIME FOR REBUTTAL.

BECAUSE --

I WANT TO SAY VERY QUICKLY, YOUR HONOR, WHAT THE BAR CHARGED ME WITH IS THAT YOU DID NOT DISCLOSE THAT YOU WERE UNDER EMERGENCY SUSPENSION. THAT IS WHAT THIS CASE WAS ABOUT. THE BAR

WOULD HAVE YOU BELIEVE TODAY

THAT I AM STILL UNDER EMERGENCY
SUSPENSION, WHICH IS NOT TRUE,
AND THAT IS WHY THERE WAS NO
MATERIAL MISREPRESENTATION.

JUSTICE: YOUR PRIVILEGE TO
PRACTICE LAW IN THE STATE OF
NEW MEXICO HAS BEEN REVOKED?
YES, YOUR HONOR.

IT WAS REVOKED WITHIN 24 HOURS
OF WHEN THE LIMITED LICENSE WAS
ISSUED AND I LOST MY JOB AS A
PUBLIC DEFENDER OVER THIS.

JUSTICE: OTHER THAN FLORIDA AND NEW
MEXICO, HAVE YOU PRACTICED LAW
OR ATTEMPTED TO PRACTICE LAW IN
ANY OTHER JURISDICTION?

NO, YOUR HONOR, I HAVE NOT.
MAY IT PLEASE THE COURT.

I AM TIFFANY COLLINS, BAR
COUNSEL WITH THE FLORIDA BAR.
ANDREW JAMES O'CONNOR SHOULD BE
DISBARRED FROM THE PRACTICE OF
LAW IN FLORIDA, BECAUSE HE MADE
A MATERIAL MISREPRESENTATION TO
THE SUPREME COURT OF NEW MEXICO
AND HAS DEMONSTRATE ADD VERY
HOSTILE DISRESPECTFUL AND
BELLIGERENT TONE THROUGHOUT
THESE DISCIPLINARY PROCEEDINGS.
THOSE TWO FACTS COUPLED
TOGETHER WARRANT DISBARMENT.

JUSTICE: AT WHAT POINT DID
THE BAR CONCLUDE THAT
DISBARMENT IS THE REMEDY HERE?
WAS IT BEFORE ALL OF THIS
HOSTILITY AROSE OR WAS IT AFTER
IT?

BECAUSE THIS, YOU KNOW, IT
SEEMS AS THOUGH THIS IS REALLY,
AND I WOULD POSE THE SAME
QUESTION TO YOU, THIS SEEMS TO
BE SOMETHING THAT JUST GOT
TOTALLY OUT OF HAND.

I WOULD CONCEDE THAT, YOUR
HONOR, THIS HAS BEEN A VERY
PROTRACTED AND VERY DIFFICULT
CASE.

HOWEVER, THE FLORIDA BAR HAS
BEEN OF THE OPINION, BASED UPON
THE NATURE OF THIS MISCONDUCT,
THE EGREGIOUS NATURE OF THIS
MISCONDUCT, A MATERIAL
MISREPRESENTATION TO A SUPREME
COURT, WE FIND THAT TO BE, TO

WARRANT DISBARMENT.

JUSTICE: IS THERE ANY INFORMATION IN THE RECORD WITH REGARD TO SOMETHING THAT MAY HAVE CAUSED THAT?

ANY TYPE OF PERSONAL ISSUES TO THE RESPONDENT, HEALTH ISSUES?

ANYTHING LIKE THAT THAT WE SHOULD KNOW ABOUT THAT IS IN THIS RECORD THAT PRECIPITATED THIS KIND OF EVENT?

ABSENT THE FACT THAT THE RESPONDENT WAS INVOLVED IN A VERY SERIOUS ACCIDENT AND THAT WAS MADE KNOWN TO THE REFEREE

--

JUSTICE: FULLY RECOVERED FROM THAT, AS FAR AS THE EVIDENCE IS CONCERNED? AS FAR AS THE FLORIDA BAR HAD ANY INFORMATION, WE ASSUME THAT THE RESPONDENT HAD RECOVERED, AS HE WAS WORKING IN THE LEGAL PROFESSION IN NEW MEXICO.

JUSTICE: DOES HE HAVE ANY KIND OF MENTAL OR EMOTIONAL PROBLEMS, AT THE TIME THAT THE EMERGENCY SUSPENSION WAS SOUGHT BY THE FLORIDA BAR? THERE WERE ALLEGATIONS TO THAT EFFECT.

I MUST SAY, JUSTICE QUINCE, THAT DURING THE DISCIPLINARY PHASE, BECAUSE OF THE FACT THAT THE UNDERLYING ALLEGATIONS AS IT PERTAINS TO THE EMERGENCY SUSPENSION, WERE NEVER ADJUDICATED, THE FLORIDA BAR WAS HESITANT TO GO INTO THOSE ALLEGATIONS, SO AT THE REFEREE LEVEL, WE SIMPLY INDICATED TO THE REFEREE THAT THE RESPONDENT WAS PLACED ON EMERGENCY SUSPENSION WITHOUT DELVING FURTHER INTO THE ALLEGATIONS.

JUSTICE: WHAT HAPPENED WITH THE ORDER THAT WAS ENTERED THAT SAID THAT THE BAR WOULD HAVE 60 DAYS TO BRING CHARGES, AFTER THE RESPONDENT NOTIFIED THE BAR AND THE COURT THAT HE WAS SUFFICIENTLY RECOVERED FROM THE INJURIES SUSTAINED?

I BELIEVE IN AN AUTOMOBILE ACCIDENT.

THAT HE COULD PARTICIPATE IN THOSE PROCEEDINGS, AND WE HAVE THAT NOTIFICATION BY HIS LAWYER, AND THEN WE HAVE NO PROSECUTION OF THOSE CHARGES AFTER THAT, THE 60 DAYS DID EXPIRE, SO WHAT IS THE BAR'S POSITION ABOUT ITS ABILITY TO PROSECUTE THOSE CHARGES WHICH WERE THE UNDERLYING CHARGES FOR THE SUSPENSION?

WHAT IS THE BAR'S POSITION, AS FAR AS ITS AUTHORITY TO PROSECUTE THOSE CHARGES? WHAT ARE WE, 14 YEARS LATER OR WHATEVER?

YES.
IT ACTUALLY HAS BEEN 14 YEARS.

JUSTICE: SO AFTER THE 60 DAYS EXPIRED, THE BAR DID NOT BRING THE CHARGES, SO ISN'T THE BAR PROHIBITED, NOW, FROM PROSECUTING THOSE CHARGES THAT WERE CONTEMPLATED AT THE TIME? THE BAR WOULD RESPECTFULLY SUBMIT THAT WE DO STILL HAVE THE ABILITY.

I AM UNSURE AS TO WHETHER OR NOT A DECISION WOULD GO FORWARD IN TERMS OF MOVING FORWARD WITH THOSE UNDERLYING ALLEGATIONS, IN TERMS, BECAUSE OF PATS AGE OF TIME NOW.

HOW COULD THE BAR GO FORWARD ON THOSE CHARGES, IF IT IS VERY CLEAR THAT THEY WERE GIVEN 60 DAYS AFTER A NOTICE AND WE ALL ACKNOWLEDGE THAT THE NOTICE WAS FILED.

THE 60 DAYS EXPIRED.
THERE IS NO PROSECUTION, SO HOW CAN THE BAR GO FORWARD ON THE CHARGES?

AS I WAS SAYING, I DO NOT BELIEVE THE FLORIDA BAR WOULD MOVE FORWARD WITH.

THAT I THINK BASED UPON THE FACT THAT WE DID NOT FILE THE COMPLAINT EFFECT THAT WE HAVE CONCEDED THROUGHOUT THESE PROCEEDINGS AND MADE KNOWN TO THE REFEREE, I THINK THAT IT

WOULD BE HIGHLY UNLIKELY THAT
THE FLORIDA BAR --

JUSTICE: WHY WOULDN'T IT BE
A REASONABLE INTERPRETATION,
THEN, BY MR. O'CONNOR, THAT IF
THE BAR COULDN'T PROSECUTE THE
UNDERLYING CHARGES THAT WERE
RESPONSIBLE FOR THE TEMPORARY
SUSPENSION, THAT THE, IN EFFECT
THE SUSPENSION WAS DISSIPATED,
WHEN THE INACTIVE STATUS WAS
AGREED TO AND THE 60 DAYS
EXPIRED?

WHY WOULDN'T THAT BE A
REASONABLE POSITION TO TAKE?
THE FLORIDA BAR WOULD SUBMIT
THAT THE MERE FACT THAT THE
RESPONDENT FILED A MOTION TO
HAVE THAT EMERGENCY SUSPENSION
DISSOLVED, THAT MOTION WAS
DENIED, AND BASED ON THE
LANGUAGE IN THE EMERGENCY
SUSPENSION ORDER WHICH
INDICATED THAT HE WAS UNDER
EMERGENCY SUSPENSION UNTIL
FURTHER ORDER OF THE COURT, AND

THIS COURT HAS NOT, SINCE THEN,
ISSUED AN ANY ORDER LIFTING
THAT SUSPENSION, SO THEREFORE
IT WOULD BE THE ARGUMENT OF THE
FLORIDA BAR.

JUSTICE: BY VERY, ALMOST
DEFINITION, THE SUSPENSION
REALLY RESTED ON THE EFFICACY
OF THE UNDERLYING CHARGES, AND
THE UNDERLYING CHARGES WENT A
WAYS, EITHER BY THE VOLUNTARY
DISMISSAL BY THE BAR OR BY
OPERATION OF EFFECT OF OUR
ORDER THAT SAID THE BAR HAS 60
DAYS TO PROSECUTE, WHY WOULD
THE SUSPENSION STAY IN PLACE,
IF IT WAS DEPENDENT ON A
PROCEEDING THAT, THEN,
AUTOMATICALLY WAS DISMISSED BY
OPERATION OF LAW, AFTER 60 DAYS?
WELL, BASED UPON THE
LANGUAGE IN THE RULE, THE RULES
DON'T INDICATE THAT AN
EMERGENCY SUSPENSION WOULD
DISSOLVE, AND, AGAIN, BASED

UPON THE LANGUAGE IN THE ORDER WHICH INDICATED THAT THE SUSPENSION WAS EFFECTIVE UNTIL FURTHER ORDER OF THE COURT. JUSTICE: WHAT EFFECT DID THE PETITION FOR INACTIVE STATUS, BECAUSE OUR TIME LINE IS NOVEMBER, THIS COURT, NOVEMBER OF '93, DENIED LIFTING OF SUSPENSION.

BUT THEN, WITHIN 30 DAYS, OR THEREABOUTS, IN TEST OF '93, IS WHEN THE PETITION TO BECOME INACTIVE WAS FILED.

SO WHAT EFFECT, IF ANY, DOES THE FLORIDA BAR, WOULD IT HAVE HAD JURISDICTION OR IS THERE A RULE THAT WOULD APPLY TO HAVE PROSECUTED THIS SUSPENSION WHILE HE IS IN AN INACTIVE STATUS OR NOT?

IT IS MY UNDERSTANDING THAT, BASED UPON THE RULES, THE FLORIDA BAR WOULD HAVE HAD THE ABILITY TO DO SO, BUT --

JUSTICE: WOULD HAVE HAD THE AUTHORITY.

YES.

JUSTICE: WHAT --

CHIEF JUSTICE: LET ME JUST, IF HE HAD APPLIED FOR REINSTATEMENT, WHAT, THAN IS I GUESS WHAT WE ARE ALL STRUGGLING WITH, WHAT WOULD HAVE BEEN THE EFFECT OF THIS PRIOR EMERGENCY SUSPENSION, BASED ON CONDUCT THAT YOU SAY THAT IN THIS CASE, THE FLORIDA BAR STAYED AWAY FROM BECAUSE THEY DIDN'T KNOW THE STATUS? IN OTHER WORDS, WHAT WOULD HE HAVE TO HAVE DEMONSTRATED TO HAVE INACTIVE STATUS?

IF THIS HADN'T HAPPENED WITH NEW MEXICO AND MISREPRESENTING HIS STATUS, AND HE HAD APPLIED FOR REINSTATEMENT, WHAT WOULD HE HAVE HAD TO GO THROUGH, TO BE REINSTATED?

THERE IS A ENTIRE PROCESS, AND THE RESPONDENT WOULD HAVE HAD TO SHOW BY CLEAR AND CONVINCING EVIDENCE, THAT HE

HAD THE FITNESS TO PRACTICE LAW
IN THE STATE OF FLORIDA.

CHIEF JUSTICE: IS IT YOUR
POSITION THAT THE BAR WOULD
HAVE GONE BACK AND REENACTED OR
REACTIVATED THESE 1992 CHARGES?

I AM HESITANT TO SAY THAT,
BECAUSE THAT IS A DECISION THAT
WOULD BE MADE ABOVE MY LEVEL.
HOWEVER, I THINK THAT IS A MERE
FACT THAT HE WAS PLACED ON
EMERGENCY SUSPENSION, I THINK
THAT THAT WOULD HAVE BEEN A
FACTOR THAT THE REFEREE
REVIEWING THE CASE WOULD HAVE
CONSIDERED.

JUSTICE: LET ME ASK YOU
THIS.

CHIEF JUSTICE: I THINK I
INTERRUPTED EITHER JUSTICE
QUINCE OR JUSTICE ANSTEAD.
WELL, I WAS VERY CONCERNED
ABOUT THE FACT THAT THE
DEFENDANT HAD IN FACT, WITHIN A
MONTH OR SO OF THE TIME THAT
HE, WE DENIED HIS MOTION TO
LIFT THE EMERGENCY SUSPENSION,
THEN ASKED INSTEAD, TO BE PUT
ON THE INACTIVE LIST, WHICH, I
AM A LITTLE BIT CONFUSED HERE
AS TO HE SENT A NOTICE THAT
SAID HE WAS READY TO
PARTICIPATE BUT WANTED THE
EMERGENCY SUSPENSION LIFTED.
THIS WAS ALL DONE AT ONE TIME?
YES, YOUR HONOR.

AND THEN BECAUSE WE DID NOT
LIFT THE EMERGENCY SUSPENSION,
HE ASKED FOR INACTIVE STATUS OR
HOW DID THAT ALL WORK?

THE PETITION FOR PLACEMENT
ON INACTIVE STATUS WAS THE
MOTION TO HAVE THE EMERGENCY
SUSPENSION DISSOLVED AND THE
FLORIDA BAR DID NOT OBJECT TO
HIS BEING PLACED ON THE
INACTIVE LIST, SO THAT WOULD
HAVE THEN ACHIEVED THE RESULT
OF THE RESPONDENT NOT BEING
ABLE TO PRACTICE LAW AND HAVING
TO, THEN, GO THROUGH THE
REINSTATEMENT PROCESS.

THERE IS NO RULE THAT, OR IS
THERE A RULE THAT TALKS ABOUT

WHAT HAPPENS WITH AN EMERGENCY
SUSPENSION, WHEN SOMEONE THEN
GOES INACTIVE?

NO, MA'AM.

THERE IS NOT.

THE RULES ARE SILENT.

THIS IS A VERY UNIQUE CASE.

JUSTICE: GETTING BACK TO THE
EMERGENCY SUSPENSION, THE BAR
HAD 60 DAYS TO FILE CHARGES.

SO I AM WONDERING HOW, IF THE
BAR DID NOT FILE CHARGES WITHIN
60 DAYS, MR. O'CONNOR WAS
SUPPOSED TO CHALLENGE THE
ALLEGATIONS OF THE BAR TO HAVE
THIS EMERGENCY SUSPENSION
LIFTED, IF THERE AREN'T ANY,
THERE IS NO COMPLAINT AND THERE
IS NO FORUM, APPARENTLY, IN
WHICH TO LITIGATE THE ISSUE.

THERE IS NO FORUM AND I
UNDERSTAND AS PERTAINS TO THE
EMERGENCY SUSPENSION.

THE RESPONDENT DID
NOT FILE A SUBSEQUENT MOTION TO
HAVE THE EMERGENCY SUSPENSION
DENIED.

THERE WAS AN EMERGENCY
SUSPENSION.

JUSTICE: BUT ISN'T THAT TOO
MUCH TO HAVE ASK OF EVERY
LAWYER TO RELY UPON, IF THERE
IS A 60-DAY PERIOD, AND IF THE
BAR DOESN'T TAKE IT UP, I MEAN,
THE BAR IS DOING THE
PROSECUTING HERE, TO EXPECT
THAT THERE COULD BE SOME
RELIANCE ON THE FACT THAT THE
BAR DIDN'T DO THAT.

AND THEN GOES FORWARD AND
ALLOWS THE PERSON TO GO ON
INACTIVE STATUS.

ISN'T THAT COMBINATION
SOMETHING THAT PUTS SOME, THAT
RESPONSIBILITY ON THE BAR?

ABSOLUTELY, AND THE BAR HAS
CONCEDED AS I SAID THROUGHOUT
THESE PROCEEDINGS, THAT THE BAR
FAILED TO FILE A COMPLAINT
WITHIN THE 60-DAY TIME PERIOD.

THE RESPONDENT DID NOTIFY US OF
HIS ABILITY TO PARTICIPATE IN
THE PROCEEDINGS AND THE BAR DID
NOT, BECAUSE HE SUCCESSFULLY

SOUGHT LEAVE TO BE PLACED ON THE INACTIVE STATUS LIST.

CHIEF JUSTICE: I GUESS, MAYBE, AND MAYBE THIS IS IN TERMS OF INTENT, IF HE REALLY WENT ON THE INACTIVE LIST, HE HAD A SERIOUS ACCIDENT WHICH WAS INCAPACITATING BOTH PHYSICALLY AND MENTALLY. IT APPEARS THAT PRIOR TO THAT, THIS EMERGENCY SUSPENSION PROBABLY WAS RELATED TO SOME MENTAL ISSUES THAT HE WAS HAVING, BUT SOMEHOW IF HE WAS, BUT FOR THE EMERGENCY SUSPENSION, WOULD THE BAR TAKE THE SAME POSITION IF HE SIMPLY HAD BEEN IN THE ACCIDENT, AUTOMOBILE ACCIDENT, HE HAD BEEN PLACED ON THE INACTIVE LIST FOR INCAPACITY, AND STILL DID THE SAME THING WITH THE NEW MEXICO SUPREME COURT, IN OTHER WORDS REPRESENTED THAT HE WAS IN GOOD STANDING, OR IS IT THE ADDITION OF WHAT HAD PRECEDED THE PETITION TO BE PLACED ON THE INACTIVE LIST, THAT SORT OF IS THE UNDER CURRENT IN THIS CASE, AND I THINK THAT IS AN IMPORTANT DIFFERENCE.

IN OTHER WORDS, THAT THAT, TAKE THAT WE DON'T HAVE THE 1992 MISCONDUCT ALLEGATION, JUST THAT HE IS PLACED ON INACTIVE STATUS AND NEVER REAPPLIES AND NOW HE GOES OUT TO HUH NEXT COAND GIVES HIS BAR CARD THAT SHOWS HE IS INACTIVE AND HE IS ALSO IN GOOD STANDING.

WOULD THE BAR STILL SEEK DISBARMENT FOR THAT?

YES, MA'AM, THE BAR COULD STILL SEEK DISBARMENT BASED UPON THE NATURE OF THE CONDUCT AND IN CONTRARY TO THE NATURE OF THE REPRESENTATION, THE FLORIDA BAR DID NOT PREMISE THE FACT THAT THERE HAD BEEN AN EMERGENCY SUSPENSION.

A CAREFUL REVIEW OF 3-13, WHICH DOES NOT DEAL WITH MISCONDUCT, CLEARLY INDICATES THAT THOSE MEMBERS WHO ARE

LISTED ON THIS LIST FOUGHT IN CAPACITY MUST GO THROUGH THE REINSTATEMENT PROCESS AND THE DOCUMENTARY EVIDENCE AND TESTIMONY OF THE RESPONDENT AT THE REFEREE LEVEL CLEARLY INDICATED THAT HE WAS PUT ON NOTICE, ACTUAL AND CONSTRUCTIVE, AND THE FACT THAT HE WAS AWARE THAT HE HAD TO GO THROUGH THIS PROCESS AND THE PLAIN READING OF THESE RULES INDICATES THAT THOSE MEMBERS WHO ARE INACTIVE ARE NOT MEMBERS IN GOOD STANDING, CLEARLY INDICATES THAT HE KNEW WHEN HE MADE THAT MISREPRESENTATION TO THE NEW MEXICO SUPREME COURT.

JUSTICE: IS IT THE BAR'S POSITION THAT HE SIMPLY REFUSED TO FOLLOW THE PROCEDURES OF THE BAR FOR REINSTATEMENT OF ANY ATTORNEY WHO IS PLACED ON THE INACTIVE LIST. IS THAT THE POSITION OF THE BAR?

YES.
THAT'S CORRECT.

JUSTICE: HAS THE BAR PREVIOUSLY, IF THAT IS THE ONLY ISSUE, SOUGHT DISBARMENT OF AN INDIVIDUAL VERSUS A SUSPENSION FOR FAILING TO GET REINSTATED? IT SEEMS LIKE IT IS KIND OF A DRACONIAN MEASURE, IF ALL WE ARE TALKING ABOUT IS THE FACT THAT YOU ARE IN ACTIVE, YOU DIDN'T GET REINSTATED, TO DISBAR, SOME VERSUS SUSPENDING SOMEBODY.

WELL, THE BAR'S POSITION IS THAT THE RESPONDENT KNEW THAT HE WAS NOT A MEMBER IN GOOD STANDING, AND MADE A MATERIAL MISREPRESENTATION WHEN HE ATTACHED HIS BAR CARD, CLEARLY THE APPLICATION INDICATED THAT A CERTIFICATE OF MEMBERSHIP IN GOOD STANDING WAS TO BE ATTACHED AND THE RESPONDENT ACKNOWLEDGED THAT HE ATTACHED A BAR CARD.

THE FLORIDA BAR RELIES UPON THE CASE OF THE FLORIDA BAR V

WEBER, WHOSE FACTS ARE VERY SIMILAR TO THE INSTANT CASES, IN THAT AN ATTORNEY ADMITED IN THE DISTRICT OF COLUMBIA AND FLORIDA SOUGHT ADMISSION TO THE MICRONESIA BAR AND THE REPUBLIC OF PULAU, AND HE DID NOT OBTAIN THOSE CERTIFICATIONS AND THOSE POINTS ARE CLEARLY ON POINT WITH THE INSTANT CASE, AND WITH THAT POINT --

JUSTICE: THIS CASE MAY BE ANALOGOUS, AND WHETHER THERE IS A MATERIAL DIFFERENCE OR NOT NOT SAYING THAT YOU ARE SUSPENDED SOMEWHERE BECAUSE YOU ENGAGED IN MISCONDUCT, AND NOT SAYING YOU ARE INACTIVE FOR OTHER THAN MISCONDUCT, WHICH IS APPARENTLY WHAT HE WAS INACTIVE FOR.

IN THOSE CASES, HE WAS SUSPENDED IN FLORIDA, CORRECT? YES.

JUSTICE: IN THIS CASE HE WAS NOT SUSPENDED IN FLORIDA, WHETHER THAT ULTIMATELY MAKES A DIFFERENCE LEGALLY, I DON'T KNOW, BUT AT LEAST FACTUALLY IT SEEMS TO MAKE A DIFFERENCE.

WELL, IN BOTH CASES THE ATTORNEYS WERE NOT MEMBERS IN GOOD STANDING AND PURPOSEFULLY CONCEALED THOSE FACTS TO OBTAIN ADMISSION TO THE RESPECTIVE BAR ASSOCIATIONS.

CHIEF JUSTICE: THANK YOU VERY MUCH.

YOUR RESPONSE, MR.

O'CONNOR.

REBUTTAL, YOUR HONOR.

THE FIRST THING I WANT TO SAY IS THAT THE CASE THAT THE BAR REFERS TO, THAT ATTORNEY WAS UNDER EMERGENCY SUSPENSION OR UNDER SUSPENSION.

I WAS NOT UNDER EMERGENCY SUSPENSION.

JUSTICE: LET'S JUST ASSUME FOR THE MOMENT THAT YOU WERE NOT UNDER ANY SUSPENSION, THAT YOUR EMERGENCY SUSPENSION WAS LIFTED.

YOU WERE STILL ININACTIVE STATUS.

APPARENTLY THE BAR SENT YOU SOME MATERIALS ABOUT THIS IS HOW YOU GET REINSTATED AND YOU HAVE TO GET REINSTATED, IN ORDER TO BE A MEMBER OF THE BAR.

YOU, THEN, TOLD THE NEW MEXICO SUPREME COURT THAT YOU WERE A MEMBER IN GOOD STANDING.

YOU DIDN'T, YOU DID NOT TAMPA CERTIFICATE OF GOOD STANDING. YOU DIDN'T OBTAIN A CERTIFICATE IN GOOD STANDING.

WHY IS THAT NOT A VIOLATION OF THE FLORIDA BAR RULES?

WELL, JUSTICE CANTERO, WHAT I WANTED TO SAY IN REGARD TO THAT IS THAT I DID NOT KNOW THAT I WAS NOT IN GOOD STANDING.

JUSTICE: WHAT IS UNCLEAR ABOUT THE RULE THAT SAYS YOU HAVE TO BE DUES PAGAN YOU CANNOT BE ON INACTIVE STATUS, TO BE IN GOOD STANDING?

THAT, I HAVE A PROBLEM WITH THAT.

PLEASE FACTOR THAT IN.

JUSTICE LEWIS, I WOULD LIKE ADDRESS.

THAT AGAIN, MY UNDERSTANDING WAS THAT I WAS GOING BY WHAT THE ORDER OF THIS COURT SAID, AND WHAT IT STATED WAS MY STATUS WAS INACTIVE FOR INCAPACITY NOT RELATED TO MISCONDUCT.

I EQUATED THAT WITH NOT BEING IN BAD STANDING.

AND I, ALSO, EQUATED THE FACT THAT I WAS NOT UNDER EMERGENCY SUSPENSION, SO WHEN I AM TOLD THAT I AM INCAPACITATED FOR, NOT FOR MISCONDUCT, TO ME THAT IS EQUATED WITH, RESPECTFULLY, NOT BEING IN BAD STANDING.

SO I DID NOT KNOW --

JUSTICE: NOTWITHSTANDING THE RULE ON GOOD STANDING.

YES, YOUR HONOR.

THERE WAS A CONFLICT.

I WANT TO, ALSO --

JUSTICE: PLEASE ANSWER
JUSTICE CANTERO'S REMAINING
QUESTION.

I INTERRUPTED.

I AM SORRY.

I LOST THE QUESTION, YOUR
HONOR.

MY QUESTION IS WHY WASN'T IT
A VIOLATION OF THE FLORIDA BAR
RULES, JUST SIMPLY NOT BECOMING
AN ACTIVE MEMBER OF THE FLORIDA
BAR BEFORE APPLYING TO THE
SUPREME COURT AND THEN TELLING
THE NEW MEXICO SUPREME COURT
THAT YOU ARE A MEMBER IN GOOD
STANDING OF THE FLORIDA BAR?
BECAUSE I DID NOT BELIEVE
THAT I HAD TO BE REACTIVATED OR A MEMBER IN
GOOD STANDING OF THE FLORIDA
BAR.

MY INTENT WAS TO STAY AND WORK
AS A PUBLIC DEFENDER IN NEW
MEXICO, SO I DIDN'T UNDERSTAND
OR KNOW THAT I SHOULD COME BACK
TO FLORIDA AND BE AN ACTIVE
MEMBER OF THE FLORIDA BAR.

JUSTICE: HAD YOU GONE
THROUGH THE BAR PROCESS IN NEW
MEXICO?

MA'AM?

JUSTICE: HAD YOU GONE
THROUGH THE BAR PROCESS IN NEW
MEXICO?

I DID NOT.

JUSTICE: SO IN ORDER TO AND
PUBLIC DEFENDER, DID YOU THINK
THAT YOU HAD TO BE A MEMBER OF
A BAR?

I THOUGHT I REQUESTED
BECAUSE I WAS INACTIVE.

CHIEF JUSTICE: YOU PAID DUES
IN THE TEN YEARS?

NO.

CHIEF JUSTICE: DID YOU GO TO
TAKE CLE REQUIREMENTS?

NO.

IN FACT --

CHIEF JUSTICE: WAS THERE
ANYTHING THAT YOU DID TO DO
WITH THE PRACTICE OF LAW, AS
FAR AS KEEPING UP YOUR LEGAL
TRAINING?

IN FLORIDA OR NEW MEXICO.

CHIEF JUSTICE: IN FLORIDA.

I HAVEN'T DONE ANYTHING IN
FLORIDA.

I HAVEN'T LIVED HERE SINCE
1994.

CHIEF JUSTICE: I HAVE TO
STOP YOU BECAUSE YOU ARE OUT OF
TIME.

THE COURT WILL TAKE THIS CASE
UNDER ADVISEMENT