

THE FLORIDA BAR,
Petitioner,
vs.
ROY EDWARD LEINSTER,
Respondent.

**
** CASE NO. 65,985
**
**
**

FILED
OCT 17 1984
CLERK OF THE SUPREME COURT
TALLAHASSEE, FLORIDA

The Florida Bar having filed on October 9, 1984, Notice of Felony Conviction showing that Roy Edward Leinster has been convicted of a felony by the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, and the above-named attorney having filed to file a petition with the Court requesting modification or termination of the suspension, Roy Edward Leinster is automatically suspended from the Florida Bar pursuant to article XI, Rule 11.07(2), of the Integration Rule of The Florida Bar, and it is further

ORDERED that this suspension shall be effective October 15, 1984, thereby giving respondent 30 days to close out his practice and take the necessary steps to protect his clients, and it is further

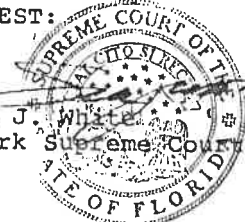
ORDERED that respondent shall not accept any new business.

See article XI, Rule 11.10(7) of the Integration Rule of The Florida Bar.

A True Copy

C
cc: Mr. Roy Edward Leinster
J. Cheney Mason, Esquire
John T. Berry, Esquire
John B. Root, Jr., Esquire

TEST:
Sid J. White
Clerk Supreme Court



*Bar Exhibit
3 (rebuttal)
C.M.H.*

THE FLORIDA BAR,
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ORDERED that this suspension shall be effective ^{SAT 15} October 15, 1984, thereby giving respondent 30 days to close out his practice and take the necessary steps to protect his clients, and it is further

ORDERED that respondent shall not accept any new business.

See article XI, Rule 11.10(7) of the Integration Rule of The Florida Bar.

Vacated
11-26-84

A True Copy

TEST:

C
cc: Mr. Roy Edward Leinster
J. Cheney Mason, Esquire
John T. Berry, Esquire
John B. Root, Jr., Esquire

Sid J. White
Clerk Supreme Court

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Petitioner,

v.

ROY EDWARD LEINSTER,

Respondent.

CONFIDENTIAL

65,985

CASE NO. CFC85001

FILED

SID J. WHITE

OCT 9 1984

CLERK, SUPREME COURT

By _____
Clerk

NOTICE OF FELONY CONVICTION

COMES NOW, The Florida Bar, and files this notice of felony conviction pursuant to Florida Bar Integration Rule, art. XI, Rule 11.07, and says:

1. Respondent is a member of The Florida Bar admitted on February 27, 1974. His Florida Bar attorney number is 171431.

2. The State Attorney of the Ninth Judicial Circuit of Florida did, on March 23, 1984, file an Information, Number CR84-1703, against the respondent. The Information contained two counts. The first count charged a violation, on March 21, 1984, of Florida Statute 893.13(1)(e), unlawful possession of cocaine, a substance controlled by Florida Statute 893.03(2)(a). Count II charged a violation on March 21, 1984, of Florida Statute 843.01, unlawfully, willfully, and knowingly resist, obstruct, or oppose an officer of the Metropolitan Bureau of Investigation, in the lawful execution of a legal duty, to wit: the investigation of a drug offense by offering or doing violence to the person of said officer.

3. Count II was nolle prossed by the prosecution on September 4, 1984, the date of sentencing of the respondent.

4. On Ju 22, 1984, the respondent pl guilty to Count I as charged and adjudication of guilt was withheld, but a finding of guilt entered.

5. On September 4, 1984, the respondent was sentenced to probation for a term of four years with sixty days to be served in the Orange County Jail less time served and with credit for good and gain time.

6. Pursuant to the provisions of Florida Bar Integration Rule, art. XI, Rule 11.07(2), respondent shall be automatically suspended on the eleventh day following proof of service of this notice of felony conviction on the respondent.

7. Certified copies of the Information and of the court minutes and order of sentencing are attached as Composite Exhibit A.

WHEREFORE, The Florida Bar respectfully requests that this Court enter an order suspending the respondent and order that he furnish a copy of the suspension order to all clients as required by Florida Bar Integration Rule, art. XI, Rule 11.10(7) and to furnish Branch Staff Counsel of The Florida Bar with a requisite affidavit listing all clients so informed within thirty days after receipt of the Court's order.

Respectfully submitted,

John F. Harkness, Jr.,
Executive Director
The Florida Bar
Tallahassee, Florida 32301
(904) 222-5286

John T. Berry,
Staff Counsel
The Florida Bar
Tallahassee, Florida 32301
(904) 222-5286

and

John B. Root, Jr.,
Bar Counsel
The Florida Bar
605 East Robinson Street
Suite 610
Orlando, Florida 32801
(305) 425-5424

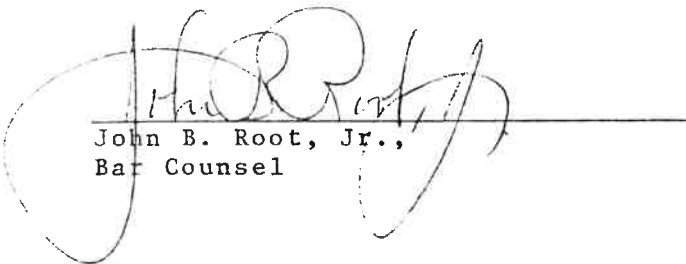
By: 

John B. Root, Jr.,
Bar Counsel

Composite Exhibit A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Notice of Felony Conviction has been furnished by mail to the Clerk of the Supreme Court, Supreme Court Building, Tallahassee, Florida 32301; a copy of the foregoing Notice of Felony Conviction has been furnished by mail to J. Cheney Mason, Counsel for Respondent, 127 North Magnolia Avenue, Orlando, Florida 32801; a copy of the foregoing Notice of Felony Conviction has been furnished by mail to Roy Edward Leinster, Respondent, at his record Bar address, 811 N. Magnolia Avenue, Orlando, Florida 32803; a copy of the foregoing Notice of Felony Conviction has been furnished by mail to Staff Counsel, The Florida Bar, Tallahassee, Florida 32301 on this 5th day of October, 1984.


John B. Root, Jr.,
Bar Counsel

IN THE CIRCUIT COURT OF ORANGE COUNTY, STATE OF FLORIDA

THE STATE OF FLORIDA

INFORMATION # CR84-1703

VS.

DIVISION 14

ROY EDWARD LEINSTER

1. POSSESSION OF COCAINE,
A CONTROLLED SUBSTANCE
2. RESISTING OFFICER WITH VIOLENCE

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

ROBERT EAGAN, State Attorney of the Ninth Judicial Circuit prosecuting for the State of Florida in Orange County, CHARGES that ROY EDWARD LEINSTER, on the 21st day of March, 1984, in said County and State, did, in violation of Florida Statute 893.13(1)(e), unlawfully possess Cocaine, a substance controlled by Florida Statute 893.03(2)(a).

COUNT TWO

ROBERT EAGAN, State Attorney of the Ninth Judicial Circuit prosecuting for the State of Florida in Orange County, CHARGES that ROY EDWARD LEINSTER, on the 21st day of March, 1984, in said County and State, did, in violation of Florida Statute 843.01, unlawfully, willfully, and knowingly resist, obstruct, or oppose MIKE MORRIS, an officer for the Metropolitan Bureau of Investigation, in the lawful execution of a legal duty, to-wit: the investigation of a drug offense, by offering or doing violence to the person of the said officer.

"This information encompasses the transaction and all charges listed on Complaint Number CR84-1703, and the bond thereon is hereby superseded. The Orange County Sheriff's Office shall substitute the charge(s) and bond indicated on this information for those on the above cited complaint.

W.D. GONZALEZ
 CLERK OF THE CIRCUIT COURT
 ORANGE COUNTY, FLORIDA
 FILED IN OFFICE
 CRIMINAL DIVISION
 MAR 23 AM 11:20

STATE OF FLORIDA
 COUNTY OF Orange

Personally appeared before me Robert Eagan State Attorney of the Ninth Judicial Circuit of Florida, who being first duly sworn, say that he certifies that he has received testimony under oath from the material witness or witnesses for the offense and that he institutes the prosecution in good faith.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23 day of March, 1984

Robert Eagan
 ROBERT EAGAN, State Attorney
 Ninth Judicial Circuit of Florida

Bond \$ 1,000.00

Ct.1&2-F3 JS/ja

STATE OF FLORIDA
VS

ROY EDWARD LEINSTER

CHARGED WITH: 1) POSS. COCAINE, ACS

COURT OPENED at 9:40 AM, 9-4-84

HONORABLE R. JAMES STROKER

JUDGE PRESIDING

ASSISTANT PUBLIC DEFENDER — — —

ASSISTANT STATE ATTORNEY STEVE WALLACE

COURT REPORTER D. GUNDERSON

BAILIFF J. KENDALL

This case came on this date for — Plea X Sentencing — Trial. WARREN EDWARDS &
The Defendant was — present, — not present X present with Counsel RUSS CRAWFORD &
— Plea of not guilty withdrawn. — Defendant tried and found guilty of: J. Cheney mass
Defendant sworn and pled — Guilty, — Nolo contendere to: —

— Defendant reserves right to appeal —

— Adjudication of guilt withheld, finding of guilt entered.

— Defendant was adjudged guilty. — \$4.00 C.C. — \$15.00 C.C.F. — Costs waived.

— P.S.I. ORDERED. It is hereby ordered that the Department of Corrections conduct
a Pre-Sentence Investigation of Defendant and deliver a written report of same to
the undersigned Judge within two working days before sentencing. Status —.

— Sentencing set for —, 19—, at —.M, Courtroom —.

— P.S.I. Bond set at \$ —. — PDR Ordered. — P.S.I. waived.

SENTENCING

1/2 Adjudication of guilt was withheld, a finding of guilt entered.

— Defendant adjudged guilty. — \$4.00 C.C. 1/2 \$15.00 C.C.F. — Costs waived.

SENTENCE: Probation for term of 4 yrs. w/ conds: 1) 60 days
Org. City Jail w/ credit 1 day time served & w/ credit
good & gain time. in accordance w/ order to be filed.

OTHER: Said jail sentence to run concurrent w/ TOS 2-13-83

STATE ANNOUNCED NOLLE PROS AS TO CT. 2

Defense witnesses sworn & testified: Walter Komanski, Hal Boer, Andy
Boonette.

RELEASE- Defendant is Ordered released from custody as to this case only.

DONE AND ORDERED this 4 day of Sept, 1984.

[Signature]
CIRCUIT JUDGE

Filed in Open Court this
4 day of Sept., 1984.

W.D. GORMAN, CLERK OF THE CIRCUIT AND COUNTY COURTS

BY: [Signature]
Deputy Clerk, in attendance.

COURT RECESSED AT 11:00 AM, 9-4-84

DISTRIBUTION
— Surety/Cash bond

X Defendant X bailiff
— Probation and Parole

STATE OF FLORIDA, CLERK OF ORANGE COUNTY, by certify,
that the above and foregoing is a true copy of the original filed
in this office. [Signature]
Clerk of the Circuit Court

IN THE SUPREME COURT OF FLORIDA

THURSDAY, NOVEMBER 15, 1984

THE FLORIDA BAR,

**

Complainant,

**

vs.

**

CASE NO. 65,985

ROY EDWARD LEINSTER,

**

Respondent.

**

The Emergency Motion to Stay Order of Suspension filed by respondent is granted and the suspension is stayed until ultimate determination of this matter.

A True Copy

TEST:

C

cc: J. Cheney Mason, Esquire
John T. Berry, Esquire
John B. Root, Jr., Esquire

Sid J. White
Clerk Supreme Court

IN THE SUPREME COURT OF FLORIDA
THE FLORIDA BAR,

5,985

Complainant,

FILED

vs.

SID J. WHITE

CONFIDENTIAL

ROY EDWARD LEINSTER,

NOV 14 1984

CASE NO: 90D85C09

Accused Attorney

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

EMERGENCY MOTION TO STAY
ORDER OF SUSPENSION

COMES NOW the Accused Attorney, ROY E. LEINSTER, and moves this Court for entry of an Order Staying the Rule 11.07 suspension imposed upon him and as grounds would show:

1. The Accused Attorney is scheduled to appear before a referee on November 15, 1984, to both finalize all stipulations previously cited to this Court and to present mitigation in his behalf.

2. Should the referee's findings be favorable to the Accused Attorney and subsequently be approved by this Court, the actual time of suspension will be greater by that amount of time spent in the final determination, and therefore the Accused Attorney will be punished a more severely than if, as bar counsel contends is proper, a Petition to Modify had been filed within eleven days of the Accused Attorney's plea.

3. Counsel for the accused failed to file such Petition because of the inherent ambiguity in Rule 11.07 which states that;

"the convicted attorney shall stand suspended....unless he shall before that day...."

It is axiomatic that a withholding of adjudication is not a conviction.

4. It is unprecedented for an attorney not

convicted of a felony to be subjected to the dictates of Rule 11.07 unless said attorney acquiesced to such findings. It was the clear intent of all concerned that the Accused Attorney not be considered convicted, and on-going negotiations with local bar staff clearly reflected a concerted effort to treat the Accused Attorney as anyone else so situated.

5. The Accused Attorney has successfully completed in-house alcohol treatment, is active in after care, and has rehabilitated himself during the last eight months, a fact which will be attested to both by attorneys, judges, and counselors. The Accused Attorney has practiced criminal law successfully and honestly for ten years, but because of personal and emotional problems, became impaired, not to the detriment of clients, but to himself, a problem which has been rectified.

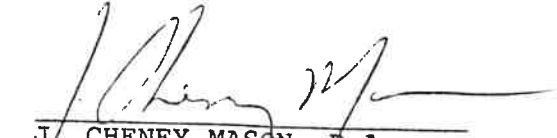
6. Any ambiguity in Rule 11.07 should be resolved in favor of the Accused Attorney. Had counsel interpreted said rule consistent with staff counsel's interpretation, no suspension would enter unless and until recommended and approved through normal bar litigation. Case law does not clarify this ambiguity.

7. Because of the time it will take to resolve the referees findings and his ultimate approval or disapproval, any suspension imposed immediately will unduly punish the Accused Attorney and jeopardize his clients.

WHEREFORE, it is respectfully requested that any stay presently imposed be stayed until ultimate determination of this matter.

I HEREBY CERTIFY that a true copy hereof has been furnished by mail delivery this 9th day of November, 1984, to: John Root, Bar Counsel, Florida Bar, 605 Robinson St., Suite 605, Orlando, Florida 32801; and to John T. Berry, Staff

Counsel, The Florida Bar, Tallahassee, Florida 32301.



J. CHENEY MASON, P.A.
127 N. Magnolia Avenue
Orlando, Florida 32801
Phone: (305) 843-5785
Attorney for Accused Attorney

IN THE SUPREME COURT OF FLORIDA
MONDAY, NOVEMBER 26, 1984

THE FLORIDA BAR,
Complainant,
vs.
ROY EDWARD LEINSTER,
Respondent.

**
**
** CASE NO. 65,985
**
**

The order of suspension of this Court dated October 10,
1984, is hereby vacated.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

C
cc: Roy Edward Leinster, Esquire
J. Cheney Mason, Esquire
John T. Berry, Esquire
John B. Root, Jr., Esquire

IN THE SUPREME COURT OF FLORIDA
THE FLORIDA BAR,
Complainant,
vs.
ROY EDWARD LEINSTER,
Accused Attorney.

S.D. W.
OCT 18 1984
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk
CONFIDENTIAL

CASE NO: 09D85C09

MOTION TO RE-CALL AND QUASH ORDER OF SUSPENSION, OR
ALTERNATIVELY TO MODIFY SAME

COMES NOW the Accused Attorney/Respondent, Roy Edward Leinster, by and through his undersigned attorney and moves this Court for entry of its Order to re-call and Quash the Order of Suspension previously entered herein, or, alternatively, to modify said Order, and as grounds therefore shows as follows:

1. This Court, on October 10, 1984, entered an Order suspending the Respondent Attorney, effective October 15, 1984, which Order was received by your undersigned attorney on October 12, 1984.
2. The aforesaid Order was entered as a result of a "Notice of Felony Conviction" being filed by the Florida Bar on October 9, 1984.
3. Said Order erroneously recites that the Respondent "has been convicted of a felony...".
4. The Respondent has not been "convicted" of a felony, and no "judgment" to such effect has been entered by any Court.
5. Immediately upon receipt of the "Notice of Felony Conviction", your undersigned telephoned the Clerk of this Court and advised that there had not been a "Felony Conviction", but that, in fact, adjudication of guilt was withheld.
6. Subsequently, the office of the Clerk of this Court telephoned your undersigned to advise that the "Order"

would stand. No Order had been received by either the Respondent or your undersigned as of that time.

7. The aforesaid Order, dated October 10, 1984, states that it is "...effective October 15, 1984, thereby giving Respondent 30 days to close out his practice...". Such is apparently a clerical error as said provision is inherently inconsistent.

8. The entry of said Order, without prior notice to Respondent violates the Respondent's Rights to Due Process of Law, guaranteed by both, the Florida Constitution, and the U.S. Constitution.

9. The Florida Bar Integration Rule 11.07(2) refers to a Judgment of Guilt. In this case, adjudication of guilt was formerly withheld by the trial Court for the specific purposes of avoiding the automatic suspension by "Felony Conviction".

10. Throughout the period of litigation since the Respondent's arrest, Counsel for the Florida Bar has been engaged in negotiations with your undersigned regarding the disciplinary proceedings by the Florida Bar against the Respondent.

11. It has previously been agreed that the Respondent would stipulate to a finding of Probable Cause (which has been done on three occasions, each necessitated by change in form), that a Conditional Plea of Guilty would be entered and the recommended discipline would be 91 day suspension and proof of rehabilitation required for re-admission.

12. Said Conditional Plea was provided to your undersigned on October 15, 1984, by cover letter from Bar Counsel. A copy of same is attached hereto as Respondent's exhibit "A".

13. It would be un-conscionable to subject the Respondent to automatic suspension under Rule 11.07, when

simultaneously, the Petitioner (Florida Bar) has agreed to and is involved in negotiating and finaling a conditional plea.

14. The Respondent was charged with the single possession of approximately \$10. worth of cocaine. Compare Bar vs. Pettie, 424 So.2d 734 (Fla. 1983).

15. All persons involved in this matter, have recognized that the Respondent has been a impaired attorney, resulting from alcoholism, and have attempted to have such recognition manifested by the Plea and proposed disposition at both the Trial Court Level, and Bar Disciplinary Proceedings. Such efforts would be unreasonably and inequitably thwarted by the improper application of Integration Rule 11.07.

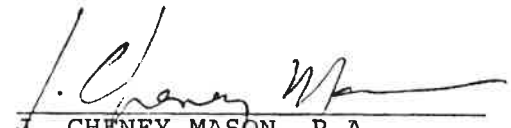
WHEREFORE, the Respondent prays this Court do the following:

A. Recall and Quash the Order of Suspension dated October 10, 1984.

B. Withhold any further Order, pending the review of the Conditional Plea and recommendation of the Board of Governors.

C. Alternatively, Modify the Order of Suspension to comport with the proposed discipline setforth in the Conditional Plea, and to correct the effective date.

I HEREBY CERTIFY that a true copy hereof has been furnished by mail delivery this 16th day of October, 1984, to: John Root, Jr. Bar Counsel, Florida Bar, 605 E. Robinson Street, Suite 605, Orlando, Florida 32801; John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301.


J. CHENEY MASON, P.A.
127 N. Magnolia Avenue
Orlando, Florida 32801
Phone: (305)843-5785
Attorney for Accused Attorney.