

IN THE SUPREME COURT OF FLORIDA

BARRY ROBERT GAINSBURG,

Supreme Court Case
No.

Petitioner,

vs.

THE FLORIDA BAR,

Respondent.

_____/

**PETITION FOR REVIEW OF DENIAL OF PETITION FOR
PERMANENT RETIREMENT**

PETITIONER, BARRY ROBERT GAINSBURG, pursuant to R. Regulating Fla. Bar 1-3.5, respectfully petitions this Court to review a denial of his Petition for Permanent Retirement from The Florida Bar as grounds therefore states:

Factual Predicate

1. On March 22, 2023, Petitioner, Barry Robert Gainsburg, electronically submitted a document styled, Petition for Permanent Retirement, to The Florida Bar. See Exhibit A attached (March 22, 2023, e-mail and attached Petition for Permanent Retirement).

2. On March 28, 2023, The Florida Bar, through a membership records assistant, sent an e-mail advising the Petitioner

that in order to permanently retire he needed to use the correct retirement petition and designate that he was seeking a permanent retirement on the form that she provided to the Petitioner. See e-mail chain attached as Exhibit B.

3. Later that same day, Petitioner submitted a new Petition for Permanent Retirement via electronic mail. See Exhibit C (March 28, 2023, e-mail and attached Petition for Permanent Retirement).

4. The Bar acknowledged receipt of the Petition and noted that same would be processed in due course. See Exhibit D.

5. However, the next day the Bar, through a membership records assistant, advised as follows:

While beginning to process your permanent retirement request, we were notified by our Lawyer Regulation Department that we may not move forward with processing it.

If you have questions regarding this, please contact that department at 850-561-5839. See Exhibit E.

6. Counsel for the Petitioner engaged in communication with Linda Gonzalez, Esq., of The Florida Bar's Fort Lauderdale Office as directed by the membership records assistant.

7. The first e-mail exchange of note was on March 29, 2023, wherein Mr. Teschner, counsel for Petitioner, inquired about any action taken by the Executive Director of The Florida Bar regarding R. Regulating Fla. Bar 1-3.5 and the response from Bar Counsel was a terse two sentence response advising that the Bar would not be accepting the petition for permanent retirement. See Exhibit F.

8. Mr. Teschner followed up on March 30, 2023, by way of an e-mail which contained a request for confirmation of action by the Executive Director on the petition. See Exhibit G. No response was promptly provided to this email.

9. Additional correspondence was sent by undersigned counsel via email to Ms. Gonzalez on March 31, 2023, with another inquiry about any action taken by the Executive Director, vis-à-vis the aforementioned petition. See Exhibit H. There was no immediate response to this email.

10. On April 5, 2023, Mr. Teschner forwarded a letter to the Bar's Executive Director, again requesting advisement on his actions taken on the aforementioned petition. See Exhibit I.

11. Lastly, on April 6, 2023, Bar counsel forwarded an e-mail

that stated in relevant part as follows:

In response to your emails pertaining to the Petition for Permanent Retirement, Rule 1-3.5 states, “Any member of The Florida Bar may retire from The Florida Bar upon petition or other written request to, and approval of, the executive director.” This is to inform you that Joshua Doyle does not approve Mr. Gainsburg’s petition for permanent retirement. Additionally, all further communication should be directed only to the undersigned bar counsel. See Exhibit J.

12. Having now been advised of the Executive Director’s denial of the Petition for Permanent Retirement this Petition to Review such denial now follows.

Argument

13. This dispute is governed by R. Regulating Fla. Bar which reads in *toto*:

Any member of The Florida Bar may retire from The Florida Bar upon petition or other written request to, and approval of, the executive director. A retired member shall not practice law in this state except upon petition for reinstatement to, and approval of, the executive director; the payment of all membership fees, costs, or other amounts owed to The Florida Bar; and the completion of all outstanding continuing legal education or basic skills course requirements. A member who seeks and is

approved to permanently retire shall not be eligible for reinstatement or readmission. A retired member shall be entitled to receive such other privileges as the board of governors may authorize.

A retired member shall remain subject to disciplinary action for acts committed before the effective date of retirement. Acts committed after retirement may be considered in evaluating the member's fitness to resume the practice of law in Florida as elsewhere stated in these Rules Regulating The Florida Bar.

If the executive director is in doubt as to disposition of a petition, the executive director may refer the petition to the board of governors for its action. Action of the executive director or board of governors denying a petition for retirement or reinstatement from retirement may be reviewed upon petition to the Supreme Court of Florida.

14. As is noted above, Petitioner submitted a Petition for Permanent Retirement on an approved Florida Bar form and the Executive Director, through Bar Counsel, eventually confirmed that said petition was denied.

15. It is respectfully submitted that the Petitioner meets all of the requirements to be allowed to retire in Florida.

16. The denial came without explanation¹ and therefore, the Petitioner can only surmise the grounds for such denial is a grievance pending in the Fort Lauderdale Office of The Florida Bar, the grounds² of which are immaterial to this instant petition for review in that the Rule clearly states that: “A retired member shall remain subject to disciplinary action for acts committed before the effective date of retirement.” *Id.*

17. In essence, the Bar has declined to accept a Permanent Retirement solely because of a pending grievance that has not advanced past a grievance committee yet, notwithstanding that the Bar is not precluded in any manner from prosecuting the Petitioner for any of the actions that are contained in such grievance.

18. It is important to note that in *The Florida Bar v. Bosse*, 2021 Fla. Lexis 1341, 2021 WL 3560627 (Fla. 2021), this Court

¹ While there are due process concerns about not providing an explanation for the denial, the Court may not need to reach that point in resolving this Petition.

² The grievance concerns personal conduct unrelated to the representation of any client. The Petitioner is currently a member in good standing, has no pending matters with a Florida client, owes no refund or restitution to anyone, inclusive of Florida clients.

approved a Report of Referee, which dismissed the underlying grievance as the lawyer had submitted a permanent retirement that had already been approved by the Bar.

19. There are other known instances wherein a lawyer who had pending disciplinary matters was allowed to permanently retire with no further action taken by the Bar.

20. However, in this instance, Petition simply asks to be permitted to permanently retire from The Florida Bar and has not asked for a *quid pro quo* from the Bar relative to his pending case before a grievance committee. There is no reasonable basis to deny such a request.

WHEREFORE, the Petitioner, BARRY ROBERT GAINSBURG, respectfully requests this Court to accept his Petition for Permanent Retirement, to award him costs in this proceeding and grant such other relief that the Court deems reasonable and proper.

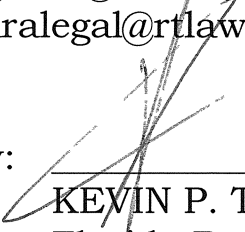
CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the foregoing was furnished via electronic mail only to Linda Gonzalez, Bar Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, FL 33323

(lgonzalez@flabar.org; rcorzo@floridabar.org), and to Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300 (psavitz@floridabar.org) on this 24th day of April 2023

Respectfully submitted,

RICHARDSON & TYNAN, P.L.C.
Attorneys for Petitioner
8142 North University Drive
Tamarac, Florida 33321
954-721-7300
ktynan@rtlawoffice.com
paralegal@rtlawoffice.com

By: 

KEVIN P. TYNAN, ESQUIRE
Florida Bar No: 710822