

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT OF APPEALS
STATE OF NEW YORK

MATTER OF LEO

No. 176

20 Eagle Street
Albany, New York
October 18, 2016

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA

Appearances:

JOHN F. CLENNAN, ESQ.
LAW OFFICE OF JOHN F. CLENNAN
Attorney for Appellant
2206 Ocean Avenue
Ronkonkoma, NY 11779

ROBERT H. CABBLE, ESQ.
ATTORNEY GRIEVANCE COMMITTEE
Attorney for Respondent
150 Motor Parkway #102
Hauppauge, NY 11788

Sara Winkeljohn
Official Court Transcriber

1 CHIEF JUDGE DIFIORE: The next matter on the
2 calendar is appeal number 176, Matter of Leo.

3 Good afternoon, counsel.

4 MR. CLENNAN: Good afternoon, Your Honor. My
5 name is John Clennan. I represent the appellant, Donald
6 Leo. I'd ask for two minutes for rebuttal. Today, we have
7 two important concerns before the court. One is the
8 construction of a rule that permits the sale of legal
9 practices. It's a case of first instance in this court.
10 It is only the second highest court of the United States to
11 reach this issue; the other court was the Supreme Court of
12 Minnesota some years ago.

13 JUDGE GARCIA: Counsel, I - - - sorry to
14 interrupt you. But is that really the issue here? I mean
15 is the issue really how do you sell your practice when
16 you're about to be disbarred? Or is it under what facts
17 and circumstances did your client do that, right?

18 MR. CLENNAN: Right.

19 JUDGE GARCIA: And how was the money from that
20 disbursed. And again, I don't think you can disassociate
21 that from what he was originally found to have done.

22 MR. CLENNAN: Well, let me go - - - let me - - -
23 well, okay. Well, what he found to have done was
24 comingling not larceny.

25 JUDGE GARCIA: Right.

1 MR. CLENNAN: No client lost any money.

2 JUDGE GARCIA: Right. Well, it was a balance
3 issue. But if we go to what he did then after the sale.
4 He - - - he taps into the escrow fund. He's paying off his
5 people in the office with funds that belong to his clients.

6 MR. CLENNAN: Is that after the sale or - - -

7 JUDGE GARCIA: No, before.

8 MR. CLENNAN: Okay.

9 JUDGE GARCIA: Then he has this sale, and I have
10 a lot of trouble understanding what money he's getting from
11 this sale. Because in the first hearing, he tells the
12 story that he's getting about 500,000 in disbursements,
13 nontaxable disbursements, up to '07. At which point he
14 gets 300,000 in something which he doesn't feel a need to
15 have to actually characterize but - - - because he's - - -
16 but some part of that may be the purchase price. Then
17 there's an adjournment and an indication he's not - - -
18 they're not going to recommend reinstatement. And then he
19 comes back a year-and-a-half or so later with a file of
20 here's what the actual money was, which is, as I read it,
21 although it's very difficult to understand significantly
22 different than what he testified to.

23 MR. CLENNAN: Well, what I'm telling you is that
24 in the interim, if you read my brief, you - - - and
25 remember what went on in this court and the Appellate

1 Division Second Department, the value of negligence cases
2 shrunk. The soft tissue case was driven out of the court.

3 JUDGE GARCIA: Counsel, it's not the value. It's
4 what he actually received.

5 MR. CLENNAN: What he actually received is
6 reflected in his tax returns. What - - -

7 JUDGE GARCIA: When?

8 MR. CLENNAN: When? For the - - -

9 JUDGE GARCIA: The first hearing or the second
10 hearing?

11 MR. CLENNAN: The tax returns that were submitted
12 to the board and the board had no objection to his tax
13 returns.

14 JUDGE GARCIA: At the first hearing or the second
15 hearing?

16 MR. CLENNAN: I believe the tax returns had to be
17 submitted, according to the Appellate Division's order,
18 before the first hearing. Yeah.

19 JUDGE GARCIA: So he never amended his tax
20 returns?

21 MR. CLENNAN: As far as I know, they were - - -
22 there was no change in the tax returns. There's none
23 developed in this record.

24 JUDGE GARCIA: But it seems to me he's claiming
25 in the first hearing that 500,000 of what he's paid are

1 disbursements, which wouldn't be taxed.

2 MR. CLENNAN: Right. That's not taxed.

3 JUDGE GARCIA: And then it turns out that's
4 actually not accurate at the second hearing.

5 MR. CLENNAN: Might be not accurate, yeah. But I
6 mean - - -

7 JUDGE GARCIA: And so they're actually - - -

8 MR. CLENNAN: How much money did I make last
9 year? I can't tell you. I'd have to look at the tax
10 returns. I would never - - -

11 JUDGE GARCIA: Right. But - - -

12 MR. CLENNAN: I would never hazard a guess.

13 JUDGE GARCIA: - - - you would think you would
14 look at your tax returns before you go into the hearing.
15 So you - - - there's - - - at the second hearing, he goes
16 in and he says, no, those were fees. Fees are taxable. So
17 at the first hearing he just hadn't looked at his tax
18 returns and he actually was paying tax on that?

19 MR. CLENNAN: I - - - I don't know whether he was
20 testify - - - the record does not reflect that he asked for
21 permission to look at his tax returns before he testified.
22 And I think you're going to an issue, really, that - - -
23 that's a nonissue. It's not the reason he was turned down
24 for admission. He was turned down for admission because
25 the full committee and the subcommittee said that the sale

1 of practice regulation was not adhered to, that he should
2 have notified past clients who had left him and went either
3 to his son or somebody else. And what we're saying - - -
4 okay.

5 JUDGE STEIN: Well, that - - - that's one of two
6 issues. That - - - that is one of the issues. It has to
7 do with the notification. But - - - but it seems to me
8 that what certainly the subcommittee felt was most
9 troubling, because it was the reason for them to come back,
10 was the issue of how the money from the sale was categor -
11 - - characterized.

12 MR. CLENNAN: Well, again, the existing - - - on
13 the tax returns, the tax returns are not part of this
14 record. I don't know what the tax returns are.

15 JUDGE STEIN: I'm not talking about the tax
16 returns. I'm talk - - - I mean he - - - he eventually goes
17 back to court - - -

18 MR. CLENNAN: Right. And gets - - -

19 JUDGE STEIN: - - - to get permission to do what
20 he should have done or did what he should have done in the
21 first place before - - -

22 MR. CLENNAN: Well, again, that's what your court
23 is going to decide, whether you can read a referral
24 regulation into a sale of practice rule that's in the Code
25 of Professional Responsibility. That's the issue that's

1 before the court right now.

2 JUDGE STEIN: Okay. So your - - - so your
3 argument is is that he never had to do that? He just - - -

4 MR. CLENNAN: Well, he did it because he was told
5 to do it by the subcommittee. And that that wasn't the
6 rule. That the rule which governs the sale of practice
7 does not put that limitation on it. There is no
8 requirement, as there is in other types of - - -

9 JUDGE STEIN: But there - - - but there are rules
10 about what a suspended or disbarred or resigned attorney
11 can do and can receive and not receive and how it can do it
12 after - - -

13 MR. CLENNAN: But you see, the - - -

14 JUDGE STEIN: - - - after they're no longer
15 practicing law. And - - -

16 MR. CLENNAN: There's a difference between - - -

17 JUDGE STEIN: And there's - - - so there's an
18 overlap there, isn't there?

19 MR. CLENNAN: There's a - - - no. I don't think
20 so. I think there's a difference between a referral. A
21 referral is here, take this case, I - - - I really can't do
22 it. A sale of an entire - - -

23 JUDGE STEIN: It seems - - -

24 MR. CLENNAN: - - - practice is you're selling
25 the goodwill of a firm, the - - - the willingness of people

1 to come back and do business there.

2 JUDGE GARCIA: So you could sell your firm - - -

3 MR. CLENNAN: The telephone number.

4 JUDGE GARCIA: - - - the day before you're
5 disbarred. I sell my firm to my son. I have an
6 arrangement that I'm going to receive fees for work done on
7 cases that I have - - - as of the date I sold to my son.
8 And then two days later, he starts disbursing money to me
9 off of settlements, but I don't have to report that, as a
10 disbarred attorney, to any of the court and get approval
11 for those fees?

12 MR. CLENNAN: It's compensation for the sale of
13 practice. That's the way this agreement is structured.

14 JUDGE PIGOTT: I think one of the things that - -
15 - that certainly troubles me and - - - is how cute this all
16 was. I mean he's - - - he's facing disbarment and without
17 telling anybody outside of what he knew was going to
18 happen, he - - - all these clients end up with different
19 lawyers. His son ends up, you know, with the practice.
20 He's getting monies out of it. It all seemed lawful - - -
21 you know, he didn't take his medicine for being disbarred.
22 I mean it's not a seven-year suspension - - -

23 MR. CLENNAN: Okay.

24 JUDGE PIGOTT: - - - as some people have said.

25 MR. CLENNAN: Do you think that - - - what you're

1 trying to do - - - again, way back when, you know, when - -
2 - if I had been allowed to give my presentation I would
3 have told you when I was very young, I picked up the old
4 Long Island Star. There was a picture of the Queens and
5 Nassau Bar Association at a joint meeting celebrating their
6 anniversary. And there was a bunch of white men sitting in
7 a - - - on a - - - in a bleachers in a park.

8 To replay that whole scene, we would have to rent
9 out City Field. They wouldn't be all white. They wouldn't
10 all be veterans of the Second World War. They wouldn't be
11 all from Judeo-Christian denominations. There would be
12 women. It wouldn't be all men. Today, we have such a
13 diverse group. We have to look at what the written word
14 says. What does Judge Holmes, who was a - - - kind of an
15 adversary of Judge Peckham whose picture is out there, what
16 does he say about a diverse population? You have to rely
17 on the written word because we write down laws because
18 populations are diverse.

19 JUDGE GARCIA: Why was there an attachment to the
20 sale agreement laying out percentages of each of the cases?

21 MR. CLENNAN: Because that's the way his attorney
22 structured it. If I had been the attorney, not - - - not -
23 - - I wouldn't have done it because I'm too lazy.

24 JUDGE GARCIA: But on a pure sale and you're
25 paying me X amount of money as a purchase price, why do you

1 need the percentages? It doesn't make any sense.

2 MR. CLENNAN: Because that's the way they
3 structured how much the firm was worth. And as far as
4 being cute, well, you're not required to advise everybody
5 you know that you're thinking of resigning or that you have
6 charges that might be pending. There never was charges
7 launched here.

8 JUDGE GARCIA: But he had already - - - had he
9 sent his resignation letter in when he - - -

10 MR. CLENNAN: That's correct. But you're not
11 required to - - -

12 JUDGE GARCIA: So he was thinking about it.

13 MR. CLENNAN: - - - notify the - - -

14 JUDGE GARCIA: He had sent a resignation letter
15 in.

16 MR. CLENNAN: But the rule doesn't say I shall
17 notify my clients when I send out the letter. It says when
18 the court accepts it you must notify the client.

19 JUDGE GARCIA: But going to Judge Pigott's point
20 about how this looks, he sends a letter out saying I'm
21 relocating. It doesn't say I'm resigning. It says I'm
22 relocating to Tennessee or relocating.

23 MR. CLENNAN: And he did.

24 JUDGE GARCIA: And he did. But he had also
25 resigned. He had sent his letter of resignation in at that

1 point, and he was facing disbarment.

2 MR. CLENNAN: Not in effect. He was still an
3 attorney until July.

4 JUDGE GARCIA: And he then refers to it as us and
5 if you want to stay with our team.

6 MR. CLENNAN: I think he said the new team.

7 JUDGE GARCIA: And doesn't that go to Judge
8 Pigott's point?

9 MR. CLENNAN: I think he said the new team.

10 JUDGE GARCIA: Our new team.

11 MR. CLENNAN: But - - - well, you know, again, I
12 didn't draft the letter but I can tell you that the letter
13 conformed, does not violate the rule, because he hadn't
14 been disbarred yet. And again, how you feel - - - and
15 again, when there were those white - - - white men veterans
16 of the First and Second World War sitting on the bench,
17 they could run bar discipline by winks and nods.

18 CHIEF JUDGE DIFIORE: Thank you, Mr. - - - excuse
19 me. Thank you, counsel.

20 MR. CLENNAN: Okay. Thank you.

21 CHIEF JUDGE DIFIORE: Mr. Clennan.
22 Counsel.

23 MR. CABLE: May it please the court, my name is
24 Robert Cable for the Grievance Committee, the Tenth
25 Judicial District. As was alluded to earlier, the - - -

1 one of the primary vexing problems in this - - - in this
2 rather cute scheme was keeping the clients in the dark.
3 The whole thrust of this was to, one, keep an intact law
4 firm until he came back from reinstatement. Two, during
5 his enforced absence as a disbarred lawyer, collect income
6 without court oversight or client consent. And three, keep
7 the clients in the dark so that the scheme could continue.

8 JUDGE PIGOTT: So - - -

9 JUDGE STEIN: Well, - - - but would you - - -
10 would you at least agree that the language of the rules is
11 a little bit ambiguous about so what - - - what does a
12 person before they are - - - I mean is there anything that
13 says that a person has to send out a letter saying I may be
14 - - - I may be resigning or I may be disbarred or I may be
15 suspended and - - - you know, and I'm going to Tennessee
16 and - - - and I'm selling my practice? Is there anything
17 that says they have to do that?

18 MR. CABLE: Not in the literal - - - literal
19 language of the rule. But this - - - this matter is - - -
20 is of a whole. What happened here was the fail - - -

21 JUDGE STEIN: Well, I understand. But I'm trying
22 - - - I guess I'm trying to parse out the two - - - I see
23 two aspects to this. One is the letter. And I just - - -
24 I think that's a little fuzzier than - - - than what the
25 rules are about - - - about, you know, collecting fees.

1 MR. CABLE: Well, the fuzziness could probably
2 be dispelled if you consider it in this light. At the time
3 that that letter went out, aside from its failing in
4 properly advising the clients of the realities of the facts
5 on the ground at that time, he was clearly under the cloud
6 of a disciplinary investigation. He had clearly already
7 resigned. He had clearly made the determination that he
8 was going to be disbarred.

9 JUDGE FAHEY: But see, that's the problem.
10 That's really the problem. And the way I understand Judge
11 - - - Judge Stein's question is in the first part of the -
12 - - of the two-part analysis that the committee came out
13 with and was accepted by the Appellate Division, the first
14 part is the violation of that rule, 669.10 or whatever it
15 is. And there's a distinction, that I understand the
16 petitioner to be arguing, between the submission of a
17 letter and the acceptance of a letter.

18 And my experience on the Appellate Division was
19 always that you weren't - - - we had to accept your
20 resignation, and there was no guarantee that we were going
21 to accept your resignation. So hypothetical here is what
22 if you hadn't accepted his resignation? Well, then you
23 would have went to further hearings. The court would have
24 - - - and it would have went on for a while. During that
25 time period, it seems that he could go forward and attempt

1 to deal with whatever was legally possible or ethically
2 possible with what remained of his practice. And you're
3 asking us to establish a rule that the submission of a
4 letter of resignation is tantamount to the acceptance of a
5 letter of resignation in terms of its effect, and that
6 doesn't seem to make sense to me.

7 MR. CABLE: I wouldn't accept that
8 characterization at all.

9 JUDGE FAHEY: Okay. You tell me why not then.

10 MR. CABLE: Because we - - - first of all, I
11 don't believe that a resignor attorney, in this appellant's
12 position - - -

13 JUDGE FAHEY: I'm sorry. You don't believe what?

14 MR. CABLE: And resign - - - I don't believe
15 that a resignor attorney, that was this appellant's
16 position at the time of the purported sale, can invoke - -
17 - could invoke at that time DR 2-111. That - - - that is a
18 very limited rule. It only provides for three categories
19 of persons who could sell a law practice. He's not one of
20 those categories.

21 JUDGE FAHEY: Well, let's just stay with the
22 question first, though. When is he off? When - - - when
23 does it happen? When he submits the letter or when the
24 Appellate Division accept it - - - accepts it?

25 MR. CABLE: When, disbarment?

1 JUDGE FAHEY: When does he resign? That's right.

2 MR. CABLE: Disbarment occurs when the Appellate
3 Division issues the order accepting it.

4 JUDGE FAHEY: All right. So until that time,
5 still an attorney, right?

6 MR. CABLE: Correct.

7 JUDGE FAHEY: All right. Go ahead then.

8 MR. CABLE: He's not an attorney in good
9 standing, however.

10 JUDGE FAHEY: Well, that's - - - that's - - -
11 okay.

12 MR. CABLE: And - - - and that's only for
13 clarification.

14 JUDGE FAHEY: That's a - - - that's a much more
15 fungible question. I think you're right, but leaving that
16 aside, you know, go forward with the - - - this - - - the
17 meat of it, which is his particular actions in this case.

18 MR. CABLE: Well, in the particular actions in
19 this case, being on notice that there was a possibility he
20 was on the brink of disbarment - - -

21 JUDGE FAHEY: Um-hum.

22 MR. CABLE: - - - it was certainly in the
23 contemplation of the appellant and his son because it's
24 actually mentioned in the agreement that he submitted it
25 and it was expected that he was going to be disbarred.

1 And under those circumstances, perhaps he didn't
2 have to send out a letter stating in prospective fashion to
3 his clients I - - - I may be disbarred. But what happened
4 here was he placed himself through this guise of a sales
5 agreement of being in the position of assuming or claiming
6 that he longer had any clients to advise of the disbarment.

7 JUDGE STEIN: Well, isn't the purpose of the
8 notification so that the clients are protected so that they
9 have - - - they - - - that there's a - - - they know that
10 they have to get someone else to protect and represent
11 their rights because this person is no longer available? I
12 mean that's - - - that's a major purpose of this, right?

13 MR. CABLE: That's exactly the point. Yes.

14 JUDGE STEIN: Okay. And that happened here,
15 didn't it?

16 MR. CABLE: No. It did not happen. These
17 clients did not know that their attorney, up until this
18 point in time, was going to be disbarred.

19 JUDGE STEIN: What difference did it make to them
20 and their rights at that time?

21 MR. CABLE: It would seem - - -

22 JUDGE STEIN: They - - - they know they - - -
23 that he couldn't - - - he was no longer going to be
24 available to represent them and they needed to get somebody
25 else to do so and they got that notice and they were able

1 to go ahead and do that.

2 MR. CABLE: It would seem to be beyond dispute
3 that those clients would have liked to know that that
4 lawyer was disbarred as a factor to considering whether
5 they were going to continue with this law firm.

6 JUDGE PIGOTT: Well, I don't know about that.

7 JUDGE STEIN: And did it - - -

8 MR. CLENNAN: Since that's the purpose of the
9 rule.

10 JUDGE STEIN: When he was disbarred, did that
11 become public? Was that public knowledge then, public - -
12 -

13 MR. CABLE: It's a public - - -

14 JUDGE STEIN: - - - public information?

15 MR. CABLE: It's a public order. Yes.

16 JUDGE STEIN: Okay.

17 MR. CABLE: But the public, in the general
18 world, probably wouldn't know about it. And that's
19 precisely one of the reasons why 691.10 requires
20 notification of the clients and to other counsel. Because
21 if we are talking about the - - -

22 JUDGE STEIN: But I don't understand what it is
23 that they're - - - they're supposed to have said, that he
24 was supposed to have said at the time he sent his resign -
25 - - between the time he sent his resignation letter and the

1 time that it was accepted. What should he have told his
2 clients?

3 MR. CABLE: I - - - I think that one of two
4 possibilities here could have been followed by this
5 appellant. One, he could have just been forthright and
6 said - - -

7 JUDGE STEIN: He could have been.

8 MR. CABLE: - - - I'm - - - I'm in trouble, this
9 is what I've done, I may be disbarred, and I'm leaving.

10 JUDGE STEIN: But isn't that a major reason why
11 an attorney decides to resign rather than face the charges
12 so that they don't have to put - - - project that to the
13 world?

14 MR. CABLE: No. Because it becomes projected to
15 the world once the disbarment order is accepted. The - - -
16 the - - -

17 JUDGE STEIN: So what's the - - -

18 MR. CABLE: - - - facts and circumstances are
19 out.

20 JUDGE STEIN: Why - - - why would an attorney
21 then resign rather than let them go ahead and try to prove
22 the charges and maybe he'd only be suspended for a couple
23 years?

24 MR. CABLE: Well, that's a strategic decision
25 that that attorney has to make. He's in the disciplinary

1 investigation.

2 JUDGE STEIN: I know. But why - - - why would he
3 do that? If he's essentially agreeing to be disbarred, why
4 would he do that?

5 MR. CABLE: Some attorneys don't want to go
6 through the - - - through the trouble of a - - - of a
7 hearing.

8 JUDGE FAHEY: Essentially, it's - - -

9 CHIEF JUDGE DIFIORE: You don't see any policy -
10 - -

11 JUDGE FAHEY: - - - it's to control the timing,
12 isn't it?

13 MR. CABLE: Sometimes it is. Yes.

14 JUDGE FAHEY: Seems to be the primary reason.

15 MR. CABLE: That's correct.

16 JUDGE FAHEY: Yeah. It's to control the timing
17 of it, and that's what was done here. They wanted to
18 control the timing.

19 MR. CABLE: And sometimes it's a matter of not
20 having money to pay counsel to do a hearing, as well.

21 JUDGE FAHEY: Sure. There's - - - you're
22 absolutely right about that.

23 JUDGE STEIN: Don't we want to encourage that?

24 MR. CABLE: I'm sorry?

25 JUDGE STEIN: Don't we want to encourage that as

1 a policy matter?

2 MR. CABLE: Encourage - - -

3 JUDGE STEIN: Isn't that - - - isn't that good so
4 that the resources of the disciplinary committees and the
5 courts aren't needlessly used if - - - if an attorney is
6 willing to do that and save some face or - - -

7 MR. CABLE: Well, I don't - - - okay.
8 Certainly, it would be - - - from an efficiency standpoint,
9 it would be fine. But I don't know that, as the price for
10 efficiency, you want to accept an interpretation of a rule
11 that leads to a deception to the clients.

12 JUDGE PIGOTT: Well, let's - - - let's look at
13 the deception for a minute. If - - - if this attorney, who
14 apparently, is pretty good, I mean there's an awful lot of
15 clients there - - - if he's in a big firm, and now by big
16 let's - - - let's say thirty lawyers or more, his - - - his
17 ultimate suspension or disbarment will have an impact but
18 the firm will go on. If, on the other hand you're a sole
19 practitioner and you want to protect your son as, you know,
20 seemed to be a possibility here, is that a bad thing to
21 say, you know, I'm giving my practice to my son, and then
22 when they find out six months later that, you know, he's
23 moved to Tennessee and/or he's disbarred?

24 MR. CABLE: Certainly, it's a bad thing for the
25 son if they find out that the father was disbarred. But -

1 - -

2 JUDGE PIGOTT: Why?

3 MR. CABLE: - - - the purpose of - - -

4 JUDGE PIGOTT: Why? Why? Why? Why is it a bad
5 thing for the son if you find out your father - - - I mean
6 it's a sad thing but - - -

7 MR. CABLE: Well, the clients may leave the firm
8 if they actually knew that the father had been disbarred.

9 JUDGE GARCIA: Right.

10 MR. CABLE: And the son would be left without a
11 firm.

12 JUDGE PIGOTT: I mean if - - - if you're - - -
13 okay. I - - - go ahead.

14 JUDGE GARCIA: But counsel, another issue I see
15 with this letter is he wasn't disbarred at the time. But
16 wouldn't it have been accurate and your obligation to not
17 misrepresent anything to say I have submitted my
18 resignation? Not I'm relocating and our team and our
19 people and our firm, giving the impression that, while I
20 may be off in another state for a while, you know, I'm not
21 ending my practice or intending to end my practice in any
22 way. That, to me, is troubling about this letter, not in
23 the sense that I had to notify people I was under
24 disciplinary proceedings or notify that I was going to be
25 disbarred for all intents and purposes or - - - but at that

1 point, he had submitted his resignation, right?

2 MR. CABLE: Correct.

3 JUDGE GARCIA: And the letter just says I'm
4 relocating.

5 MR. CABLE: I agree with you. The letter is
6 misleading in the extreme, putting aside the question of
7 whether he had any obligation to advise ahead of time that
8 he was facing possible disbarment. Putting that issue
9 aside, the letter, in and of itself, is misleading. It's
10 misleading of the circumstances; it's misleading of his
11 intent; and it's misleading of the clients' whose interests
12 are supposedly being protected by the rule who ought to be
13 able to decide for themselves do we want to continue with
14 this firm - - -

15 JUDGE PIGOTT: You know, you're making - - - I
16 apologize, but your light is on and one of the arguments,
17 as I understand it from the petitioner here, is that the
18 Appellate Division did not explain anything. They just
19 said, you know - - - and - - - and you're making arguments,
20 some of - - - you know, I shouldn't say some, but
21 articulate arguments on why but the Appellate Division
22 didn't say that.

23 MR. CABLE: Your - - - well, this court's
24 decision in the Citrin case I think is dispositive of that
25 issue. In that case, this court determined that as long as

1 the record, as a whole, provides notice to a denied
2 applicant for reinstatement or in that case, reinstatement,
3 then the due process - - -

4 JUDGE PIGOTT: But one - - - one of the things I
5 - - -

6 MR. CABLE: - - - is satisfied.

7 JUDGE PIGOTT: One of the things I was thinking
8 about when you were talking about that is there was no
9 charge. There was no - - - there was no charge. You
10 didn't charge Mr. Leo with misleading his - - - his clients
11 after his resignation and before his disbarment.

12 MR. CABLE: Well, this matter - - - that aspect
13 of things didn't come forward until the reinstatement
14 application.

15 JUDGE PIGOTT: Right. So you didn't charge him
16 on it, so that can't possibly be the reason why he was
17 disbarred. And if it's the reason why he's not being
18 reinstated, shouldn't there be something in the record that
19 - - -

20 MR. CABLE: Well, there is. The full
21 committee's letter stated two reason. One, the - - - the
22 letter to the clients upon the sale of the law firm
23 violated the court's rules, and the second reason was
24 violating the court's rules relating to the payments of the
25 fees and disbursements - - -

1 JUDGE PIGOTT: Percentages.

2 MR. CABLE: - - - without board approval.

3 JUDGE PIGOTT: Okay.

4 MR. CABLE: And without client consent, as well,
5 because the rule also requires notice to the clients that a
6 disbarred lawyer is going to be a payee in quantum meruit.

7 CHIEF JUDGE DIFIORE: Thank you, sir.

8 MR. CABLE: Thank you.

9 JUDGE ABDUS-SALAAM: Could I just ask one more -
10 - -

11 CHIEF JUDGE DIFIORE: Yes. One more question.

12 JUDGE ABDUS-SALAAM: - - - one more question.
13 Your adversary mentioned that there was no obligation to go
14 to court because that was part of the sale. Could you
15 comment on that? There's no interplay between the - - -
16 the sale and the requirement to get court approval?

17 MR. CABLE: I don't think that by private sales
18 agreement you can abrogate a court rule that requires that
19 a disbarred lawyer obtain court approval for predisbarment
20 quantum meruit legal services or disbursements.

21 JUDGE ABDUS-SALAAM: Thank you.

22 CHIEF JUDGE DIFIORE: Thank you, sir.

23 Counsel.

24 MR. CLENNAN: What I think we're trying to do is
25 go back to the way it was before when you couldn't sell a

1 practice. That's what I think we're trying to do over
2 here. We're trying to read into a regulation different
3 requirements that aren't there. We're trying to - - -

4 JUDGE PIGOTT: Your client went and got the
5 orders, right?

6 MR. CLENNAN: That's right.

7 JUDGE PIGOTT: All right. So - - -

8 MR. CLENNAN: I was there when he got most of
9 them.

10 JUDGE PIGOTT: All right. So - - - so he must
11 have felt like he should go get them and he - - -

12 MR. CLENNAN: Actually, he went there because the
13 - - - the subcommittee told him to. The - - - and looking
14 at what happened here is that not one Supreme Court judge,
15 we went before six of them - - - not one had the least
16 objection to it.

17 JUDGE PIGOTT: We didn't see the papers. I was
18 curious about, you know, the application, you know, for the
19 orders and to whom notice went. And - - -

20 MR. CLENNAN: At that time I represented Donald
21 Leo Junior.

22 JUDGE PIGOTT: And the orders itself.

23 MR. CLENNAN: Went to - - - they went to all his
24 former clients. No one showed up in court to oppose the
25 procedures. No one contacted either me or Mr. Leo, who is

1 now my client, to find out what the story was about. No
2 one contacted Donald Leo Junior who was my client at the
3 time. But what I'm tell - - -

4 JUDGE GARCIA: They're all fees that are coming
5 out of the percentage that went to the law firm, right? So
6 the law firm gets thirty-three percent on a case, these
7 fees are how much does your client get and how much does
8 your former client get, I guess, in that distribution,
9 right? So why would a client object to that?

10 MR. CLENNAN: Again, the client has the right to.

11 JUDGE GARCIA: Right. But what I think Judge
12 Pigott was saying - - -

13 MR. CLENNAN: I mean I have had - - - I - - -

14 JUDGE GARCIA: - - - we haven't seen the papers
15 so you filed these things which now say no, no, no, they're
16 not - - - some of this isn't disbursement and this part
17 isn't the sales price but they're actually tied to the
18 cases that you had in the appendix to the sales agreement
19 and the court says okay. That's what you did, right?

20 MR. CLENNAN: Right. We attached the sales
21 agreement and showed that was the agreement that was made.
22 That's correct. We also attached - - -

23 CHIEF JUDGE DIFIORE: Counsel, do you care to
24 address the second issue regarding the Appellate Division's
25 failure to detail the reasons in its - - -

1 MR. CLENNAN: Well, you see what we have here,
2 and different from the days when you had the men sitting on
3 the park bench and can run the bar by winks and nods, what
4 you have here today is a disparate group. We have to run
5 it closer to the book than ever before because there is no
6 common moral focus anymore. We have people going - - -
7 saying today that the Ten Commandments are - - - shouldn't
8 be out in the parks, some things as fundamental as that
9 there are disputes over. What - - - what is the common
10 moral focus is the black letter of the law, and it has to
11 be objectively applied. Why should the Appellate - - - why
12 shouldn't the Appellate Division explain it? Well, every
13 other profession that you have in order to get disciplinary
14 proceeding through it must be explained.

15 JUDGE STEIN: So you're saying we should overrule
16 Citrin?

17 MR. CLENNAN: Well, I think Citrin, by subsequent
18 cases, was being cut down on. I believe Matter of
19 Anonymous said that, you know, if they considered
20 extraneous matters not in hearings before or not generally
21 open to the public, they - - - or they had to - - -

22 JUDGE STEIN: But you're not arguing - - -

23 MR. CLENNAN: - - - provide it - - -

24 JUDGE STEIN: You're not arguing that your client
25 didn't know what the charges were, you know, what - - - I

1 mean certainly the - - -

2 MR. CLENNAN: Well, - - -

3 JUDGE STEIN: - - - the committee said what they
4 were based on and the Appellate Division - - - I think we
5 can - - -

6 MR. CLENNAN: Rubberstamped them.

7 JUDGE STEIN: Well, but - - - or agreed with
8 them.

9 MR. CLENNAN: We don't - - -

10 JUDGE STEIN: They didn't feel it was necessary
11 to add anything.

12 MR. CLENNAN: Well, you know, they didn't say for
13 the reason stated. There's - - - there's ways your court,
14 ways that court - - - sometimes they agree with the Supreme
15 Court judge and they say for the reasons stated by Judge
16 So-and-So.

17 CHIEF JUDGE DIFIORE: Thank you, counsel.

18 MR. CLENNAN: Take care. Bye-bye.

19 (Court is adjourned)

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Leo No. 176 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

Agency Name: eScribers

Address of Agency: 700 West 192nd Street
Suite 607
New York, NY 10040

Date: October 21, 2016