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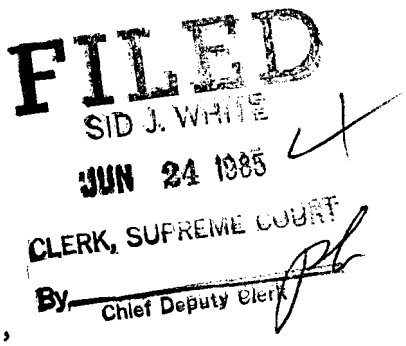
IN THE
SUPREME COURT OF THE STATE OF FLORIDA



IN RE:

CHRISTOPHER DeBOCK,
Petitioner,

STATE OF FLORIDA,
Plaintiff/Respondent,

v.

RICHARD F. RENDINA,
Defendant.

JURISDICTIONAL STATEMENT

Seeking Discretionary Review of Opinion of
Fourth District Court of Appeals
Case No. 84-2632

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JURISDICTIONAL STATEMENT

The Petitioner, CHRISTOPHER DEBOCK, respectfully requests this Court to exercise its discretionary jurisdiction to review the issuance of a writ of common law certiorari obtained by the State of Florida from the Fourth District Court of Appeal in this case. This Court has the discretionary power to grant review of the Fourth District's ruling as 1) it expressly affects two classes of constitutional and state officers; and 2) it expressly and directly conflicts with a decision of this Court on the same question of law. See Rule 9.030(a)(2), and Article V, Section 3(b)(3), Florida Constitution (1980), and as more fully set forth below.

BRIEF STATEMENT OF FACTS

This Petitioner, CHRISTOPHER DEBOCK, an attorney and member of the Bar of this State, was served with a subpoena to appear at a deposition on November 7, 1984, and give testimony in a pending criminal case[1]. Upon this Petitioner's assertion of the Fifth Amendment and refusal to testify, the State moved the Circuit Court for an Order to Show Cause, arguing that the statutory use immunity conferred by the service of that subpoena, pursuant to Fla.Stat., Section 914.04, extinguished the witness' Fifth Amendment claim and required him to testify.

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[1] State of Florida v. Richard Rendina, Case No. 84-6521-CF-10, pending in the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida.

This Petitioner successfully argued that the subpoena failed to confer upon him, an attorney, immunity co-extensive with his Fifth Amendment right to remain silent, and thus he could not be held in contempt for his failure to testify. The Circuit Court thereafter issued a written Order to this effect, predicated upon the following findings:

> It is the finding of this Court that the case authorities cited on behalf of the Witness hold that:
>
> 1) The Fifth Amendment applies to Florida Bar disciplinary proceedings;
>
> 2) The use immunity conferred upon the Witness pursuant to Section 914.04 does not reach Bar disciplinary proceedings and would not immunize the Witness from his testimony being used against him in a Florida Bar Proceeding;
>
> 3) That only the Supreme Court of Florida can confer immunity in Bar proceedings and that the State has had the option of petitioning the Supreme Court of Florida for the necessary immunity grant.

The trial court further found that:

> [T]he Witness has a substantial and imminent danger of prosecution both before the Florida Bar in disciplinary proceedings and in possible criminal sanctions. In this regard the Court notes that the State Attorney has represented its intention to pursue Florida Bar disciplinary proceedings against the Witness.

See Appendix, pp. A5-A7.

The State thereafter petitioned the Fourth District Court of Appeal for a writ of common law certiorari, seeking to quash the trial court's order denying their motion for an order to show cause. On March 27, 1985, the Fourth District Court of Appeal granted the writ and quashed the trial court's order, finding that Bar disciplinary proceedings were not penal in nature, and therefore a witness may not properly invoke his Fifth Amendment

privilege for fear that his answers may tend to incriminate him if used by the Bar in disciplinary proceedings instituted against him. This opinion, which was reaffirmed on May 15, 1985, by denial of this Petitioner's timely motion for rehearing,[2] expressly affects the rights of a class of constitutional officers; viz; all members of the Florida Bar over whom this Court maintains exclusive jurisdiction pursuant to Article V, Section 15, Florida Constitution; and expressly affects the duties and obligations of another class of constitutional and State officers; viz; all State Attorneys created and empowered by Article V, Section 17, Florida Constitution. Furthermore, the Fourth District's legal reasoning expressly conflicts with this court's decision in Ciravolo v. The Florida Bar, 361 So.2d 121 (Fla. 1978). For these reasons, this Court has jurisdiction to review the Fourth District's decision pursuant to Article V, Section 3(b)(3), Florida Constitution, and Rule 9.030(a)(2), Florida Rules of Appellate Procedure.

REASONS WHY THIS COURT OUGHT TO EXERCISE ITS DISCRETIONARY POWER TO REVIEW THIS CASE

A. The Fourth District's Opinion Expressly Affects the Rights, Duties and Obligations of Two Classes of Constitution and State Officers; Viz, Members of the Florida Bar and State Attorneys of the State of Florida

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[2] Notice to this Court of Petitioner Debock's request that this court exercise its discretionary jurisdiction to review the Fourth District's opinion was filed on June 13, 1985, within thirty (30) days of this May 15, 1985 order. The instant Jurisdictional Statement is filed within ten (10) days of this Notice. Therefore, this Petitioner has timely requested this Court to entertain granting review of this matter, pursuant to Rule 9.140, Florida Rules of Appellate Procedure.

The purpose of granting this Court the right to review decisions expressly affecting any class of constitutional and state officers is to authorize it to be final arbiter of any legal precedent which impacts upon the "respective duties, powers and obligations of such officers," Richardson v. State, 246 So.2d 771 (Fla. 1971); especially when that decision "in the ultimate, would affect all constitutional or state officers. . . even though only one of such officers might be involved in the particular litigation." Florida State Board of Health v. Lewis, 149 So.2d 41 (Fla. 1963); accord, State v. Robinson, 132 So.2d 156 (Fla. 1962).

Article V, Section 15 of the Florida Constitution confers upon this Court exclusive jurisdiction pertaining to the admission and discipline of lawyers practicing within this State's borders. By such jurisdiction, the Florida Bar becomes an entity, and as such its members are constitutional officers within the meaning of Article V, Section 3(b)(3), Florida Constitution. Indeed, "lawyers are independent professionals, yet as `officers of the Court' they are part of the governmental structure involved with the administration of justice," In Re Florida Bar, supra, 316 So.2d at 48, the respective rights and duties of whom may be reviewed under this Court's discretionary jurisdiction.

The Fourth District's opinion in this case impacts upon all members of the Bar, even though but one is a litigant herein. Specifically, the Fourth District's holding, that members of the Bar of the State of Florida may not invoke their Fifth Amendment privilege solely for fear of their testimony's use in disciplinary

licensing proceedings, is expressly grounded upon its finding that "Bar disciplinary proceedings are remedial, not punitive,. . . ." The Fourth District borrowed this legal pronouncement from decisions of States other than Florida, and by so announcing, has attempted to define the contours of disciplinary proceedings which the Constitution of this State has exclusively reserved to this Court.[3]

This opinion, if left standing, would divest all members of the Bar of this State of the right to invoke the Fifth Amendment unless immunized against the use of their testimony in Bar proceedings which might arise from the same events. As such legal ruling impacts upon officers of the Court over whom this Court has exclusive jurisdiction, we respectfully submit that this Court's discretion would be well exercised by accepting this case for review.

We also invoke this Court's jurisdiction under Article V, Section 3(b)(3), as the Fourth District's opinion directly affects a second class of constitutional and State officers as well. Specifically, the appellate opinion sought to be reviewed here purports to excuse a State Attorney of this State -- a class of officers created by Article V, Section 17, Florida Constitution -- from having to seek from this Court immunity from

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[3] Indeed, this Court has repeatedly exercised this exclusive jurisdiction. See e g., Ciravolo v. The Florida Bar, 361 So.2d 121 (Fla. 1978); In Re the Florida Bar, 316 So.2d 34 (Fla. 1975); The Florida Bar v. Messfeller, 170 So.2d 834, 838 (Fla. 1964). Upon this grant of exclusive jurisdiction alone, this Court has the right to review the instant case. See Ciravolo, supra, Article V, Section 3(b)(7), and Rule 9.030(a)(3), Florida Rules of Appellate Procedure.

the use of statements it so elicits in any subsequent disciplinary proceeding, thus defining the duties and obligations of all State Attorneys in this State, when seeking to compel the testimony of members of the Florida Bar who invoke the protection of the Fifth Amendment. See Appendix, p. A-2.

Were this Court to accept jurisdiction, the Petitioner would urge that it elaborate upon its holding in Ciravolo, supra, and place the burden upon the State to apply for such immunity from this Court. We would urge that it is the State, and the State only, who can best advise this Court when "it appears that the greater good to society will be served by granting immunity. . . ." Ciravolo v. The Florida Bar, supra, 361 So.2d at 125.

These are serious determinations, with far-reaching consequences for both attorneys and prosecutors of this State, which should not be given the final force of law without the imprimatur or censure of this Court. For these reasons, we request that this Court exercise its discretionary jurisdiction to review the propriety of the Fourth District's ruling, and define the rights, obligations and duties of these two classes of constitutional and State officers.

B. The Fourth District's Opinion Directly and Expressly Conflicts With this Court's Holding in Ciravolo v. The Florida Bar, 361 So.2d 121 (Fla. 1978).

In Ciravolo v. The Florida Bar, 361 So.2d 121 (Fla. 1978), this Court found that the statutory immunity conferred by Section 914.04 could not immunize a witness from the institution

of Bar disciplinary proceedings.[4] Its decision was, however, expressly grounded upon a narrow and well delineated legal basis: that given the Supreme Court's exclusive jurisdiction over attorneys under Article V, Section 15, and the Constitution's firm separation of powers doctrine contained in Article II, Section 3, neither the legislature, by statute, nor a member of the executive, could tread upon its disciplinary powers by conferring immunity against Bar proceedings. This Court further held, however, that immunity from disciplinary proceedings could be granted, but it had to be given by order of the Supreme Court.

The Fourth District's decision in the instant case -- that bar disciplinary proceedings are not penal and therefore the Fifth Amendment does not apply -- is in direct conflict with this Court's holding in Ciravolo. Were this Court of the mind that Bar

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[4] At the time that Ciravolo was decided, Section 914.04 was construed as conferring "transactional" immunity. Thus, the prosecutor's purported immunity grant, if respected, would have prohibited Bar disciplinary proceedings against the witnesses from even being instituted. This Court's concern about such a broad grant of protection is unmistakeable: "It is disquieting having attorneys who may have engaged in serious misconduct handling the affairs of clients. It is this disturbing feature that motivated The Florida Bar to take action in this case. . . . The court is concerned about the practice of law by those involved in wrong doings of a criminal nature, but, we are also mindful that this court and the profession should not place a stumbling block in the path of the citizens of this state who strive mightily to uncover and rid our communities of criminal acts [by the obtaining of evidence by grants of immunity]." Ciravolo, supra 361 So.2d 125. Were this Court to grant jurisdiction over this case, we would urge that testimony compelled under Section 914.04, as amended in 1982 (now conferring only "use" immunity) is testimony the use of which is prohibited in all proceedings in which the witness could assert his Fifth Amendment right. See Murphy v. Waterfront Commission, 378 U.S. 52, 12 L.Ed.2d 678, 84 S.Ct. 1594 (1964) (holding that each jurisdiction is constitutionally prohibited from using testimony against a witness which he was compelled to give by the grant of use immunity by a different jurisdiction).

proceedings were not penal, it could not, predicated upon the Fifth Amendment,[2] offer to immunize one from its penalties, as it most certainly did in Ciravolo. See, id., 361 So.2d at 125.

Indeed, Justice England's dissent in Ciravolo expressly acknowledged that this Court had refused to adopt the holding that the Fourth District has now attempted to impose in this case. While concurring with the majority that immunity from disciplinary proceedings could only be granted by the Supreme Court, Justice England in dissent, however, bemoaned the fact that the majority refused to adopt the very legal reasoning which the Fourth District has now embraced in its opinion here. See Ciravolo, supra, 361 So.2d at 127.

The Fourth District's adoption of that which was addressed by the dissent in Ciravolo as predicate for its ruling here, demonstrates that it is expressly in conflict with this Court's majority holding therein, and grants this Court power to exercise its discretionary jurisdiction to review this case, pursuant to Article V, Section 3(b)(3). David v.State, 369 So.2d 943, 944 (Fla. 1979); Autrey v. Carroll, 240 So.2d 474 (Fla. 1970); Keller v. Keller, 308 So.2d 106 (Fla. 1974).

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[2] The Fifth Amendment may only be asserted if his testimony may possibly expose the witness to criminal liability, Ullman v. United States, 350 U.S. 422, 432 100 L.Ed.511, 76 S.Ct. 497 (1956). Proceedings which may result in a forfeiture or penalty, though they may be civil in form, "`are in their nature criminal,' for Fifth Amendment purposes." United States v. U.S. Coin & Currency, 401 U.S. 715, 518, 28 L.Ed.2d 434, 437, 91 S.Ct. 1041 (1971), quoting Boyd v. United States, 116 U.S. 616, 634, 29 L.Ed. 746 752, 6 S.Ct. 524 (1886).

Were this Court to review this case, we should urge that this Court's opinion in Ciravolo was an express acknowledgement that the possible ramifications of bar proceedings, just as all other disciplinary licensing proceedings in the State of Florida, see Lurie v. Florida State Board of Dentistry, 288 So.2d 223 (Fla. 1973), encompass the imposition of penalties and forfeitures, against which the Fifth Amendment privilege may be invoked. As this Court has explained, in relation to licensing proceedings under this State's laws:

> Certainly, threatened loss of professional standing through revocation of his real estate license is as serious and compelling to the realtor as disbarment is to the attorney. In succinct terms, it is our view that the right to remain silent applies not only to the traditional criminal case, but also to proceedings "penal" in nature in that they tend to degrade the individual's professional standing, professional reputation or livelihood.

State ex rel Vining v. Florida Real Estate Commission, 281 So.2d 387, 391 (Fla. 1973).

This Court's holding in Ciravolo has equitably balanced the substantive effect of administrative proceedings against all licensed professionals in the State of Florida, by recognizing that immunity is and must be available to prevent the use of a person's statements against himself in administrative disciplinary proceedings, whether controlled by the Judicial or the Executive Branch. The import of Ciravolo upon the Bar is not to make their disciplinary proceedings remedial, while disciplinary proceedings against all other professionals licensed by this State are penal.[6] Rather, the Ciravolo opinion is an acknowledgement that

[6] We note that the force of interpretative construction alone imposes such a reading upon us. Judicial rulings, no less than

lawyers -- the only professionals regulated by the judicial rather than the executive branch of government -- must resort to the procedural mechanism of receiving immunity from this Court, rather than by statute.

We urge this Court to exercise its discretionary jurisdiction here, in order to rectify the Fourth District's refusal to follow the express dictates of its holding in Ciravolo v. The Florida Bar, supra.

CONCLUSION

For all of the above and foregoing reasons, this Court ought to exercise its discretionary jurisdiction under Article V, Section 3(b)(3), to review the Fourth District's opinion in this case.

Respectfully submitted,

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statutes, should be interpreted in accord with constitutional strictures. Cf., United States v. Johnson, 323 U.S. 273, 276, 89 L.Ed. 236, 65 S.Ct. 249 (1944). Were Ciravolo to be read to substantively exempt lawyers from the Fifth Amendment protections all other licensed professionals enjoy in Florida, see Lurie v. Florida State Board of Dentistry, 288 So.2d 223 (Fla. 1973), as Justice England in dissent and the Fourth District in this case have urged, lawyers would be singled out for unequal treatment under the law, in violation of the Equal Protection Clauses of the State and Federal Constitutions.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by mail to Assistant Attorney Gerneral Joan Fowler Rossin, 111 Georgia Avenue, Suite 204, West Palm Beach, FL 33401, and by mail to Special Prosecutor Steven Russell, Assistant State Attorney, P.O. Drawer 2007, Collier County Courthouse, Naples, Florida, this 21 day of June, 1985.