

FILED
DEBBIE CAUSSEAU

SEP 09 1999

CLERK, SUPREME COURT
By _____

**In The Supreme Court
State Of Florida**

The Florida Bar
Complainant

-v-

Irving B. Gussow
Respondent

Case No.69645

**Respondent's Brief In Support of Petition
For An Order Conditionally Modifying Disbarment**

**IRVING B. GUSSOW
1370 EAST ALTAMONTE DRIVE
ALTAMONTE SPRINGS, FLORIDA 32701
407-260-2377**

TABLE OF CONTENTS

	Page
Table of Authorities	ii
Statement of Facts and The Case.....	1
Summary of the Argument.....	2
Argument	3,4
This Court should Grant the petition filed herein and allow the petitioners readmission application to the Florida Bar continue through the admission process.	
Conclusion.....	5
Certificate of Service.....	6

TABLE OF AUTHORITIES

	<u>PAGE(S)</u>
The Florida Bar Re:Hipsh	3
The Florida Bar Re: Whitlock	3

STATEMENT OF FACTS AND THE CASE

Petitioner was a solo practitioner, with his office located in Winter Park, Florida. Petitioner was admitted to the Florida Bar in May 1973. All the records of the various complaints, which were filed against the Petitioner in the year 1986 are with the Florida Bar, and Petitioner has not maintained any of them. This court has exclusive jurisdiction over admissions and discipline of Attorneys in the Florida. Petitioner pled guilty to all violations including , but not limited to stealing funds from his trust account, disobeying Court Orders, and the mishandling of legal matters. Petitioner was Disbarred by Order of this court dated January 28, 1988 and a subsequent order dated March 3,1988

Petitioner has made reapplication for admission to the Florida Bar. One of the conditions in Petitioner's Disbarment Order was that Full Restitution be made prior to this Court allowing him readmission. It is from that aspect of the Disbarment Order that this Petition for Conditional Modification has been filed.

SUMMARY OF ARGUMENT

This Court has exclusive Jurisdiction over admissions, and punishments and all other activities of the Florida Bar.

Petitioner is seeking this court to allow his application with The Florida Board of Bar Examiners to continue with a specific waiver of the restitution provision until the admission process is concluded. If petitioner is allowed a probationary status with the Bar than a three year time limit to conclude the restituition obligation.

ARGUMENT

The Supreme Court of the State has exclusive jurisdiction over the admission to practice law in this state is granted through Article 5, section 15 of the Florida Constitution. Through this Jurisdiction of Article 5, section 15 this Court established the Florida Board of Bar Examiners to be it administrative agency to oversee this process. It is from a decision by the executive director that further direction from this Court is necessary that this Petition and Brief are being filed.

A Petition to conditionally Modify a Disbarment Order is not novel to this Court.

This Court addressed modification of a permanently disbarred attorney in the case of THE FLORIDA BAR re LAWRENCE H. HIPSH, 586 So.2d 311 (FLA., 1991) wherein this court stated :

“ This Court has the authority to allow a permanently disbarred lawyer leave to reapply under its exclusive constitutional authority to regulate lawyer discipline and admissions.” at page 313

The court went on to say

“On the other hand, we have the authority to grant leave to reapply particularly in those cases where a permanently disbarred lawyer’s conduct is no different from the conduct of other lawyer who have been disbarred and the permanently disbarred lawyer is able to demonstrate subsequent rehabilitation that would justify this Court’s granting the permanent disbarred lawyer leave to apply for readmission”

Petitioner is at this time neither downplaying his conduct which led to his Disbarment, nor singing praises of his rehabilitation. Petitioner is only seeking what was succinctly said by Justice Barkett

“Thus, I would grant Hipsch’s petition to apply to the Bar, which would then review his application and weigh the rehabilitation evidence against his earlier misconduct”

Hipsch at pg. 314 - 315

This court has also addressed the issue of allowing reinstatement upon the condition of making restitution upon readmission.

THE FLORIDA BAR Re WILLIAM E. WHITLOCK, III 511 So.2d. 524,(Fla.1987) where this court stated

“To deny reinstatement for the reasons given by the referee i.e., failure to make more money while suspended, is basically denying him reinstatement forever.” at page 525

Your undersigned Petitioner again reiterates that I am only asking that I be allowed to prove before this court that I have met the other criteria for readmission. However, all documentation and the application are remaining in The Florida Board of Bar Examiners unless otherwise directed this court. See Appendix Exhibit “G”

Should this court allow a probationary period of readmission then petitioner would be able to obtain gainful employment, This employment would allow restitution to be repaid in full.

CONCLUSION

This court should enter its Order allowing Petitioner's Petition for Conditional Modification be **GRANTED** and his application proceed to this Court for a Final determination if he's suitable for a probationary re-admission to the Florida Bar.

CERTIFICATE OF SERVICE

I Hereby certify that a true copy of the foregoing Brief has been furnished by U. S. Mail this 7 day Of September, 1999 to the following:

The Florida Bar c/o John Harkness, Executive Director, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300

Mr. Boggs, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300

Florida Board Of Bar Examiners. c/o Kathryn E. Ressel, 1891 Eider Court Tallahassee, Florida 32399-1750

Thomas Pobjecky, Staff Counsel, Florida Board Of Bar Examiners, 1891 Eider Court, Tallahassee, Florida 32399-1750



IRVING B. GUSSOW
1370 EAST ALTAMONTE DRIVE
ALTAMONTE SPRINGS, FLORIDA 32701
407-260-2377