

IN THE SUPREME COURT OF FLORIDA

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FLORIDA BOARD OF BAR EXAMINERS)
IN RE: FRED PARKER BINGHAM, II)

Case No. 75,075

RESPONSE TO PETITION FOR WRIT
OF CERTIORARI AND PETITION
FOR REVIEW

Submitted by:

FLORIDA BOARD OF BAR EXAMINERS
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RESPONSE TO PETITION

The Florida Board of Ear Examiners, by and through its undersigned attorney, files its Response to the Petition and Supplemental Petition filed on behalf of Fred Parker Bingham, 11.

STATEMENT OF THE CASE AND THE FACTS

The Board accepts Bingham's Statement of Prior Proceedings before the Florida Board of Bar Examiner. The Board accepts Bingham's Factual Background as to factual matters contained therein except the Board is without knowledge of the allegations in paragraphs 4 and 5 except as supported by the Affidavit of Dean Ronald Phillips. (Bingham's Appendix at 16)

SUMMARY OF ARGUMENT

Applicants for admission to the Florida Bar Examination must be graduates of a full-time accredited law school. The only alternative to this graduation requirement is the practice of law for, at least, ten years by a duly admitted out-of-state attorney and the submission of an acceptable representative compilation of work product demonstrating such attorney's previous experience and practice at the bar.

The Board properly found that, Bingham's prior work experience as a California Juvenile Traffic Hearing Officer did not reflect his engagement: in the practise of law to the extent required. Additionally, Bingham's work in the field of law in Florida since 1987 does not comply with the current provisions regarding ten years of practice. If a rule amendment recently

proposed by the Board is approved by the Court, then Bingham will be able to rely upon his practice in federal courts while residing in Florida in any future submission of work product filed by him for evaluation by the Board.

Bingham's request for a waiver of the rules should not be granted. Since 1983, the Board and the Court have consistently denied petitions seeking waivers of the educational requirements. Regarding Bingham's arguments as to equitable estoppel and due process, the basis for these arguments are not supported by the facts. The Board did not affirmatively and materially mislead Bingham. Instead, Bingham misinterpreted the Board's correspondence and specifically ignored the Board's explicit reference to both subsections (1) and (2) of Article III, Section 1.c. in its letter dated August 24, 1989. In any event, the appropriate remedy would be to afford Bingham the opportunity to reappear before the Board.

The Board urges the Court to deny the pending Petition without prejudice to Bingham to submit an abstract of practice for the Board's evaluation when he achieves ten years of practice excluding his judicial service in California.

ARGUMENT

**THE BOARD PROPERLY FOUND THAT BINGHAM'S WORK
EXPERIENCE DID NOT REFLECT HIS ENGAGEMENT IN
THE PRACTICE OF LAW TO THE EXTENT REQUIRED BY
THE PROVISIONS OF ARTICLE III, SECTION 1.c.
OF THE RULES**

- A. The Board properly found that Bingham's service as a California Juvenile Traffic Hearing Officer did not constitute the practice of law under Article III, Section 1.c.(2) of the Rules.

(Bingham's Points 1A. and 1B.)

Applicants for admission to the Florida Bar Examination must have graduated from a full-time law school "at a time when such law school was accredited or within 12 months of such accreditation." Fla. Sup. Ct. Bar Admiss. Rule, Art. III, Section 1.c. Bingham received his Juris Doctor degree in July 1970 from Pepperdine University School of Law. Bingham is unable to satisfy the aforementioned requirement since his law school was not provisionally approved by the American Bar Association until August 1972

The Court recognizes the significance of a quality legal education as established by graduation from an accredited law school by providing only a very limited exception for such requirement. This exception is set forth in Article 111, Section 1.c. of the Rules which provides:

For those applicant's not meeting the requirements of Article III, Section 1a. or b. the following requirements shall be met: (1) such evidence as the Board may required that such applicant was engaged in the practice of law in the District of Columbia or in other states of the United States of America, or in practice in federal courts in territories, possessions or protectorates of the United States for at least ten years, and was in good standing at the bar of the District of Columbia, the territory, possession or protectorate, or of the state in which such applicant practiced; and (2) a representative compilation of the work product in the field of law showing the scope and character of the applicant's previous experience and practice at the bar, including samples of the quality of the applicant's work, such as pleadings, briefs, legal memoranda, corporate charters or other working papers which the applicant considers illustrative of such applicant's expertise and academic and legal training. Such representative compilation of the work product shall confine itself to the applicant's most recent ten years of practice and shall be filed at least 90 days prior to the administration of the Florida Bar Examination, notwithstanding the provisions of Article VI, Section 5. If a thorough consideration of such representative compilation of the work product shows that the applicant is a lawyer

of high character and ability, whose professional and legal scholarship conform to approved standards and sum up to the equivalent for that required of other applicants for admission to the Florida Bar Examination, the Board may, in its discretion, admit such applicant to the General Bar Examination and accept score reports directed to the Board from the National Conference of Bar Examiners or its designee. In evaluating academic and legal scholarship the Board is clothed with broad discretion.

In an effort to establish his qualifications under Section 1.c., Bingham made a submission to the Board regarding his work experience in the field of law since his admission to the Bar of California. Bingham supplemented his compilation on several occasions and personally appeared before a panel of the Board on September 16, 1989 in support of his compilation.

Although Bingham was initially admitted to the California Bar in 1971, he took a leave of absence from the field of law from February 1980 to January 1987. See Petition at XIX. Because of this sizeable gap in his legal career, Bingham must rely upon his five years, eight months service as a full-time Juvenile Traffic Hearing Officer in Orange County, California to establish ten years of the practice of law under Article III, Section 1.c. of the Rules.

Based upon its reviews of Bingham's compilation of work product as supplemented, the Board advised Bingham in writing that his submitted materials failed to establish his engagement in the practice of law to the extent required by the provisions of Article III, Section 1.c. of the Rules. See Board's letters dated October 25, 1988 and September 29, 1989. (Bingham's Appendix at 7 and 18) Bingham petitioned the Board for clarification of its ruling set forth in its September 1989

letter. In response to Bingham's Petition for Clarification, the Board specifically advised him that it did not consider his employment as a judicial officer to be the practice of law under subsection (2) of Article III, Section 1.c. (Bingham's Appendix at 23)

In his Petition before the Court, Bingham argues that the Board's position conflicts with Rule 6-3.5(c)(1) of the Rules Regulating The Florida Bar. In that particular rule provision concerning the Bar's designation and certification programs, the "practice of law" is defined as the "full-time legal work performed primarily for purposes of rendering legal advice or representation." This definitional provision also adds: "Service as a judge of any court of record shall be deemed to constitute the practice of law."

The fact that the drafters of this definition felt compelled to include the addition regarding judicial service appears to support the generally accepted notion that service as a judge is separate and apart from the practice of law. This notion is confirmed by two sources. First, Canon 5 F. of the Florida Code of Judicial Conduct provides: "A judge should not practice law."

The second source is even more explicit and is found at Article V, Section 13 of the Florida Constitution which mandates the following:

Prohibited activities. - All justices and judges shall devote full time to their judicial duties. They shall not engage in the practice of law or hold office in any political party.

Thus, it can be argued that under Florida law, a judge does not engage in the practice of law and is, in fact, ethically and constitutionally prohibited from doing so.

Bingham's reliance on language from the Court's opinion in State v. Sperry, 140 So.2d 587 (Fla. 1962) is similarly misplaced. In that case, it is evident that the Court was restricting its definition of the "practice of law" to the duties and responsibilities of a practicing attorney and not a judge and especially not a Juvenile Traffic Hearing Officer. Such restriction is evident when the language quoted by Bingham is placed in context with the paragraph which preceded it:

It is generally understood that the performance of services in representing another before the courts is the practice of law. But the practice of law also includes the giving of legal advice and counsel to others as to their rights and obligations under the law and the preparation of legal instruments, including contracts, by which legal rights are either obtained, secured or given away, although such matters may not then or never be the subject of proceedings in a court.

We think that in determining whether the giving of advice and counsel and the performance of services in legal matters for compensation constitute the practice of law it is safe to follow the rule that if the giving of such advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.

Id. at 591

References to the Code of Judicial Conduct, the Florida Constitution and case law are not, however, determinative of the issue before the Court. It is assumed that the Board (like the

Bar did in its rule governing designation and certification programs) could also deem judicial service to constitute the "practice of law." This is especially true since the Court has clothed the Board with "broad discretion" in evaluating an applicant's work product under Article III, Section 1.c. (2).

In exercising this discretion, the Board determined that Bingham's employment as a judicial officer did not constitute the "practice of law." A similar determination was made by the Board and affirmed by the Court in the case of Florida Board of Bar Examiners Re: Woodrow W. Hatcher, No. 70,578 (Fla. September 28, 1987).

Bingham argues that the Board's decision is too restrictive. The Board disagrees. Article III, Section 1.c. (2) provides that a representative compilation of work product must establish "the scope and character of the applicant's previous experience and practice at the bar, including samples of the quality of the applicant's work, such as pleadings, briefs, legal memoranda, corporate characters or other working papers..." The Board clearly did not abuse its discretion in determining that Bingham's employment as a hearing officer in juvenile court in California was insufficient pursuant to the above-quoted language.

As observed by the Court in Petition of Klein, 259 So.2d 144, 145 (Fla. 1972), Article III, Section 1.c. "is not designed to thwart an applicant, but rather to establish assurance of an applicant's ability and capacity to function as a lawyer." This is the standard adopted by the Board. This is the reason why the Board is requiring Bingham to submit evidence

of his "ability and capacity to function as a lawyer" which the Board has properly determined is different from Bingham's past ability and capacity to function as a Juvenile Traffic Hearing Officer in the State of California.

An excellent description of the different roles of an attorney is set forth in the Preamble to Chapter 4 of the Rules Regulating The Florida Bar:

As a representative of clients, a lawyer performs various functions. As an adviser, a lawyer provides a client with a informed understanding of the client's legal rights and obligations and explains their practical implications. **As** an advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. **As** a negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As a intermediary between clients, a lawyer seeks to reconcile their interests as an advisor and, to a limited extent, as a spokesman for each client. A lawyer acts as an evaluator by examining a client's legal affairs and reporting about them to the client or to others.

The Board has decided that Article III, Section 1.c. of the Rules requires evidence of an applicant's engagement in these different functions of a lawyer during a ten year period. There has not been an abuse of discretion by the Board in reaching this decision.

The Board properly exercised its discretion when it determined that judicial service does not qualify as the practice of law. Having made such a determination, the Board would now have to waive in effect the provisions of Article III, Section 1.c. to find Bingham's representative compilation acceptable. This end result is consistent with the remarks made by members of the Board during Bingham's hearing. See Petition at 5-6.

The Board is unwilling, however, to waive any of the provisions of Article III, Section 1 regardless of whether such waiver is de jure or de facto. The Board notified Bingham of its unwillingness to grant a waiver in its September 29, 1989 letter to him. In this letter, the Board stated in part: "Since the decision of the Supreme Court of Florida in Florida Board of Bar Examiners in re Hale 433 So.2d 969 (Fla. 1983), the Board and the Court have consistently denied requests for waivers under both sections 1.b. and 1.c. of Article III, of the Rules." (Bingham's Appendix at 18)

As indicated in the Board's letter quoted above, the Court's decision in Hale is controlling in the instant case. In that case, the Court had before it a petition for waiver of Article III, Section 1.b. of the Rules. The Court in Hale acknowledged that it had only granted nine of fifty-five petitions seeking waivers of the educational requirements since 1976. The Court noted that "[d]isappointed petitioners, however, have questioned our discretion in granting the above waivers while not granting their petitions." Id. at 971. The Hale Court then held that it would not grant future waivers in this area because "a seeming ad-hoc approach in the granting of waivers bears within it the appearance of discrimination...." Id.

In his Petition before the Court, Bingham argues that the Board's reliance upon the Hale decision was misplaced. (Petition at 7) Binyham points out that the Court in Hale only addressed waivers of the undergraduate and Law school requirements under Article III, Sections 1.a. and b. Bingham

concludes that consideration of a waiver or exception under Section 1.c. is not precluded by the holding in Hale.

Bingham's argument, however, fails to recognize that in Hale, the Court specifically noted that one of the nine granted petitions was the Milton case. This case involved "a sitting Florida county court judge who wished to submit a work product in lieu of the law school requirement." Bingham (like Milton) is unable to comply with the law school requirement of Section 1.b. To grant Bingham a waiver of Section 1.c. would in effect be granting him a waiver of Section 1.b.

- B. The Board properly found that Bingham's practice in federal courts while physically located in Florida failed to comply with the requirements of Article III, Section 1.c. (1) of the Rules.

(Bingham's Point 1 C.)

Since February 1987, Bingham has resided in Florida and worked for Peter S. Herrick, an attorney, and for the law firm of Herrick & Ross. Bingham's work has included matters in the federal courts in which he is admitted to practice. Following Bingham's appearance before a panel of the Board in September 1989, the Board notified him that his law related work in Florida did not qualify under the provisions of Article III, Section 1.c. (1). See Board's letters dated September 29, 1989 and November 21, 1989. (Bingham's Appendix at 18 and 23)

A review of the language of Article III, Section 1.c. (1) establishes that this exception was intended to be available only to practicing attorneys from out-of-state jurisdictions. The provision clearly requires that the applicant must have been "engaged in the practice of law" in his or her foreign

jurisdiction and that such applicant must have been in "good standing at the bar" wherein he or she practiced. It is clear that the "practice of law" contemplated by Subsection 1.c. (1) must occur outside the State of Florida.

The position taken by the Eoard in Bingham's case was recently affirmed by the Court in Florida Board of Bar Examiners, Re: Richard A. Culbertson, No. 74,837 (Fla. January 22, 1990). Culbertson (like Bingham) relied upon his practice in federal courts while residing in Florida to fulfill the ten years of practice requirement. The Court concluded: "It appears that the petitioner does not meet the requirements of subsection (1) of article III, section 1(c) of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar." Id.

The Court in Culbertson also requested the Board to consider the desirability of an amendment to Article 111, Section 1.c. (1) which would allow the practice of law to take place in Florida. Pursuant to the Court's request, the Board recently approved an amendment to Article III, Section 1.c. (1). The proposed amendment, which was filed with the Court on February 21, 1990, would allow an applicant to qualify under the ten years of practice provision if he or she practiced law in any federal courts regardless of the location of the applicant's residence.

If the Board's proposed rule amendment is adopted by the Court, Bingham could then rely upon his practice in Florida since 1987. When Bingham's Florida practice and his private practice in California total ten years, it will be appropriate

for him to submit a representative compilation for such ten years for the Board's evaluation.

- C. Public Policy Considerations do not require reversal of the Board's decision.

(Bingham's Point ID)

As noted under Point C. above, Bingham will not be permanently barred from admission to The Florida Bar if the Court should approve the pending amendment to Article III, Section 1.c. (1) of the Rules. In such an event, Bingham will be able to continue to reside and work in Florida knowing that his legal work in federal courts will be fulfilling the ten years of practice requirement. In such an event, the "public policy considerations" argued by Bingham will become moot because Bingham will not have "to leave Florida to establish 'qualifying' practice" Petition at 16.

Bingham could also elect to comply with Article III, Section 1.b. by obtaining a Bachelor of Laws or Doctor of Jurisprudence from a full-time accredited law school. **As** noted by the Alaska Supreme Court in 1980, an accreditation requirement "is not a severe impediment to entry into the legal profession" in light of the number of accredited law schools (168) and the size of the student population at such schools (121,600). In re Urie, 617 P.2d 505, 508 (Alaska 1980). **As** of 1988, the number of accredited law schools had increased to 175.

POINT II

THE BOARD PROPERLY DENIED
BINGHAM'S REQUEST FOR A WAIVER
OF ARTICLE 111, SECTION 1.c. OF
THE RULES

Under Point II of his Petition, Bingham asserts that "[t]he Board failed to consider the underlying rationale for the Hale decision,..." Petition at 18. Bingham describes such rationale in the following manner: "The rationale underlying Hale's policy of no waivers of Section 1(b), was the confessed inability of the court, and the Board, to adequately assess on a case-by-case basis the quality of legal education provided by unaccredited law schools." Id. (Citations omitted).

Bingham's statement of the Court's rationale in Hale is only partially correct. An equally important aspect of the Hale rationale is the undesirability of employing "a seemingly ad-hoc approach in granting of waivers [which] bears within it the appearance of discrimination,..." In re Hale, supra at 971. This aspect of the Kale rationale has application to Bingham's case.

In exercising its discretion under Article III, Section 1.c., the Board has implemented a reasonable guideline to assist it in performing its evaluation of an applicant's representative compilation of work product. This guideline simply provides that prior judicial service will not qualify as the "practice of law." As previously discussed under Point I, the Board has not abused its discretion by adopting this guideline.

Having determined that judicial service does not fall within the purview of the practice of law, the Board should adhere to this guideline in a consistent fashion. The Board's guideline should not be reconsidered on an ad-hoc approach. As observed by the Court in Hale: "Disappointed petitioners, however, have questioned our discretion in granting the above waivers while not granting their petitions" Id. If the Board had decided to grant Bingham's request to receive credit for his judicial service, then disappointed petitioners (like Judge Hatcher) will be able to question the appearance of unfairness and discrimination resulting from such a decision.

Bingham also suggests that he should be granted credit for one year based upon his receipt of an LL.M. degree from the University of Miami School of Law. Such a suggestion was considered and found unsatisfactory by the Court in its Hale decision:

A second course of action could be to accept a graduate degree in law from an ABA-approved law school in lieu of the accredited first degree in law. This likewise is unsatisfactory. A Master's degree (LL.M.) usually involves only a one-year program of combined course work and research; a Doctorate of Juridical Sciences (S.J.D.) is a graduate academic research degree revolving around advanced publishable work; and a Master's in Comparative Law (M.C.L.) is primarily for foreign-educated lawyers. None of the three degrees, in our opinion, is based upon the core of courses we deem as minimally necessary to be a properly-trained attorney.

Id. at 972. For the reasons set forth above, Bingham should not be granted a waiver of Article III, Section 1.c. nor given credit for his LL.M. degree

POINT III

THE BOARD IS NOT EQUITABLY ESTOPPED FROM FINDING THAT BINGHAM FAILED TO MEET THE REQUIREMENTS OF ARTICLE 111, SECTION 1.c.

Under Point III of his Petition, Bingham argues that he relied upon misleading correspondence from the Board regarding his efforts to comply with the provisions of Article 111, Section 1.c. of the Rules. Bingham then concludes that the Board is equitably estopped from finding his lack of compliance with Article III, Section 1.c. Bingham's argument is neither supported by the facts of his case nor the law in the area of equitable estoppel.

Bingham filed with the Board a "Submission Pursuant to Article III, Section 1.c." (Bingham's Appendix at 5) Bingham's five page submission consists of statements on the following matters: a detailed statement of the work performed to earn his LL.M.; a general statement of his engagement in private practice and service as a Juvenile Traffic Hearing Officer in California; and a detailed statement of his duties and responsibilities since February 1987 while employed as a legal assistant in Florida.

Following consideration of Bingham's submission, the Board notified him in writing of its decision. The Board's letter dated October 25, 1988 stated in part:

This will advise you that this Board, while in formal session during October 20-22, 1988, after haviny carefully considered the representative compilation of work product filed and information in your application complementing your representative work product, determined that the materials submitted do not reflect your engagement in the practice of law to the extent

required by the provisions of Article III, Section 1(c) of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar.

(Bingham's Appendix at 7)

As seen by the above-quoted language, the Board based its decision on Bingham's submission and information contained in his application. Contrary to Bingham's argument before the Court, the Board did not restrict its decision to subsection (2) of Article III Section 1.c. "Engagement in the practice of law" is a requirement under both the ten years of practice provision of subsection (1) and evaluation by the Board of a representative compilation of work product under subsection (2). The Board's October 1988 letter is entirely consistent with subsequent letters to Bingham from the Board.

One of these subsequent letters is the Board's letter dated August 24, 1989 to Bingham's attorney. In this letter, the Board clarified its October 1988 letter by advising Bingham of the following:

Regarding your request for clarification of the Board's Letter of October 25, 1988, I offer you the following information which you will hopefully find helpful. Article 111, Section 1.c. of the Rules requires that an applicant must have been "engaged in the practice of law in the District of Columbia or in other states of the United States of America, or in practice in federal courts in territories, possessions or protectorates of the United States for at least ten years..." This section further requires that the representative compilation of work product must be confined "to the applicant's most recent ten years of practice" and must demonstrate "that the applicant is a lawyer of high character and ability." Based upon its review and consideration of your client's submitted work product, the Board concluded that his submission failed to satisfy the requirements of Article III, Section 1.c. noted above.

(Bingham's Appendix at 12)

In support of his argument before the Court, Bingham improperly quotes only the last sentence from the above-quoted paragraph. Bingham ignores the explicit reference in the Board's letter to the requirements under both subsections (1) and (2) of Article 111, Section 1.c. It is also noted that in his petition, Bingham misquotes the Board's letter. Bingham quotes the Board's letter as referring to "Article 111, Section 2(c)" when, in fact, the Board's letter correctly referred to "Article III, Section 1.c." See Petition at 22 and Bingham's Appendix at 12.

Bingham is essentially arguing that since he misinterpreted the Board's letters of October 1988 and August 1989, he was unaware of the Board's concerns when he appeared for his hearing in September 1989. Reliance upon one's own misinterpretation does not, however, constitute equitable estoppel.

The rules and elements of equitable estoppel in cases involving the state were enumerated by the Court in State Department of Revenue v. Anderson, 403 So.2d 397 (Fla. 1981).

In that case, the Court stated:

As a general rule, equitable estoppel will be applied against the state only in rare instances and under exceptional circumstances. Another general rule is that the state cannot be estopped through mistaken statements of the law. In order to demonstrate estoppel, the following elements must be shown: 1) a representation as to a material fact that is contrary to a later-asserted position; 2) reliance on that representation; and 3) a change in position detrimental to the party claiming estoppel, caused by the representation and reliance thereon.

Id. at 400 (citations omitted),

Based upon the facts of this case, it is clear that Bingham cannot show the required elements of equitable estoppel. First, the Board has never made a representation to Bingham that was contrary to a later-asserted position. The Board has consistently advised Bingham that he has failed to establish his engagement in the practice of law as required by the provisions of Article III, Section 1.c. As noted earlier, the "practice of law" provision is equally applicable to both subsections (1) and (2) set forth in Article III, Section 1.c.

Assuming the Board's lack of specificity in its October **1988** letter can somehow be construed as an affirmative and material act of misleading by the Board as argued by Bingham (Petition at 25), then Bingham has still failed to establish the third element of equitable estoppel. In both his Petition for Reconsideration filed with the Board and his Petition before the Court, Bingham fails to state how his position was changed to his detriment based upon his reliance on the alleged misleading notices from the Board.

Anticipating that Bingham may somehow attempt to establish the third element of equitable estoppel in a Reply to this Response, the Board would urge the Court to consider the appropriateness of Bingham's requested relief. It is noteworthy that Bingham does not request the opportunity to reappear before the Board to confront the issues which he claims he was ill-prepared to address at his first hearing.

On the contrary, Bingham argues that since, in his opinion, the Board is at fault, then he should be admitted to The Florida Bar regardless of his compliance with Article III,

Section 1 of the Rules. Bingham's request for admission is not supported by the case law in this area.

As observed by the Court in its opinion in Anderson, "equitable estoppel will be applied against the state only in rare instances and under exceptional circumstances." Id. The facts of the instant case even as depicted by Bingham simply do not qualify under this stringent standard of "exceptional circumstances." Even more persuasive is the Court's decision in the case of Florida Board of Bar Examiners. In re Agar, 283 So.2d 361 (Fla. 1973),

In Agar, the Board misinterpreted an order of the Court and consequently advised the applicant in writing that he need not file an abstract of practice. In reliance upon the Board's statement, the applicant destroyed the records pertaining to his law practice. The Board subsequently corrected its earlier representation and informed the applicant that he in fact needed to submit an abstract of practice.

Unlike Bingham, the applicant in Agar clearly established all three elements of equitable estoppel. In Agar, the Board made an initial representation (i.e. the applicant need not submit an abstract of practice) contrary to the Board's later-asserted position. In reliance upon the Board's initial representation, the applicant changed his position to his detriment by destroying the records pertaining to his prior practice of law.

Notwithstanding the applicant's establishment of equitable estoppel in Agar, the Court denied his petition and ordered him to provide the requested abstract of practice. The

Court noted that the applicant could obtain copies of his records from the courts, opposing attorneys and clients. The Agar Court reasoned: "Petitioner may be somewhat inconvenienced by his reliance on the Board's letter, but, in our judgment, not unduly so." Id. at 363.

If Bingham is earnestly asserting that he was not properly prepared for his hearing for reasons attributable to the Board and that his presentation would somehow have been different if properly prepared, then the only reasonable disposition is to grant Bingham the opportunity to supplement his presentation by reappearing before the Board. By reappearing before the Board, Bingham "may be somewhat inconvenienced... but...not unduly so."

Bingham additionally argues a deprivation of procedural due process. Bingham claims that he "**was** deprived of a fair opportunity to meet the issues that the Board was considering..." (Petition at 26) Bingham's due process argument is based upon the same claim of defective notices from the Board which he made under his equitable estoppel argument. The Board, therefore, denies the allegation and reaffirms its previously made response under this point.

Bingham alleges a separate due process violation based upon the Board's reference to the Court's unpublished order in Florida Board of Bar Examiners Re: Woodrow W. Hatcher, No. 70,578 (Fla. September 28, 1987). Bingham claims that the Board's reliance upon an unpublished decision by the Court "denied [him] a fair opportunity to fully present his case, and

denied him an opportunity to be heard on the issues presented for determination." (Petition at 29)

In response to Bingham's argument, the Board would note that it specifically advised him of the Hatcher decision in its letter dated November 21, 1989. (Bingham's Appendix at 23) If Bingham is earnestly arguing that prior knowledge of the Hatcher order would have materially altered his presentation at his hearing before the Board, then once again the appropriate remedy is to grant Bingham the opportunity to reappear before the Board.

POINT IV

BINGHAM'S SUBMISSION OF A REPRESENTATIVE COMPILATION OF WORK PRODUCT IS INSUFFICIENT PURSUANT TO ARTICLE 111, SECTION 1.c. (2) OF THE RWLES

In an effort to convince the Court that his representative compilation of work product is sufficient, Bingham relies upon the work product which he produced as a legal assistant in Florida since 1987 and the research papers which he submitted as a candidate for a LL.M. degree. The deficiencies of both of these endeavors have been previously discussed by the Board in this Response. See Points 1b. and 2 above.

Bingham's submitted compilation is also insufficient for another reason. In his argument under this Point, Bingham notes that his compilation failed to include any materials regarding his service as a traffic hearing officer since "that period of service was prior to his most recent ten years, as required under Section 1(c), subsection (2)." Petition at 30, n.18.

Bingham's interpretation of Subsection (2) is absolutely incorrect. Subsection (2) provides in part the following: "Such representative compilation of the work product shall confine itself to the applicant's most recent ten years of practice...." (Emphasis supplied) Bingham somehow grossly misinterprets this language to mean that the representative compilation shall confine itself to an applicant's practice of law during the last ten years. Bingham's interpretation is nonsensical especially when applied to any applicant who has practiced law for only a short period in the last ten years.

The Board would lastly note that Bingham's scores from the bar examination are irrelevant as to the issues under consideration by the Court in this case. As stated by the Court in LaBossiere v. Florida Board of Bar Examiners, 279 So.2d 288 (Fla. 1973):

Beginning in 1955, however, this Court, in an effort to provide uniform and measurable standards by which to assess the qualifications of applicants, adopted a two-pronged system for the determination of educational fitness: 1) we required all applicants for admission to The Florida Bar to submit to a Bar Examination on certain subjects determined by this Court to be indicative of the applicant's general familiarity with the law; and 2) we required all applicants to be graduates of law schools approved by the American Bar Association or members of the Association of American Law Schools.

Id. at 289

The purpose of the bar examination is to require an applicant who is otherwise educationally qualified to demonstrate his or her minimum technical competence. Scores on the bar examination, therefore, bear no relationship to the issue of whether an applicant: (like Bingham) can satisfy the

educational requirements of Article III, Section 1. The bar examination in Florida was never intended to be a general admission test whereby achievement of a certain score would result in admission regardless of educational background.

CONCLUSION

Since Bingham did not graduate from an accredited law school, he must comply with the provisions of Article III, Section 1.c. The Board properly determined that Bingham failed to satisfy these provisions. Bingham now requests the Court to return to the pre-Hale era and evaluate his case on an ad-hoc approach.

In his Petition before the Court, Bingham refuses to accept any responsibility for his present situation. Yet, it was Bingham who elected to graduate from an unaccredited law school. Yet, it was Bingham who elected to leave the private practice of law to become a full-time California Juvenile Traffic Hearing Officer. Yet, it was Bingham who elected to disassociate himself from the field of law during the period of **1980-1987**. Yet, it was Bingham who elected to become employed in Florida as a legal assistant when he could have practiced law as an attorney in California.

Lastly, it was Bingham who wanted the Board to accommodate his background and grant him a waiver of the provisions of Article III, Section 1.c. The Board elected not to do so. The Court is urged to reach the same result.

WHEREFORE, the Board respectfully requests the entry of an order denying the relief sought herein and dismissing the

Petition without prejudice to Bingham to submit in the future a representative compilation of work product for his most recent ten years of practice (excluding his judicial service) should the Court approve the pending rule amendment to Article III, Section 1.c. (1) of the Rules.

DATED this 23rd day of February, 1990.

Respectfully submitted,

FLORIDA BOARD OF BAR EXAMINERS
RONALD A. CARPENTER, CHAIRMAN

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response has been served by U.S. Mail this 23rd day of February, 1990 to Lorence Jon Bielby, Esquire, Roberts, Baggett, LaFace & Richard, Post Office Drawer 1838, Tallahassee, FL 32302.

Thomas A. Pobjecky
Thomas A. Pobjecky