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CLERK SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

FLORIDA BOARD OF BAR EXAMINERS
RE: AMENDMENT OF RULES OF THE
SUPREME COURT RELATING TO
ADMISSIONS TO THE BAR

CASE NO. 91,713

RESPONSE

Members of the Bar, Charles A. Stampelos and Richard C. McFarlain, file this Response to the Florida Board of Bar Examiners' Petition and state:

1. On October 30, 1997, the Florida Board of Bar Examiners (Board) filed a Petition with this Court requesting several changes to the Rules of the Supreme Court Relating to Admissions to The Bar (Rules). In material part, the Board seeks to amend Rule 2-13.1 and create Rule 3-22.7 as follows:

2-13.1 Disbarred or Resigned Pending Disciplinary Proceedings. Once eliuibilty has been established and following completion of the Board's backuround investiaation, such person shall be required to appear for a formal hearinu that is open to the public as provided by Rule 3-22.7.

* * *

3-22.7 Public Hearing for Disbarred/Resigned Attornevs. All applicants who have been disbarred from the practice of law or have resianed pending disciplinary proceedinus shall appear before a quorum of the Board for a formal hearinu. Such formal hearina shall be open to the Dublic and the record produced at such hearinu and the Board's Findings of Fact and Conclusions of Law shall be Dublic information and exempt from the confidentiality provisions of Rule 1-61.

See The Florida Bar News, December 1, 1997, 12-13.

2. The "Rationale" portion of Rule 2-13.1 discusses this Court's view of the confidentiality of the Bar admissions process. The issue of confidentiality was considered by this Court, most recently in 1996. The undersigned responded at that time, suggesting with limited exception, that the Board's investigative files and records should be made public or, at the very least, the applicant be allowed to review them. One rationale for this position was based on the State of Florida's treatment of other licensed professionals, such as physicians, dentists, and engineers. With limited exception, the information regarding applicants of other professions are open to public inspection.' This process allows the applicant to review any negative or positive information in the file. It was further argued that the Administrative Procedure Act, Chapter 120, requires State executive branch agencies to maintain a subject matter index of all orders which are then made available for public inspection.' In this manner, the applicant and the public can locate existing precedent. This process serves the public well.

3. Notwithstanding these arguments, this Court concluded

¹ See, e.g., §§455.229(1) and 455.261(5) (a), Fla. Stat. (Supp. 1996), as amended, Ch. 97-261, §27 and Ch. 97-209, §3, Fla. Sess. Law Serv. See also §454.026, Fla. Stat. (1995).

² See Gessler v. Department of Business and professional Regulation, 627 So. 2d 501 (Fla. 4th DCA 1993), dismissed, 634 So. 2d 624 (Fla. 1994); §120.53, Fla. Stat. (Supp. 1996).

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that it was in the public interest to maintain the confidentiality of the Board files and proceedings.

4. Your respondents, upon reflection, move from our prior position of opening the Board's investigative files, but renew our request in a modified form. We ask the Court to at least open formal hearings of the Board to the public and publish all decisions of the Board and the Court after disposition. There is no sound public policy reason to distinguish between classes of applicants.

5. To open such hearings only for applicants who have been disbarred or have resigned pending disciplinary proceedings allows the public only a glimpse into who is and who is not being admitted to the Bar. A lawyer who commits acts sufficient for disbarment is no better or worse a person than one who commits similar acts before being licensed. Stealing is stealing, fraud is fraud, crime is crime, regardless of the status of who does it.

6. If the Board is inclined to recommend admission for a person with a felonious or otherwise untoward past, the public ought to know. They can judge how well the Board performs under the Court's jurisdiction and how this Court handles recommendations from its Board. Rascals, whether lawyer rascals or lay rascals, have no right to expect the Supreme Court to protect them from public scrutiny.

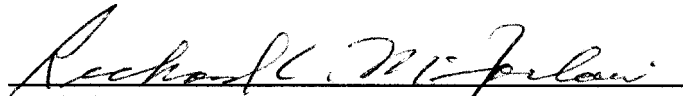
7. We also request that all decisions made by the Board,

after a formal hearing, be published, whether they be favorable or unfavorable to the applicant. In this manner, the applicant and public will be able to locate Board precedent in a meaningful manner. Currently, aside from published opinions by the Court, the public at large, the organized Bar, and Bar applicants cannot locate Board precedent.

8. In regulating bar admissions, the Court is exercising a very real governmental power given to it in the Constitution. The exercise of this power should be done in public so as to infuse confidence in the process. We agree with those, including nonlawyers, who participated in a Judicial Management Council planning session in the legal system held in February, 1996, who, according to Chief Justice Gerald Kogan, 'wanted a system that was open, a system that was friendly to the users and a system that above everything else guaranteed fairness and justice for all.' The Florida Bar News, July 15, 1996, 4.

9. In conclusion, we request the Court open all formal hearings of the Board to the public and further that all Board Orders following formal hearings, and the Court's decisions and opinions, be made public with the name of the applicant redacted if necessary. Such steps will further implement the Court's current policy of opening up its processes so the public can better understand every aspect of the judiciary.

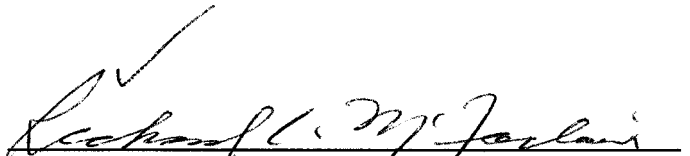
Respectfully submitted this 18th day of December, 1997.


MCFARLAIN, WILEY, CASSEDY & JONES,
P.A.
215 S. Monroe Street, Suite 600
Tallahassee, FL 32301
(850) 222-2107

RICHARD C. MCFARLAIN
FL Bar No. 052803
CHARLES A. STAMPELOS
FL Bar No. 240885

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Thomas A. Pobjecky, General Counsel, Florida Board of Bar Examiners, 1891 Eider Court, Tallahassee, FL 32399-0750 by U.S. Mail this 18th day of December, 1997.


RICHARD C. MCFARLAIN