

SUPREME COURT OF FLORIDA

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SID J. WHITE
FEB 2 1998 2/28
CLERK, SUPREME COURT
Chief Deputy Clerk

THE FLORIDA BAR **

RE: VTCTORD. INES **

CASE NO: 92,133

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APPELLANT BRIEF & ARGUMENT

My argument concerning the denial of my Certification is already contained in the limited "Record" which hopefully was provided to the Court as part of this review. Although part of my argument to this Court regards the nature of this limited record which **does not** include copies of my two (2) certification tests and answers, the record should contain copies of my letters and attachments thereto for **both** tests as well as responses/"Order" from the Bar and my rebuttal response in 1997.

These documents/attachments/letters/Orders speak for themselves.

The argument I present that the Family Law Certification process is inherently unfair, arbitrary and capricious is based upon the testing/grading/review process itself as reflected in the "record", my oral arguments before the BLSE appeals committee and the Board of Governors and summarized as follows:

1. The "scoring guide criteria" given to the graders as well as **the sample** answers were not of sufficient guidance to insure that grading of the essay portion of the exam was not inherently "arbitrary and capricious".

2. The "holistic" grading system itself results in a "curved" grading process which **presumes failure** by a portion of the examinees who have each been already "pre-qualified" as candidates with "special competence" in the area of Marital & Family law. These candidates have already had **significant practice** and continue and **will continue** to practice family law in the State of Florida notwithstanding the results of the certification exam.

3. The requirement that the exam cannot be retaken after two failures is also

inherently arbitrary and capricious in that it is for the benefit of the Bar. In oral argument before the Board of Governors, counsel for the Bar admitted that if this rule were not in effect, “test questions could not be repeated in subsequent years”. Again, this attitude reflects the Bar’s attempt to presume failure rather than encourage success. To use an airline pilot as an analogy, if the pilot can pass difficult competence testing, he gets his certification. The testing is not changed to encourage failure. He either has the special competence he needs or he doesn’t. If he can learn by failure of a question he subsequently passes when repeated, **this** is what is expected. This is an encouragement and presumption of success not failure.

4. The Grade Review Panel also did not have sufficient guidance (or this guidance has not been disclosed by the Bar) to “review” my exams based upon the comments from the Chair of my review panel for both my exams after my failure on my first exam, as well as the .5 increases which were given by the review panel in 1996 without indication that .5 scoring was part of the initial guidance given to graders scoring the tests originally.

5. To make 50% of the exam grade based upon the “subjective” holistic grading process and only 50% of the grade based upon the less subjective multiple choice questions and short answer portions of the test, again reflects the Bars’ intention to encourage failure and discourage success. (Question: Is this same percentage used in other certification areas?)

6. In a review/appeal of the exam process and under rules encouraged by the BLSE, my exam(s) and answer(s) were not allowed to be part of the “record” beyond the initial grade review by other Certified Family Lawyers. By itself, this inherently makes suspect the Bar’s grading/review process. Additionally, during the “appeal” process, we have no opportunity for limited “discovery” (ie: to ask the question indicated above) or to present a “testing” expert’s testimony to the appeals committee or to the Board of Governor’s, regarding the holistic testing process.

In my “Reply to Response of the Board” filed March 13, 1997 (and hopefully included as part of the “record” for Supreme Court review), I made suggestions as to how I would recommend the Family Law Certification grading process be changed. In my letter to the Bar dated December 19, 1997 regarding this appeal (also hopefully included as part of the “record” for this review), I expressed the belief that the testing methods utilized by the Bar violated my due process rights to a fair and appropriate consideration for certification. Further, I argued that if

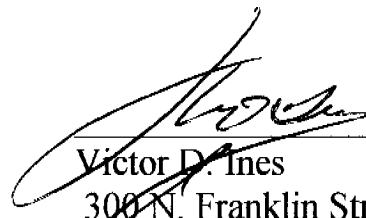
certification has an economic value, then a property right has been taken away or denied.

The Bar is using my dues each year to “educate”, the public that certified lawyers have a “special competence” and should be sought out when searching for a lawyer. Again, as I indicated in my letter of December 19, 1997 to the Bar regarding this appeal, if-the testing process does not serve the stated goal, then it is more that me who is hurt. The citizens of the State of Florida are also hurt when they have not been appropriately directed to lawyers of “special competence” who can help them. (~~See Bar~~ filing on February 2, 1998 to this Court wherein the Bar is requesting an amendment to the Rules Regulating the Florida Bar and wherein those amended rules require, “If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted to so indicate. However, no lawyer who is not certified by the Florida Bar or an organization having substantially the same standards may be described to the public as a “specialist” or as “specializing”. (Proposed Rule regarding Communications of fields of practice, comment to 4-7.6)

If appropriate, I would respectfully request and appreciate the opportunity for Oral argument and/or the opportunity to answer the Court’s questions.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief was sent to Dawna Bicknell, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Fl and Thomas M. Ervin, Jr. Esq., P.O. Drawer 1170, Tallahassee, Fl, this 31st day of January, 1998.


Victor D. Ines
300 N. Franklin Street
Tampa, Fl 33602
FBN #2323 19 Candidate #143