

047

**FILED**  
DEBBIE CAUSSEAU

IN THE SUPREME COURT OF FLORIDA JUN 01 1999

CLERK, SUPREME COURT  
By \_\_\_\_\_

FLORIDA BOARD OF BAR EXAMINERS )  
RE: JOSEPH J. HIGGINS )  
\_\_\_\_\_ )

Case No. 93,712

REPORT TO COURT

The Florida Board of Bar Examiners, by and through its undersigned attorney, files this report with the Court in response to the order of the Court dated March 5, 1999.

BACKGROUND

1. Higgins was disbarred for three years by this Court on December 18, 1986 pursuant to a consent judgment. Exhibit "C" to Petition.

2. Higgins was convicted of a crime on December 11, 1987 in the U.S. District Court of New Jersey. Exhibit "D" to Petition.

3. Higgins was disbarred by consent by order of the Supreme Court of New Jersey on April 26, 1988. Such order "permanently restrained and enjoined [Higgins] from practicing law" in that jurisdiction. Exhibit "F" to Petition.

4. Higgins recently attempted to reapply for admission to The Florida Bar. Exhibit "A" to Petition. Pursuant to Rule 2-13.1 and the Court's holding in *Florida Board of Bar Examiners re R.L.V.H.*, 587 So.2d 462 (Fla. 1991), the Board informed Higgins that he was ineligible to seek readmission in Florida while being permanently disbarred in New Jersey. Exhibit "B" to Petition.

5. Higgins filed a petition with the Court seeking review of the Board's decision.

6. By order dated March 5, 1999, the Court remanded the matter back to the Board with the following direction:

The Florida Board of Bar Examiners is directed to make an additional finding of fact in this case. Specifically, the Board is directed to determine whether the conduct for which Higgins was disbarred in Florida is the same conduct for which he was permanently disbarred in New Jersey.

#### FINDING OF FACT

Following investigation by its staff, the Board made the following finding of fact while in formal session at its May 1999 Board meeting: Joseph J. Higgins was disbarred in Florida for the same conduct for which he was permanently disbarred in New Jersey.

#### ARGUMENT

In addition to making the finding of fact set forth above, the Board reaffirmed the argument presented to the Court in its Response to Petition dated September 9, 1998. Such argument is based on Rule 2-13.1 of the Rules of the Supreme Court Relating to Admissions to the Bar. Such rule provides:

**2-13.1 Disbarred or Resigned Pending Disciplinary Proceedings.** A person who has been disbarred from the practice of law or has resigned pending disciplinary proceedings shall not be eligible to apply for a period of 5 years from the date of disbarment or 3 years from the date of resignation or such longer period as is set for readmission by the jurisdictional authority. Once eligibility has been established and following completion of the Board's background investigation, such person shall be required to appear for a formal hearing that is open to the public as provided by Rule 3-22.7.

Such rule was adopted by the Court in 1991. *Florida Board of Bar Examiners re Amendment to Rules of the Supreme Court*

*Relating to Admissions to the Bar*, 578 So.2d 704, 707 (Fla. 1991). See also *Florida Board of Bar Examiners re R.L.V.H.*, 587 So.2d 462, 463 (Fla. 1991)("[W]e will not allow petitioner to practice law in Florida so long as he is disbarred in the state of Ohio.").

The Board reaffirms the two justifications for Rule 2-13.1. First, it prevents attorneys disbarred in other states from circumventing such discipline by seeking admission in Florida prior to the expiration of such disbarment period.<sup>1</sup> Thus, Florida does not become a haven for dishonored attorneys seeking a geographical cure for professional misconduct.

The second justification concerns the integrity of Florida's judicial system. As observed by this Court: "The lawyer is an essential component of the administration of justice." *State ex rel. The Florida Bar v. Evans*, 94 So.2d 730, 733 (Fla. 1957). Furthermore, "[t]he layman must have confidence that he has employed an attorney who will protect his interests." *Florida Board of Bar Examiners re Eimers*, 358 So.2d 7, 9 (Fla. 1978). The Board submits that the public respect and confidence in Florida's judicial system

---

<sup>1</sup>It is worth noting that the Board does not require disbarred foreign attorneys to be actually readmitted in all jurisdictions from which they were disbarred. The Board recognizes that attorneys may be residents of Florida and have no interest in practicing law in another jurisdiction. The Board currently requires, however, that such attorneys have completed their disbarment period and be eligible for making application for readmission in the jurisdiction(s) from which they were disbarred.

are eroded by having lawyers who can practice in this state while being barred from practicing law in another state for unprofessional conduct.

It is clearly reasonable for Florida to have a rule of eligibility that requires disbarred lawyers to be eligible for readmission in all jurisdictions from which they were disbarred before seeking admission/readmission to The Florida Bar. Higgins' argument that his permanent disbarment in New Jersey is cruel and unusual punishment is misdirected. If he wishes to assert such argument, then he should assert it before the proper forum: the Supreme Court of New Jersey.

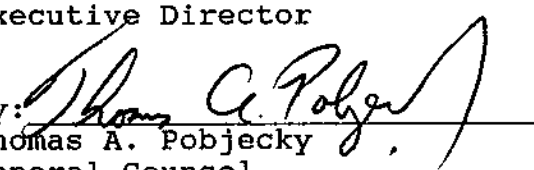
WHEREFORE, the Board requests the entry of an order reaffirming Rule 2-13.1 and the Court's decision in *Florida Board of Bar Examiners re R.L.V.H., supra*, and denying the relief sought herein and dismissing the petition.

DATED this 28th day of May, 1999.

Respectfully submitted,

FLORIDA BOARD OF BAR EXAMINERS  
FRANKLIN R. HARRISON, CHAIR

Kathryn E. Ressel  
Executive Director

By:   
Thomas A. Pobjecky  
General Counsel  
Florida Board of Bar Examiners  
1891 Eider Court  
Tallahassee, FL 32399-1750  
(850) 487-1292  
Florida Bar #211941

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Report has been served by U.S. Mail this 28th day of May, 1999 to Howard Messing, Esquire, Nova Southeastern University, Shepard Broad Law Center, 3305 College Avenue, Fort Lauderdale, Florida 33314.

  
Thomas A. Pobjecky