

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

-vs-

Case No. 94,573
T.F.B. No. 99-10,581(6E)

JOE RAWLS WOLFE,
Respondent.

BRIEF IN SUPPORT OF REQUEST FOR REVIEW OF THE FINDINGS OF FACT
AND RECOMMENDATION OF REFEREE DATED SEPTEMBER 16, 1999

BRIEF FILED FOR PETITIONER, JOE RAWLS WOLFE

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STATEMENT OF THE ISSUES

1. IS JOE R. WOLFE FIT TO RESUME THE PRACTICE OF LAW?
2. IS THE REFEREE'S RECOMMENDATION BASED ON FACTS THAT ARE NOT SUPPORTED BY THE RECORD?
3. HAS THE REFEREE CREATED AN UNSUPPORTED LITMUS TEST OF REQUIRED COMMUNITY WORK AND PRO BONO WORK IN ORDER TO SHOW UNIMPEACHABLE CHARACTER?

STATEMENT OF THE CASE

Joe Rawls Wolfe, hereinafter referred to as "Wolfe", was suspended from the practice of law on November 16, 1995 for a period of 3 years, with provision for reinstatement in 2.5 years if \$300,000 was paid to the Baumgardners.

Wolfe petitioned this Court, on December 24, 1998, for reinstatement to The Florida Bar pursuant to Rule 3-7.10 Rules of Discipline.

Under the Disciplinary Rules, Anthony S. Battaglia was the Florida Bar designated reviewer. Anthony S. Battaglia did not object to the reinstatement of Wolfe, subject to certain restrictions on his trust account. (See letter, item 1 in Appendix)

The Florida Bar did not support the reinstatement of Wolfe. Discovery disclosed that the Florida Bar objections to Wolfe's reinstatement were:

(1) The beneficiaries of the Baumgardner Trust, one or more of which were the complaining parties that resulted in the investigation of and suspension of Wolfe, are opposed to Wolfe's reinstatement.

(2) Wolfe owes various creditors who are shown in his Chapter 11 Bankruptcy and has certain real property which could be sold and the proceeds used to partially pay his creditors. Wolfe, with the approval of the creditors, intends to use some

of the proceeds from one sale of assets to develop another piece of real property Wolfe owns. This may create a condition which may be ripe for future trust fund violations. (See Wolfe request for Admissions dated June 3, 1999, item 2 in Appendix)

The Florida Bar made no objection to and stipulated into evidence the Petition For Reinstatement and the attached 24 letters. The report of The Florida Bar investigation of Wolfe's Petition verified and confirmed the position, statements and opinions of the persons whose letters were attached to the Petition For Reinstatement. This report and 24 letters were admitted into evidence. (Order on Status Conference, item 3 in Appendix)

The Referee limited the evidence to be received concerning William Baumgardner et al. vs. Joe R. Wolfe, to the length of litigation, attorney fees, verdict, notices of appeal, the ultimate resolution of the matter, and brief evidence as to the parties feelings regarding the resolution of the matter and offers of settlement made by Joe R. Wolfe to the Baumgardners. (Order on Status Conference, item 3 in Appendix)

A hearing was held by the Referee on August 19, 1999. After announcing her ruling on September 1, 1999, the Referee's written report of September 16, 1999 was sent to the Supreme Court of Florida.

The Referee found that "the Petitioner has met the conditions imposed during the period of suspension and the

procedural requirement of Rule 3-7.10"(Paragraph 111 A of Report of Referee, item 4 in Appendix)

The Referee at paragraph 111-D of her report states, "There is clear evidence of Petitioner's good reputation for professional ability and of Petitioner's lack of malice and ill feeling toward those involved in the disciplinary proceeding. The Petitioner has made the appropriate assurances as to his sense of repentance and his desire to conduct his law practice in an exemplary fashion in the future." (Appendix item 4)

The Referee found that "Petitioner is not presently fit to resume the practice of law in that he has failed to present evidence of an unimpeachable character. Although Petitioner has testified as to his remorse, he has not engaged in any community work service or permissible pro bono work."(Paragraph 111 H of item 4 in Appendix)

On the question of remorse the Referee stated--"Although his remorse seems sincere, he has not taken any action to restore the public's confidence in him as a trustworthy individual or to recompense the bar for the damage he has done to the reputation of the legal profession as a whole." (Paragraph 111 H of item 4 in Appendix)

"His actions, or lack of action, have demonstrated that he has failed to grasp the moral implications of his transgression; and therefore, prevents a finding that he has presented evidence

of unimpeachable moral character." (Paragraph 111 H, item 4 in Appendix)

Wolfe filed a request for review of the findings of fact and recommendation of Referee.

STATEMENT OF FACTS

Joe Rawls Wolfe, hereinafter referred to as "Wolfe", was suspended from the practice of law on November 16, 1995 for a period of 3 years, with provision for reinstatement in 2.5 years if \$300,000 was paid to the Baumgardners.

Wolfe fully cooperated with The Florida Bar investigation before and after his suspension. Susan Woodrin, Wolfe's legal assistance since 1974 stated, "He told me to cooperate fully and provide all the information we had to the Bar. He put me at their disposal to answer any question and pull up any information they needed".(R-126-13)

The detailed facts leading to the suspension are set forth in the Conditional Guilty Plea for Consent Judgment.(Appendix item 5)

In summary the causes for the suspension were escrow account violations, escrow borrowing and borrowing of funds by Wolfe's corporations from the Baumgardner Trust while Wolfe was serving as trustee.

Wolfe's Petition for Reinstatement was accepted by The Florida Bar after an investigation and contains extensive detail on Wolfe's activities since his suspension, as well as 24 letters about Wolfe.(The petition is item 6 of the Appendix.)(The letters are item 12 of the Appendix.)

The record contains extensive facts relating to the question

of Wolfe's fitness to practice law and his unimpeachable character. In summary the record shows the following facts:

Attorney Robert C. Burke, Jr. has known Joe Wolfe as a lawyer since 1974, (R-87-19) as co-counsel and adversarial, and his legal ability is superb. (R-88-7) It is superb both from an intellectual, and educational standpoint and in terms of demeanor, productivity and display of effort.(R 88-6) His reputation in the community is excellent. He was in shock to learn of Joe Wolfe's problems, and " but for this event, I would absolutely consider him to be honest and trustworthy. I've seen him in too many situations, and he has always abided by what was right." (R- 92-4) On being able to practice again in a exemplary fashion Mr. Burke has enjoyed his "relationship with Jody before this matter and would hope to enjoy it again prospectively." (R-92-20)

Attorney Charles F. Robinson has an extensive record of Bar leadership (R-101-25-102-6) and has known Joe Wolfe as a lawyer since 1967. He has dealt with Joe Wolfe on real estate and getting help on tax matters. (R-103-2). Joe Wolfe's reputation on professional ability is outstanding. (R-103-20) He has an outstanding mind and is the kind of lawyer that doesn't exist in as many offices as we need them to. (R105-15) "The idea of not taking a retainer because he feels there's mutual trust between lawyer and client, that's just a Jody kind of thing."(R-105-20) He remembers when the Clearwater Bar was looking for a place and

Jody, on behalf of the family, made an offer that was almost free for a site. (R-106-16) Mr. Robinson's reaction to his problems was absolute surprise and disappointment. Not in character for Jody Wolfe. (R-104-2) "I volunteered to do something like this testimony to help." (R-104-4). "If I didn't believe strongly in his character, then I wouldn't be here." (R107-19). " I would make him my trustee." (R107-20) "The level of trust I have in him should be viewed in a society now where lawyers are not trusted very much by outsiders & lawyers don't trust each other very much."(R-109-1)

Attorney F. Wallace Pope, Jr. has practiced law in Clearwater for 25 years and has known Joe R. Wolfe for 25 years. He worked with Joe R. Wolfe on referred litigation and "have always known him to be a highly competent, professional attorney who represents his clients with great skill and determination." (Exhibit 8/7 attached to Petition) " Mr. Wolfe's action with respect to the Baumgardner Trust were out of character. He has represented to me that he is committed to living up to the standards of the Rules of Professional Conduct, and I believe him." (Exhibit 8/7 attached to Petition.)

Susan Woodrin was Joe R. Wolfe's legal assistant from 1974 until his suspension in 1995. (R-125-6) He always put the client's interest first. (R-125-20). He has a knack for seeing the whole picture and can put together solutions that please both sides. (R-125-15) He is as honest as they come, also clients have

told her that. (R-127-19) On his professional abilities, he is brilliant.(R-127-25) "His clients respected him, not only for the results he achieved for them, but for his honesty, integrity and respect for them. During his entire career as an attorney, his actions were above reproach."(Petition Exhibit 8/8-p.2)

Linda Stewart has known Joe R. Wolfe for 34 years. (R-111-17) Her deceased husband was an attorney and she never heard anything negative about Jody, (R-113-3) until he called and told her about a very bad mistake. (R-113-15) "He was held in high esteem and I believe still is." (R-113-24) "I wouldn't hesitate for a moment to turn over all of my affairs to Jody." (R-114-10) If readmitted he will avoid problems and practice law in an exemplary fashion. (R-115-12). "There are so very many people in this world, no matter their profession, who focus solely on money, but Jody is one of those rare individuals who truly cares about people and wants to see them treated fairly and adequately."(Petition Exhibit- 8/1)

John V. Phillipoff is chairman of the board of PCB Bandcorp and has known Jody 25 years. (R-117-8) Mr. Wolfe has always been very respected in our community. Other attorneys and CPAs do not hesitate to consult Mr. Wolfe on complicated legal matters and taxes. On one occasion for my partners and myself he worked out the exchange of a number of properties, and our CPA stood in awe of the 50 page completed package. (Petition Exhibit-8/5) " You might not like the answer to a question you asked Mr. Wolfe but

it was an honest answer and there was nothing misleading in his answer." (Petition Exhibit- 8/5)

Lowrey Whitson has known Mr. Wolfe for about 40 years both personally and professionally. He is aware of Mr. Wolfe's outstanding professional expertise when he represented his father, who had severe tax problems. Mr. Wolfe through hard work obtained good results. He has used diligence in representing Lowrey Whitson in an extremely complicated chain of events and has "given me invaluable insight into my personal tax and business questions." "Mr. Wolfe has always pulled out all the stops to help me, above and beyond the call of duty."(Petition Exhibit-8/2) "It is the opinion of many that attorneys in general are more interested in furthering their own financial well being than they are in genuinely helping their clients. Mr. Wolfe definitely is NOT a member of that class." "He is a great deal more than a highly qualified professional; he is a warm, genuinely caring and concerned friend to all he serves." (Exhibit-8/2)

Lorraine A. Blackwood has known Joe R. Wolfe since June of 1994. She relates an experience of using Joe R. Wolfe in contract work on selling Orlando properties to Asia investors. There was a three day time crunch and a difficult CEO from Korea who had little regard for the legal requirements of Florida. Joe R. Wolfe put his calendar on hold and stood firm with her CEO, never losing his temper, and carefully explaining again and again

why certain things could and could not be done. Joe R. Wolfe contracts and escrow program later protected over twenty investors in securing returns on their deposits. (Petition exhibit-8/3) She was involved in two other cases with Joe R. Wolfe, and states, "it was not only his immense knowledge of the law that impressed me but his thoughtful approach and insight." (Exhibit-8/3) "Joe R. Wolfe exemplifies what I believe attorneys were originally meant to do - counsel, guide, right wrongs, and ensure justice prevails - even if it means not getting rich." "Joe R. Wolfe is not only one of the finest attorneys I have known, but an individual with a certain rectitude and honor that is not often found today." (Exhibit-8/3)

Robert Miller has known Joe R. Wolfe as his attorney for over twenty years. "In every case, he has directed me to the most ethical course of action". "He has handled himself with complete professionalism, unwavering commitment and unparalleled skills." (Petition Exhibit- 8/19)

Frank C. Kunnen, Jr. has known Joe R. Wolfe for 25 years. "In the 25 years that I have sought advice from Mr. Wolfe, I have always respected his legal opinion, appreciated his patience and been overwhelmed with his professionalism." (Petition Exhibit- 8/9) Mr. Wolfe has always been highly regarded within our community with respect to his participation within and the moralistic mannerism he portrays. In all the years that I have known Mr. Wolfe, I have heard nothing but positive remarks from

others within our community." (Exhibit-8/9)

George E. Feaster has used Mr. Wolfe's legal and tax services since 1984, which resulted in "a deep respect for his professional abilities." (Petition Exhibit 8/24) He respectfully requested that the Court rule favorably on his petition for reinstatement. "The community and his clients miss his wisdom, expertise and counseling." (Exhibit- 8/24)

Wolfe clearly states that he knows why he was suspended, due to his ignoring the trust and escrow rules and the Baumgardner Trust borrowing. (R-18-8) He acknowledged that his mistakes were tragic and against what he was trained to do.(R-37-14) He states that the suspension was justified and blames himself.(R-21-11) The witness at the hearing stated that he took full blame and had expressed no ill will or malice towards the Bar or the Baumgardners. "He has acknowledged his utter embarrassment and disgrace to me."(R-90-1) He "has expressed remorse and repentance to him." (R-104-21) "I know Jody very well and he's very remorseful." (R-117-25)

Wolfe has no ill feeling towards the Bar and is sorry that he caused it.(R-36-10) There is no ill feeling towards the Baumgardners or criticizing of them.(R-36-20 & 37-2)

Wolfe has spent most of his time in the last four years trying to pay back his debts.(R-22-15) "He has my respect and I honor the efforts he's making to make everybody whole. He could have taken the easy way out, a straight liquidation." (R-118-1)

"Jody has put his life on hold, and continues to do so in order to get the present market value out of these properties." (R-136-14) Rather than walking away he has spent four years demonstrating repentance trying to make this work. (R-99-17) "I think that's admirable. I choose to believe that it is an effort to make up for the ridiculousness of the error that he made before." (R-99-23) "He has learned a lesson that is not imaginable, that he did wrong, that it almost killed him. He developed a heart problem due to the stress." (R-141-25 & 142-2)

As set forth by Wolfe's bankruptcy reorganization attorney, for three years during the reorganization he has seen very few people experience the stress from the embarrassment and the humiliation due to the Bar suspension and poor financial condition. "Notwithstanding the extreme pressure that you were under, not once did you suggest that your case be handled in other than a straight forward, ethical and honest manner. Your exemplary character during a time of extreme financial and personal pressure would indicate to me that you possess the moral character necessary for the practice of law." (Petition Exhibit 8/10)

When questioned about his Baumgardner Trust loan activity the Petitioner made full disclosure to the Baumgardners in two reports, dated in December 1994 and February 1995, (Hearing Exhibits 6 and 7) that were received by the beneficiaries and are attached to the complaint that William Baumgardner filed.

(Hearing Exhibit 8)

Prior to the Baumgardner suit being filed in March of 1995 Wolfe signed personal notes in 1991 on trust loans to Leftcoast Apparel, Inc. after the corporation went under.

The notes contained a provision that Wolfe was personally liable for attorney fees. (Hearing Exhibit 7-report attaches note copies.) Wolfe paid \$154,868.01 in interest on the notes prior to the trial of the William Baumgardner case.(Petition for reinstatement, paragraph 7, Appendix 6)

Wolfe told Richard Baumgardner he was sorry and volunteered to resign as trustee.(R-27-4) At mediation of the case Wolfe's lawyer on his behalf gave an extensive apology.(R-29-7)

The Baumgardner Trust had a 706 value of 732,949.20 and required annual distribution of \$73,296.92. (Exhibit 4 page 2 attached to the Petition, Appendix 6) Wolfe served as trustee from February 1980 until he resigned in July of 1995 two weeks before the Baumgardner trial. (R-229-13) All required trust annual distributions of 73,296.92 were made for the 15 years and six months Wolfe served as trustee. (R-232-7 & 229-7)

At the time that Wolfe resigned as trustee, the trust had \$42,000 cash, a \$60,000 mortgage receivable(R-71-23) and notes receivable of \$671,000 from Wolfe.(R-71-23)

In addition to the \$102,000 in trust assets turned over to the new trustee, Wolfe paid in full settlement an amount of \$850,000, which was \$179,000 more than the amount of the notes he

signed. (Full release from the Baumgardners and the Trust, Exhibit 4 introduced at hearing, Appendix 7)

The suit filed in March of 1995 by William Baumgardner on behalf of the trust resulted in a judgment dated July 23, 1996 based on a tort theory of \$1,500,000 and \$3,000,000 putative. (Hearing exhibit 5, Appendix 8) This judgment was appealed. (Hearing exhibit 5, Appendix 8) There was never a state appellate court decision fixing the amount due from Wolfe.

The settlement was part of the reorganization plan of Wolfe, which was approved by the Baumgardners, the Baumgardner Trust trustee, and the Federal Bankruptcy Court. (Hearing exhibit 3, Appendix 7).

Wolfe made attempts after the failed settlement negotiations at arbitration to settle the case before trial. A letter of December 7, 1995 was sent to the three trust beneficiaries inviting settlement. The letter stated he had dismissed his attorney who brought up bankruptcy and that he wanted to do every thing to settle and avoid bankruptcy and wanted to pay the Trust rather than lawyers. (Hearing-Exhibit 1, Appendix 9)

Wolfe sent a detailed letter dated February 1, 1996 offering several settlement options. The letter set forth all the assets and liabilities of Wolfe and offered to give the trust whatever assets they wanted, so long as enough was left to pay Wolfe's other creditors. (Hearing Exhibit 2, Appendix 10)

After the trial Wolfe appealed and filed for a Chapter 11

reorganization. Wolfe tried to avoid filing under the Bankruptcy Law. Attorney Rogers, the attorney for William Baumgardner, stated that Mr. Wolfe "sincerely did not want to declare bankruptcy." (R-155-8) Mr. Wolfe filed for a reorganization in November, 1996, to stop the foreclosure sale of two different properties as one unit." "If the Island property was lost, then there wouldn't be enough assets to pay all the creditors, including the Baumgardners." (R-25-4 to 11)

In order to pay his creditors, Wolfe waived his Homestead Exemption. (Hearing Exhibit 3, Appendix 11)

Wolfe still owes his other creditors a net of over \$850,000. The \$ 1,180,629.20 set forth in the Petition includes an amount that Wolfe has inherited from his Mother's estate.

The amount due is after payments through real estate transfers of over \$1,500,000 to mortgage holders, resulting in a loss of over \$600,000 to Wolfe. A cash payment of \$850,000 was made to the Baumgardner Trust from a sale of the family farm. A cash payment of \$150,000 was made to Gills for a release of the Island through funds borrowed from Wolfe's brother. (Hearing Exhibit 3, Appendix 11) The creditors not yet paid have agreed to the plan of reorganization giving Wolfe up to five years to pay the debt plus interest, and Wolfe has been discharged from bankruptcy. (Appendix 11) The Bar investigation report in record confirms their agreement in great detail.

The Florida Bar stipulated that Wolfe has the assets to pay

his creditors and this was made part of the pre trial order.

(Appendix 3)

The record shows that Wolfe has engaged in extensive community work and pro bono work prior to suspension. Wolfe was active for 9 years in the Clearwater Jaycees, serving on committees, and as legal counsel and vice president.(R-44-20) Wolfe served on the Clearwater Downtown Association giving free legal services for 8 to 10 years and also served as co-chairman of both the traffic and convention committee. (R-45-3) Wolfe did pro bono work for the Clearwater Yacht Club and served on their board for 7 years and on the board of trustees for 5 years. (R-45-15)

Wolfe has done extensive pro bono work for individuals as well as the public organizations mentioned above. Three letters attached to the Petition verify some of this work. Linda K. Stewart sets forth that Wolfe handled her husband's estate for free. (Petition Exhibit 8/1 and R-112-2) Lorraine A. Blackwood sets forth that Wolfe represented her personally on a pro bono basis, with well over sixty hours of time, just prior to his suspension from the Florida Bar. "He put his own welfare on hold to address my immediate problem." (Petition Exhibit 8/3) James G. Rayes sets forth that Wolfe helped a group of investors obtain an out of state attorney and by seeing it through and helping with settlement, all for no fee.(Petition Exhibit 8/6)

SUMMARY OF ARGUMENT

After an extensive review, The Florida Bar agreed, the Referee has found, and the record reflects clear and convincing evidence that Wolfe has:

1. Met the conditions imposed during the period of suspension and the procedural requirements of Rule 3-7.10 (Appendix 4, paragraph 111 A.)
2. Provided clear evidence of Petitioner's good reputation for professional ability (Appendix 4, 111 D.)
3. Provided clear evidence of Petitioner's lack of malice and ill feeling toward those involved (Appendix 4, 111 D.)
4. Made appropriate assurances as to his sense of repentance (Appendix 4, 111 D.) and his remorse seems sincere. (Appendix 4, H.)
5. Shown his desire to conduct his law practice in an exemplary fashion in the future. (Appendix 4, 111 D.)
6. Made restitution of funds before the suspension (Appendix 5) and payment of debt of \$850,000 was made to the Baumgardners, as the order of suspension mentioned the repayment of \$300,000.

The Referee has found that Petitioner is not fit to resume the practice of law due to Petitioner's failure to present evidence of an unimpeachable character.

The Referee's fact findings are not supported by competent, substantial evidence in the record. The amount paid to the Baumgardners was determined by full settlement of the matter to be \$850,000 and not the \$1,500,000 stated by the Referee. The evidence was contrary to the finding of the Referee that the evidence did not support the claim that there were efforts to fully reimburse the Baumgardners before the trial. The record shows extensive efforts to settle the matter before trial and the efforts were fully supported by a pretrial settlement letter (Hearing Exhibit 2, Appendix 10) and the testimony of the Baumgardner's own attorney.

The Referee has taken one method of showing good moral character, pro bono or community service, and made them a requirement for reinstatement. The Referee ignored the extensive record of pre suspension community service and pro bono work, the fact that her pre trial order did not make such a requirement an issue for evidence at the hearing, and the fact that the suspension of the Petitioner prohibited providing legal services with client contact.

The Referee has expanded the requirement of this Court's suspension order. If the criteria of the Referee is adopted, then the Court should do so by requiring such community service in future orders of suspension and also make it clear what, if any pro bono services can be performed while suspended. This requirement should not be a condition of Wolfe's reinstatement.

The suspension order is res judicata.

To determine good moral character the Court should look at the 29 years of law practice without any prior grievance matter, the fact that Petitioner has fully cooperated with The Florida Bar, and has devoted himself for four years to solving the problems that he admits he created. The record clearly shows that Petitioner is not only an unusually competent attorney but that he is honest and his clients miss his wisdom, expertise and counseling. Strong moral character has been shown during the suspension by Petitioner's action in paying his creditors over \$2,500,000, waiving his homestead, and obtaining the agreement from his remaining creditors that he has their confidence and sufficient assets to pay the remaining debt in full with interest.

Petitioner is discharged from bankruptcy, having met "the conditions set forth by the Suspension Order and deserves reinstatement and an opportunity to earn a living in the field in which he is trained." The Florida Bar v. Whitlock, 511 So.2d 524 (Fla. 1987) Petitioner's actions show repentance and that he recognized the severe nature of his transgressions.

The facts of Petitioner's transgressions were made a part of this Court's order of suspension. The Court suspended Wolfe, did not disbar Wolfe, and the reinstatement of Wolfe will serve to protect the public, promote lawyer cooperation and encourage those that devote themselves to solving the problems they

created. As a lawyer, Wolfe will be given the chance to continue the type of work he was trained to do and has done so well in the past, while contributing the type of community work and pro bono work he has always done as a lawyer.

IS JOE R. WOLFE FIT TO RESUME THE PRACTICE OF LAW?

Yes. The record and most of the Referee's findings confirmed Mr. Wolfe's fitness to resume the practice of law. The Referee found, "There is clear evidence of Petitioner's good reputation for professional ability and of Petitioner's lack of malice and ill feeling toward those involved in the disciplinary proceeding. The Petitioner has made the appropriate assurances as to his sense of repentance and his desire to conduct his law practice in an exemplary fashion in the future." (Appendix, 4, par. 111 D.)

The Referee's finding that Wolfe "has failed to present evidence of an unimpeachable character" (Appendix, 4, par. 111 H.) is not supported by the record.

Unimpeachable character is clearly and convincingly shown by what Mr. Wolfe has done during his 29 years as a lawyer and his efforts during the time of his suspension.

Character must be viewed over time and can not be solely judged by some litmus test applied over a selective period of time.

Attached to the Petition For Reinstatement were 24 letters attesting to Wolfe's unimpeachable character, professional ability, lack of malice and his sense of repentance, and desire to conduct his practice in a exemplary fashion if reinstated. (Appendix 12) As is more fully summarized in the Statement of the Facts above, the testimony at the hearing from two attorneys, CEO

of a Community Bank, former clients, his secretary for over 21 years, and his brother affirmed in great detail Mr. Wolfe's fitness to resume the practice of law. This evidence also shows unimpeachable character.

Wolfe's record after 29 years of law practice without prior grievances shows unimpeachable character.

Wolfe fully cooperated with The Florida Bar, acknowledged his wrong doings in the consent judgment of suspension, and paid back all loans from his trust account before his suspension.

Unimpeachable character is shown by the fact that Wolfe did the right thing in a number of cases where it would have been easier and/or more in his self-interest to have done something else.

1. When Leftcoat Apparel, Inc. went under in 1991, Wolfe could have forced corporate bankruptcy, discharged the corporate debt and used the long trust loan history and his broad investment authority granted in the Baumgardner Trust to possibly avoid personal liability. Instead, Wolfe signed personal notes to the Baumgardner Trust for \$671,000 and paid \$154,868.01 in interest before the Baumgardner trial.

2. Wolfe gave two detailed and accurate reports to the three trust beneficiaries of his errors in December of 1994 and February of 1995. (Hearing Exhibits 1 and 2, Appendix 9 and 10) He could have resigned as trustee and hid behind the Trust powers.

3. After one of the three trust beneficiaries filed suit

in March of 1995, Wolfe was asked by another beneficiary to stay on as trustee. Instead of taking the easy way out and resigning as trustee, Wolfe honored that request and stayed on as Trustee and kept the required \$73,294 annual distributions current through the time he resigned as trustee two weeks before the trial.

4. Wolfe could have followed the advice of his attorney and filed bankruptcy, claiming his \$2,500,000 + 160-acre Homestead Exemption and stopping any trial. Instead Wolfe dismissed his attorney and made offers of settlement after failed mediation, offering whatever assets the beneficiaries wanted to pick, provided that enough assets were left to pay other creditors. (Hearing Exhibits 1 and 2, Appendix 9 and 10)

5. Wolfe filed for a Bankruptcy Plan of Reorganization in November of 1996 to stop the loss through foreclosure of assets so all creditors could be paid. Wolfe could have claimed his Homestead Exemption and filed for liquidation.

6. Wolfe obtained discharge from bankruptcy by agreeing to work after the bankruptcy to pay over \$850,000 in debt to the remaining creditors and agreeing to use what remained of his homestead exempt property to help him do so.

None of the efforts by Wolfe excuse the wrong that he did. Wolfe has admitted his errors, blames only himself and has no malice toward others. (R-36-10, R-36-20, R-37-20, R-37-2) Once a mistake is made, what one does to rectify the mistake shows

character. Unimpeachable character is shown by the action and choices Wolfe made by putting his life on hold, living meagerly, and by not seeking a new job so he could devote himself to paying off all his debts.

At a substantial loss of assets to himself, Wolfe has paid off over \$2,450,000 in debt since being suspended and has gained the agreement and confidence of his remaining creditors. The Florida Bar has agreed that Wolfe has the assets to pay his remaining creditors.(Appendix 3)

As stated by Wolfe's bankruptcy attorney, "Your exemplary character during a time of extreme financial and personal pressure would indicate to me that you possess the moral character necessary for the practice of law." (Petition Exhibit 8/10, Appendix 6)

Rather than walking away, Wolfe has spent over four years demonstrating repentance by trying to make a repayment plan work. "I think that's admirable. I choose to believe that it is an effort to make up for the ridiculousness of the error that he made before." (R-99-23)

Wolfe has demonstrated financial responsibility by paying the Baumgardner trust \$850,000, obtaining their full release, and filing a Chapter 11 bankruptcy proceeding as suggested in The Florida Bar v. Winderman, 663 So.2d 623 (Fla. 1995). What Wolfe did to compensate the aggrieved party and pay his debts is indicative of character. The Florida Bar v. Sickmen, 523 So.2d

154 (Fla. 1988)

Wolfe's Petition for Reinstatement and the evidence in the record satisfies the standards of the case law. The Florida Bar v. Grusmark, 662 So.2d 1235 (Fla. 1995) and The Florida Bar v. Whitlock, 511 So.2d 524 (Fla. 1987). Wolfe's admitted mistakes were addressed by The Florida Bar and this Court and resulted in a three year suspension in December of 1995. After four years of suspension Wolfe has shown his fitness to be readmitted to the Bar.

Wolfe's entire career as an attorney should be considered. The record shows in depth that Wolfe "is the kind of lawyer that doesn't exist in as many offices as we need them to." (R-105-15) "His clients respected him, not only for the results he achieved for them, but for his honest, integrity and respect for them". (Petition Exhibit 8/8 p.2, Appendix 6) "He is a great deal more than a highly qualified professional; he is a warm, genuinely caring and concerned friend to all he serves." (Petition Exhibit 8/2, Appendix 6) As one pro bono client said, "He put his own welfare on hold to address my immediate problem." (Petition Exhibit 8/3, Appendix 6) "The level of trust I have in him should be viewed in a society now where lawyers are not trusted very much by outsiders and lawyers don't trust each other very much." (R-109-1) "The community and his clients miss his wisdom, expertise and counseling." (Petition Exhibit 8/24, Appendix 6) "He has handled

himself with complete professionalism, unwavering commitment and unparalleled skills."(Petition Exhibit 8/19, Appendix 6)

The best evidence of fitness for practice of law come from those who have known the attorney's professional conduct first hand and not from those who do not know him and who apply a litmus test to determine character. One thing is not to be determinative.

Actions that prove repentance speak louder than words. Suspending lawyers rather than disbaring them creates a method of making the punishment fit the transgression. Lawyers deserve a second chance.

For the reasons stated in the record, this brief and to lend constancy with prior case law, the Court should reinstate Joe Rawls Wolfe to the practice of law.

The record shows Wolfe has:

1. Met the conditions imposed during the period of suspension and the procedural requirements of Rule 3-7.10.
2. Provided clear evidence of Petitioner's good reputation for professional ability.
3. Provided clear evidence of Petitioner's lack of malice and ill feeling toward those involved.
4. Made appropriate assurances as to his sense of repentance and his remorse seems sincere.
5. Shown his desire to conduct his law practice in an exemplary fashion in the future.

6. Made restitution of funds before the suspension and paid debt of \$850,000 to the Baumgardners, while the order of suspension mentioned repayment of \$300,000.

7. Unimpeachable character.

The referee's failure to find unimpeachable character ignores the record, Wolfe's witnesses, and the letters of the 24 people who supported Wolfe's reinstatement.

**IS THE REFEREE'S RECOMMENDATION BASED ON
FACTS THAT ARE NOT SUPPORTED BY THE RECORD?**

Yes. The referee's finding that each beneficiary received "\$15,000 instead of the estimated \$500,000 per person they would have received if the trust had been handled appropriately, using conservative investment techniques", is not supported by the record.

The record shows that Wolfe paid \$850,000 to the Baumgardner Trust and received a full release. (Hearing Exhibit 4, Appendix 7) In addition, the record shows that Wolfe turned over \$102,000 to the successor trustee. (R-71-23) The total available to the trust was \$952,000.

There is no accounting in the record as to how the successor trustee disbursed the funds. There is no evidence that the beneficiaries received \$15,000 each. The \$15,000 is probably a typographical error by the referee. If the referee meant to use the figure of \$150,000 for each of the three beneficiaries, the referee went beyond the scope of the hearing and status conference order which limited the issue on the amount due the beneficiaries versus the amount received by the beneficiaries.

There is no expert testimony as to what should have been in the trust had Wolfe used appropriate investment techniques. No State Court decision on the matter of the amount due from Wolfe was final. (See Notice of Appeal filed, Hearing Exhibit 5, Appendix 8) The beneficiaries, the Trust, and Wolfe did reach a final determination of the amount due and set the amount at

\$850,000 and that is what was paid. (Hearing Exhibit 4, Appendix 7) The Bankruptcy Court approval of this settlement made this a final legal determination of the matter. (Hearing Exhibit 3, Appendix 11)

In addition, the question of the amount paid and what should have been paid were not permitted by the Referee's pre trial order. The Referee's pre trial order on the Baumgardner litigation stated, "The parties will be able to offer evidence and/or rebuttal evidence regarding the following:

1. The length of the litigation.
2. Attorney's fees as a result of the litigation.
3. The verdict and the ultimate resolution of the matter.
4. Brief evidence as to the parties feelings regarding the resolution of the matter." (Appendix 3)

It was not appropriate under the order, the record, and the final determination of these matters by the parties and the Bankruptcy Court for the Referee to enter a fact finding on the question of what the value of the trust should have been and the amount the beneficiaries received. The Referee entered her judgment of what should have happened as a fact finding and ignored the record on the amount of the settlement. The \$15,000 amount is not supported by the record.

An additional unsupported finding by the Referee was, "The Petitioner's claims regarding his efforts to fully reimburse the trust beneficiaries prior to the case going to trial were not

supported by evidence." (Appendix 4, 111 E.)

The record shows that there were extensive efforts to settle the matter before trial. After a failed attempt at arbitration, Wolfe dismissed his attorney and made an offer to settle that gave the Baumgardners a choice of any of Wolfe's assets, provided enough was left for the other creditors. (Hearing Exhibit 1 and 2, Appendix 9 and 10) In short, Wolfe offered to give up everything he had to all his creditors to settle the case, including his homestead. Wolfe's share of the farm was offered at a figure of \$650,000 and was sold while in bankruptcy for \$930,000. The asset values were not inflated for settlement purposes. (Hearing Exhibit 2, Appendix 10)

These actions showed unimpeachable character and remorse for his transgressions.

The attorney for William Baumgardner, Howard Dennis Rogers, made the following statements on settlement efforts by Wolfe:

1. "I think that Mr. Wolfe sincerely wanted to resolve this litigation at various times during the litigation."(R-151-3)
2. On attempts by Wolfe to sell his homestead, Rogers stated, "He had prospective buyers who backed out of the deal on several occasions and that caused some of the settlement proposals to become nonviable."(R-151-9)
3. The failure to settle "wasn't for a lack of Mr. Wolfe's

motivation to settle. It was due to two factors. First of all, buyers for his real estate were not available; and, secondly, Mr. Wolfe wanted to hang on to as much as he could hang on to, which in his circumstance is probably understandable." (R-154-17-23) Other creditors would have to be included in any bankruptcy plan. "He couldn't just liquidate assets, assuming that he could do so, and pay the Baumgardners. (R-162-20-24)

4. Mr. Rogers stated that Mr. Wolfe "sincerely did not want to declare bankruptcy." (R-155-8) At mediation before the trial, his attorney recommended bankruptcy and "Mr. Wolfe declined his advice." (R-155-12)

The Referee's fact finding on pre trial settlement effort ignores the record. The way the Referee worded her fact finding, "to fully reimburse", requires a judgment as to the amount that should have been paid. As set forth above, this should not have been a question for a fact finding by the Referee.

Other examples of this are found in paragraph 111 C., 111 E. & 111 F. For example, as set forth above, the properties were offered in settlement prior to the trial and not just post verdict, as she finds. (Hearing Exhibit 2, Appendix 10)

The Referee entered a fact finding that, "His actions, or lack of action, have demonstrated that he has failed to grasp the moral implications of his transgression; and therefore, prevents

a finding that he has presented evidence of unimpeachable moral character." (Appendix 4)

How could Wolfe have spent four years on working on repentance and not grasp the moral implications of his transgression? The record is clear as to Wolfe's regret as to the harm done to the beneficiaries and The Florida Bar and several apologies were given. (R-21-11, 22-15,27-4,28-23) "He has acknowledged his utter embarrassment and disgrace to me."(R-90-1) He "has expressed remorse and repentance to him." (R-91-16) "His repentance is absolutely clear, he's mortified and personally embarrassed." (R-104-21)

The Referee has concluded that Wolfe has failed to engage in any community work service or pro bono work. That he has thus failed to restore the public's confidence in him as a trustworthy individual or to recompense the Bar for the damage he has done to the reputation of the legal profession as a whole." (Appendix 4)

Would Wolfe have been better off to seek reinstatement after performing community work, retain his homestead, and filing Chapter 7?

The record shows that the people who know of Wolfe's efforts honor his efforts and trust him. Would the reputation of lawyers have been better served if Wolfe had let the creditors fight over his assets and destroy his ability to repay all his creditors? Wolfe took the high road by not filing a Chapter 7 and keeping his exempt homestead, and by doing so showed that all lawyers do

not take the easy way out or act solely in their best financial interest. Wolfe put everything on hold and devoted four years to solving his debt problems and waived his Homestead Exemption. Remorse is not just saying you are sorry, it also is trying to do something about it.

Pro bono and community service was not a condition of the suspension order, nor is it a requirement to show unimpeachable moral character. The Florida Bar v. Sickmen, 523 So.2d 154 (Fla. 1988)

The referee's finding as to the amount of money received by the aggrieved party was incorrect and not part of what was to be presented at the hearing, looks behind the release signed by the aggrieved parties and the amount paid, and attempts to require a different amount than provided for by the suspension order.

**HAS THE REFEREE CREATED AN UNSUPPORTED LITMUS TEST OF
REQUIRED COMMUNITY WORK AND PRO BONO WORK IN ORDER
TO SHOW UNIMPEACHABLE CHARACTER?**

Yes. The Referee based her recommendation not to reinstate Wolfe on her finding that there was no showing of community work and pro bono work. She stated in her report, "The standard for reinstatement is set out in The Florida Bar re Milton E. Grusmark, 662 So.2d 1235 (Fla. 1995) (Appendix 4) This case does not require a showing of community service and pro bono work in order to show unimpeachable character.

As set forth in the last page of the Statement of Facts Wolfe has done extensive community work and pro bono work during his 29 years of law practice. The lack of community work and pro bono work was never a problem.

There was no requirement of community work or pro bono work in this Court's order of suspension. The order and the rules required that Wolfe refrain from practicing law. This Court's rules are clear about the limited employment of attorneys that are suspended. The rules regulating the Florida Bar, 3-6, prohibit direct client contact. How can someone do pro bono work when there can be no client contact? The rule restricts volunteer work to an authorized business entity and a sworn report must be submitted quarterly that no aspect of the employee's work has involved the unlicensed practice of law, that the employee has had no direct client contact, or handled trust funds or property.

Pro bono work or community service was not an issue at the pre trial hearing. The objections to the reinstatement of Wolfe raised by The Florida Bar were not based on lack of community service or pro bono work. The presentation of Wolfe's case to the Referee did not focus on community work, since it was not an issue raised by The Florida Bar.

The Referee referred to "Wolfe's debt to the community". If this "debt to the community" is to be analogous to a criminal's debt to society, then Wolfe has served his time with a 3 year suspension, that has now become over 4 years, in the same manner as a convicted felon serves his sentence.

The Referee required an unspecified amount of community service or pro bono work to be done in order to be reinstated. Wolfe was suspended from the practice of law, versus being disbarred. The Suspension Order is silent as to community service or pro bono work.

Wolfe's record of past pro bono work and community service was performed when no one was watching or requiring such work. Wolfe has never viewed doing community work or pro bono work as a punishment or something one must do to make amends. Wolfe's community work and pro bono work was done because Wolfe wanted to help the community and individuals, not because he sought credit.

Character should not be decided by some perception of Wolfe's failure to do things that might look good on a résumé. What Wolfe has done during his 29 years of law practice and during the

time of suspension tells one a great deal about his character. Wolfe devoted himself to solving the problems created by the transgressions he caused, even though doing so was detrimental to his health and his own financial interest. He has shown a depth of character not often found today. That character was not destroyed due to the adverse events, or resurrected by satisfying certain objective criteria. It is the same character that has been verified in this record by those who know him best.

The referee has attempted to impose additional requirements to reinstatement by finding pro bono work and community service as a requirement to show unimpeachable character, i.e. pay a moral debt to society, where none existed previously.

CONCLUSION

The cause for the suspension was escrow account violations, borrowing from the escrow account, and making loans to Wolfe-controlled corporations from the Baumgardner Trust while serving as the Trustee.

Based upon Wolfe's compliance with the suspension order, obtaining a full release from the Baumgardners and providing clear and convincing evidence on all points required for reinstatement, Respondent Wolfe requests this Court to reinstate his membership in The Florida Bar.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to: Thomas E. DeBerg, Assistant Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport Marriott Hotel, Tampa, Florida 33607; and John Anthony Boggs, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this _____ day of November, 1999.

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