

IN THE SUPREME COURT OF FLORIDA

FLORIDA BOARD OF BAR EXAMINERS )  
RE: STEPHEN A. PAPY, SR. ) Case No. SC04-1411  
----- )

**ANSWER BRIEF**

Submitted by:

FLORIDA BOARD OF BAR EXAMINERS  
GLORETTA H. HALL, CHAIR

Eleanor Mitchell Hunter  
Executive Director

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

**TABLE OF CONTENTS**

ANSWER BRIEF..... 1

TABLE OF CONTENTS..... 2

TABLE OF CITATIONS ..... 4

JURISDICTION..... 6

PRELIMINARY STATEMENT ..... 6

STATEMENT OF THE CASE AND FACTS ..... 7

SUMMARY OF ARGUMENT ..... 16

ARGUMENT ..... 18

I. THE BOARD PROPERLY CONCLUDED THAT PAPY WAS NOT PRESENTLY QUALIFIED FOR READMISSION TO THE FLORIDA BAR. (PAPY’S POINTS 1, 2, and 3)..... 18

    A. Introduction ..... 18

    B. Papy's Past Disqualifying Conduct..... 19

    C. Papy's Insufficient Evidence of Rehabilitation..... 22

II. PAPY’S CRITICISM OF THE BOARD’S FINDING ON SPECIFICATION 3 IS DEVOID OF ANY MERIT. (PAPY’S POINT 4) ..... 33

III. PAPY’S ACCUSATIONS OF IMPROPRIETIES DURING HIS FORMAL HEARING ARE BASELESS. (PAPY’S POINT 1)..... 35

IV. WHETHER PAPY HAS SUFFERED ENOUGH PUNISHMENT IS NOT AN ISSUE BEFORE THE COURT. (PAPY’S POINT 5)..... 44

CONCLUSION..... 46

CERTIFICATE OF SERVICE ..... 47

CERTIFICATE OF TYPE SIZE AND STYLE ..... 47

**TABLE OF CITATIONS**

<u>Cases</u>	Page
<i>Florida Board of Bar Examiners re Amendment to Rules,</i> 451 So. 2d 1384 (Fla. 1984)YYYYYYYYYYYYYYYY	23,37
<i>Florida Board of Bar Examiners re D.A.R.,</i> 753 So. 2d 1288 (Fla. 2000)YYYYYYYYYYYYYYYY	42
<i>Florida Board of Bar Examiners re J.C.B.,</i> 655 So. 2d 79 (Fla. 1995)YYYYYYYYYYYYYYYY.	24,28
<i>Florida Board of Bar Examiners re J.J.T.,</i> 761 So. 2d 1094 (Fla. 2000)YYYYYYYYYYYYYYYY.	19,31,32,35
<i>Florida Board of Bar Examiners re L.H.H.,</i> 660 So. 2d 1046 (Fla. 1995)YYYYYYYYYYYYYYYY	18,25
<i>Florida Board of Bar Examiners re M.A.R.,</i> 755 So. 2d 89 (Fla. 2000)YYYYYYYYYYYYYYYY	21
<i>Florida Board of Bar Examiners re M.L.B.,</i> 766 So. 2d 994 (Fla. 2000)YYYYYYYYYYYYYYYY.	32,37
<i>Florida Board of Bar Examiners re N.W.R.,</i> 674 So. 2d 729 (Fla. 1996)YYYYYYYYYYYYYYYY	26
<i>Florida Board of Bar Examiners re W.H.V.D.,</i> 653 So. 2d 386 (Fla. 1995)YYYYYYYYYYYYYYYY..	19,36
<i>In re Petition of Diz-Arguelles,</i> 401 So. 2d 1347 (Fla. 1981)YYYYYYYYYYYYYYYY..	36,37
<i>Kosseff v. Board of Bar Examiners,</i> 475 A.2d 349 (Del. 1984)YYYYYYYYYYYYYYYY..	44

Cases

Page

*Petition of Wolf,*

257 So. 2d 547 (Fla. 1972)YYYYYYYYYYYYYYY.. 44

*The Florida Bar re Amendment to Rules Regulating The Florida Bar,*

644 So. 2d 282 (Fla. 1994)YYYYYYYYYYYYYYY 38

*The Florida Bar in re Timson,*

301 So. 2d 448 (Fla. 1974)YYYYYYYYYYYYYYY.. 22,23

*The Florida Bar re Janssen,*

643 So. 2d 1065 (Fla. 1994)YYYYYYYYYYYYYYY.. 22

*The Florida Bar re Wolfe,*

767 So. 2d 1174 (Fla. 2000)YYYYYYYYYYYYYYY.. 27

*The Florida Bar v. Hale,*

762 So. 2d 515 (Fla. 2000)YYYYYYYYYYYYYYY.. 18,36

*The Florida Bar v. Travis,*

765 So. 2d 689 (Fla. 2000)YYYYYYYYYYYYYYY.. 21

Rules of the Supreme Court Relating to Admissions to the Bar

---

Rule 3-40.1	YYYYYYYYYYYYYYYYYYY	6
Rule 3-13	YYYYYYYYYYYYYYY..	10,22,23,25,29,39
Article III, Section 4	YYYYYY.YYYYYYYY.	23
Rule 3-13(f)	YYYYYYYYYYYYYYYYYYY	29
Rule 3-13(b) and (e)	YYYYYYYYYYYYYYY..	30
Rule 3-13(g)	YYYYYYYYYYYYYYYYYYY	32
Rule 3-11	YYYYYYYYYYYYYYYYYYY	39

Rules Regulating The Florida Bar

---

Rule 3-7.10(f)(3)(G)	YYYYYYYYYYYYYYY..	27
Rule 3-5-1	YYYYYYYYYYYYYYYYYYY..	38
Rule 3-5.1(j)	YYYYYYYYYYYYYYYYYYY	39

## **JURISDICTION**

The Board acknowledges that the Court has jurisdiction of this matter pursuant to Article V, Section 15 of the Florida Constitution and Rule 3-40.1 of the Rules of the Supreme Court Relating to Admissions to the Bar (hereinafter referred to as "Rules").

## **PRELIMINARY STATEMENT**

The Board will use the following designations:

(Pet) references Papy's Amended Petition for Review.

(T) references the transcript of Papy's formal hearing held March 12, 2004.

(FF) references the Board's written Findings of Fact, Conclusions of Law and Recommendation issued May 14, 2004 and served on Papy.

(BE) references the Board exhibits introduced into the record at the March 2004 formal hearing.

(OGCE) reference the exhibits introduced into the record by the Office of General Counsel at the March 2004 formal hearing

(AE) references the exhibits introduced into the record by Papy at the March 2004 formal hearing.

## STATEMENT OF THE CASE AND FACTS

As stated in the Procedures for Formal Hearings Before the Florida Board of Bar Examiners: "The Board's findings shall be based solely upon the record made at the formal hearing." (BE 2 at attached Procedures at page 4, paragraph 4 of Formal Hearing Procedures) Additionally, as announced by the presiding officer at Papy's formal hearing: "Specifications have previously been served upon the respondent and the issues drawn upon the pleading will be decided solely upon the record made in this proceeding." (T 3)

The formal record consists of the following items: Board's Exhibits; Office of General Counsel's Exhibits; Applicant's Exhibits; and the transcript of Papy's formal hearing. In addition to the formal hearing record, the record before the Court includes the Board's Findings of Fact, Conclusions of Law and Recommendation. An attempt to supplement the record with new exhibits at this stage of review is objectionable in that the formal hearing panel (in its capacity as the finder of fact) would not have had the opportunity to consider and evaluate such items.

Papy's reliance upon an affidavit by Dr. Paxton (Pet 2-3) is objectionable in that such document does not appear to be a part of the formal hearing record. Papy's reliance upon an article appearing in The Florida Bar News (Pet 11 at fn 1) is also objectionable in that such article does not appear to be a part of the formal hearing record. Furthermore, if Papy had a genuine concern about the impartiality of any Board member, then he should have moved to disqualify such member from sitting on his formal hearing panel as authorized by the Board's procedures. (BE 2 at attached Procedures at page 4, paragraph 2 of Formal Hearing Procedures)

In lieu of Papy's narrative version of the facts without citations to the formal hearing record, the findings of fact contained in the Board's Findings of Fact,

Conclusions of Law and Recommendation are submitted for the Court's consideration and are reproduced below for the convenience of the reader (added citations to the record are noted by the use of brackets):

Specification 1 [BE 2] concerns the circumstances surrounding the applicant's disciplinary resignation. Specification 1(A) alleges that the applicant misappropriated funds from his trust account while practicing law in Florida as a sole practitioner. Specification 1(B) alleges that the applicant improperly loaned to himself over \$500,000 of undisbursed trust funds belonging to Ewart Rose, one of the applicant's legal clients. Specification 1(C) alleges that The Florida Bar discovered improprieties in the applicant's trust account following a compliance audit that was conducted in response to a complaint filed by Mr. Rose. The applicant subsequently petitioned the Supreme Court of Florida to grant his resignation. The Court granted the petition by order dated January 15, 1998.

By his Answer to Specifications, the applicant admitted the allegations of Specification 1. [BE 3] Accordingly, the Board finds that the allegations of Specification 1 have been proven. The language of this Specification reproduced above under the Findings Background is hereby adopted by the Board as its specific findings of fact. Based upon the seriousness of the allegations, the Board further finds that the proven allegations of Specification 1 are individually disqualifying for admission to The Florida Bar.

Specification 2 [BE 2] alleges the applicant's lack of compliance with the federal income tax laws and regulations pertaining to the timely filing of tax returns and the timely payment of taxes for several tax years since 1994. This Specification further alleges that the notices of federal tax liens were filed and that two such liens, in the amounts of \$55,363.09 and \$161,787.64, remained unsatisfied.

By his Answer to Specifications, the applicant admitted the allegations of Specification 2. [BE 3] Accordingly, the Board finds that the allegations of Specification 2 have been proven. The language of this Specification reproduced above under the Findings Background is hereby adopted by the Board as its specific findings of fact. Based upon consideration of the record before it, the Board further finds that these proven allegations are disqualifying for admission to The Florida Bar when viewed collectively with other proven and disqualifying Specifications.

Specification 3 [BE 2] concerns testimony offered by the applicant during his investigative hearing before the Board regarding the operation of his trust account. This Specification alleges a lack of candor by the applicant when he testified that except for one unauthorized check issued by a member of his office staff, the applicant had signed the rest of the checks issued from his trust account.

By his Answer to Specifications, the applicant denied that his investigative hearing testimony was lacking in candor. [BE 3] The applicant also testified at his formal hearing that he intended his testimony to relate to a period of time when he, in fact, was the only person signing checks issued from his trust account. (Formal Hearing Transcript at 156-158, hereinafter designated by "T" followed by the page number) Based upon the record before it, the Board finds that the evidence offered in support of the allegations of Specification 3 is insufficient. Accordingly, the Board finds that Specification 3 is not proven.

During his formal hearing presentation, the applicant called the following witnesses who testified on his behalf and commented favorably about the applicant's character and fitness.

- John Romano (T 17-37) is a practicing attorney who worked with the applicant prior to his resignation and has employed him in a paralegal capacity since his resignation.
- Joel Cronin (T 38-58) is a practicing attorney who first met the applicant in 1994. Mr. Cronin worked with the applicant on several cases and was co-counsel with him in representing Ewart Rose. Mr. Cronin has also used the applicant as a paralegal on several cases since the applicant's resignation from the Bar.
- Kevin Carroll (T 59-70) is a practicing attorney who litigated against the applicant in the late 1980s. They became friends and have stayed in touch after Mr. Carroll's relocation to Tallahassee in December 1991.
- Charles C. Papy, III (T 71-87) is a practicing attorney and the applicant's brother. The applicant is employed by Charles Papy's law firm as a contract paralegal.
- Juan Bauta (T 88-105) is a practicing attorney who first met the applicant in 1998 or 1999 on a religious retreat at which the applicant was one of the speakers. They later became members of the same church and Mr. Bauta assisted the applicant in putting on a church festival for the poor.



- Maria Papy (T 106-126) is the applicant's spouse and they have been married for 17 years. They have an 11-year-old son along with children from each of their prior marriages ranging in ages from 18 to 24.

The applicant also introduced into the record several exhibits consisting of three certificates of appreciation for coaching kids=baseball, three character affidavits and two character letters. The applicant also testified on his own behalf and responded to questioning from members of the Board and the attorney for the Office of General Counsel. (T 127-218)

Upon consideration of the applicant's formal hearing presentation, the Board finds that his evidence establishes a defense to the allegations of Specification 3, which the Board finds not proven. The Board further finds the applicant's evidence fails to mitigate the seriousness of the proven allegations of Specifications 1 and 2. Lastly, the Board finds that the applicant's formal hearing presentation failed to establish his rehabilitation by clear and convincing evidence as required by Rule 3-13 of the Rules.

(FF 7-10)

Several exhibits were offered into evidence by the Office of General Counsel including documents pertaining to the civil action filed against Papy by Ewart Rose, a former legal client. (OGCE 2) The suit alleged a breach of fiduciary duty and negligence by Papy in his appropriation of approximately \$660,000 in trust funds belonging to the plaintiff. (OGCE 2 at Amended Complaint). A judgment of \$680,000 was entered in favor of the plaintiff and against Papy and his law firm. (OGCE 2 at Order of Final Summary Judgment)

The Office of General Counsel also offered into evidence documents pertaining to Papy's resignation from The Florida Bar consisting of Papy's petition, the Bar's response and Court's order granting Papy's resignation. (OGCE 3) Lastly, the Office of General Counsel offered documents into the formal hearing record pertaining to Papy's tax returns for the years 1994 through 2000 (OGCE 4) and tax liens filed by the Internal Revenue Service. (OGCE 5, OGCE 6 and OGCE

7)

One witness called by Papy was Joel Cronin. (T 38-59) Mr. Cronin is an attorney who worked on several cases with Papy up until Papy's resignation. (T 41, 52) Their last case together was their joint representation of Mr. Rose. (T 52) Mr. Cronin never saw any sign of impairment by Papy during their close working relationship. (T 53)

Mr. Cronin further testified that Mr. Rose was a steward for a cruise ship. (T 55) Mr. Rose suffers from complete kidney failure. (*Id.*) Mr. Rose was not very sophisticated and he trusted his lawyers. (T 57) The funds obtained by the lawyers (Papy and Mr. Cronin) on Mr. Rose's behalf were for a kidney transplant for Mr. Rose. (T 57)

During his formal hearing, Papy testified on his own behalf. His law practice handled a lot of cases involving employees of cruise ships. (T 134). The practice was very lucrative. (*Id.*) As to the effect his profitable law practice had on his lifestyle, Papy stated:

You know, if I had a nice Rolex watch one week, you know, then I had to have the gold Submariner the next week, and that was that way. You know, every success I had, I had to show.

And I put a lot of value into material things and lost complete sight of my family and my lifestyle.

So the bottom line to it, I know I'm getting pretty wordy, but I guess I would say that I was a guy who was making way too much money way too fast, and just, you know, spent it way too fast and didn't have any clue of anything.

(T 135)

Specifically, Papy earned \$300,000 in 1994, \$900,000 in 1995, and \$300,000 in 1996. (T 172-174) Papy also appropriated, at least, \$500,000 in trust funds belonging to his legal client in 1997. (T 174) Papy also received an additional \$200,000 in 1997 from the settlement of a personal car accident. (T 191) Papy

currently earns \$5,000 per month working for his brother's law firm and another \$5,000 per month working for his father's law firm for a total monthly income of \$10,000. (T 165, 194-195)

As to the civil judgment entered in favor of Papy's legal client from whom Papy had taken, at least, \$500,000 in trust funds, Papy's insurance carrier settled the judgment. (T 189) As to whether he has an obligation to repay this money, Papy stated: "[A]s to the insurance carrier, you know, I believe legally as well as morally, I should pay that money back." (T 160) Papy intends to pay it back providing he can get back into the practice of law. (Id.)

The formal hearing record contains a letter dated February 25, 1997 from Papy to Ewart Rose, the client from whom Papy took over a half million dollars in trust funds. (OGCE 2 at Defendant's Answer at attached Exhibit A) The letter grants Papy the power to place the funds due to Mr. Rose in a trust with Papy serving as the Trustee. The letter also grants Papy the power to invest the trust funds by making loans to the Trustee or Papy.

When questioned about the legitimacy of his letter dated February 25, 1997, Papy acknowledged: "I can't fathom how any portion of it would be seen as anything other than misleading and improper." (T 208) Papy added: "I don't see any -- there's nothing that I can look at in my letter of that day with Mr. Rose that I can say in any way was not improper, was not misleading, and was not wrong." (Id.)

Papy also acknowledged that Mr. Rose had not been made whole. Papy explained: "I would say, without fear of being wrong, that if being made whole would include all costs and interest and whatnot, I would imagine he has not been made whole." (T 189) Papy had also indicated that he would like to take care of the attorney fees that Mr. Rose had to pay in connection with the legal action that

Mr. Rose brought against Papy for the misappropriated trust funds. (T 189-190; OGCE 8 at page 67)

During the March 2004 formal hearing, Papy was asked about his most recent tax return for tax year 2002. Papy believes he still owes \$10,000 in unpaid taxes for 2002. (T 167) As to his current employment with the law firms of his brother and father, Papy is required to make quarterly tax deposits. (T 168) Papy failed to make any of quarterly deposits during tax year 2003. (*Id.*) Papy explained: **A**We did not have the money to make the deposits.@ (*Id.*) Papy's sister-in-law has indicated that she will pay his 2003 tax liability. (T 169, 196-197)

During his formal hearing, Papy also offered into evidence a letter from James Lawrence King, a federal judge from Miami. (AE 12) Papy had listed Judge King as a witness but Judge King expressed a desire to Papy's attorney **A**to be deposed, or **Y**do it some other way than appearing.@ (T 219) The attorney for the Office of General Counsel agreed to allow Judge King's letter to be introduced into the formal hearing record with the following stipulation announced on the record by Papy's attorney:

Judge King had told me, represented to me he had one face-to-face meeting with Mr. Papy and two or three telephone calls in the last year or so, and that is all of the contact the two had since the resignation, so in the last six years, there's been three or four contacts, one of which was face to face, two or three which were telephone contacts.

(T 219)

## SUMMARY OF ARGUMENT

Papy resigned from The Florida Bar in 1997 while disciplinary proceedings were pending. Papy had committed serious ethical and fiduciary transgressions as a practicing attorney. His misconduct involved misappropriations of trust funds including a half million dollars from the trust funds of a particular client.

Papy engaged in further misconduct pertaining to his failure to comply with the federal income tax laws and regulations dating back to 1994. Papy has outstanding tax liens of over \$200,000; he owes \$10,000 for his 2002 taxes; and he failed to withhold or make deposits for federal income taxes for his income of \$120,000 plus during 2003.

Papy's arguments that his formal hearing was unfair are without merit. For example, Papy erroneously argues that the Board improperly found Specification 3 proven by rejecting his evidence. Based upon its fair evaluation of the record evidence, the Board actually found that the evidence in support of Specification 3 to be insufficient. The Board's finding (that Specification 3 was not proven) is clearly stated in the Board's written Findings of Fact, Conclusions of Law and Recommendation previously rendered by the Board on May 14, 2004 and served on Papy.

Having engaged in disqualifying conduct in the past, Papy was required to present clear and convincing evidence of his rehabilitation at his formal hearing. Based upon its thorough evaluation of Papy's presentation, the Board properly found that his evidence was insufficient as to several of the elements of rehabilitation. The Court is, therefore, requested to affirm the Board's findings, conclusions and recommendation that Papy not be readmitted to the practice of law in Florida at this time.

## ARGUMENT

### I. THE BOARD PROPERLY CONCLUDED THAT PAPY WAS NOT PRESENTLY QUALIFIED FOR READMISSION TO THE FLORIDA BAR. (PAPY'S POINTS 1, 2, AND 3)

#### **A. Introduction**

In the case of *Florida Board of Bar Examiners re L.H.H.*, 660 So. 2d 1046 (Fla. 1995), this Court confronted the issue of whether the petitioner, a disbarred attorney, should be readmitted. The Court observed: "An applicant such as L.H.H. bears the heavy burden of establishing rehabilitation. Thus, L.H.H.'s disbarment alone is disqualifying unless he can show clear and convincing evidence of rehabilitation." *Id.* at 1048 (Citation and footnote omitted). In denying the petitioner's application, the Court reaffirmed that "the rehabilitation requirement is stringent." *Id.* at 1049.

Papy actually resigned from The Florida Bar while disciplinary proceedings were pending against him. (OGCE 3) The Court, however, has held that "disciplinary resignation is tantamount to disbarment." *The Florida Bar v. Hale*, 762 So. 2d 515, 517 (Fla. 2000).

## **B. Papy's Past Disqualifying Conduct**

In evaluating the sufficiency of evidence of rehabilitation by a bar applicant, the severity of the misconduct must be considered. This principle was recognized by the Court in *Florida Board of Bar Examiners re W.H.V.D.*, 653 So. 2d 386 (Fla. 1995). There, the Court observed: "In evaluating an applicant's showing of rehabilitation, we cannot disregard the nature of past misconduct." *Id.* at 388.

This principle was reaffirmed by the Court in *Florida Board of Bar Examiners re J.J.T.*, 761 So. 2d 1094 (Fla. 2000). There, the Court added: "The more serious the misconduct, the greater the showing of rehabilitation that will be required." *Id.* at 1096. These decisions all soundly determine that the degree of rehabilitation required in a particular case is dependent upon the nature and extent of the past misconduct.

In its findings of fact and conclusions of law, the Board highlighted the seriousness of Papy's past misconduct:

The Board concludes that the proven allegations of Specification 1 are individually disqualifying for admission to The Florida Bar. These allegations establish the applicant, as a practicing attorney in Florida, misappropriated trust funds. The applicant's conduct as an attorney was particularly egregious when he breached his ethical and fiduciary duties by loaning himself \$500,000 from the trust funds of a legal client.

The Board further concludes that the proven allegations of Specification 2 are collectively disqualifying. These allegations establish a willful disregard of the applicant's obligation to comply with the federal income tax laws and regulations. The applicant's disregard covers an extended period dating back to 1994.

(FF 10)

As a practicing attorney, Papy misappropriated trust funds to pay for operating expenses of his law office. (BE 2 and BE 3 at Specification 1(A))

According to Papy, this unethical conduct began sometime after September 1996 and continued until May or June of 1997. (T 142-143, 175-176)

Papy also breached his ethical and fiduciary duties to his legal client, Mr. Rose, when Papy misappropriated a half million dollars in Mr. Rose's trust funds by loaning the trust funds to himself. Mr. Rose was a steward for a cruise ship. (T 55) Mr. Rose suffers from total renal failure. (T 55; BE 5 at page 8) Mr. Rose was not very sophisticated and he trusted his lawyers. (T 57) The trust funds obtained by Papy and co-counsel on Mr. Rose's behalf were for a kidney transplant for Mr. Rose. (T 57)

Papy used the \$500,000 of Mr. Rose's trust funds to pay his (Papy's) tax indebtedness and other bills. (BE 2 and BE 3 at Specification 1(B); T 149-150) Papy admitted during his formal hearing that his attempt to justify his misconduct by having his client sign a letter authorizing loans of the client's trust funds to Papy was misleading, improper and wrong. (T 208)

The serious nature of Papy's past misconduct as set forth in Specification 1 is indisputable. The Court has made known the unacceptability of this misconduct in holdings such as the following: "We have repeatedly held that the misuse of client funds in trust is one of the most serious offenses a lawyer can commit and that disbarment is presumed to be the appropriate punishment." *The Florida Bar v. Travis*, 765 So. 2d 689, 691 (Fla. 2000).

As set forth in the uncontested allegations of Specification 2, Papy has engaged in additional disqualifying conduct pertaining to his untimely filing of tax returns and his nonpayment of taxes. Papy incurred around a quarter of million dollars in tax liens. (BE 2 and BE 3 at Specification 2)

Notwithstanding his high level of income during the years 1994-1996 and his swindling a legal client out of a half million dollars to enable Papy to pay his taxes,



Papy somehow still has over \$200,000 in liens that are still out there for tax years 1995 and 1996. (T 174-175; BE 2 and BE 3 at Specifications 2(D) and (E)) Papy even owes delinquent taxes of \$10,000 to the United States Government from his most recently filed federal income tax return. (T 167)

In *Florida Board of Bar Examiners re M.A.R.*, 755 So. 2d 89 (Fla. 2000), the Court addressed this same issue. There, the Court observed: "Moreover, M.A.R.'s failure to timely file and pay federal income taxes and his conduct in writing worthless checks show dishonesty, financial irresponsibility, and a lack of respect for the law and for the rights of others." *Id.* at 92.

In its findings, the Board properly stated: "Because of his past serious misconduct, the applicant appeared before the Board with a heavy burden of establishing his rehabilitation." (FF 10-11) (Citation omitted) As discussed below, Papy failed to meet his burden.

### **C. Papy's Insufficient Evidence of Rehabilitation**

The primary issue presented by this appeal is the correctness of the Board's evaluation of his presentation of evidence as to his rehabilitation. Papy's burden as to this issue is set forth in the Court's rules governing admission to the Bar. As stated in Rule 3-13 of the Rules:

Any applicant or registrant who affirmatively asserts rehabilitation from prior conduct which bears adversely upon such person's character and fitness for admission to the Bar shall be required to produce clear and convincing evidence of such rehabilitation....

In 1974, this Court listed the following elements of rehabilitation in cases involving reinstatement of disbarred attorneys:

1. Strict compliance with the disciplinary order.
2. Evidence of unimpeachable character.
3. Clear evidence of a good reputation for professional ability.
4. Evidence of lack of malice and ill feeling toward those involved

in bringing the disciplinary proceedings.

5. Personal assurances of sense of repentance and desire to conduct practice in exemplary fashion in the future.

6. Restitution of funds.

*The Florida Bar in re Timson*, 301 So. 2d 448, 449 (Fla. 1974). See also *The Florida Bar re Janssen*, 643 So. 2d 1065, 1066 (Fla. 1994).

In 1984, this Court amended former Article III, Section 4 of the Rules to add a specific section on the elements of rehabilitation when asserted by an applicant at a bar admissions hearing. *Florida Board of Bar Examiners re Amendment to Rules*, 451 So. 2d 1384 (Fla. 1984). Such provision incorporated the six elements from the *Timson* decision and also added the following additional element:

(7) Positive action showing rehabilitation by such things as a person's occupation, religion, community or civic service. Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of positive action is appropriate for applicants for admission to the Bar because service to one's community is an implied obligation of members of the Bar.

In that the allegations for Specifications 1 and 2 were fully admitted by Papy, the issue before the Court is whether the Board properly applied the burden of "clear and convincing evidence" in its evaluation of Papy's rehabilitation in light of his past misconduct. Based upon its evaluation of the record produced at Papy's formal hearing, the Board found that he had failed to establish his rehabilitation by clear and convincing evidence as required by Rule 3-13 of the Rules.® (FF 10)

Contrary to Papy's assertions in his pending petition, the Board did not simply ignore or reject the evidence presented by him during his formal hearing. (See e.g. Pet 14-15) On the contrary and as established by the findings quoted above in the Statement of Facts, the Board considered and evaluated Papy's

evidence and concluded that it was insufficient as to the establishment of his rehabilitation. (FF 11)

For example, Papy relies heavily upon a favorable character letter from a federal district judge. (Pet 13-14) Papy then argues that A[t]he Board responded to Judge King's letter by completely ignoring it and thereby rejected this testimony without comment. (Pet 14)

Although one might question Papy's use of the word Atestimony@ in characterizing an unsworn character letter, Papy's argument is unsound for a more fundamental reason. In discussing the judge's letter, Papy neglects to inform the Court of the stipulation that allowed the introduction of the judge's letter in lieu of his live testimony at the formal hearing. The stipulation between the parties stated that Judge King has had a few phone conversations and only one personal meeting with Papy since Papy's resignation from The Florida Bar in 1997. (T 219)

A review of Judge King's letter reveals that he thought highly of Papy's trial skills when Papy appeared in his court as a practicing attorney. (AE 12) Yet, in a rehabilitation case such as this one, the focus must be on activities since Papy's resignation. *Florida Board of Bar Examiners re J.C.B.*, 655 So. 2d 79, 82 (Fla. 1995) (AOur focus, however, is on his activities since his disbarment.@). Clearly, the Board is allowed to consider such factors as the judge's unavailability to respond to questioning and the judge's very limited dealings with Papy during the last seven years when evaluating such evidence.

In reviewing the Board's finding, it must also be remembered that the burden is upon Papy to demonstrate his rehabilitation by "clear and convincing evidence." Rule 3-13 of the Rules. It would indeed be a rare occasion if a bar applicant at a formal hearing failed to produce favorable character evidence from individuals such as relatives, friends, employers or colleagues. Such a fact highlights the inherent

nature of character evidence. Because of its ready availability and potential partiality, character evidence must be weighed carefully in determining whether a bar applicant has demonstrated sufficient rehabilitation.

On many occasions, the weighing process by the Board results in a favorable decision and the applicant is duly recommended for membership in The Florida Bar. Such cases, of course, never reach this stage of review. On other occasions, the Board properly finds that the applicant's presentation fails to demonstrate reformation from prior misconduct in a clear and convincing manner as the Board found in Papy's case. *See e.g., Florida Board of Bar Examiners re L.H.H., supra* at 1049 ("We share the Board's concern that...his evidence of rehabilitation since his 1984 disbarment is not clear and convincing.@).

As to the insufficiency of Papy's evidence of rehabilitation, the Board stated the following:

As to such insufficiency, the applicant has not addressed the issue of restitution. The applicant's insurance company satisfied the judgment for \$680,000 that was obtained against him by Ewart Rose. The applicant recognizes a legal and moral obligation to pay back the insurance company but he has not yet made any payments. (T 159-160) As to Mr. Rose, the applicant testified at his formal hearing that he would imagine he has not been made whole.@(T 189) Although the applicant received a settlement from a car accident in 1997 of around \$200,000, he did not use any of those proceeds to make Mr. Rose whole. (T 191)

Another significant deficiency in the applicant's rehabilitation is his failure to address his past indebtedness to the IRS. Two federal tax liens totaling over \$200,000 remain unsatisfied. (T 174-175) Furthermore, the applicant owes \$10,000 for his 2002 taxes and failed to make any withholding payments for his 2003 taxes. The applicant's recent neglect of his tax obligations has occurred while his annual income for the past few years has been in the range of \$120,000 to \$132,000. (T 195) Rehabilitation requires clear and convincing evidence that the applicant is addressing his past and present tax obligations in a responsible and law-abiding manner.

As to the rehabilitation requirement of positive action, the applicant is commended for his service to his church, especially his past involvement with the festival benefiting the poor. However, A[b]ecause of the serious nature of this misconduct, more is required.@ *Florida Board of Bar Examiners re N.W.R.*, 674 So. 2d 729, 731 (Fla. 1996).

(FF 11)

### ***Issue of Restitution***

As to the issue of restitution, the facts are undisputed. Papy acknowledged during his formal hearing that he has a legal and moral obligation to repay his insurance carrier. (T 160) Papy also admitted during his formal hearing that his former client had not been made whole. (T 189)

In addressing the issue of restitution in his argument before the Court, Papy relies upon the case of *The Florida Bar re Wolfe*, 767 So. 2d 1174 (Fla. 2000). (Pet 32) In *Wolfe*, the attorney was suspended for misappropriations from a trust for which he served as the trustee. The referee in *Wolfe* recommended against reinstatement of the suspended attorney due to his failure to engage in community service or permissible pro bono activity during the suspension period. In overruling the referee's recommendation, the Court reasoned that neither case law nor the Bar rules (at the time of the Court's decision) require such positive action as a prerequisite for reinstatement. *Id.* at 1178. Positive action has now been added as a specific requirement for reinstatement. Rule 3-7.10(f)(3)(G) of the Rules Regulating The Florida Bar

It appears that Papy somehow believes that the *Wolfe* decision undermines the Board's finding on restitution. In *Wolfe*, however, bar counsel at the reinstatement hearing A did not dispute that restitution was paid.@ *Id.* Furthermore, A the referee made no express finding that full restitution was not paid to the trust beneficiaries.@ *Id.* The record also established that Wolfe had paid the trust

\$850,000 and had received a release from the trust beneficiaries. Based upon such record, the Court held: *Thus, we find that Wolfe has made the required restitution. Id.*

In stark contrast to those facts, Papy has not paid anything to his insurance carrier although he recognizes his legal and moral obligation to repay the satisfied judgment. (T 160) Papy justifies his inaction by claiming that he intends to pay this money back if he can get back into the practice of law. (T 160) Papy's intent, however, to do something only if readmitted in the future is inadequate to demonstrate rehabilitation now. *Florida Board of Bar Examiners re J.C.B., supra* at 82 (J.C.B.'s promise to perform pro bono work if readmitted is not enough to show rehabilitation now.).

Furthermore, Mr. Rose settled with the insurance carrier to avoid an appeal. (T 189; OGCE 8 at page 67) Papy concedes that Mr. Rose has not been made whole due to Mr. Rose's expenditures for costs, interest and attorney fees. (T 189-190; OGCE 8 at page 67) Papy has failed to address these expenditures. (T 190)

Lastly, Papy alleges that his rights to due process under the Fourteenth Amendment to the United States Constitution were violated because the issue of making restitution was not pled as a basis to reject his admission and hence Papy received no notice that it would be an issue at the hearing. (Pet 33) In making this argument, Papy disregards several factors. First, as discussed earlier, Papy appeared before the Board with a heavy burden of establishing his rehabilitation. Thus, his prior misconduct bars his readmission absent a showing of clear and convincing evidence of rehabilitation.

As set forth above, there is a specific bar admissions rule on rehabilitation. Rule 3-13 of the Rules. This rule places the burden on the applicant to prove his rehabilitation by clear and convincing evidence. This rule has a specific provision

requiring Arestitution of funds or property, where applicable.@ Rule 3-13(f) of the Rules.

Contrary to Papy's assertion before the Court, it is not the burden of the Office of General Counsel to plead Papy's rehabilitation and then offer evidence to disprove such rehabilitation. Instead, it is Papy's burden, a burden which the Board properly found that Papy had failed to meet.

### *Issue of Taxes*

During the last several years and following his disciplinary resignation in 1997, Papy has shown a continuing disregard for his obligation to comply with laws and regulations governing the timely filing of tax returns and the timely payment of tax returns. For tax years 1997 and 1998, Papy admitted in his Answer to Specifications that he failed to file his tax returns on time. (BE 3 at Specification 2(A)) For tax years 1998, 1999 and 2000, Papy admitted in his Answer to Specifications that he failed to pay his taxes on time. (BE 3 at Specification 2(B))

During his formal hearing, Papy indicated that he still owes \$10,000 in unpaid taxes for his most recently filed tax return. (T 167) As to his employment in 2003, Papy was required to make quarterly tax deposits. (T 168) Yet, Papy failed to make any deposits. (*Id.*)

What was Papy's justification for not making deposits? Papy responded: AWe did not have the money to make the deposits.@ (*Id.*) Papy intends to rely upon his sister-in-law to take care of his irresponsibility and lack of respect for the tax law by having her pay his 2003 tax liability. (T 169, 196-197)

As an applicant who needs to establish rehabilitation, Papy must show that his character is Aunimpeachable@ and that his conduct will be Aexemplary.@ Rule 3-13(b) and (e) of the Rules. Unimpeachable is defined as "beyond doubt or

reproach" or "unquestionable." Exemplary is defined as "worthy of being imitated" or "commendable."<sup>1</sup>

During the last several years, Papy's response to his obligation to file tax timely returns and pay his taxes in a timely manner has been neither worthy of imitation nor commendable. On the contrary, Papy has continued to engage in highly questionable conduct.

Papy cannot plead poverty for his failure to take reasonable steps in addressing this issue. In fact, Papy testified that during the last several years he has earned from \$120,000 to \$132,000 a year as a paralegal. (T 165, 194-195) Unlike law-abiding citizens, Papy failed to make quarterly tax deposits to the IRS or to have taxes withheld from his paycheck.

The Board properly concluded that Papy's handling of his tax obligations was simply not clear and convincing evidence of rehabilitation. (FF 11) The Court is urged to reach the same conclusion.

### ***Issue of Positive Action***

As to this element, the Board specifically noted that Papy's evidence of past involvement in his church's festivals for the poor was commendable. (FF 11) The Board concluded, however, that a stronger showing of positive evidence was required. (*Id.*)

In the case of *Florida Board of Bar Examiners re J.J.T., supra*, the Court confronted the identical issue. There, the Board had determined that the applicant's evidence of positive action was insufficient. In upholding the Board's determination, the Court reasoned:

Recognizing the serious nature of the misconduct for which J.J.T. was disbarred, we agree with the Board that J.J.T. has not shown sufficient

---

<sup>1</sup> Definitions of unimpeachable and exemplary found in THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE.



A positive action to establish his rehabilitation. \* \* \* This requirement is a stringent one, and the burden was on J.J.T. to present evidence of the Aextra effort required to show rehabilitation.

*Id.* at 1096 (Citation omitted). The Court's reasoning in *J.J.T.* is equally applicable to the facts of Papy's case.

For example, Papy testified that he last chaired his church's festival for the poor in 2001. (T 162) Yet, the requirement of positive action under the rehabilitation rule is properly viewed as a continuing one in that A service to one's community is an implied obligation of members of the Bar. Rule 3-13(g) of the Rules. As Papy did in the past in his work for the poor, Papy's future activities should be A directed to good deeds and humanitarian concerns impacting a broad base of citizens. *Florida Board of Bar Examiners re M.L.B.*, 766 So. 2d 994, 999 (Fla. 2000).

**II PAPY'S CRITICISM OF THE BOARD'S FINDING ON SPECIFICATION 3 IS DEVOID OF ANY MERIT. (PAPY'S POINT 4)**

In his pending petition before the Court, Papy states *A*the Board upheld its Third Specification and found Papy lied in his testimony during the preliminary hearing.<sup>@</sup> (Pet 38) Papy then states more fully: *A*Specifically, the Board found that it had proven Papy had lied by testifying he signed all of his trust checks when Papy had previously stated that he did not sign all of his trust checks.<sup>@</sup> (*Id.*)

Papy argues that the *A*Board's Finding is contrary to the facts.<sup>@</sup> (*Id.*) Papy further asserts that *A*[t]he Board simply rejected the evidence introduced and reached its conclusion.<sup>@</sup> (*Id.*) Papy concludes that *A*the specification and the finding cannot stand.<sup>@</sup> (FF 38-39)

There is, however, one decisive factor that Papy somehow overlooked in making his argument before the Court. The Board did *not* find Specification 3 proven. As reproduced below from the Board's findings, the Board actually found Specification 3 *not* proven:

Specification 3 concerns testimony offered by the applicant during his investigative hearing before the Board regarding the operation of his trust account. This Specification alleges a lack of candor by the applicant when he testified that except for one unauthorized check issued by a member of his office staff, the applicant had signed the rest of the checks issued from his trust account.

By his Answer to Specifications, the applicant denied that his investigative hearing testimony was lacking in candor. The applicant also testified at his formal hearing that he intended his testimony to relate to a period of time when he, in fact, was the only person signing checks issued from his trust account. (Formal Hearing Transcript at 156-158, hereinafter designated by "T" followed by the page number) ***Based upon the record before it, the Board finds that the evidence offered in support of the allegations of Specification 3 is insufficient. Accordingly, the Board finds that Specification 3 is not proven.***

\* \* \*

***Upon consideration of the applicant's formal hearing presentation, the Board finds that his evidence establishes a defense to the allegations of Specification 3, which the Board finds not proven.***

(FF 8-9) (Emphasis supplied)

In his petition pending before the Court, Papy acknowledges that he received the Board's written Findings of Fact, Conclusions of Law and Recommendation on May 17, 2004. (Pet 8) Furthermore, Papy's argument as to Specification 3 extends for over a page and cannot simply be excused as a typographical error. (Pet 38-39)

It is assumed that Papy's assertion of an utterly unfounded argument based on fabricated findings was not done to intentionally mislead the Court. Yet, how can Papy make a good faith argument against a particular finding by the Board without having ever read the Board's decision?

### **III. PAPY'S ACCUSATIONS OF IMPROPRIETIES DURING HIS FORMAL HEARING ARE BASELESS. (PAPY'S POINT 1)**

In addition to his unfounded criticism of the Board's findings as discussed under Point 2 above, Papy also criticizes opposing counsel and a member of the hearing panel as discussed below. Unwilling to accept the reasonableness of the Board's recommendation, Papy suggests that the Board's recommendation may have been the product of bias and prejudice revealed during the hearing. (Pet 23)

#### ***Closing Argument by the Attorney for the Office of General Counsel***

Initially, Papy appears to be claiming that opposing counsel improperly argued that the Board should consider the seriousness of Papy's past misconduct. (Pet 24) In making this argument, Papy overlooks the published case law by the Court in the bar admissions area.

In *Florida Board of Bar Examiners re J.J.T., supra*, the Court reaffirmed the following principle of bar admission proceedings: A [I]n evaluating an applicant's showing of rehabilitation, the nature of the past misconduct cannot be disregarded. The more serious the misconduct, the greater the showing of rehabilitation that will be required.

*Id.* at 1096 (Citation omitted).

Papy also appears to be critical of opposing counsel's argument that Adisciplinary resignation is tantamount to disbarment. (T 221) Again, counsel for the Office of General Counsel merely quoted a decision of the Court. *See The Florida Bar v. Hale*, 762 So. 2d 515, 517 (Fla. 2000).

Papy also appears to be asserting that the decision by the Court *In re Petition of Diez-Arguelles*, 401 So. 2d 1347 (Fla. 1981) is controlling. (Pet 23-24) Yet, the *Diez-Arguelles* decision was issued in 1981, and Papy's argument ignores the development of the law in area of Florida bar admissions over the last twenty

plus years.

For example, the Court announced the now well-established principle that a bar applicant's demonstration of rehabilitation must be considered in light of the past misconduct in the case of *Florida Board of Bar Examiners re W.H.V.D.* 653 So. 2d 386, 388 (Fla. 1995) (¶In evaluating an applicant's showing of rehabilitation, we cannot disregard the nature of past misconduct.¶) *W.H.V.D.*, however, was not decided until 1995 or 14 years after the decision in *Diez-Arguelles*.

Additionally, at the time *Diez-Arguelles* was decided, there was no requirement for positive action in establishing rehabilitation by bar applicants. That particular element of rehabilitation was not added by the Court until several years after the *Diez-Arguelles* decision. *Florida Board of Bar Examiners re Amendment to Rules*, 451 So. 2d 1384 (Fla. 1984).

During his hearing before the Board, Diez-Arguelles showed that subsequent to his criminal conviction for drug dealing, he focused on achieving an education. In fact, he obtained a college degree, a law degree and a master of laws in taxation. *Id.* at 1348. Diez-Arguelles apparently presented no evidence to the Board of positive action in his community. *Compare Diez-Arguelles, supra, with Florida Board of Bar Examiners re M.L.B., supra* at 998-999 (¶The rules contemplate and we wish to encourage positive action beyond those one would normally do for self benefit,¶).

Furthermore, there is a significant factual distinction between Diez-Arguelles and the applicant. Diez-Arguelles was not an attorney at the time of his illegal conduct. Papy, however, breached the public trust by violating his ethical and fiduciary obligations as an attorney and an officer of the court.

Papy concludes this particular criticism by claiming that opposing counsel was somehow advocating additional punishment for Papy in contravention of

Papy's court-approved resignation which jeopardizes the Bar's ability to negotiate disciplinary matters and contrary to its [sic] basic principles of contract law and all notions of fairness. (Pet 25)

First and foremost, punishment of Papy was simply not an issue for the Board during Papy's formal hearing and is not an issue before the Court. See discussion under Point IV below. As to the remainder of Papy's criticism, it is assumed that Papy is unfamiliar with the provisions by which he resigned from The Florida Bar or else he would not have made this argument.

At the time of his disciplinary resignation in 1997, Rule 3-5.1 of the Rules Regulating The Florida Bar provided in part:

(j) Disciplinary Resignation. A respondent may be allowed to resign membership in The Florida Bar in lieu of defending against allegations of disciplinary violations. If accepted by the Supreme Court of Florida, a disciplinary resignation terminates the respondent's status as a member of the bar. A former member whose disciplinary resignation has been accepted may only be admitted again upon full compliance with the rules and regulations governing admission to the bar. Except as otherwise provided in these rules, *no application for admission may be tendered within 3 years after the date of the order of the Supreme Court of Florida that accepted the disciplinary resignation* or such additional time as the respondent may have stated in the petition for disciplinary resignation. A petition that states that disciplinary resignation is without leave to apply for readmission shall preclude readmission to the bar.

*The Florida Bar re Amendments to Rules Regulating The Florida Bar*, 644 So. 2d 282, 289 (Fla. 1994) (Emphasis added).

Although not entirely clear, it appears that Papy is arguing that because he was allowed to resign with a 3 year disqualification period as provided by Rule 3-5.1(j) above, then he cannot now be denied readmission because that would enhance his original sanction beyond the original three year disqualification period.

Papy's argument overlooks the fundamental principle that an attorney who is granted a disciplinary resignation can only be readmitted to The Florida Bar upon full compliance with the rules and regulations governing admission to the bar. Rule 3-5.1(j) above.

What Papy apparently failed to do was to familiarize himself with the rules pertaining to his disciplinary resignation and his application for readmission before slinging accusations of unethical conduct at opposing counsel.

If he had done so, then he would have realized that for him to be readmitted, he has to comply fully with the rules and regulations governing admission to the bar. Rule 3-5.1(j) of the Rules Regulating The Florida Bar.

If he had done so, then he would have realized that he had engaged in past disqualifying conduct. Rule 3-11 of the Rules.

If he had done so, then he would have realized that he is required to affirmatively assert rehabilitation from his prior misconduct. Rule 3-13 of the Rules.

If he had done so, then he would have realized that the burden was upon him to produce clear and convincing evidence of this rehabilitation. *Id.*

If he had done so, then he would have realized that the argument by opposing counsel was entirely proper.

Papy's last attack on opposing counsel concerns a reference in closing argument to the amount of money Papy had made over the years with nothing to show for it (except unpaid obligations such as delinquent taxes). (Pet 25) Papy alleges that such comment was made only to foster prejudice and bias. (*Id.*)

During closing argument, the formal hearing transcript shows that the attorney for the Office of General Counsel made the following comments:

If you look at the IRS documents and if you can say, Well, how well, how much money an attorney makes is an indication of how good an

attorney he is, I don't know if we all accept that, but there has to be at least some relationship. I believe it was, what, \$300,000 in 1994. I think it was about \$900,000 in 1995, and then back to around \$300,000 in 1996 or whatever those figures are, just an incredible amount of money for someone like a government lawyer. It's beyond belief, actually, the type of money that, you know, he was making, and then to have nothing to show for it also, but that's a whole other issue.

(T 224-225)

Apparently, Papy is asserting that the above-quoted comments by opposing counsel were fundamentally improper and that these comments require a reversal of the Board's recommendation. (Pet 25-27)

In his argument before the Court, Papy disregards the context in which the above-quoted remarks were made. In his Answer to Specifications, Papy asserted:

The misconduct that led to his Bar disciplinary proceedings, his tax problems and other reversals in his life were directly attributable to alcohol abuse and the physical injuries from his automobile accident on September 26, 1996 which lead to his prescription drug abuse.

(BE 3 at page 2) At the time of the alleged offensive comments, the attorney for the Office of General Counsel was arguing that Papy's effort to blame all of his thievery, dishonesty and unethical conduct as a lawyer on alcohol and drugs was not well supported by the formal hearing record. (T 224)

A review of the formal hearing record establishes that the remarks in issue were fair comment on Papy's formal hearing presentation (including Papy's Answer to Specifications, Papy's formal hearing testimony, and the formal hearing testimony of Papy's witness, Joel Cronin<sup>2</sup>). In making this accusation against

---

<sup>2</sup> Mr. Cronin, an attorney, testified that he worked closely on several cases with Papy for a period of time up to Papy's resignation. (T 40-41, 52) Mr. Cronin further testified: "I never saw any impairment at all, really never at all, and I mean,



opposing counsel, Papy apparently forgot that he admitted during his direct testimony that he **A**was a guy who was making way too much money way too fast, and just, you know, spent it way too fast and didn't have any clue of anything.@ (T 135)

Could a better orator have made the argument in issue more elegantly than the attorney for the Office of General Counsel? Absolutely. Was this argument improper or unethical? Absolutely not.

***Remark by a Member of the Formal Hearing Panel***

Papy does not restrict his accusations of impropriety to opposing counsel. Papy also attacks the integrity of a member of the formal hearing panel for making an offhanded remark. (Pet 28-30) Papy asserts: **A**Unfortunately, not a single panel member raised any objection or made any comment to this outrageous comment**Y**.@ (Pet 29)

In making this attack, it apparently never occurred to Papy that the reason no one objected was most likely because no one found the comment, when viewed in context, to be outrageous. In fact, the formal hearing transcript is conclusive that the Board member immediately stated that he was just **A**teasing.@ (T 209) Furthermore, the record shows that the Board member continued with his questioning after his comment and that Papy had no apparent difficulty in responding to the additional questions. (T 209-212)

***Concluding Observations***

In considering Papy's accusations of improper conduct by opposing counsel and a Board member, it is relevant that Papy was represented by experienced

---

really, these were not cases that just went along and then finally they were settled and things or went to trial. They were cases with hearings, multiple hearings, multiple depositions and things like that, and I never saw any sign of impairment.@ (T52-53) Lastly: **A**I really never noticed any impairment at all.@ (T 54)

counsel during his formal hearing. Yet, trial counsel for Papy never objected to the comments that Papy now challenges before the Court for the first time.

In the case of *Florida Board of Bar Examiners re D.A.R.* 753 So. 2d 1288 (Fla. 2000), the Court addressed the complaint of another bar applicant that he was mistreated by the Board. After finding the applicant's arguments to be non-meritorious, the Court ruled:

While the thrust of some of D.A.R.'s arguments seems to be that he has been unfairly treated by the Board, he does not explain how the perceived mistreatment affects the validity of the Board's findings of fact as to the unchallenged specifications and its conclusion that the proven, and for the most part admitted, specifications are disqualifying. Accordingly, the Board's recommendation that D.A.R. not be admitted to The Florida Bar at this time is approved.

*Id.* at 1290.

Similarly, Papy fully admitted the allegations of Specifications 1 and 2. (BE 3) Additionally, Papy failed to meet his burden as to rehabilitation as specified by the Board in its written findings and conclusions. (FF 11)

Instead of presenting proper grounds for overturning the Board's decision, Papy's personal attacks have revealed his apparent feelings of contempt for and ill will towards individuals involved in his bar admissions process. The Court in *D.A.R.* noted similar feelings by the bar applicant in that case. *Florida Board of Bar Examiners re D.A.R., supra.*

#### **IV. WHETHER PAPY HAS SUFFERED ENOUGH PUNISHMENT IS NOT AN ISSUE BEFORE THE COURT. (PAPY-S POINT 5)**

In his final point, Papy returns to the theme of punishment that appears throughout his petition. (Pet 40-41) Essentially, Papy argues that he has been punished enough.

Contrary to Papy's argument, the issue of punishment should not be a consideration when determining the character and fitness of a bar applicant. This principle was well stated by the Supreme Court of Delaware in its decision in *Kosseff v. Board of Bar Examiners*, 475 A.2d 349 (Del. 1984):

[The applicant] now contends that he has been "punished enough" by the delay which these proceedings have imposed upon his admission to our Bar. That view is a misconception of the roles of the Board and this Court in the admissions process. Denial of admission to the Bar is not a punitive action. Rather, it is based on the principle that the Court has an unyielding obligation to "protect the public from incompetent and dishonest lawyers, and to assure that those admitted to the Bar possess the requisite attributes of good moral character, learning and ability." Once again, the Board has faced that task squarely and reached the only proper result open to it on this record.

*Id.* at 354 (Citation omitted). In Papy's case, the Board faced a similar task in assessing his evidence of rehabilitation and it reached the only proper result open to it on this record. @ *Id.*

In the case of *Petition of Wolf*, 257 So. 2d 547 (Fla. 1972), the Court addressed a case under the old rules where a disbarred attorney sought readmission through The Florida Bar and not through the bar examiners as required by the current rules. In that case, the Court initially noted:

The license to practice law is a privilege, not a right, and the lawyer who has been disbarred must sustain a heavy burden of proving his fitness in terms of integrity as well as professional competency. It is not enough merely to show that he has served a sufficient term of

punishment.

*Id.* at 548.

In denying the disbarred attorney's bid for reinstatement, the Court reasoned: A review of this record naturally results in sincere sympathy for petitioner and his family, as disbarment is the worst of all calamities to most lawyers. The essence of petitioner's contention seems to be that he has now suffered sufficient punishment and, having paid his debt, should now be reinstated as a member of The Florida Bar. If this were a criminal proceeding his evidence would be entitled to significant weight in passing upon an application for parole.

On the other hand, if the concept of discipline and the protection of the public, as well as the image of The Florida Bar, are to have any meaning at all, cases such as this must be viewed in the cold light of objectivity and without regard to personal sympathy. Viewed in this light, the instant record does not justify readmission of the petitioner as a member in good standing of The Florida Bar.

*Id.* at 550.

In the cold light of objectivity and without regard to personal sympathy, the Board considered Papy's formal hearing presentation and concluded that it was insufficient. The Court is requested to reach the same result.

**CONCLUSION**

The Board's resolution in this case is fully supported by the record before this Court. The Board thoroughly and fairly evaluated the evidence before it including Papy's presentation of evidence as to his rehabilitation. Contrary to Papy's argument before the Court, the Board found Specification 3 not proven based upon its evaluation of the record evidence. Papy's other challenges to the fairness of his formal hearing are similarly without merit. The Board requests the Court to affirm the Board's findings, conclusions and recommendation that Papy not be readmitted to The Florida Bar at this time.

DATED this 22<sup>nd</sup> day of September, 2004.

FLORIDA BOARD OF BAR EXAMINERS  
GLORETTA H. HALL, CHAIR

Eleanor Mitchell Hunter  
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 Answer Brief has been served by U.S. Mail this 22<sup>nd</sup> day of September, 2004 to Juan P. Bauta, III, Esquire, 6915 SW 57th Ave, Suite 206, Coral Gables, Florida 33143-3654.

---

Thomas A. Pobjecky

**CERTIFICATE OF TYPE SIZE AND STYLE**

I HEREBY CERTIFY that the size and style of type used in this response is 14 Times New Roman and that the computer disk filed with this Brief has been automatically scanned by Norton Anti-Virus and been found to be free of viruses.

---

Thomas A. Pobjecky