Supreme Court of Florida

No. SC05-1118

FLORIDA BOARD OF BAR EXAMINERS RE: M.B.S.

[February 1, 2007]

PER CURIAM.

This case is before the Court on M.B.S.'s motion for rehearing of this Court's order denying him admission to The Florida Bar. We have jurisdiction. See art. V, § 15, Fla. Const. For the reasons expressed below, we reaffirm our previous decision to deny M.B.S. admission to The Florida Bar.

Procedural Background

M.B.S. submitted an application for admission to the Bar in March 2003. During the investigation into M.B.S.'s background, information was discovered that reflected adversely upon his character and fitness. After an investigative hearing before the Florida Board of Bar Examiners (Board) in September 2004, the Board served four specifications on M.B.S.

Specification 1 alleged M.B.S. had engaged in "illegal, irresponsible, or improper behavior" and had "demonstrated a lack of respect for the law and/or the

rights of others." The specification detailed nine instances of various conduct by M.B.S. from January 1990 through March 2002 for which he was arrested, charged, or sentenced for various criminal offenses.

In January 1990, M.B.S. was charged with the unauthorized use or possession of a Florida driver's license after he used a false driver's license to gain entry to a nightclub.

In November 1990, M.B.S. was charged with possession of cannabis and possession of drug paraphernalia after he was seen sharing a marijuana cigarette with friends in a parked car. M.B.S. entered a no contest plea on the marijuana charge and adjudication was withheld. The drug paraphernalia charge was dismissed. That same month, M.B.S. tried to sell two tablets of Valium to an undercover police officer in a bar. M.B.S. pled guilty, adjudication was withheld, and M.B.S. was placed on probation for two years, ordered to pay $700 in costs within two months, and ordered to perform twenty-five hours of community service.

In January 1992, M.B.S. and a friend misappropriated a briefcase. M.B.S. attempted to use a credit card from the briefcase to purchase gold, but ran away when he was asked for identification. He used a different credit card, also from the briefcase, to purchase over $1100 worth of gold from another store, signing the card owner's name to the receipt. He later attempted to purchase another $1200

worth of gold from the same store, but was arrested after the salesperson called the police. He was charged with two counts of fraudulent use of a credit card, two counts of forgery of a credit card receipt, and three counts of grand theft. He pled guilty to two counts of fraudulent use of a credit card, one count of uttering a forged instrument, two counts of grand theft in the third degree, and one count of forgery. Adjudication was withheld. M.B.S. was sentenced to three years of probation and required to make restitution, to continue in therapy, and to pay $720 in court costs. The theft led to the revocation of M.B.S.'s probation on the illegal delivery of a controlled substance sentence. He was placed on three years' probation, to run concurrently with the probation for theft of the briefcase.

In November 1994, M.B.S. was arrested and charged with disorderly conduct, resisting or obstructing a police officer, and obstruction by a disguised person. He pled no contest to the charges of disorderly conduct and resisting or obstructing an officer without violence. Adjudication was withheld.

In May 1997, M.B.S. was escorted from a nightclub and told to leave the premises after he caused a fight. When he refused to leave, he was arrested and charged with trespassing. He pled no contest. Adjudication was withheld.

In March 2001, M.B.S. was arrested for driving over 100 miles per hour in a 55-mile-per-hour zone and swerving around other cars from lane to lane. He was

charged with reckless driving. He was found guilty and sentenced to pay $735.25 in fines and court costs and to complete fifty hours of community service.

In March 2002, M.B.S. became involved in a fight in a nightclub. Police officers were forced to use mace to subdue him. He was arrested and charged with disorderly conduct.

Specification 2 alleged M.B.S. submitted false information on his law school application. He falsely claimed that his college attendance had not been interrupted for any reason when it had been interrupted at least twice. He stated he was a campaign advisor and event organizer for "quite a few well-known Congressman [sic], Governors as well as local representatives" for the Vermont Republican Party in the early 1990s, which was totally false. He claimed he had performed volunteer work, helping "at-risk" youth and participating in a community-policing project. This information was also a blatant lie. He provided false information about six of the eight prior jobs he listed, inventing some of them. He submitted false information concerning the arrests, charges, and criminal convictions, including failing to update his application when there were new occurrences.

Specification 3 alleged M.B.S. submitted false information to the Florida Supreme Court on an application to participate in a law school practice program by checking the blank in front of the statement: "There is nothing in my background

which reflects adversely on my character" and misrepresenting facts for submission to this Court.

Specification 4 alleged M.B.S. submitted false information on his Application for Admission to The Florida Bar. With regard to his arrest in January 1992 on two counts of fraudulent use of a credit card, two counts of forgery of a credit card, and three counts of grand theft, M.B.S. stated that his roommates stole the credit card and gave it to him and that the card was only used once to purchase $400 worth of merchandise. The truth was that M.B.S. and a friend stole a briefcase. M.B.S. attempted to use a credit card from the briefcase to purchase gold, but ran away when he was asked for identification. He used a different credit card to purchase over $1100 worth of gold from another store, signing the card owner's name to the receipt. He later tried to purchase another $1200 worth of gold from the same store, but was arrested after the salesperson called the police. He ultimately pled guilty to two counts of fraudulent use of a credit card, one count of uttering a forged instrument, two counts of grand theft in the third degree, and one count of forgery.

M.B.S. also denied ever serving time in jail, which was untrue. He served three months in jail after his probation on a charge of delivery of a controlled substance sentence was revoked. M.B.S. also failed to disclose that he was intoxicated at the time of his arrest in 1994.

A formal hearing on the specifications was held on May 20, 2005. The Board found that all of the specifications had been proven and were disqualifying. The Board, however, found that M.B.S. had proven his rehabilitation by clear and convincing evidence. The Board's entire summary of M.B.S.'s rehabilitation evidence was that it "included character evidence from five witnesses and a total of 62 exhibits." Based upon these findings and conclusions, the Board recommended that M.B.S. be conditionally admitted to The Florida Bar and serve a three-year probationary period with specified conditions. M.B.S. agreed to these conditions.

Because the Board's findings concerning M.B.S.'s rehabilitation were conclusory and the initial conduct so clearly disqualifying and egregious, the Court reviewed the entire record. Based upon its review, the Court disapproved the Board's conclusion that M.B.S. had proven his rehabilitation by clear and convincing evidence and issued an order denying M.B.S.'s application for admission.

M.B.S. moved for rehearing. The Court granted rehearing and directed the parties to "address all facts related to M.B.S.'s involvement in" the various acts of misconduct charged in the specifications and found proven by the Board. M.B.S.'s brief focused on the rehabilitation evidence presented and the recommendation that he be admitted. The Board provided the additional factual detail which the Court had requested on the disqualifying conduct, but also addressed in more detail the

rehabilitation evidence upon which it based its recommendation for conditional admission. The Board outlined alcoholism and an obsessive-compulsive disorder (OCD). The Board concluded that M.B.S. exhibited symptoms of OCD and ultimately began self-medicating with alcohol, which led to alcohol dependence.

The record established that M.B.S. began participating in Alcoholics Anonymous (AA) in January 2004 and achieved sobriety on April 12, 2004. He executed a Florida Lawyers Assistance, Inc. contract on August 23, 2004. Hearing testimony established that M.B.S. attended at least one AA meeting per day, sometimes as many as two or three a day. M.B.S. testified that he does not attend so many meetings because he feels the need to drink, but because he wants to help others.

According to the Board, M.B.S. documented an extraordinary amount of community service. The director of special projects and litigation for Legal Aid in Broward County, Florida, Sharon Bourassa, testified on M.B.S.'s behalf by telephone. Bourassa has known M.B.S. for two years. M.B.S. performed volunteer work under Bourassa's supervision. M.B.S. interviewed clients and did research for Bourassa in at least two cases. He also went into the field to make presentations on behalf of Legal Aid. Bourassa testified that if she had an opening, she would hire M.B.S., especially to work with inmates. A paralegal in the same

office also testified on M.B.S.'s behalf and testified to M.B.S.'s hard work and caring and considerate attitude in dealing with clients.

A review of the additional argument and information provided by the parties, as well as a re-review of the record, confirms and reinforces the correctness of the Court's earlier decision to deny M.B.S. admission to The Florida Bar. M.B.S. has a record of criminal conduct and arrests starting when he was eighteen and continuing to March 2002, his third year in law school.[1] Equally disturbing is the evidence of M.B.S.'s egregious lack of honesty and candor on his law school application, on his application to participate in a law school practice program, and on his application for admission to the Bar, all of which were submitted under oath. In addition to lying to conceal or minimize the negative events in his past on these documents, M.B.S. created fictitious jobs, employers, and volunteer activities to improve his chances of being admitted to law school. His sworn testimony at the formal hearing before the Board convinces the Court that M.B.S. has failed to accept full responsibility for his actions, especially his lack of candor, by

1. M.B.S. used a false driver's license to gain entry to a nightclub at eighteen. At nineteen he was charged with possession of marijuana and illegal delivery of a controlled substance. He stole a briefcase and used several of the credit cards inside to purchase or attempt to purchase thousands of dollars worth of gold merchandise. He was involved in several altercations in clubs and bars and had several encounters with law enforcement. He was arrested for reckless driving in March 2001 for swerving around cars and traveling 100 miles per hour in a 55-miles-per-hour zone.

attempting to transfer some of the blame to his alcoholism, his parents, and the wording of one of the forms upon which he lied.

M.B.S.'s primary source of income at the time of the formal hearing was disability benefits, which he has received for his OCD since 1992. His OCD was in remission with medication at the time of the hearing, yet M.B.S. had not sought paid employment since September 2004. M.B.S. testified that even though he probably should not be receiving disability benefits, he had never disclosed the true facts. M.B.S.'s parents gave him money to supplement his social security disability income. His parents also paid to have his character witnesses flown to the hearing and were paying for his attorney.

Analysis

This Court has held that we will approve the Board's findings of fact when they are supported by competent, substantial evidence in the record. Fla. Bd. of Bar Exam'rs re John Doe, 770 So. 2d 670, 673 (Fla. 2000); see also Fla. Bd. of Bar Exam'rs re R.L.W., 793 So. 2d 918, 925 (Fla. 2001). We also usually defer to findings based on a witness's credibility, Doe, 770 So. 2d at 674, and are cautious in rejecting the Board's recommendation of whether to admit an applicant. R.L.W., 793 So. 2d at 926.

However, we are not precluded from "reviewing the factual underpinnings of its recommendation, based on an independent review of the record developed at

the hearings." Fla. Bd. of Bar Exam'rs re R.D.I., 581 So. 2d 27, 29 (Fla. 1991) (quoting Fla. Bd. of Bar Exam'rs re L.K.D., 397 So. 2d 673, 675 (Fla. 1981)); see also Fla. Bd. of Bar Exam'rs re M.L.B., 766 So. 2d 994, 996 (Fla. 2000) (denying admission to an applicant, noting that most of the applicant's rehabilitation efforts had occurred within one year of the rehabilitation hearing).

The egregiousness of the disqualifying conduct at issue here, including M.B.S.'s deplorable lack of truthfulness, the minimal rehabilitation in scope and depth, and the lack of any logical relationship between the misconduct and the evidence of rehabilitation compelled the Court to review the factual underpinnings of the Board's recommendation in this case. Our review raised more than serious doubts as to M.B.S.'s character and fitness; rather than demonstrating, clearly and convincingly, his rehabilitation, it confirmed and reinforced the correctness of the Court's original decision to deny M.B.S.'s application for admission.

M.B.S.'s conduct, until very recently, has been the antithesis of that which this Court requires for members of our profession to protect the public. He has a demonstrated thirteen-year history of lying (as recently as March 2003), stealing, breaking the law (as recently as March 2002), abusing alcohol (including as recently as April 2004), and violence (three bar fights, the last in March 2002). He has been sober for a little over two years after years of abuse. This may be a good and encouraging start, but is insufficient to provide the Court adequate confidence

in his continued sobriety. Any conversion, no matter how sincere and true, needs to be buttressed by a history of good behavior which clearly and convincingly outweighs the past misconduct.

Most disturbing is the shocking lack of honesty and candor M.B.S. exhibited on his law school application to obtain admission, his application to be submitted to this Court to participate in a law school practice program, and his application for admission to the Bar, all of which were submitted under oath. He clearly lied at each step of the process in very significant ways. Truthfulness and candor are the most important qualifications for Bar membership. R.L.W., 793 So. 2d at 926. M.B.S. lied in June 1999, when he completed his application for admission to law school, inventing fictitious jobs, employers, and volunteer activities, to improve his chances of admission. When he was asked why he had lied, he said: "I thought that if I had told the truth about all my past history, I wouldn't have gotten into law school. And I really wanted to go to law school." He lied again in April 2001, on his application submitted to this Court for participation in a law school practice program, when he swore there was nothing in his background that might reflect adversely on his character. When asked about this lie, M.B.S. said: "I was — I rationalized that question because of the way that it was worded. . . . Obviously if it had said have you ever been arrested, I would have had to answer differently or I would have been untruthful." He lied again in March 2003 on his Bar application.

He misrepresented or slanted the facts concerning his arrests, particularly the theft of the briefcase. He also denied ever serving time and failed to disclose that he was intoxicated at the time of his arrest in 1994.

The Court is not persuaded that M.B.S.'s alcoholism adequately excuses, explains, or really addresses M.B.S.'s lack of candor and honesty or that there is even a nexus between alcohol and the most significant aspects of his egregious conduct. It is one thing to deny that one has a problem with alcohol or to try to hide one's consumption. It is another to fabricate jobs, employers, and volunteer activities to improve one's chances of admission to law school or to blatantly lie to this Court and on the Bar application.

In Doe, 770 So. 2d at 675-76, the Court explained: "[T]he requirement of proof of rehabilitation is firm and fixed. This is not a mere pro forma requirement, but one requiring meaningful substance." Here, as in Doe, we find the proof of rehabilitation presented by the respondent lacks meaningful substance. The conditional admission process is intended to apply to persons who have an established history of conduct related to conditions clearly subject to rehabilitation who can enter a plan for some period of time after admission. Such a course of action can only be considered after rehabilitation has been established; the plan is to continue the process. Further, there must be a clear nexus between the disqualifying conduct and the condition subject to rehabilitation and the future

plan. Conditional admission is not intended to replace the need for a clear and convincing record of rehabilitation.

Further, disqualifying conduct extending over a long period of time will require a longer period of rehabilitation to satisfy the Court that the applicant can maintain the high standards of the profession and the professionalism necessary after gaining admission. Finally, the more serious the disqualifying conduct, the greater the burden of proof of rehabilitation. M.L.B., 766 So. 2d at 996; Fla. Bd. of Bar Exam'rs re D.M.J., 586 So. 2d 1049, 1050 (Fla. 1991)). An applicant who engages in serious criminal conduct and breach of trust just days before entering law school and who thereafter demonstrates a further lack of candor must demonstrate behavior and character of the highest level subsequent to the disqualifying conduct to clearly and convincingly establish that admission is proper to a profession that requires its members to be absolutely above and beyond suspicion. M.L.B., 766 So. 2d at 996; see also Fla. Bd. of Bar Exam'rs re C.A.M., 639 So. 2d 612, 614 (Fla. 1994); Fla. Bd. of Bar Exam'rs re C.W.G., 617 So. 2d 303, 305 (Fla. 1993); Fla. Bd. of Bar Exam'rs re R.B.R., 609 So. 2d 1302, 1304 (Fla. 1992); Fla. Bd. of Bar Exam'rs re J.H.K., 581 So. 2d 37, 39 (Fla. 1991).

When the nature and quantity of M.B.S.'s egregious behavior over thirteen years is weighed against the two-year period of sobriety and recovery activities and volunteer work shown here, the misconduct still vastly overwhelms and outweighs

the rehabilitation. M.B.S.'s rehabilitation evidence will need to be of the highest order over a longer period than has been shown to overcome his past misdeeds.

The nature and timing of M.B.S.'s metamorphosis and rehabilitation are additional reasons for the Court's caution. M.B.S. exhibited some of the most egregiously disqualifying conduct—lying to gain entry to law school, lying to this Court to be certified to participate in the law school practice program under chapter 11 of the Rules Regulating the Florida Bar, and lying to the Board on his Bar application—very recently. He only began attending AA meetings in January 2004, and only attained sobriety in April 2004. He entered into a contract with FLA, Inc. on August 23, 2004. A few weeks later, in September 2004, he participated in an investigative hearing before the Board. After numerous years of abusing alcohol, breaking the law, and lying, he suggests that he has turned his life around only a few months before investigative and formal hearings before the Board. He claims to have suddenly gained control over his OCD and alcoholism, after years of being totally unable to overcome the problems presented by either. The Court requires more convincing evidence that this is truly a turning point in M.B.S.'s life and not just another deception and deliberate ploy to gain admission. There is no evidence that M.B.S. was even under the influence of alcohol when he perjured himself on multiple occasions.

The sincerity and depth of M.B.S.'s newfound candor and honesty are another concern. His lies on his application to this Court for participation in a law school practice program are a good example. He checked the option that said there was nothing in his background to reflect adversely on his character. The choice he did not check read: "There is something in my background which might reflect adversely on my character." (Emphasis removed.) M.B.S.'s explanation that he lied because of the way the form was worded is a self-serving rationalization that is diametrically opposed to that level of openness and candor which is a necessary prerequisite for admission to a profession that has honesty as its bedrock.

M.B.S.'s testimony convinces the Court that he has failed to accept full responsibility for his actions, especially his lack of candor, by attempting to transfer some of the blame to his alcoholism, his parents (for enabling him over the years), and the wording of one of the forms upon which he lied. M.B.S. attributed much of his misconduct to what he referred to as "character defects" and testified that some of these defects disappeared when he stopped drinking. Yet, there was nothing to suggest that M.B.S. was intoxicated when he made false statements under oath or that he was unaware of the truth. Such quibbling is inconsistent with a firm conviction that M.B.S. fully comprehends and intends to correct the error of

his ways. Yet, he believes he is fit to assume the significant responsibility of serving the people of this state as an attorney.[2]

The fact that M.B.S. was thirty-four years old at the time of the formal hearing before the Board, but was still financially dependent, at least in part, on his parents is further cause for caution. "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." Doe, 770 So. 2d at 675 (quoting Fla. Bar Admiss. R. 3-13(g)).

At this point, M.B.S. has failed to demonstrate that he is now living as and doing those things he should have been doing throughout life, much less that he has undertaken a useful and constructive place in society. His primary source of income was disability benefits, which he has received since 1992. His OCD was in remission with medication at the time of the hearing, yet he had not sought paid employment. M.B.S.'s parents gave him money to supplement his income. They also paid to have the character witnesses flown to the hearing and for his attorney.

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2. Another example of M.B.S.'s tenuous grasp of the concept of complete candor is provided by the discrepancies in M.B.S.'s statements concerning his conversion to another faith. He offered two different stories concerning who gave him a rosary and confused significant terms, although he claimed to have studied the materials concerning his new faith thoroughly.

While it is to be hoped that M.B.S.'s proclaimed turnaround lasts, it is the Court's obligation to protect the public and the profession by ensuring the fitness of every lawyer admitted to the Bar. Requiring M.B.S. to clearly and convincingly establish a longer record of success before allowing his admission best fulfills that obligation. The process and intent of conditional admission must not degenerate into a process that simply ushers undesirable candidates into The Florida Bar and foists them upon Florida's citizens.

Conclusion

With all of the many reasons for caution discussed above, the Court disapproves the Board's recommendation that M.B.S. be admitted. M.B.S.'s application for admission is denied at this time for the standard period of two years. If and when M.B.S. reapplies for admission, he must satisfy the concerns we express and must present objectively verifiable evidence of his continuing, uninterrupted sobriety during the interim period, as well as other suitable evidence of rehabilitation.

It is so ordered.

LEWIS, C.J., and WELLS, PARIENTE, QUINCE, CANTERO, and BELL, JJ., concur.
ANSTEAD, J., dissents with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

ANSTEAD, J., dissenting.

I would accept the Board's recommendation for the very reasons articulated in the majority's opinion, i.e., "we will approve the Board's findings of fact when they are supported by competent substantial evidence in the record [and w]e also usually defer to findings based on a witness's credibility." Majority opinion at 9 (citations omitted). After paying lip service to these long-established principles, the majority first creates and then substitutes its own views in place of the findings of the Board that heard and considered the evidence firsthand. Unfortunately, the message we deliver to the Board today is that we will no longer defer to the Board's findings on issues of fact and credibility. Because I conclude the majority fails to honor our precedent, I respectfully dissent.

To illustrate the degree of the majority's deviation from precedent we need only to consider the short shrift the majority gives to the evidence of rehabilitation presented at the evidentiary hearing before the Board, compared to the extensive and comprehensive review of the evidence and findings by the Board. In a single brief paragraph, the majority first asserts that the Board found that evidence of "an extraordinary amount of community service" was presented at the hearing; the majority then, in effect, directly refutes this statement by characterizing the evidence presented as consisting only of the brief testimony of a legal aid attorney

and paralegal. See majority opinion at 7-8.[3] In the balance of the opinion the majority essentially substitutes its view of the credibility and weight of the evidence and rejects the Board's firsthand assessment.

The summary dismissal by the majority of the evidence presented to the Board stands in sharp contrast to the Board's extensive narration of this evidence in its findings:

> Weighed against this disqualifying conduct is the extensive showing of rehabilitation presented by M.B.S. at his formal hearing. The Board concluded that M.B.S.'s showing of rehabilitation at the formal hearing clearly and convincingly established that he had rehabilitated himself from the disqualifying conduct.
>
> The record establishes that M.B.S. suffered from alcoholism and a debilitating Obsessive-Compulsive Disorder (hereinafter "OCD"). M.B.S. first started exhibiting symptoms of OCD in 1986. M.B.S. describes how the OCD manifested itself in his Chronological Medical History (BE 3, Addendum A, pp. 1-2) M.B.S. provides an

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3. Consider the majority's dismissal of the case presented by the applicant compared to the extensive findings of the Board:

> According to the Board, M.B.S. documented an extraordinary amount of community service. The director of special projects and litigation for Legal Aid in Broward County, Florida, Sharon Bourassa, testified on M.B.S.'s behalf by telephone. Bourassa has known M.B.S. for two years. M.B.S. performed volunteer work under Bourassa's supervision. M.B.S. interviewed clients and did research for Bourassa in at least two cases. He also went into the field to make presentations on behalf of Legal Aid. Bourassa testified that if she had an opening, she would hire M.B.S., especially to work with inmates. A paralegal in the same office also testified on M.B.S.'s behalf and testified to M.B.S.'s hard work and caring and considerate attitude in dealing with clients.

Majority opinion at 7-8.

extensive description of all of the attempts to treat his OCD, both by way of counseling and medication. Id. Ultimately, M.B.S. started self-medicating by drinking alcohol. Id. at 3. M.B.S.'s use of alcohol increased to the point that he became alcohol dependent.

M.B.S. joined Alcoholics Anonymous in January 2004. (AE 2, p. 4) M.B.S. also executed a Florida Lawyers Assistance, Inc. contract on August 23, 2004. Id. M.B.S.'s sobriety date is April 12, 2004. (T 107; see also AE 23) Therefore, M.B.S. appeared at the formal hearing with 13 months of sobriety. As things stand now, were M.B.S. to be admitted conditionally with a three year period of probation as recommended by the Board, M.B.S. would have over five years of sobriety at the end of the conditional admission period, assuming he maintains his sobriety.

In addition to the steps taken by M.B.S. to address his substance addiction and his OCD, M.B.S. documented at the formal hearing an extraordinary amount of community service.

Sharon Bourassa, the director of special projects and litigation for Legal Aid in Broward County, Florida, testified by telephone. (T 19-20). Ms. Bourassa has known M.B.S. for two years. M.B.S. works in her unit under her supervision, and she knows M.B.S. both professionally and personally. (T-20-21)

M.B.S. interviews clients for Legal Aid, many of them former inmates and individuals on welfare. In addition, M.B.S. has done research for Ms. Bourassa in a class-action case that will have significant impact concerning the support services available to the poor. (T 21) M.B.S. has also worked with Ms. Bourassa on a landfill case that impacts approximately 44,000 low income African Americans in the northwest section of Fort Lauderdale. (T 22)

In addition to working in their office, M.B.S. goes into the field and makes presentations on behalf of Legal Aid. Id. Ms. Bourassa trains her staff to not say "no" to people. M.B.S. has effectively absorbed that lesson, as he can relate to the type of clientele the Legal Aid office serves. (T 22-23)

Ms. Bourassa does not consider M.B.S. an intern anymore because of the work he has done and the amount of time he spends in the office. (T 23) M.B.S. has taken a lot of responsibility in the office, freeing up Ms. Bourassa and others to work on the class action case. (T 24) If Ms. Bourassa did not have M.B.S. working in her office, it would have a significant adverse impact on their ability to serve the clients they have. Id.

M.B.S. frequently advocates for the cases of certain clients to be taken. (T 25) Ms. Bourassa thinks M.B.S. will be very successful in criminal defense because he can really relate to the clients. (T 26)

M.B.S. takes a very good holistic approach to helping the office's inmate clients. Ms. Bourassa testified that many of these clients would have recidivism problems if they did not work to address all of the issues in the inmate's life. Ms. Bourassa described M.B.S.'s involvement in Alcoholics Anonymous as "very zealous." (T 30)

Ms. Bourassa also described a situation where M.B.S. went on a retreat at an abbey. M.B.S. loved the monks' lifestyle because they were very supportive, but their lives were very regimented, and that was something that M.B.S. needs in his life. This has caused M.B.S. to try to learn more about the Catholic religion. (T 30-31)

Ms. Bourassa described M.B.S. as a person with a very good heart. (T 31) She used the analogy of watching him turn into a butterfly from being a caterpillar over the past two years. She has worked in this area for 23 years, but this is only the third time she has agreed to testify on someone's behalf. Id.

Ms. Bourassa described M.B.S. as a person of honesty and integrity. Ms. Bourassa was asked specifically about M.B.S.'s truthfulness, in light of the lack of candor described in the Specifications that M.B.S. admitted. Ms. Bourassa testified that as dishonest as M.B.S. was during his alcoholism, he has now become almost overly honest in recovery. (T32)

Ms. Bourassa testified that if she had an opening right now, she would hire M.B.S., especially to work with inmates. (T 46) Ms. Bourassa has a close working relationship with the public defender's office, and she intends to get M.B.S. a job in that office if he is admitted to the Bar. (See also AE 8, a letter from Ms. Bourassa)

Nikki Elliott has worked in the legal field for 18 years, and has been a paralegal in the Broward County Legal Aid office for four years, and has worked closely with M.B.S. for the past two years. (T 51) Ms. Elliot described M.B.S. as very caring, considerate, honest, loyal, dedicated, motivated, and hard-working. (T 52)

Ms. Elliott reiterated some of the testimony of Ms. Bourassa, also describing how M.B.S. works doing intake for the office, going in to the jails to inform inmates of the services available, and going to schools to tell students of the different programs that are available. (T 53) Ms. Elliott testified that M.B.S. works harder than some of their

paid employees. (T 54) Ms. Elliott described a situation where M.B.S. convinced their supervisor to take the case of an individual wrongly accused of trespassing, and, with M.B.S. doing most of the leg work for one of the Legal Aid attorneys, their office was able to have the conviction removed. (T 54-56)

Ms. Elliott also described how M.B.S. went beyond what would normally be expected to help other clients of their office, such as getting an ex-offender into culinary school, and giving a client one of M.B.S.'s suits so the client could wear it to a job interview. (T 56-58) Ms. Elliott testified they have never had a volunteer like M.B.S. (T 59) (See also AE 11, a letter from Ms. Elliott)

Jeremy Garron is an inactive attorney in New Jersey who now works moving furniture in Florida. (T 65, 71) Mr. Garron did not stop practicing law in New Jersey because of any disciplinary action against him, but rather to try to deal with his alcoholism. (T 70) Mr. Garron is a member of Alcoholics Anonymous and has a sobriety date of February 17, 2004. (T 65-66) Mr. Garron first met M.B.S. approximately 13 months prior to the formal hearing at an Alcoholics Anonymous meeting. (T 66) Mr. Garron testified that M.B.S. was hostile when he first came to Alcoholics Anonymous. (Id.)

Sometime after first meeting M.B.S. at the meeting, Mr. Garron was introduced to M.B.S. outside the meetings, and Mr. Garron and M.B.S. started to do things together socially. (T 67) Mr. Garron has seen M.B.S. change from the person who was hostile to someone who is genuinely involved with the Alcoholics Anonymous program.

Mr. Garron knows that M.B.S. attends Alcoholics Anonymous meetings every day, sometimes two to three meetings a day. (T 67-68) Mr. Garron has also shared some church involvement with M.B.S. (T 68-69) Finally, Mr. Garron described the support group M.B.S. has in Alcoholics Anonymous. (T 69) (See also AE 68, a letter from Mr. Garron)

Robert Farrell worked for Farrell Advertising for 39 years, and was the vice president of sales for different companies. Mr. Farrell is a member of Alcoholics Anonymous. (T 76) Mr. Farrell has known M.B.S. for 16 months. (T 77) Mr. Farrell and M.B.S. have slowly become friends, and they share the same sponsor in Alcoholics Anonymous. (Id.)

Mr. Farrell and M.B.S. call each other all the time and have a strong bond of friendship. Id. In spite of M.B.S.'s relative young age, he has been able to help a lot of older people in Alcoholics

Anonymous. Mr. Farrell estimated that 90 per cent of the time M.B.S. spends in the program is geared toward helping other people. (T 78) M.B.S. has started to sponsor someone else in the program. (T 79) Mr. Farrell also described M.B.S.'s support group, a group that includes Mr. Farrell. (T 80) (See also AE 69, a letter from Mr. Farrell)

Michael Ruane gave unsworn testimony by telephone. Mr. Ruane is a Florida licensed real estate broker and has been a member of Alcoholics Anonymous for 15 years. (T 84) Mr. Ruane first met M.B.S. through their mutual involvement with Alcoholics Anonymous. (T 85)

Mr. Ruane is M.B.S.'s sponsor in Alcoholics Anonymous. Mr. Ruane took M.B.S. through the 12 steps of the program fairly quickly. M.B.S. has also gotten involved in service work, chairs multiple meetings, and is the secretary of one group. Id.

M.B.S. goes to at least one Alcoholics Anonymous meeting a day, and sometimes attends more than one meeting a day. (T 86) M.B.S. has become a mainstay of the Boca Pines Club of Alcoholics Anonymous. Id. Mr. Ruane talks to M.B.S. a minimum of one time a day: if he does not see M.B.S. during the day, he speaks with him at night. (T 87) (See also AE 46, a letter from Mr. Ruane)

M.B.S. also testified at the formal hearing about his recovery from alcoholism and his community service. With regard to his service to Alcoholics Anonymous, M.B.S. has been secretary to one group, and is currently the treasurer of another group. M.B.S. has chaired multiple meetings. (T 91)

M.B.S. also described how his involvement with Alcoholics Anonymous has helped him turn his life around. (T 91-93) M.B.S. is in the process of being confirmed into the Catholic Church, and feels that his religion has helped his recovery because it gives him a much more concrete higher power that he recognizes is in control. (T 93)

M.B.S. considers his work at Legal Aid as part of his recovery. (T 96-97) M.B.S. does not attend a lot of Alcoholics Anonymous meetings because he feels like drinking, but because he can help other people, and by helping them, he is helping himself. (T 97)

M.B.S. is heavily involved in a broad re-entry coalition, which attracted him through his work at Legal Aid. The list of community service organizations in which M.B.S. is involved includes The Dependency Division of the Seventeenth Judicial Circuit, Legal Aid of Broward County, Family, Inc., The Round Table Meetings of the Broward County Health and Rehabilitative Service Providers, The

> Broward County Re-entry Coalition for Ex-Offenders, Women in Distress, The Consortium of Faith-Based Organizations/Community-Based Organizations, The South Florida Human Rights Council, Neighbors for Neighbors – Rescue and Relief for Hurricanes Frances and Jeanne, judicial campaigns, Public Awareness Committee, Re-entry Summit Convention, making a presentation at Broward Success Institute, Operation Election Protection, American Civil Liberties Union, Elijah's Fathering Ministry, meeting regarding North Broward Hospital District Policies, making a presentation at Broward Correctional Institute, Job Fair at Sheridan Tech, Trial Assistance, South Florida Human Rights Council Education Committee Meeting, T. J. Reddick Bar Association, and a meeting with State Attorney Michael J. Satz to discuss ways to reduce recidivism. (AE 2, pp. 5-8)
>
> As this list would indicate, M.B.S. has, over the past two years, been committed on a full-time basis to performing community service. (T 116) He is able to do this in part because of gifts and/or loans from his parents and a Social Security disability he has been receiving for his OCD. (T 103-104)
>
> M.B.S. testified that he now follows three rules: "if it is not mine, I don't take it; if it is not true, I don't say it; if it doesn't feel right, I don't do it." (T 118)
>
> In addition to the evidence described above, M.B.S. introduced into evidence some 72 exhibits, most being character letters. These exhibits also provided some documentary evidence of the extensive community service in which M.B.S. has engaged.

Response to Court Order at 19-28. Finally, again in stark contrast to the majority's exclusive focus on the applicant's misconduct, we must consider the Board's conscientious attempt to carry out its responsibilities to evaluate <u>both</u> the extensive evidence of prior misconduct and the extensive evidence of rehabilitation:

> The Board acknowledges the extensive misconduct described in the Specifications, and the serious questions this conduct raises in determining whether M.B.S. should be admitted to the Bar. It should be noted that the last time M.B.S. engaged in conduct that was

disqualifying was in March 2003 (over two years prior to the formal hearing) when he provided some information on his Florida Bar Application that was false, misleading, or lacking in candor. Since that time, through two appearances before the Board for his investigative and formal hearings, M.B.S. has displayed absolute candor.

The Board was impressed with the extent of rehabilitation established by M.B.S. at his formal hearing. This was proven through documentary evidence, testimony of character witnesses, and the testimony of M.B.S. himself. The Board also acknowledges the high regard in which M.B.S. is held by those who testified on his behalf. The extent of M.B.S.'s involvement in the community is among the most impressive seen by the Board from an applicant attempting to establish rehabilitation.

The Board had the opportunity to observe the demeanor of M.B.S., and to evaluate his credibility. The Board was convinced that M.B.S. was credible, and the Board was further impressed with M.B.S.'s changed attitude about how he conducts himself.

CONCLUSION

M.B.S. appeared before the Board presenting what could be considered a classic case of extensive and serious disqualifying conduct that needed to be weighed against an impressive showing of rehabilitation. M.B.S. certainly had a very heavy burden to establish his rehabilitation considering the pervasive and serious nature of the disqualifying conduct found proven in the Specifications. As observed by the Supreme Court of New Jersey, "[a]n applicant's attitude and behavior subsequent to disqualifying misconduct must demonstrate a reformation of character so convincingly that it is proper to allow admission to a profession whose members must stand free from all suspicion." Application of Matthews, 462 A.2d 165, 176 (N.J. 1983).

The Board ultimately concluded that M.B.S. has undergone this reformation of character, and that he clearly and convincingly established that fact at the formal hearing. The Board's recommendation for a conditional admission for three years provides a further safeguard and check to ensure M.B.S. conducts himself properly as a member of the Bar. The Board respectfully requests that the Court affirm the Board's recommendation of a conditional admission for M.B.S.

Response to Court Order at 28-30. Because I conclude the Board has correctly and conscientiously carried out its responsibilities I would approve the Board's findings and recommendation.

Original Proceeding – Florida Board of Bar Examiners

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