IN THE SUPREME COURT OF FLORIDA

FLORIDA BOARD OF BAR EXAMINERS RE: ALLAN BARRY MARKS	))	Case No. SC06-524
_____	)	

INITIAL BRIEF

Submitted by:

FLORIDA BOARD OF BAR EXAMINERS
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INITIAL BRIEF

The Florida Board of Bar Examiners (hereinafter "the Board"), by and through its undersigned attorney, files its Initial Brief in the captioned matter.

JURISDICTION

The Board acknowledges that the Court has jurisdiction of this matter pursuant to Article V, Section 15 of the Florida Constitution and Rule 3-23.7 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:

(FF1) references the Board's Findings of Fact and Conclusions of Law dated October 16, 1998, which is part of Exhibit C in the record before the Court. (*See* Index to Supreme Court Record)

(BE) references the Board exhibits introduced into the record at the October 16, 1998 formal hearing, which is part of Exhibit C in the record before the Court. (*See* Index to Supreme Court Record)

(OGCE) references the exhibits introduced into the record by the Office of General Counsel at the October 16, 1998 formal hearing, which is part of Exhibit C in the record before the Court. (*See* Index to Supreme Court Record)

(AE) references the exhibits introduced into the record by Marks at the October 16, 1998 formal hearing, which is part of Exhibit C in the record before the Court. (*See* Index to Supreme Court Record)

(T2) references the transcript of Mark's public formal hearing held November 19, 2004, which is Exhibit B in the record before the Court. (*See* Index to Supreme Court Record)

(FF2) references the Board's Findings of Fact and Conclusions of Law dated March 10, 2005, which is in the record before the Court as Exhibit A. (*See* Index to Supreme Court Record)

(BE2) references the Board exhibits introduced into the record at the November 19, 2004 public formal hearing, which is part of Exhibit C in the record before the Court. (*See* Index to Supreme Court Record)

(Brief - App) references documents enclosed as part of the Appendix to this Initial Brief.

STATEMENT OF THE CASE AND FACTS

Allan Barry Marks (hereinafter "Marks") was originally admitted to practice law in Florida on October 25, 1974. (FF1 p. 2) By Order of the Supreme Court of Florida, Marks was permitted to resign pending disciplinary proceedings effective April 8, 1991. (OGCE 2) The specific conduct that led to the resignation will be discussed in section 1 of the Argument, *infra*.

After reapplying for admission to The Florida Bar, Marks appeared before the Board for his first formal hearing on October 16, 1998. (FF1 p. 3) The Board found the following Specifications proven and individually disqualifying:

Specification 1

That you were admitted to the practice of law in Florida in 1974.

(A) That during the period of 1989-1990, you operated a trust account in connection with your law practice. That during the aforementioned period, you misappropriated funds belonging to your clients on various occasions including amounts of $87,962.32 in June 1990 and $100,000.00 in October 1990.

(B) That a [sic] result of an inquiry to The Florida Bar by one of the victims of your misappropriations, a preliminary investigation and review of your trust account records was conducted by the Bar. That such investigation and review revealed the misappropriations from your trust account. That by petition dated October 30, 1990, you requested the Supreme Court of Florida to allow you to resign with leave to reapply after five years. That by order dated December 6, 1990, the Court granted your uncontested petition for resignation.

Specification 2

That by Information dated October 2, 1992, you were charged with Grand Theft-First Degree and Grand Theft-Second Degree based upon misappropriations from your trust account as more particularly alleged in Specification 1 above. That on November 13, 1992, you entered a guilty plea to the offenses as charged. That you were placed on probation for four years with special conditions of restitution and 150 hours of community service.

Specification 3

That in addition to the your [sic] misconduct as alleged in Specification 1 above, you have demonstrated financial and/or

professional irresponsibility or a lack of respect for the law and the rights of others as evidenced by the following:

(A) That you have failed to pay all of your federal income taxes for the following tax years: 1985; 1989; 1990; 1992; 1993; 1994; and 1995. That as of November 1996, you owed the Internal Revenue Service in excess of $150,000.00 for delinquent taxes, penalties and interest.

(B) That during the period of January 1990 through December 1991, you maintained the following checking accounts: personal accounts with Transatlantic Bank and United Bank; law office operating accounts with Transatlantic Bank and United Bank; and law office trust accounts with Transatlantic Bank and United Bank. That during such period, you issued a substantial number of checks that were subsequently returned for insufficient funds. That, specifically, during said period, you (sic) bank statements reveal that checks issued on the aforementioned accounts were returned in excess of 125 occasions.

* * *

(D) That as a result of your legal malpractice, a Final Judgment was entered against you on April 19, 1993 in the amount of $40,500.00 in favor of David Shore, as Trustee. That notwithstanding your financial ability to satisfy part or all of said judgment, you failed to do so and said judgment was eventually discharged by your bankruptcy on January 10, 1997.

* * *

The Board found the following Specifications proven and collectively disqualifying:

Specification 3

That in addition to the your misconduct as alleged in Specification 1 above, you have demonstrated financial and/or

professional irresponsibility or a lack of respect for the law and the rights of others as evidenced by the following:

* * *

(C) That a Final Judgment was entered against you on August 6, 1991 in the amount of $671.00 in favor of Robert M. Kahn and Steven J. Gutter d/b/a/ Kahn & Gutter. That notwithstanding your financial ability to satisfy said judgment, you failed to do so and said judgment was eventually discharged by your bankruptcy on January 10, 1997.

* * *

(E) That you obtained a personal loan from David Lipman in 1990. That at the time of obtaining said loan, you did not fully disclose your financial situation to Mr. Lipman. That said loan was eventually discharged by your bankruptcy on January 10, 1997.

(F) That you obtained a loan in the amount of $90,000.00 from Jo Marks (your aunt) in June 1991 to cover a deficiency in your law office trust account.

(i) That you executed a promissory note requiring you to pay Jo Marks interest for five months and then repay the entire principal by December 1, 1991.

(ii) That since, at least, 1994, you have been on notice that the funds you borrowed from your aunt were needed to care for her developmentally disabled adult son. That notwithstanding such knowledge, you failed to repay the principal of such loan and said loan was eventually discharged by your bankruptcy on January 10, 1997.[1]

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[1] A portion of Specification 3(F), which was denied by the applicant, was found not proven. The language of the Specification found not proven is not reproduced.

Marks reapplied for admission to the Bar in January 2001, and had a second formal hearing before the Board on November 19, 2004. (FF2 pp. 5, 7) The Board found proven and disqualifying a Specification that recounted the proven Specifications from the first formal hearing. (FF2 pp. 8-9, 15)[2] The Board withheld its recommendation for one year, stating the following in its Conclusions of Law:

> The Board concludes that the proven Specification 1 is individually disqualifying for the applicant's admission to The Florida Bar. As discussed at the formal hearing, the conduct that led to the applicant's resignation from The Bar in lieu of discipline is as serious as any misconduct by an attorney because it strikes at the very foundation of the trust clients must have in attorneys.
>
> Notwithstanding the above conclusions, the Board notes that the applicant has made significant strides toward rehabilitation. The Board also acknowledges the high regard that the applicant is held by those who testified on his behalf, and the extensive involvement the applicant has in his community.
>
> Accordingly, the Board concludes that if the applicant continues his involvement in the community at its present level, and continues to responsibly deal with his obligations to the Internal Revenue Service for a period of one year from the date of the formal hearing, and if there are no disclosures of matters adversely reflecting upon the applicant's character and fitness during this one-year period, then the Board will conclude that the applicant is fit for admission to The Bar without further proceedings before the Board.
>
> At the conclusion of his deferral period, the applicant must file with the Board a sworn report detailing his continued efforts of rehabilitation, with particular emphasis on his community service and his compliance with his obligation with the Internal Revenue Service since his formal hearing.

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[2] A second Specification was found proven, but not disqualifying.

(FF2 pp. 15-16)

On November 2, 2005 the Board received Marks's Sworn Report detailing his continued efforts of rehabilitation as required by the Board's Findings. (*See* Exhibit "B" to the Report and Recommendation filed by the Board March 17, 2006). The Board determined that Marks had satisfied the requirements set forth in the Findings, and on March 17, 2006 the Board filed a Report and Recommendation recommending that the Court issue a public order of readmission of Marks to The Florida Bar.

By Order dated September 18, 2006, the Court requested from the parties supplemental briefing in this case, identifying four separate areas to be specifically addressed. These areas are discussed below.

SUMMARY OF ARGUMENT

Marks resigned from The Florida Bar effective in April 1991. This resignation resulted from discovery that Marks had misappropriated client money from his client trust account. The exact total amount of money taken is unknown, but Marks estimates the total taken was approximately $250,000. Marks also estimated that he took money from the trust account 12 to 15 different times. Marks took this money because he was living a lifestyle beyond his income.

The only information maintained by The Florida Bar in connection with its investigation of Marks consists of Marks's Petition for Leave to Resign Pending Disciplinary Proceedings, The Florida Bar's Response to Petitioner's leave to resign Pending Disciplinary Proceedings, and three Orders from the Supreme Court of Florida generated as a result of Marks's Petition. When an attorney decides to resign after having a grievance filed, as is the case here, the grievance is closed and there is no additional hearing or investigation done.

Marks has two outstanding debts. One is for $90,000 owed to a family revocable trust. Marks has entered into an agreement with a co-trustee of the trust that provides Marks will repay the money owed once he is readmitted to The Florida Bar. Until readmission, Marks is not obligated to make payments toward this debt.

Marks also owes money for unpaid federal income taxes. The record does not clearly establish the total amount owed, but Marks's most recent estimation in the

record of the amount owed is $140,000. Marks has been actively pursuing an acceptable payment agreement with the Internal Revenue Service. Based upon information possessed by the Board, such agreement has not yet been reached, so it appears this debt remains outstanding.

This Court's decision in *Florida Board of Bar Examiners re: Papy*, 901 So. 2d 870 (Fla. 2005) has many similarities to the case at bar. Both *Papy* and the present case involve attorneys who resigned after misappropriating significant sums of money from clients. Each case also involved issuance of insufficient fund checks and failure to pay timely federal income taxes for several years.

The main difference between the *Papy* decision and the present case is the timing of the Court's review of the case. In *Papy*, the applicant was before the Court with his first attempt at readmission seven years after resigning from the Bar. Marks is before the Court on his second attempt at readmission, having been denied admission in his first attempt. Additionally, it has been over 15 years since Marks resigned from the Bar.

ARGUMENT

The Court directed the Board to address the following issues:

1. All circumstances surrounding Allan Barry Marks's resignation

A grievance was filed against Marks in 1990 with regard to a case in which he was the attorney representing the buyer in a real estate transaction. (OGCE 2) At the time of this incident, Marks was a sole practitioner. (BE 5 p. 7) In his Petition for Leave to Resign Pending Disciplinary Proceedings, Marks described the facts leading to this grievance as follows:

> Respondent was the attorney representing the buyer in a real estate transaction. The net proceeds due the Seller were $197,102.10 to be wire transferred on October 3, 1990 from Respondent's trust account to the seller's bank account. Respondent failed to transfer said funds and on October 5, 1990, Respondent wire transferred $97,102.10. Upon inquiry by seller's attorney as to where the balance was and why the full amount had not been paid, Respondent advised that there was a bank error and he would wire transfer the balance of $100,000 immediately.
>
> Said funds were never received and on October 15, 1990, Respondent issued his trust account check number 128 in the amount of $100,369.42 payable to seller's attorney. Upon inquiry by seller's attorney of Respondent's bank, seller's attorney was advised that said check would not clear.
>
> Seller's attorney contacted The Florida Bar inquiring what he, on behalf of his client, should do. Upon inquiry and investigation by The Florida Bar, it was discovered that Respondent misappropriated said funds in violation of Rule 4-1.15 (safekeeping property); and 5-1.1

> (trust accounts) of the Rules Regulating The Florida Bar. Further investigation and audit of Respondent's trust account revealed additional defalcations.

(OGCE 2) At the time Marks filed his Petition for Leave to Resign Pending Disciplinary Proceedings, this was the only grievance pending against him, and the grievance was at the Grievance Committee level. (*Id.*)

At his January 16, 1998 investigative hearing, Marks gave the following description of this transaction that led to the grievance:

> The particular circumstance that led to the proceedings that led to my resignation involved a real estate transaction involving a client of mine by the name of Sam Bassov. I believe his wife's name was Helen or Helene, who had been involved in a real estate transaction with a seller by the name of Howard Goldfeder.
>
> The transaction closed and I had a responsibility to disburse certain proceeds that Bassov had wired in to my escrow account. And as a result of some defalcations that had occurred and some transfers of money out of my escrow account for my personal use, there were not sufficient funds there.
>
> When the attorney for Mr. Goldfeder learned of that, he contacted the Florida Bar. I was contacted by Warren Stamm, who was with the Bar at that time. And they proceeded to conduct an audit of my escrow account, discovered a number of different defalcations and overdrafts, which ended in an agreement related to my resignation.

(BE 5 pp. 6-7)

Marks admitted that there were numerous times he had misappropriated money from his trust account. While Marks could not remember how many times that had occurred, he estimated that he did it 12 to 15 times. (*Id.*, p. 13) When asked at his

first investigative hearing for the total amount taken from his trust account, Marks said he did not know. (*Id.*, p. 49) He went on to say that "I took out some. I took out, put back some. Took out some more, put back some. For me to give you a precise figure, I would have to go back and do a complete audit." (*Id.*, p. 50) Marks estimated that he took approximately $250,000 from his trust account over a period of a year or more. (*Id.*)

Marks testified that he took the money from the trust account because he had become extremely overextended in his personal financial obligations. (*Id* p. 12) Marks had a house much larger than he could afford in an exclusive area of Miami and a very expensive car. (*Id.* pp. 12, 46) Marks took vacations when he wanted to take them and bought whatever he wanted whenever he felt like buying it. (*Id.* p. 46) As Marks explained at his first investigative hearing,

> I was constantly relying on my ability to earn money as a way of paying my obligations, without considering matters of savings or reducing my lifestyle or thinking ahead in the future or considering what if's and contingencies, that I probably realized could occur but didn't think that way.

(*Id.*, pp. 46-47)

2. All information held by The Florida Bar in connection with its investigation of Marks.

As part of its standard background investigation, the Board sent a letter to The Florida Bar dated June 6, 1996. (Brief - App 1) Specifically, the Board requested

"any existing documents which were filed relative to the applicant's resignation, including the complaints, any records of hearing conduct[ed], and any investigative reports, etc." (*Id.*) All of the documents provided to the Board from The Florida Bar are in the record as part of OGCE 2. In a telephone conversation on May 2, 1997, a representative of The Florida Bar confirmed that these documents were the only documents in the Bar's file relating to the applicant's resignation. The representative further advised that when an attorney decides to resign after having a grievance filed against the attorney, the grievance is closed and therefore, no additional hearing or investigation is done. Marks resigned while the grievance was still at the grievance committee stage. (OGCE 2) Therefore, OGCE 2 contains all of the documents held by The Florida Bar in connection with its investigation of Marks.

3. All information regarding the status of Marks's repayment of debt.

At his November 19, 2004 formal hearing before the Board, Marks testified that he had two outstanding debts: one was for federal income taxes, and one was a $90,000 debt to a family revocable trust that resulted from money loaned to the applicant by a family member.[3] (T2 p. 160) With regard to the second debt, Marks

[3] At the second investigative hearing, Marks testified that he had also paid some debts that had been discharged in his 1997 bankruptcy. (BE 2 p. 11-12) The
(Footnote continued on following page)

entered into evidence at his formal hearing a letter dated October 26, 2001 from his attorney that memorialized an agreement with a co-trustee of the trust. (AE 31) Under the terms of that agreement, repayment by the applicant is contingent on his readmission to the Bar. (*Id.*) Therefore, under the terms of this agreement, Marks is not presently obligated to make any payments toward this debt.[4]

With regard to Marks's federal income tax debt, according to a Collection Information Statement for Individuals (Form 433-A) signed by Marks on May 29, 2001, Marks and his wife owed $156,000 in federal taxes from prior years. (AE 4 p. 7) At his October 13, 2001 investigative hearing, Marks testified that while he is not sure of the exact amount of his tax deficiency, he estimated it was approximately $140,000. (BE2 5 p. 7)

Marks stated the following in his Sworn Report dated November 1, 2005:

> 9. I timely filed my Form 1040 and promptly paid all taxes due for the year 2004.
>
> 10. Shortly after the November 19, 2004 public formal hearing, my wife and I spoke with the Internal Revenue Service collection officer assigned to our case regarding a mutually agreeable payment agreement. Sometime later, the Internal Revenue Service

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record is not conclusive as to whether all debts discharged in bankruptcy have been paid.

[4] The copy of this agreement that is in the record is not signed by Marks. Marks testified at his November 19, 2004 public formal hearing that he had signed the agreement, even though the copy he has does not have his signature. (T2 p. 164)

> collection officer contacted me with a payment proposal, which we accepted. Later, we followed up with the collection officer by phone on several occasions and were advised that the collection officer had retired prior to sending us the paperwork. A new collection officer has been assigned to our case and is reviewing the file to complete the agreement.

(*See* Exhibit "B" to the Report and Recommendation filed by the Board March 17, 2006) The Board has not received any further information with regard to payment on this debt.

4. Address why the circumstances of this case are not controlled by *FBBE re: Papy*, 901 So. 2d 870 (Fla. 2005)

The Board's Findings of Fact, Conclusions of Law and Recommendation were issued March 10, 2005, a month and a half prior to this Court's decision on April 28, 2005 in *Florida Board of Bar Examiners re: Papy*, *supra*. Therefore, the *Papy* decision was not considered by the Board in rendering its recommendation in the Findings.

In the March 2005 Findings, the Board recommended that Marks's admission to the Bar be withheld for twelve (12) months from the formal hearing, or until November 19, 2005. During the withhold period, the Board recommended "that the applicant comply with the requirements of rehabilitation set forth in Rule 3-13 of the Rules, with particular emphasis on his continued community service and compliance with obligations the applicant has with the Internal Revenue Service." (FF2 p. 16) Marks submitted a Sworn Report dated November 1, 2005 in which he detailed his

continuing community service with the Community Blood Centers of South Florida and Recording for the Blind & Dyslexic. Additionally, Marks described the efforts he and his wife had taken to resolve the issues he had with the Internal Revenue Service. (*See* Exhibit "B" to the Report and Recommendation filed by the Board March 17, 2006)

The Board's review of Marks's Sworn Report and its ultimate recommendation that Marks be readmitted to the Bar focused on Marks's continued efforts at rehabilitation, with emphasis on the issues specifically delineated in the Board's Findings. The Board's recommendation did not include consideration of the *Papy* decision published by this Court after the Board filed its Findings, but before the Board's Report and Recommendation to this Court.

The Specifications found proven and disqualifying in the *Papy* case are similar to the Specifications in the case at bar, but there are also distinguishing facts. Papy misappropriated funds from one or more clients and used the money to pay for office operating expenses. In one instance Papy failed to provide a client with all of the funds to which the client was entitled, withholding at least $500,000. *Papy*, *supra*, at 870.

In addition to withholding the money, Papy drafted a letter which the client signed at Papy's request that allowed Papy to set up an irrevocable trust for the client's undisbursed funds with Papy serving as the trustee. Under the terms of the

letter signed by the client, Papy was allowed to invest the funds by making loans to himself. Papy used at least $500,000 for personal obligations, and was ultimately unable to repay the money, necessitating a civil action. This client filed a complaint against Papy, and a subsequent audit by The Florida Bar of Papy's trust account confirmed additional improprieties, including the issuance of checks that were returned for insufficient funds. *Id.*

Papy also failed to file timely his federal income tax returns for five years, and failed to pay timely his federal income taxes for six years, resulting in late filing penalties and failure to pay penalties. *Id*. at 870-871.

With regard to rehabilitation, this Court summarized Papy's evidence as follows:

> At the formal hearing, Papy presented the following evidence to establish his rehabilitation: several record exhibits consisting of three certificates of appreciation for coaching childrens' baseball, three character affidavits, and two character letters. Six character witnesses testified on Papy's behalf. Papy also testified on his own behalf.

Id. at 871. The Board recommended that Papy not be admitted to the Bar, concluding that the evidence presented failed to mitigate the seriousness of the proven specifications. *Id.*

In approving the Board's recommendation, this Court did not reach the issue of whether Papy demonstrated sufficient rehabilitation. The Court concluded that "the seriousness of his past misconduct and his continued failure to be financially

responsible with regard to his own finances as well as in his dealings with others disqualify him from admission to the Bar." *Id.* at 872. This Court concluded that Papy may reapply for admission to the Bar after two years from the Board's adverse recommendation. *Id.*

This Court's decision in *Papy* is comparable to the Board's recommendation after Marks's first formal hearing in October 1998.[5] In recommending that Marks not be admitted after the first formal hearing, the Board concluded the following:

> In reaching its conclusion as to the applicant's present character and fitness to return to the practice of law, the Board is guided by the following factors contained in Rule 3-12 of the Rules of the Supreme Court Relating to Admissions to the Bar:
>
> (a) age at the time of the conduct;
> (b) recency of the conduct;
> (c) reliability of the information concerning the conduct;
> (d) seriousness of the conduct;
> (e) factors underlying the conduct;
> (f) cumulative effect of the conduct or information;
> (g) evidence of rehabilitation;
> (h) positive social contributions since the conduct;
> (i) candor in the admissions process;
> (j) materiality of any omissions or misrepresentations.
>
> In applying the above-listed factors to the facts of the applicant's case, the Board observes that the applicant had been an attorney for over fifteen years at the time of his unethical and criminal

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[5] This Court did not review that recommendation at the time because Marks did not file a petition for review.

> conduct. The seriousness of the applicant's misconduct cannot be overstated.
>
> The applicant repeatedly took money from his client trust account for personal use. By his own admission, he took money from the trust account twelve to fifteen times. This conduct resulted in the applicant's resignation from the Bar in lieu of discipline, and caused the applicant to be charged criminally with grand theft.
>
> Because of his past serious misconduct, the applicant appeared before the Board with a very heavy burden. Pursuant to Rule 3-13 of the Rules of the Supreme Court Relating to Admissions to the Bar, the applicant was required to establish his full rehabilitation in a clear and convincing manner. The Board concludes that the applicant's formal hearing presentation was clearly insufficient as to establishing his rehabilitation.

(FF1 p. 15-16)

As noted above, there are similarities between the facts of these two cases. Both involve misappropriation of client funds, issuance of insufficient funds checks, and failure to timely pay federal income taxes for several years.[6] While there might be divergence in some of the specific facts (*e.g.* amount of money taken from clients, number of years taxes were not timely paid, and number of insufficient fund checks), those distinctions are not significant in evaluating how these two cases compare.

The most significant distinguishing factor between the *Papy* case and the case at bar is the timing of the Court's decision. In *Papy*, the Court was addressing Papy's

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[6] Papy also had the issue of failing to file timely his federal income taxes for several years which is not present in Mark's case.

first attempt at readmission, and the Court's decision was issued a little over seven years after Papy's disciplinary resignation. Here, Marks has been denied readmission once and is reapplying. Additionally, it has been over 15 years since Marks resigned from the Bar. The results of these two cases might best be compared if and when Papy decides to reapply.

CONCLUSION

"The willful misappropriation of client funds should be the Bar's equivalent of a capital offense. There should be no excuses." *The Florida Bar v. Breed*, 378 So. 2d 783, 784 (Fla. 1979). *See also The Florida Bar v. Tunsil*, 503 So. 2d 1230 (Fla. 1986). A former attorney who has left the Bar because of misappropriating client funds has an enormous burden to establish sufficient rehabilitation to justify readmission to the Bar.

In 1998, at his first formal hearing, Marks did not show sufficient rehabilitation to convince the Board that he should be readmitted to the Bar, even though the Board noted the quality of Marks's community service to that point. (FF1 p. 14). Subsequent to that hearing, Marks redoubled his efforts at rehabilitation, especially in the area of community service, and dealing responsibly with his debts and timely payment of his federal income taxes. When the Board made its recommendation of readmission to this Court in March 2006, Marks had an extended track record of significant community service over the seven years since his first formal hearing on

top of the quality community service he performed prior to his first formal hearing. The Board also acknowledged "the high regard that the applicant is held by those who testified on his behalf." (FF2 p. 15) The Board concluded that this evidence established Marks's rehabilitation by clear and convincing evidence, which led to the Board's recommendation of readmission.

DATED this 16th day of October 2006.

Respectfully submitted,

FLORIDA BOARD OF BAR EXAMINERS
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Initial Brief has been served by U.S. Mail this 16th day of October 2006 to Roberto Villasante, Esquire, 44 West Flagler Street, Suite. 1700, Miami, Florida 33130.

_____
Robert G. Blythe

CERTIFICATE OF TYPE SIZE AND STYLE

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

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Robert G. Blythe