

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Supreme Court Case No: SC08-1375, SC08-1552, SC08-2398, SC08-1891

Complainant,

vs.

**PHILLIP DAVID IRISH,
Respondent.**

_____ /

RESPONDENT, PHILLIP DAVID IRISH'S REPLY BRIEF

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SYMBOLS AND REFERENCES

In this reply brief, the complainant, Florida Bar, shall be referred to as “Florida Bar” or “the Bar”.

The trial transcript will be referred to as “TR” followed by the referenced page number(s). (TR. __).

The Report of Referee shall be referred to as (ROR- __).

The Bar’s answer brief shall be referred to as (AB-__).

SUMMARY OF ARGUMENT

The Bar's position is that disbarment is the appropriate discipline based upon the Referee's finding that Respondent was not addicted to steroids and that Respondent has not demonstrated rehabilitation. It is Respondent's position that (1) he does not have to prove he was addicted to steroids in order to overcome the presumption of disbarment and (2) that the record is clear that he has proven by clear and convincing evidence that he achieved interim rehabilitation.

ARGUMENT

POINT I

IT IS NOT NECESSARY FOR RESPONDENT TO PROVE THAT HE WAS ADDICTED TO STEROIDS IN ORDER TO OVERCOME THE PRESUMPTION OF DISBARMENT

The Bar's argument that Respondent had to prove that he was addicted to steroids, which was adopted *in todo* by the Referee, is simply erroneous. The Bar either does not understand Respondent's argument or misstates it in the answer brief. (AB-9). Contrary to the Bar's misstatement on page 9 of the answer brief, Respondent has never argued that an addiction to one substance is sufficient to demonstrate an addiction to all other controlled substances. (AB-9) Likewise,

Respondent has never contended that once he demonstrates an addiction to some illegal substance it is a *de facto* excuse to all criminal conduct. (AB- 9). What Respondent contends is very simple: (1) that the illegal conduct of possessing steroids was the direct and proximate result of his addiction to GHB and cocaine and (2) that while the addiction does not excuse his conduct, the impairment due to his addiction should mitigate the sanction imposed.

It is irrelevant whether or not he was addicted to steroids as long as the illegal act of possessing the steroids was the proximate result of his addiction to GHB and cocaine. The evidence presented at trial clearly demonstrated that this was in fact the case. The Bar's argument defies logic and is wholly inconsistent with an understanding of addiction. For example, a lawyer charged with auto theft for failing to return a rental car on time because he was too impaired from drugs would argue that the offense occurred as a result of his addiction. There is no case law that requires a Respondent to prove that he was addicted to auto theft in order to rebut the presumption of disbarment. This is the same situation in this case. Respondent committed the crime of possessing steroids as a result of his use of GHB and cocaine, and not because he was addicted to steroids. Once Respondent demonstrated that he committed all of the misconduct as a result of his addiction to

GHB and cocaine, then he satisfied that element of the mitigating factor of impairment.

The testimony cited in the answer brief does not rebut Respondent's argument but rather supports it. For example Dr. Seely testified that Respondent's addiction to GHB and cocaine impaired his ability to make decisions and operate in reality. (AB- 10) The remaining portion of Dr. Seely's testimony, which the Bar omitted in its brief, further supports Respondent's argument. Specifically Dr. Seely testified that Respondent's use of steroids doesn't change Respondent's story, which is that he was a good person of good moral fiber that fell victim to addiction and, in the course of his addiction, neglected clients, broke the law, and had terrible consequences. (TR. 32).

Respondent used steroids as a result of self image problem. (TR. 108). His impaired thinking (from GHB and cocaine) made him believe that if he took steroids, he would become bigger and stronger and would be more accepted by others. (TR. 108). As a result of this impaired thinking he engaged in the unlawful conduct of possessing and using steroids. Therefore all of Respondent's criminal conduct was the result of his addiction to cocaine and GHB. (ROR 22).

The Bar's contention that Respondent's argument has no merit and that it

would set a bad precedent is simply wrong. There are a myriad of cases that support Respondent's position and holds that a lawyer who has been convicted of a felony may overcome the presumption of disbarment if the addiction proximately caused the criminal conduct. *See: Florida Bar v. Jahn*, 509 So. 2d 285 (Fla. 1987), *The Florida Bar v. Rosen*, 495 So.2d 180, 181 (Fla. 1986); *The Florida Bar v. Hochman*, 815 So.2d 624 (Fla. 2002); *The Florida Bar v. Marcus*, 616 So.2d 975 (Fla. 1992); *The Florida Bar v. Weintraub*, 528 So.2d 367 (Fla. 1988).

POINT II
RESPONDENT HAS PROVEN INTERIM REHABILITATION
BY CLEAR AND CONVINCING EVIDENCE

Respondent has proven by clear and convincing evidence that he achieved interim rehabilitation. In fact there was no evidence presented at trial that demonstrated otherwise. The argument that Dr. Seely could not have formed a reliable opinion based upon his failure to speak with Respondent's treating professionals in prison and his failure to review Respondent's treatment file from prison is seriously flawed. It assumes that there are records of his treatment. Respondent completed and graduated from a substance abuse program while incarcerated. Common sense would dictate that if Respondent completed and graduated from the program he must have achieved interim rehabilitation. As far

as reviewing treatment records, there has been no evidence presented that such records ever existed. It defies logic to discount Dr. Seely's opinion based upon his failure to review records that might not even exist.

Respondent retained the best expert on the subject of addiction in order to establish that Respondent was addicted to various controlled substances and that he had achieved rehabilitation from his addiction. Dr. Seely is considered by many institutions to be amongst the best if not the best in the evaluation of individuals for addiction and rehabilitation. He has assessed and treated more than 600 members of the legal profession for the Florida Bar, the Florida Board of Bar Examiners, and Florida Lawyers Assistance Inc. His opinions have been consistently accepted by these institutions concerning whether or not an individual is rehabilitated and fit to practice law in the State of Florida.¹

That is Dr. Seely's undisputed testimony was that a phone interview is a sufficient method to evaluate a person and a method that he has become accustomed to using. (TR. 28-29) Dr. Seely testified that even over the telephone

¹ Dr. Seely is also the regional representative for the Physicians Recovery Network and has assessed and treated thousands of health care professionals for substance abuse. His opinions are also consistently relied upon by other professional organizations including the Intervention Project for Nurses and the National Football League.

he can fairly and accurately assess a person's mental status and the veracity of what they're saying. (TR. 29). In fact Dr. Seely's opinion concerning Respondent's rehabilitation has been corroborated by (1) Respondent's successful completion of the drug program in prison and (2) his father's testimony that Respondent is the same as he was prior to becoming addicted to drugs and that he appears to be rehabilitated. The Referee's finding that Respondent had no interim rehabilitation is unsupported by the record and is therefore clearly erroneous.

CONCLUSION

In this case Respondent has proven by clear and convincing evidence that (1) he was addicted to drugs, (2) Respondent could not function as an attorney as a result of his of his addiction; (3) all of the misconduct occurred as a direct result of his addiction and (4) Respondent has interim rehabilitation. Based upon Respondent having proven these elements by clear and convincing evidence the penalty has to be something less than disbarment. Therefore, this Court should reject the Referee's Report and Recommendation of disbarment and impose in its place a long term suspension.

Respectfully submitted,

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COMPLIANCE WITH RULE 9.210(a) (2)

The undersigned hereby certifies that the foregoing Initial Brief complies with Fla.R.App.P. 9.210(a) (2) in that it was prepared using 14 point proportionately spaced Times New Roman font and hereby files a 3.5” computer diskette containing said brief, which has been scanned and found to be free of viruses.

RICHARD B. MARX
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and ten (10) copies of the foregoing brief have been sent by Federal Express, overnight delivery to Thomas D. Hall, Clerk, The Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927; and a true and correct copy of the foregoing was sent and regular U.S. Mail to The Honorable Jack H. Cook, Referee, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, FL 33401 and to Juan Carlos Arias, Esq., Staff counsel, The Florida Bar on _____, 2009.

RICHARD B. MARX
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