

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO RULES OF  
THE SUPREME COURT RELATING TO  
ADMISSIONS TO THE BAR**

**CASE NO. SC08-2296**

**Response to Public Comment**

The board received one public comment to its proposed rule amendments pending before the Court. Attorney John A. Weiss filed a comment to proposed rule 2-13.1 wherein he opposes the provision of the rule amendment that requires Florida bar applicants to be eligible for readmission in any and all jurisdictions from which they were disbarred.

The board's recommended change to rule 2-13.1 is set forth below in legislative format:

**2-13.1 Disbarred or Resigned Pending Disciplinary Proceedings.** A person who has been disbarred from the practice of law, or who has resigned pending disciplinary proceedings, will not be eligible to apply until expiration of the ~~for a period of 5 years from the date of disbarment, or 3 years from the date of resignation, or such longer period as is set for readmission by each~~ the jurisdictional authority from which the person had been disbarred or had resigned. If the person's disbarment or disciplinary resignation occurred in a foreign jurisdiction and it was the person's home state at the time of the underlying conduct resulting in the disbarment or disciplinary resignation, then the person will not be eligible to apply for admission to The Florida Bar until the person is readmitted in his or her home state.

Readmission must occur in the home state even if Florida imposed discipline prior to the imposition of discipline by the home state and even if the person is eligible for readmission under the conditions of the Florida discipline.

The board offered the following rationale for this provision:

The proposed rule amendment also addresses a person with disbarments or resignations in more than one jurisdiction. Although such person only needs to be readmitted in his or her home state, such person must, however, be eligible for readmission in each of the jurisdictions from which he or she was disbarred or resigned. If the proposed change is adopted by the Court, the applicable ruling in *Florida Board of Bar Examiners re Simring*, 802 So. 2d 1111 (Fla. 2000) would no longer be controlling.

In the *Simring* case, the applicant was disbarred in Florida with the standard disqualification period of five years. New York then imposed a reciprocal disbarment “based exclusively on the misconduct [multiple trust account violations] committed in Florida which caused the Florida disbarment.” *Id.* at 1112. The disqualification period in New York was, however, seven years.

Based on rule 2-13.1, the Board refused to accept the applicant’s application for readmission to The Florida Bar until the expiration of the New York’s seven-year disqualification period. In overturning the Board’s ruling and allowing the applicant to apply, the Court concluded “that it would be unfair to prevent Simring from applying for readmission in Florida simply because New York imposes a longer standard disbarment period than that imposed in Florida.” *Id.*

The proposed rule amendment makes clear that to be eligible to apply in Florida, a person must be eligible for readmission in “each jurisdictional authority from which the person had been disbarred or had resigned.” (Emphasis supplied) Thus, if a person is permanently disbarred in another jurisdiction, such person would be ineligible to apply in Florida regardless of which jurisdiction is the person’s home state.

The Board submits that this change is desirable “to preserve public respect and confidence in Florida’s judicial system.” *Florida Board of Bar Examiners re Higgins*, 772 So. 2d 486, 487 (Fla.

2000). The proposed change will simply preclude persons from practicing law in Florida if they are prohibited from practicing law in other jurisdictions until the prohibition has been removed.

As set forth above in the board's rationale, the proposed provision would exclude from Florida those individuals who are permanently disbarred in another jurisdiction even if that jurisdiction is not their home state.

In *Florida Board of Bar Examiners re McMahan*, 944 So. 2d 335 (Fla. 2006), the Court stated: "This Court must protect the members of the public by demanding and requiring the utmost in professional standards for attorneys. Our citizens expect more and, most assuredly, they deserve more." *Id.* at 339 (citations omitted). The board's proposal complies with the Court's statement in *McMahan*.

Individuals wishing to be Florida attorneys and officers of this Court should not be barred from performing those same functions in another jurisdiction. That is what the Florida public should reasonably expect from its legal profession; that is what the Florida public definitely deserves. If individuals believe that their permanent disbarment in another jurisdiction is unjust, then their objection should be directed to the highest court of that jurisdiction and not to this Court or the board.

### **Conclusion**

The board requests the entry of an order approving the board's proposed rule amendments pending before the Court including the amendment to rule 2-13.1.

Dated this 5<sup>th</sup> day of March 2009.

FLORIDA BOARD OF BAR EXAMINERS  
REGINALD D. HICKS, CHAIR

Michele A. Gavagni  
Executive Director

By: \_\_\_\_\_  
Thomas Arthur 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 Response to Public Comment has been served by U.S. Mail this 5<sup>th</sup> day of March 2009 to John A. Weiss, Esquire, 2937 Kerry Forest Parkway, Suite B-2, Tallahassee, FL 32309-6825.

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Thomas Arthur Pobjecky