IN THE SUPREME COURT OF FLORIDA

FLORIDA BOARD OF BAR EXAMINERS	**)**	
RE: WILLIAM CASTRO	**)**	**Case No. SC10-2439**
_____	**)**	**Lower Tribunal No.: 18000**

Answer Brief

Submitted by:

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Jurisdiction

The board acknowledges that this 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 designated by "Rule" followed by the rule number).

Preliminary Statement

The board will use the following designations:

(Brief) references Castro's Initial Brief served February 22, 2011.

(FF) references the board's written Findings of Fact, Conclusions of Law and Recommendation issued by the Board on October 19, 2010.

(T) references the transcript of Castro's formal hearing held July 15, 2010.

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

Statement of the Case and of the Facts

The board accepts Castro's statement as to the case and facts except for the arguments contained therein.

Summary of Argument

As a practicing Florida attorney, Castro chose actions involving multiple kickbacks to a judge. His misconduct appropriately resulted in his criminal conviction, incarceration, and disbarment.

Based upon its evaluation of record produced at Castro's formal hearing, the board recommended that Castro be denied readmission. The board further concluded that Castro will never be able to demonstrate sufficient rehabilitation to allow him to rejoin the profession that he dishonored.

Based on the record before it, this Court should affirm the board's findings, conclusions, and recommendation that Castro not be readmitted and that Castro be excluded permanently from The Florida Bar.

Argument

The Board Properly Recommended Castro's Permanent Exclusion

A. Standard of Review (Castro's Point A)

In cases before the board involving an evaluation of a bar applicant's character and fitness to practice law, the board serves the same function as a referee in an attorney discipline proceeding. As this Court observed: "The referee is the person most well-equipped to judge the character and demeanor of the lawyer being disciplined." *The Florida Bar v. Rood*, 622 So. 2d 974, 977-978 (Fla. 1993) (citation omitted).

Regarding the appropriate standard of appellate review in this case, the Court has held in an attorney discipline case:

> In reviewing a referee's recommended discipline, this Court's scope of review is broader than that afforded to the referee's findings of fact because, ultimately, it is the Court's responsibility to order the appropriate sanction. However, generally speaking, this Court will not second-guess the referee's recommended discipline as long as it has a reasonable basis in existing case law and the Florida Standards for Imposing Lawyer Sanctions.

The Florida Bar v. Hall, 49 So. 3d 1254, 1257-1258 (Fla. 2010) (citations omitted); *see also The Florida Bar v. Adorno*, No. SC09-1012 at 28-29 (Fla. April, 2011).

In the case of *Florida Board of Bar Examiners re R.L.W.,* 793 So. 2d 918 (Fla. 2001), this Court had before it the board's recommendation that the applicant be disqualified from reapplying for the enhanced period of five years. In approving the board's recommendation, this Court observed:

> The Board has had the firsthand opportunity to hear the evidence and evaluate the suitability of an applicant for entry into the practice of law. Past justices have frequently cautioned against the rejection of Board recommendations of whether to admit an applicant to the practice of law.

Id. at 926 (citations omitted).

As discussed under Point C below, the board's decision is reasonably based on existing case law and the Rules of the Supreme Court Relating to Admissions to the Bar.

B. Castro's Disqualifying Conduct

It is undisputed that Castro engaged in gross misconduct as a practicing attorney. Castro admits this fact in his argument before the Court: "There can be no dispute that William Castro's payments to Circuit Court judge Roy Gelber of a percentage of the fees he earned from appointments to represent indigent state court defendants was *egregious* conduct." (Brief 1, emphasis added)

Several of Castro's supporters also recognized the grievous nature of Castro's conduct. For example, Francisco Angones testified to the following at Castro's formal hearing: "The reason that our system works is because of our

judicial system. I know what [Castro] did many years ago was one of the worst things that a lawyer can do because it…hurts our judicial system." (T 270, lines 14-18)

As discussed under Point C below, Castro engaged in past egregious conduct. That egregious conduct fully justifies the board's recommendation that he be permanently excluded from readmission to The Florida Bar.

C. The Board's Recommendation (Castro's Point B)

"While we are free to choose our actions, we are not free to choose the consequences of our actions." -Stephen R. Covey

In reaching it recommendation in Castro's case, the board concluded in part:

> William Castro appeared before the board as a convicted felon and disbarred attorney. There is no dispute as to the egregious nature of the applicant's prior misconduct that eventually resulted in his criminal conviction, incarceration, and disbarment. The applicant's criminal actions covered an extended period of time and involved multiple kickbacks to a judge. As stated in one of the character letters submitted on the applicant's behalf: "There is no crime that directly and adversely affects more the public's confidence in the judicial system than bribery, even with the simple goal of obtaining court appointments for attorneys." (FHR-AE 27 at April 21, 2008, letter of Federico A. Moreno, Chief U.S. District Judge, Southern District of Florida)
>
> As the Florida Supreme Court held in the *W.F.H.* case, the board concludes that no amount of rehabilitation will ever suffice to allow the applicant's readmission to the Florida legal profession that he dishonored when he participated in the corruption of the judicial system that he had sworn as an officer of the court to respect and uphold.

(FF 15-16)

In the June 2006 *W.F.H.* case referenced by the board, this Court unanimously ruled that a bar applicant should be permanently barred from admission to The Florida Bar. The majority and concurring opinions are set forth below in their entirety.

> Upon consideration of W.F.H.'s Petition for Review filed in the above cause, based on the totality of the circumstances, the findings of fact and conclusions of law, the recommendation of the Florida Board of Bar Examiners that W.F.H. not be admitted to The Florida Bar is approved. This Court concludes that the total circumstances and underlying facts of the instant case, which involve misconduct by a sworn law enforcement officer, are so egregious and extreme, and impact so adversely on the character and fitness of W.F.H., that the recommendation of the Florida Board of Bar Examiners must be approved. We further conclude that under the totality of the circumstances, the grievous nature of the misconduct mandates that W.F.H. not be admitted to the Bar now or at any time in the future. Accordingly, W.F.H.'s petition is hereby denied.
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> PARIENTE, C.J., and ANSTEAD, LEWIS and QUINCE, concur.
> WELLS, J., concurs in result only with an opinion, in which CANTERO and BELL, JJ., concur. WELLS, J., concurring in result only.
>
> I concur only in this result. However, I believe that the Board erred and we erred in not making this decision at the time of W.F.H.'s first petition, rather than allowing W.F.H. to reapply when a reapplication was futile. I regret this for reasons of fundamental fairness.

Florida Board of Bar Examiners re: W.F.H., 933 So. 2d 482 (Fla. 2006), *cert. denied*, 549 U.S. 1020 (2006).

In September 2007, this Court again, *sua sponte*, applied the principle that certain misconduct requires permanent exclusion from the legal profession. In that case, this Court stated:

> Upon consideration of Bruce L. Helmich's petition for review filed in the above cause, we approve the Florida Board of Bar Examiners' findings of fact, conclusions of law, and recommendation that Helmich not be admitted to The Florida Bar. We further conclude that under the totality of the circumstances, the seriousness of Helmich's prior disqualifying conduct mandates that he not be admitted to the Bar now or at any time in the future. *See Fla. Bd. of Bar Exam'rs re W.F.H.*, SC04-185 (Fla. order filed April 20, 2006). Accordingly, Helmich's petition is hereby denied, and he may not reapply for admission to The Florida Bar.

Florida Board of Bar Examiners re Bruce L. Helmich, SC07-255 (Fla. Sept. 11, 2007) (language of order available for review on the Court's online docket at http://jweb.flcourts.org/pls/docket/ds_docket_search%20)

Additionally, in December 2008, the board petitioned this Court to amend the Rules of the Supreme Court Relating to Admissions to the Bar. Among the proposed amendments, the board recommended that rule 3-23.6(d) be amended to add permanent exclusion. The board stated:

> The proposed amendment would also authorize the board to recommend permanent denial for "extremely grievous misconduct." Such authorization is consistent with recent decisions of the court that have permanently barred applicants from seeking admission to The Florida Bar.

Petition of the Florida Board of Bar Examiners at page 3 filed in the case of *In re Amendments to Rules of the Supreme Court Relating to Admissions to the Bar*, 52

So. 3d 652 (Fla. 2010) (copy of petition available online at http://www.law.fsu.edu/library/flsupct/sc08-2296/08-2296Petition.pdf)

On December 16, 2010, this Court issued its opinion on the board's petition for rule amendments. In response to the board's proposed amendment to rule 3-23.6, this Court held:

> We amend subdivision (d) of rule 3-23.6 (Board Action Following Formal Hearing) to authorize the Board to recommend permanent denial for "extremely grievous misconduct" and to clarify its meaning. In 2006, this Court ruled that a Bar applicant should be permanently barred from admission to The Florida Bar because of the "grievous nature of the misconduct" committed by the applicant. *Fla. Bd. of Bar Exam'rs re W.F.H.*, 933 So.2d 482 (Fla.), *cert. denied*, 549 U.S. 1020, 127 S.Ct. 561, 166 L.Ed.2d 411 (2006). Our amendment of this rule codifies the holding in *W.F.H.* The amendment also conforms the rule to The Florida Bar's companion provision for disbarment. Rule 3-5.1(f) of the Rules Regulating the Florida Bar provides that permanent disbarment shall preclude readmission.

In re Amendments to Rules of the Supreme Court Relating to Admissions to the Bar, *supra* at 654-655.

Castro correctly points out that the above decision of this Court occurred after his formal hearing that was held on July 15, 2010. But more significant is the fact that this Court had already issued its decisions in *W.F.H.* and *Helmich* upon which the board's decision in Castro rests before Castro's formal hearing. In fact, this Court issued its public decisions in *W.F.H.* and *Helmich* before Castro even filed his Florida Bar Application seeking readmission. The board received Castro's application on December 17, 2007. (BE 4 at 1 at stamped received date)

But this Court previously released its decisions in *W.F.H.* on April 20, 2006 and in *Helmich* on September 11, 2007.

Furthermore, the board properly made its recommendation known to this Court and Castro. To do otherwise would give rise to the concern voiced by Justice Wells in his concurring opinion in *W.F.H.* There, Justice Wells observed: "…I believe that the Board erred and we erred in not making this decision at the time of W.F.H.'s first petition, rather than allowing W.F.H. to reapply when a reapplication was futile." *W.F.H, supra* at concurring opinion.

In any event, this argument as to whether or not the board had the authority to recommend permanent exclusion is academic at best. This Court will make the final decision in the pending case. Even if the board had recommended something other than permanent exclusion for Castro, this Court, sua sponte, could permanently exclude Castro from readmission as it did in *W.F.H.* and *Helmich*.

One factor not to be overlooked is that Castro's case contains an aggravating factor not present in the facts of *W.F.H.* Unlike *W.F.H.*, Castro was a practicing attorney at the time he engaged in conduct directly related to his law practice. As a practicing attorney and an officer of the court, Castro knew better. Yet, he chose his disreputable course of action. He cannot now choose to ignore the reasonable consequences of those actions.

As this Court recently stated in *Adorno, supra* at 38: "When considering lawyer discipline, we must impose a discipline that is severe enough to deter other attorneys who might be prone to engage in similar conduct." Similarly, the Court must determine in Castro's case if the underlying conduct is so grievous that it requires the Court to permanently exclude him from readmission to The Florida Bar in light of the Court's decisions in *W.F.H.* and *Helmich*.

It is noteworthy that the board's recommendation is not punitive. The consequences of Castro's egregious conduct should bar him from working in certain professions like law enforcement and the practice of law. But they do not bar him from having a meaningful career in another area. And more importantly, those consequences do not bar him from living a fulfilling life.

Lastly, Castro suggests that he cannot now be permanently excluded because this Court only disbarred him for ten years. (Brief 21-22) Yet, that argument is without merit because to adhere to that principle is to turn a blind eye to the constant that the law is ever changing, ever evolving. If the law never changes, then the advancements in the law as seen in cases like *Brown v. Board of Education*, 347 U.S. 483 (1954) would never have occurred.

That same principle of the changing law is equally true as to the issue presented by Castro's case. This Court embraced that principle when, in *W.F.H.*, the Court decided that in the end, the right decision was to permanently exclude

that particular applicant from seeking readmission regardless of prior decisions by the Court and the board of denying him for only a specific period of time.

The seal of the Supreme Court of Florida contains the following official motto: *Sat Cito Si Recte*. The Latin phrase means "Soon enough if done rightly."

In its recommendation in the pending case, the board got it right. The board urges this Court to affirm the board's recommendation and to exclude Castro from seeking readmission to The Florida Bar.

CONCLUSION

In the case of *Application of Matthews*, 463 A.2d 165 (N.J. 1983), the Supreme Court of New Jersey reflected upon the concept of rehabilitation in the area of bar admissions:

> An 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. The more serious the misconduct, the greater the showing of rehabilitation that will be required. In certain instances, evidence of a positive kind including affirmative acts demonstrating personal reform and improvement will be required in order to establish the requisite degree of rehabilitation. However, it must be recognized that in the case of extremely damning past misconduct, a showing of rehabilitation may be virtually impossible to make. In all cases, the need to ensure the legitimacy of the judicial process remains paramount.

Id. at 176.

Castro is one of those rare cases where his "extremely damning past misconduct" makes it impossible for him to show rehabilitation to warrant his readmission. Castro is one of those rare cases where "the need to ensure the legitimacy of the judicial process remains paramount" over even a strong showing of rehabilitation by the bar applicant.

The board requests this Court to affirm the board's recommendation that Castro not be admitted to The Florida Bar and that Castro be permanently excluded from reapplying.

Dated this 25th day of April, 2011.

Florida Board of Bar Examiners
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Certificate of Service

I certify that a true and correct copy of the foregoing Answer Brief has been served by U.S. Mail this 25th day of April 2011 to Bruce S. Rogow and Cynthia E. Gunther, Attorney for the Applicant, Broward Financial Centre, Suite 1930, 500 East Broward Blvd., Fort Lauderdale, FL 33394.

_____
Thomas Arthur Pobjecky

Certificate of Type Size and Style

I certify that the size and style of type used in this Answer Brief are 14 Times New Roman.

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Thomas Arthur Pobjecky