

IN THE SUPREME COURT OF FLORIDA

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**CASE NO. SC10-2439**

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**WILLIAM CASTRO**

Petitioner,

vs.

**FLORIDA BOARD OF BAR EXAMINERS,**

Respondent.

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**PETITIONER'S INITIAL BRIEF**

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## INTRODUCTION

William Castro seeks review of the Florida Board of Bar Examiners' October 19, 2010 Findings of Fact, Conclusions of Law and Recommendation that he not be readmitted to The Florida Bar. The Board wrote:

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. Based on the record before it, the board concludes that the Applicant fails to meet the standards of conduct and fitness required under the provisions of rule 3 of the Rules.

Appendix A, p. 16.

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 misconduct. Appendix A, p. 15. Castro, who was admitted to The Florida Bar in 1981, was disbarred in 1998 for 10 years, *nunc pro tunc* to May 12, 1994. Appendix A, p. 4.

As we show below, the Board exceeded its authority by recommending that Castro be permanently denied admission to The Florida Bar based on the same misconduct which resulted in his original ten-year disbarment. Since this Court's



1994 ten-year disbarment did not preclude readmission to the Bar, Castro is eligible for readmission if he has rehabilitated and redeemed himself. It is undisputed that since his arrest 18 years ago, Castro has met and surpassed every standard of “rehabilitation” relevant to readmission. Based on the extraordinary hearing record of rehabilitation, the rules governing Bar admission, and this Court’s decisions, Castro’s application for readmission should be granted. The Board’s recommendation should be rejected and William Castro should be readmitted to The Florida Bar.

## **STATEMENT OF THE CASE AND FACTS**

### **A. THE BOARD’S FINDINGS**

The Board’s “Findings Background” and “Findings of Fact” are accurate. We summarize the Findings:

- Castro graduated from Columbia University in 1977 and from the University of Pennsylvania Law School in 1980. He was admitted to practice in Florida in 1981.
- He was convicted of conspiracy to commit racketeering, mail fraud and bribery and was sentenced in 1994 to 37 months imprisonment. (His civil rights were restored in 2006 except for the right to possess or use firearms).
- The Board’s Specification 1 was this: “Judge Gelber offered to give you numerous court appointments as a Special Assistant Public

Defender in exchange for you giving him a percentage of the money you earned. You agreed to engage in this conduct.”

- Castro admitted Specification 1.
- Specification 2, which Castro admitted, contained the Various Rules Regulating the Florida Bar to which Castro “signed a Conditional Guilty Plea for Consent Judgment in which [he] agreed to a ten year disbarment *nunc pro tunc* to May 1994 . . . [T]he Supreme Court of Florida disbarred [Castro] for ten years, and entered a judgment for costs totaling \$897.14.”
- Specification 3, that Castro made a misrepresentation in the Consent to Disbarment, was found by the Board to “not [have] been proven.”

The Board’s multi-page recitation of excerpted testimony of the 24 witnesses who testified on behalf of Castro is accurate. Appendix A, pp. 7-14; T:24-258. Those live witnesses, which included lawyers, judges, a retired justice, and lay people Castro has known through his church, were supplemented by 190 letters and other documents attesting to Castro’s post-conviction rehabilitation. *See* Applicant’s Amended Formal Rehabilitation Hearing Exhibit Index (Nos. 1-218), hereinafter referred to as “FHR-AE” followed by Exhibit number; T:22. At the hearing, a host of supportive judges, lawyers and lay people were also introduced, but in the interest of time and to avoid redundancy, did not

testify. T:258-266. The full list of witnesses is attached as Appendix B to this Brief.

**B. EXCERPTS FROM CHARACTER REFERENCES SUPPORTING CASTRO'S ADMISSION TO THE FLORIDA BAR**

Among the judges who submitted letters on Castro's behalf was Judge Federico Moreno, Chief United States District Court Judge for the Southern District of Florida. Judge Moreno was quoted by the Board in its effort to justify its permanent rejection of Castro. The Board wrote: "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.'" Appendix A, p. 16. However, the Board omitted the very next paragraph of Judge Moreno's character reference letter, and omitted other portions of his letter that attested to Castro's rehabilitation. Judge Moreno wrote:

Having said that, as a judge I constantly face the decision of whether there is such a concept of rehabilitation after punishment. As federal judges we dish out plenty of punishment. It appears to me that the Florida Bar has the more difficult task of deciding if a disgraced attorney, like Willy Castro, can instead rehabilitate himself after serving his punishment and further be of

service to the public as an attorney. I believe Willy has and can serve.

\* \* \*

If Willy Castro is not readmitted to the Florida Bar he will continue to serve his God and continue to perform his good work with foster children at the Catholic Home for Children, attend his retreats, etc. I am afraid that many of our vulnerable citizens, especially children, will miss having an attorney with Willy's experience and new found dedication who will truly serve the public as a moral duty and not just a business. It is true that Willy has come to this realization after committing a serious crime and serving his time. However I believe we can learn a lot more from our failures than from our successes. I have no doubt that Willy has.

I thank the Florida Bar for making these written inquiries. I do not envy your task of deciding whether Willy Castro should be readmitted. I believe his situation, as a young, impressionable attorney, is different from the disgraced judges. I do know that his case is unique and that the public would benefit. I also believe, that based upon my experience with thousands of defendants, that he indeed has been rehabilitated. I understand that denying him readmission would be equally reasonable and definitely easier. But to deny him admission after his rehabilitation would lead the Bar to conclude that there are no circumstances where a convicted felon can ever be readmitted. Such conclusion would be a disservice to the public, but it is a decision that you, and not I, must make.

FHR-AE:27; Appendix C.

Judge Moreno was not a lone judicial voice. Thirty-two current or former judges supported Castro's readmission to The Florida Bar. Circuit Court Judge John Schlesinger wrote:

As a sitting Circuit Court judge, a seventeen-year federal prosecutor, and the son of police officers, I do not take lightly the charges that William Castro stands convicted of so many years ago. I respectfully urge you, however, to closely examine this man's life and his exceptional commitment to his community. I respectfully believe that Mr. Castro has redeemed himself, and is very much deserving of redemption by the bar. He has demonstrated by his actions that he would make a terrific contribution to the bar as a lawyer, as he has contributed immensely to our community over his many years in the wilderness, outside the practice of law. I sincerely hope you will look favorably on his application for readmission to the bar...

FHR-AE:39.

Circuit Court Judge Maxine Cohen Lando, who supervised Castro at the Public Defenders Office in the early 1980's, stated:

[H]e was a great trial attorney who clearly loved his profession...but along with the talent was an appalling lack of humility.... Then, he was charged with his crimes and his practice of law was finished. He was disgraced, imprisoned, and humiliated. ... [A]t this time, Willie has

learned humility. He has lost neither his talent nor his brilliance. However, he is using these gifts...in the quest for his own humanity...in acts of kindness, compassion, and justice towards others. ...[W]ith those character traits Willie can now honor our professional responsibilities....Willie will put service before greed, and honesty before success. ... [He] will bring honor to himself and the profession.

FHR-AE:29.

Retired Circuit Court Judge Marilyn Milian, a former prosecutor,

wrote:

Willie is the truest example of reform and redemption that I have ever seen in all my years in the criminal justice system. From the wreck that became his life this man found the strength and devotion to make radical changes that would affect not only him but thousands of others in our community.

\* \* \*

Willie is living proof of what a life worthy of redemption can achieve in the lives of countless others. He is a success story. All his worthy deeds are done daily . . . .

FHR-AE:44.

Former Circuit Court Judge Jorge Perez, a Tew Cardenas partner,

wrote:

The Willie Castro who existed before he was convicted as part of “Operation Court Broom” no longer exists. That person ceased to exist willingly. The Willie Castro of today is a new human being, one who is committed to his family, community and to public services.

\* \* \*

He now leads an exemplary life. One that is free of greed and selfishness that no doubt drove him to commit the serious acts that he did commit. He is humble, intelligent, compassionate and caring. I can personally attest to, and vouch for, his personal character, his contrition as well as his professional ability as I have personally seen all of these characteristics. If anyone deserves to be readmitted into the Bar under these circumstances, it is Willie Castro. Indeed, if he would not be readmitted then I could not think of anyone who would be able to pass what should, of course, be a very high standard for readmission.

FHR-AE:46.

County Court Judge Victoria Brennan, a former member of the Florida

Board of Bar Examiners, wrote:

It is my opinion that if he is admitted, he will not only practice law with great skill, he will serve as a tremendously inspirational mentor to both young lawyers, as well as not so young lawyers who may be struggling with personal issues.

FHR-AE:24.

Attorneys and lay people also wrote letters in support of Castro's readmission. Assistant State Attorney Gary Winston, who wrote his letter before he was appointed to the Florida Board of Bar Examiners, said:

Willie has emerged from [his] experience a religious, contrite man keenly aware of the wrongs he committed, now devoted to acts of benevolence, charity, and service. ...Some people never learn from their mistakes ... others ... learn lessons of such great impact as to change their lives forever. I believe Willie Castro to be one of the latter. ... I ask that you permit him to be readmitted to the Bar.

FHR-AE:50.

Frances Feinberg, Castro's supervising attorney at the Guardian Ad Litem Program, wrote:

If he is readmitted, I feel with certainty that he will not do anything to endanger his status and I can safely say he will pay back countless pro bono hours to this program as well as others in the community. In fact, if William had already been readmitted, he would have won this year's Criminal Court project Pro Bono Award, an award given by Lawyers for Children to the attorney who best exemplifies pro bono advocacy for child victim/witnesses in the criminal court. Hopefully, you will afford him the chance to win it next year.

FHR-AE:10.

Terry Fogel, a Board Certified Marital and Family Law attorney, said:

Willie's unwavering moral compass has become for me  
an



inspiration both in my professional life and in my spiritual life....He believes and embodies the concept that any task which will improve the moral, ethical or professional standards of attorneys is a task worth doing.

FHR-AE:4.

A member of the Disciplinary Review Committee of the Board of Governors of The Florida Bar, David Rothman stated in his letter:

I have never written a letter on behalf of a person seeking readmission to The Florida Bar. Maybe if I practice another 30 years, I will find it appropriate to do this again. But my endorsement of Willie Castro's application is without reservation. He has earned a chance to be a lawyer again. I would be pleased and proud to have Willie Castro as a member of The Florida Bar. It would be my honor to call him my brother attorney.

FHR-AE:25.

Eugene Zenobi, a member of the Florida Supreme Court's Commission on Professionalism who has known Castro since he supervised him as an intern at the Public Defender's Office in the late 1970's, stated:

I have personal knowledge of many of the programs Mr. Castro ... has become involved. The voluntary work and efforts to turn his life around have been extremely impressive. It is clear that his decade-long life efforts have been exceptional.... I particularly find his efforts with adopted children, foster children and children with cancer to be of the highest calling. There is no intention in [recommending Mr. Castro for readmission to The Florida Bar] to offer an apology for [his] illegal acts. However, if ten years of rehabilitation can be better shown, I have not seen it.

FHR-AE:144.

A children's welfare volunteer, Francisco Alzuru, stated:

I had the honor to participate in several of the outings Mr. Castro organized for children from the Catholic Home for Children to either the Marlins Stadium or the Heat Arena...He showed me a side of service to my fellow human beings I had not experienced before. I also had the opportunity to join Mr. Castro one Christmas as he sought volunteers to deliver presents to children housed in several foster homes in South Miami.

FHR-AE:146.

The parents of a teenager Castro taught during a 1½ year long confirmation class, Robert and Elizabeth Stone, stated:

Of all the religious education instructors our children have had over the years, we found Willie to be the most committed, passionate, and dedicated instructor of all. He put his words into action, bonding a class of teenagers and their families in experiencing Christian faith in action. Our daughter went to numerous social service projects initiated

by Willie. These projects included trips to feed the homeless, taking underprivileged children to sporting events, and providing gifts to the same children during the holidays. He led the teenagers in retreats, prayer, and reflective activities to help them in their relationship with God.

\* \* \*

We firmly believe that if anyone is deserving of being readmitted to the Florida Bar, it should be Willie. He is a man who truly cares and wants to make a difference in our community, our state and our country. We see Willie

as a leader in our community and trust him with our children, property, and the future of our church and families. There is no doubt in our minds that, should you give Willie the opportunity to be readmitted to the Florida Bar, he will be an excellent attorney.

FHR-AE:132.

At the formal hearing, several current and former judges testified in support of Castro's readmission. Former Justice Raoul G. Cantero, III, who met Castro at a religious retreat in 1994, stated:

I was well impressed by Willie's openness and his humility and his willingness to testify about the mistakes he had made in his life, in particular the circumstances of his misconduct that eventually resulted in his disbarment; and the way he engaged with the retreat and tried to make that a part of his life a positive by bringing others to know that

no matter what kind of wrongdoing you have done, that it is possible to change your life.

\* \* \*

I have never seen in my time reviewing applications – I'm not just talking about admissions or readmissions to the bar but also suspensions we would receive of people would seek to regain practice after suspensions from the practice.

I have never seen the extent of rehabilitation over such a long period of time, the kinds of things Willie has done over the last 18 years. There has to be one case that stands out from the rest in everything. There has always got to be the one that you have seen the most rehabilitation. To me, this is it.

Willie's case is the one where I have seen more rehabilitation over a greater period than any other case....So if there is — if at any point rehabilitation matters, then this is a case where it would matter.

T:160, 164, 167.

Circuit Court Judge Beatrice Butchko, a former prosecutor and special counsel to the Judicial Qualifications Commission, who approved Castro's adoption of a boy he and his wife fostered, stated:

I am here today to tell you that as a judge, next to the death penalty, termination of parental rights is the most important decision that a judge can make. To remove a child and give a child to a couple, you cannot do that if you don't feel that the family is above reproach and 100 percent suitable to parent a child.

So because I have already — they have already passed muster with me to that level, I asked Willie that if he ever needed a witness to testify about his character that I would be happy to do it; and that is why I am here.

\* \* \*

I have no doubt that he would be a very positive member of the Florida Bar....He has paid his debt. He has turned his life around. He is a totally different person than that person who behaved that way in the eighties. He is humble. He is generous of his time, and I think it would be a disservice to the people of this community to rob them of somebody who I know would give their time, their pro bono time to serve the community.

T:182-184.

Circuit Court Judge Stanford Blake, Administrative Judge for the Criminal Division of the Eleventh Judicial Circuit, who has known Castro for over 25 years, stated:

I'm absolutely convinced Willie is a very good person that made a very bad mistake. If you all decide that there is rehabilitation, then this is a case where I as a judge and a lawyer feel confident if Willie Castro is in front of me that his word would be what has really happened. I have only testified one other time at one of these type hearings for someone who is now a lawyer, and I take this very seriously.

T:192.

Circuit Court Judge Diane Ward staked her law license on Castro's rehabilitation, telling the Board:

I have known Willie for a very long time, and I know that your concern is that because of the criminal act that he committed back then in, I guess, 1992. But I have no doubt that if he is readmitted, that there is zero chance that he would ever commit any type or moral or criminal act again and I would put my Bar license on it.

T:212.

No other reported applicant for readmission has established the kind of support for a claim of rehabilitation that Castro presented to the Board, and now to this Court.

**C. THE FACTS SUPPORTING REHABILITATION**

The written submissions and hearing record reflects the reasons why 190 people supported Castro's readmission to The Florida Bar. His over 13,000 hours of community service, including his participation in religious retreats designed to develop mind, soul, spirit, principle; his work (with his wife) as a licensed foster parent caring for several children, including a 20-month boy who they subsequently adopted, and the adoption of two other infants; his certification as a volunteer Guardian Ad Litem, and representation (as a non-lawyer) of children who are victims of, or witnesses to crimes, mostly sexual abuse or violence; his work in organizing a Florida Bar CLE series "My Faith in Practice," which included courses entitled "Balancing Work and Family" (moderated by Castro) and "Resurrecting our Moral Conscience" all speak to his commitment to his rehabilitation. *See* FHR-AE:2, detailing Castro's record of deeds, acts, and efforts to better himself and his community over the past eighteen years since his arrest in 1992.

Castro's testimony at the Board hearing covered nearly 100 pages (T:286-370), and he was extensively examined by Board members. We set forth one colloquy between Castro and a Board panel member which captures the essence of the dilemma of weighing evidence of good moral behavior over a long period of time against inexcusable wrongdoing.

Q. Now you are asking us and the Supreme Court of Florida to forgive you, aren't you?

\* \*

\*

- A. If forgiveness is not part of this process as is atonement and redemption, then I don't have a shot.

T:347.

The Board did not present any evidence contesting Castro's decade plus contributions to his community and its citizens. The Board's counsel acknowledged "a lot of weight on that side of the scale." T:375. The Findings/Conclusions/Recommendation devoted only a paragraph (Appendix A, p. 14) to its summary of the activities that motivated the scores of witnesses and letter writers to unequivocally support Castro's unimpeachable character and moral standing in the community. The Board recognized there was no way to dispute Castro's compliance with the rules regarding rehabilitation.

The only witness called by the Board was *one of Castro's character witnesses*, Francisco Angones, a former President of the Florida Bar, the Dade County Bar Association and the Cuban American Bar Association, and a 2010 recipient of the American Bar Association's Commission on Racial and Ethnic Diversity, Spirit of Excellence Award. Angones testified unhesitatingly in support of Castro's readmission (T:267-281), but the Board sought to impeach him with his

support for a *proposed change* to the admission requirements – a Board Character and Fitness Commission recommendation to permanently bar anyone convicted of a felony from being admitted to the Bar:

Q. [Board Counsel]: Obviously the situation we are looking at here today would be an individual [Castro] [who] would not be eligible to be admitted to the [B]ar [under the proposed recommendation].

A. [Angones]: I'm well aware.

T:268-269. Examined and re-examined about how he could reconcile his support for Castro's readmission with his support for a no admission rule, Angones spoke movingly:

[W]hen I was first asked to come here . . . I struggled an awful lot; and in my conscience I could not shy away.

I do believe in the recommendations we gave but we are also human beings . . . .

As a Christian and as a lawyer, I have reviewed, not only his application but I have talked to many of the folks that have appeared before you this morning, some of the people who were here and I have observed him in church. . . .

I am convinced that . . . . he will serve as an example of what should be. . . . and he will be the best person that will be talking to other lawyers who are recently admitted that get into minor difficulties and will prevent other lawyers in the future from committing similar crimes.



\* \* \*

I . . . believe in . . . paying for the results for what you do, owning up to it, repentance and redemption . . . I think this is the essence of this country to do that.

\* \* \*

[An exception will] allow[] for some type of small ability to save those that can be saved and that can serve a greater purpose and the purpose of our community.

T:270-273, 280.

**D. THE BOARD'S CONCLUSIONS AND RECOMMENDATIONS**

The Board counsel's closing argument spoke of this Court's decision in *Florida Board of Bar Examiners re: W.F.H.*, 933 So.2d 482 (Fla. 2006), telling the Board that the Court's lifetime admission ban in that case did not apply to Castro:

MR. BLYTHE: That is not something that your rules allow you to recommend. Your, you know limitations of the rules – the most you can recommend for a denial period is five years; the standard is two years.

I'm not suggesting that you go beyond two years . . . .

You know, again I'm not going to argue that the Applicant has not done a lot in the area of community service to try to establish his rehabilitation.

But you can always do more of the same.

T:375-376.

The Board disregarded its counsel. In its Conclusions and Recommendations, it quoted *W.F.H.* and concluded “that no amount of rehabilitation will ever suffice to allow the Applicant’s readmission” and recommended that William Castro not be readmitted. Appendix A, 16.

For the reasons set forth below, the Board’s recommendation should be rejected and Castro, who has already successfully passed the Florida Bar examination, should be readmitted.

### **SUMMARY OF THE ARGUMENT**

William Castro has met, and surpassed, every rehabilitation standard set forth in Bar Admission Rule 3-13. The Board of Bar Examiners did not contest the overwhelming clear and convincing evidence that established his present unimpeachable character, reputation, moral standing and exemplary conduct. Castro had been disbarred for 10 years in 1998, *nunc pro tunc* to 1994, based on his federal convictions for acceding to a judge’s demand for kickbacks in exchange for criminal defense court appointments.

The Board of Bar Examiners based its readmission ban solely on that nearly two decade ago transgression. The decision to permanently preclude Castro was contrary to Bar Admission Rule 3-23.6(d), and contrary to the advice of the Board’s counsel, who informed the Board that a recommended permanent ban was

not within the Board's discretion. *Florida Board of Bar Examiners v. W.F.H.*, 933 So. 2d 482 (Fla. 2006) allows permanent preclusion of a law school graduate based on "the grievous nature of the misconduct." Castro's application for readmission after being disbarred is a different application genre, and his crime, while egregious, must, under the applicable Florida Bar and Board of Bar Examiners Rules, be weighed against proof of rehabilitation because that balancing was integral to the terms of his disbarment and permitted an application for readmission. The Court's recent, December 2010 amendment to Rule 3-23.6(d), which now allows the exercise of such discretion, did not apply to Castro's readmission application; it was not extant at the time of his application, his hearing, or the Board's Findings/Conclusions/Recommendation. Moreover, the Board's decision to recommend permanent denial based on the same misconduct that resulted in his original 10-year disbarment is inconsistent with the doctrine of *res judicata*, given the fact that the disbarment permitted readmission upon rehabilitation.

The Court should not approve the recommendation, and should declare Castro to be admitted. His 10 year disbarment carried a promise of the hope for rehabilitation. *See Florida Bar v. Liberman*, 43 So. 3d 36, 39 (Fla. 2010) ("the sanction must be fair to the disciplined attorney, being sufficient to punish while at

the same time encouraging rehabilitation. . . .”). Castro has proven himself rehabilitated – 190 lawyers, judges, lay citizens, and religious leaders have attested to their faith that he has redeemed himself. His actions and conduct earned the support he received.

The Board of Bar Examiners failed to weigh the required factors under Bar Admission Rule 3-12. This Court should, on this record, disapprove the Board’s recommendation and order the readmission of William Castro.

## **ARGUMENT**

### **THE BOARD OF BAR EXAMINERS’ RECOMMENDATION SHOULD BE REJECTED. WILLIAM CASTRO SHOULD BE ADMITTED TO THE FLORIDA BAR**

#### **A. THE STANDARD OF REVIEW**

This Court ... will approve the Board's findings of fact when they are supported by competent, substantial evidence in the record. [It] also usually defer to findings based on a witness's credibility, and are cautious in rejecting the Board's recommendation of whether to admit an applicant. However, [it is] not precluded from reviewing the factual underpinnings of its recommendation, based on an independent review of the record developed at the hearings.

*Florida Board of Bar Examiners re: M.B.S.*, 955 So. 2d 504, 509 (Fla. 2007)(internal citations and quotation marks omitted). Where the underlying

material facts are undisputed, the Board's findings and recommendations present a question of law that the Court reviews *de novo*. *The Florida Bar v. Hines*, 39 So.3d 1196, 1199 (Fla. 2010).

**B. THE GOVERNING LAW AND RULES OF READMISSION REQUIRE THAT THE BOARD'S RECOMMENDATION BE REJECTED**

**1. The Board's Recommendation Was Erroneous**

Rule 3-5.1(f) of the Rules Regulating the Florida Bar provides that "[p]ermanent disbarment shall preclude readmission." Further, rule 3-7.10(n)(1) states that "[a]n order of disbarment that states the disbarment is permanent shall preclude readmission to The Florida Bar." *See In re Amendments to Rules Regulating the Florida Bar*, 718 So.2d 1179 (Fla.1998)(clarifying that that the sanction of permanent disbarment is permanent, and precludes readmission). A "[j]udgment of permanent disbarment is warranted only where the conduct of a respondent indicates that he is beyond redemption." *The Florida Bar v. Carlson*, 183 So.2d 541, 542 (Fla. 1966). *Cf. The Florida Bar v. Behm*, 41 So.3d 136, 151 (Fla. 2010)("The only appropriate sanction under these circumstances – cumulative misconduct and a persistent course of unrepentant misconduct – is permanent disbarment from the practice of law."). However, where "there is no evidence tending to show that [an attorney] is beyond redemption or cannot or will

not be rehabilitated", permanent disbarment is not an appropriate sanction. *The Florida Bar v. Turk*, 202 So.2d 848, 849 (Fla. 1967).

Unlike *W.F.H.*, *supra*, where this Court determined that W.F.H.'s "egregious and extreme" misconduct warranted that he "not be admitted to the Bar now or at any time in the future," this Court entered an Order approving the Referee's and Florida Bar's respective recommendations that Castro be disbarred for ten years. Appendix D. In doing so, the Court adopted the Referee's finding that Castro's "plea and The Florida Bar's recommendation as to the terms of discipline [were] both fair to [Castro] and in the public's best interest." Appendix E, p. 2. Under these circumstances, the Court has recently stated that disbarment "serves best to encourage rehabilitation and to protect the public in that it ensures [that a former attorney] may be readmitted only upon full compliance with the rules and regulations governing admissions to the Bar." *The Florida Bar v. Liberman*, 43 So.3d 36, 39 (Fla. 2010).

On December 17, 2007, thirteen years after the effective date of his disbarment, Castro applied for readmission to the Florida Bar. He had not been permanently disbarred, therefore he was entitled to apply for readmission. *See* Rules Regulating the Florida Bar, Rule 3-5.1(f) ("A former member who has not been permanently disbarred may only be admitted again upon full compliance with

the rules and regulations governing admissions to the bar."'). Since neither the underlying circumstances of Castro's disbarment have changed, nor has Castro committed any subsequent criminal or ethical violations, the Board exceeded its authority in disregarding Board counsel's advice that permanent disbarment was not permissible under Bar Admission Rule 3-23.6(d). Such a recommendation for an already disbarred attorney who has completed his period of disbarment without incident was not only contrary to the letter and spirit of the Court's November 12, 1998 disbarment order, but exceeded the maximum five-year disqualification period for reapplication that the Board could recommend.

In addition, concepts of *res judicata* precluded the Board from recommending that Castro be permanently disbarred based solely on the same misconduct upon which The Florida Bar sought, and this Court approved, a ten-year disbarment. *Cf. The Florida Bar v. Neely*, 675 So.2d 592 (Fla. 1996)(former attorney permanently disbarred as a result of violating original disbarment order)<sup>1</sup>. The Board's permanent denial recommendation was inconsistent with the Court's 1998 order disbaring Castro for a 10-year term.

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<sup>1</sup>*Res judicata* applies where these conditions are present: "(1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of persons and parties to the action; and (4) 'identity of quality in persons for or against whom claim is made.'" *The Florida Bar v. St. Louis*, 967 So.2d 108, 119 (Fla. 2007). The Florida Bar and the Florida Board of Bar Examiners are identical parties because they are

The Board's failure to follow the Rules is confirmed by the fact that on December 16, 2010, two months after the Board's action here, the Court amended Bar Admission Rule 3-23.6(d), confirming the readmission times we quoted above, but adding, for the first time, the possibility of permanent preclusion. *See In re Amendments to the Rules of the Supreme Court Relating to Admissions to the Bar*, \_\_\_ So. 3d \_\_\_, No. SC08-2296, \*8 (Fla. 2010), which added this sentence to the end of Rule 3-23.6(d): "In a case involving extremely grievous misconduct, the board has the discretion to recommend that the applicant or registrant be permanently prohibited from applying or reapplying for admission to the Florida Bar." That provision did not apply when Castro was disbarred by this Court; it did not apply when he applied for readmission following the passage of his 10 year waiting period; it did not apply when he gathered and submitted the evidence supporting his Application; it did not apply when he had his formal hearing in July 2010, nor when the Board issued its findings in October 2010.

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entities within the judicial branch of government "established by or operating under the authority of the supreme court or the chief justice". Fla.R.Jud.Adm. 2.420(b)(2). Castro, his conduct, and the Court's 1998 10 year disbarment order, bring this case within the *res judicata* principles, precluding a permanent disbarment.



Going forward, applicants and disbarred reapplicants will be on notice that *W.F.H.* and the Amended Rule 3-23.6(d) may lead to permanent exclusion of admission consideration. But Castro is not within either of those precedents because he is a disbarred attorney exercising the *readmission* possibility attached to his disbarment, and the Rule change came after consideration of his application by the Board. Because the Board did not, and could not, contest the overwhelming clear and convincing evidence of Castro's character, fitness, and candor in the application process, its recommendation of permanent prohibition on readmission was contrary to the applicable rules governing both The Florida Bar and the Bar Admission Rules.

## **2. The Case Law Supports Castro's Readmission**

"In determining whether [a] petitioner has shown sufficient rehabilitation, the nature and seriousness of the offense are to be weighed against the evidence of rehabilitation." *Florida Board of Bar Examiners re Barnett*, 959 So.2d 234, 238 (Fla. 2007). "Disbarment alone is disqualifying for admission to the Bar unless an applicant can show clear and convincing evidence of rehabilitation." *Florida Board of Bar Examiners re Marks*, 959 So.2d 228, 232 (Fla. 2007). The "more serious the misconduct, the greater the showing of rehabilitation that will be

required." *Florida Board of Bar Examiners re J.J.T.*, 661 So.2d 1094, 1096 (Fla. 2000).

"However, the rules do not bar the admission of previously convicted persons if they demonstrate that they *currently* meet the standards of conduct and fitness." *Florida Board of Bar Examiners re D.M.J.*, 586 So.2d 1049, 1050 (Fla. 1991)(emphasis added). "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." *Florida Board of Bar Examiners re M.B.S.*, 955 So.2d 504, 509 (Fla. 2007). Thus, an applicant must demonstrate:

positive actions beyond those one would normally do for self benefit, including, but certainly not limited to, working as a guardian ad litem, volunteering on a regular basis with shelters for the homeless or victims of domestic violence, or maintaining substantial involvement in other charitable, community, or educational organizations whose value system, overall mission, and activities are directed to good deeds and humanitarian concerns impacting a broad base of citizens.

*Florida Board of Bar Examiners re M.L.B.*, 766 So.2d 994, 998-9 (Fla. 2000).

The Court has not discarded rehabilitation in the disbarment/readmission equation. Recently in *Florida Bar v. Liberman*, 43 So. 3d 36 (Fla. 2010), the Court reaffirmed

the criteria previously enunciated by this Court in *Florida Bar v. Pahules*, 233 So. 2d 130, 132 (Fla. 1970): the sanction must be (1) fair to the disciplined attorney, being sufficient to punish while at the same time **encouraging rehabilitation**; (2)

fair to society, both in terms of protecting the public from unethical conduct and at the

same time not denying the public the service of a qualified lawyer as a result of undue harshness; and (3) severe enough to deter others who might be tempted to engage in like violations. *See also Fla. Bar. v. St. Louis*, 967 So. 2d 108, 124 (Fla. 2007) (discussing *Pahules* criteria). Disbarment of an attorney convicted of a serious felony offense cannot be interpreted as unfair to him. Illegal behavior involving moral turpitude demonstrates intentional disregard for the very laws an attorney is bound to uphold. Disbarment under these circumstances also serves best to **encourage rehabilitation** and to protect the public in that it ensures respondent **may be readmitted** only upon full compliance with the rules and regulations governing admission to the Bar.

*Lieberman*, 43 So. 2d at 39 (emphasis supplied).

A legion of cases support the Court's commitment to the concept of rehabilitation for attorneys who have lost their license to practice law. Justice Drew wrote: "[F]ew, if any, men are beyond redemption, a principle which for nearly 2000 years has been embedded in our Christian concepts . . . .The records of our profession and of mankind generally are replete with histories of great men who had been guilty of wrongdoing at some point in their lives." *Florida Bar v. Johnson*, 140 So. 2d 306, 309 (Fla. 1962) (Drew, J., concurring specially). In *In re: Rassner*, 265 So. 2d 363, 364 (Fla. 1972), a *per curiam* opinion of the Court

countenanced “a subsequent demonstrated record of rehabilitation, good conduct and clean living,” saying “[i]t is not of keeping with the Biblical philosophy that no one is altogether beyond redemption. It is also contrary to modern concepts concerning rehabilitation of persons convicted of crime and state parole and pardon policies.”

While reported Florida Supreme Court decisions admitting disbarred attorneys to practice law describe community service performed and community support, none of those applicants had the amount of community service or the depth of community support, especially from lawyers and judges, which Castro offered in evidence at his formal hearing. *See, e.g., Florida Board of Bar Examiners re Barnett*, 959 So.2d 234 (Fla. 2007); *Florida Board of Bar Examiners re P.T.R.*, 662 So.2d 334 (Fla. 1995).

Comparing Castro’s evidence of rehabilitation to that in *Florida Board of Bar Examiners re: J.J.T.*, 761 So. 2d 1094 (Fla. 2000) is instructive. *J.J.T.* was disbarred for serious criminal conduct and lying under oath, and in the “six years prior to his rehabilitation hearing “he c[ould] show only a handful of instances of volunteer community service,” some of it not “until shortly before the rehabilitation hearing.” Nor were his corroborating support letters convincing. Many were written by people who did not know of his transgressions, and many

were prepared by the applicant himself. *Id.* at 1097. *See also Florida Board of Bar Examiners re: J.C.B.*, 655 So. 2d 79, 82 (Fla. 1995) and *Florida Board of Bar Examiners re M.L.B.*, 766 So. 2d 994, 996-97 (Fla. 2000). Here, Castro has made the ultimate clear and convincing showing on every front. His exemplary conduct was not an eve of hearing event; it consisted of more than a decade and a half of good works and good conduct that was corroborated by discerning people who were all aware of his 1992 fall from grace.

This Court disbarred Circuit Court Judge Phillip Davis, who “accepted bribes and committed other flagrant acts of misconduct,” disbaring him “without permission to reapply for 10 years.” *Florida Bar v. Davis*, 657 So. 2d 1135, 1137 (Fla. 1995). The Court also disbarred attorney Nancy Lechtner, who was convicted for offenses like Castro’s, and she too, like Castro, was disbarred without permission to reapply for ten years. *Florida Bar v. Lechtner*, 662 So. 2d 892, 895 (Fla. 1996). To the best of our knowledge, neither Davis nor Lechtner has reapplied for readmission to the Bar, although neither were prohibited from doing so.

Castro has reapplied, and he has proven his worthiness. He waited much longer than 10 years; his rehabilitation cannot be (and was not) disputed. Justice Caldwell, agreeing with the Court’s disapproval of a disbarment without leave for

reinstatement, wrote: “I believe the ‘without leave to reinstate’ language is (1) not binding upon this Court upon later application and (2) no man is beyond hope of redemption . . . .” *Florida Bar v. Sherr*, 179 So. 2d 337 (Fla. 1965) (Caldwell, J., commenting specially). William Castro has proven himself rehabilitated, redeemed, and readmittable. His disbarment left the door to readmission open, and it should not be closed.

### **CONCLUSION**

The Court’s ten year disbarment of Castro carried with it the opportunity to reapply. His reapplication should have been approved by the Board. This Court should correct the Board’s deviation from the Rules governing it, and decide that William Castro be approved for admission to the Bar, based upon his satisfactory compliance with all the Bar Admission and Florida Bar Rules that pertained to his application for readmission.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to counsel listed below, by U.S. Mail this \_\_\_\_\_ day of February, 2011:

THOMAS A. POBJECKY  
GENERAL COUNSEL  
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BRUCE S. ROGOW



**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this Petition is in compliance with Rule 9.210, Fla.R.App.P., and is prepared in Times New Roman 14 point font.

BRUCE S. ROGOW \_\_\_\_\_