IN THE SUPREME COURT OF FLORIDA

CASE NO. SC10-2439

WILLIAM CASTRO

Petitioner,

vs.

FLORIDA BOARD OF BAR EXAMINERS,

Respondent.

PETITIONER'S REPLY BRIEF

BRUCE S. ROGOW
BRUCE S. ROGOW, P.A.
Broward Financial Centre, Suite 1930
500 East Broward Blvd.
Fort Lauderdale, FL 33394

Counsel for Petitioner

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INTRODUCTION TO THE REPLY

The Answer Brief filed by the Board of Bar Examiners provides no principled basis for denying readmission to William Castro.

The Board's offer of the recent decision in *The Florida Bar v. Adorno*, No. SC09-1012 at 28-29 (Fla. 2011) as additional support for the proposition that "this court will not second guess the referee's recommended discipline . . . " is odd, given that the Court in *Adorno did* reject the Referee's recommendation because it did not have a reasonable basis in existing case law. Here, the Board's denial of a readmission recommendation has no reasonable basis and should be rejected, just as the Referee's recommendation was rejected in *Adorno* and in *The Florida Bar v. Hall*, 49 So. 3d 1254 (Fla. 2010), the other case cited for the "accept the referee" proposition urged by the Board.

The Board's offer of *Brown v. Board of Education*, 347 U.S. 483 (1954), to escape the inescapable – that Castro's 10 year disbarment permitted readmission upon a showing of adequate rehabilitation – is imprudent. *See* Answer Brief, at 13. The Board suggests that Castro's potential for readmission, which was inherent in the Court's 1998 Order, can now be vitiated because "the law is ever changing, ever evolving," and that "[i]f the law never changes . . . *Brown v. Board of Education* . . . would never have occurred." *Id.* The analogy has no merit.

As we show below, the change that is relevant here is not the years of social awakening between *Plessy v. Ferguson*, 163 U.S. 537 (1896) and *Brown v. Board of Education*. The change that is relevant here is the change between the William Castro of 1994 and the William Castro of 2010-2011. Castro's 1998 disbarment, *nunc pro tunc* to 1994, contemplated the possibility of that change. The Board's present refusal to acknowledge the applicable law that allowed readmission upon an adequate showing of rehabilitation, and the overwhelming unrebutted evidence of rehabilitation that is present here, require that the Board's recommendation be rejected.

ARGUMENT

THE BOARD OF BAR EXAMINERS' RECOMMENDATION SHOULD BE REJECTED. WILLIAM CASTRO SHOULD BE ADMITTED TO THE FLORIDA BAR

The Respondent cites the case of *The Florida Bar v. Rood*, 622 So. 2d 974, 977-978 (Fla. 1993) to support the proposition that "the referee is the person most well-equipped to judge the character and demeanor of the lawyer being disciplined." Answer Brief, at 6. In fact, in 1998 this Court did accept the referee's recommendation that Castro be disbarred not for life, but for 10 years, *nunc pro tunc* to 1994. Thus, the Board's submission actually favors Castro's argument that respect for the referee's recommendation is consistent with Castro's claim for

readmission.

The Board also offers *The Florida Bar v. Adorno*, No. SC09-1012 (Fla. 2011) and *The Florida Bar v. Hall*, 49 So. 3d 1254 (Fla. 2010) to support its argument that "this Court will not second-guess the referee's recommended discipline" (Answer Brief at 6), but those cases do not support the Board's contention because *Adorno* and *Hall* rejected the referee's recommendation. Assuming *arguendo* that the Board's recommendation is akin to a disciplinary referee's recommendation, the only thing the Board's case offerings prove is that the Board seeks to reject the 1998 referee report that countenanced readmission. Simply put, the Board's standard of review cases prove nothing. The proof in this case is the evidence and law that establishes Castro is subject to readmission and has made the case for readmission.

A. The Board Could Not Recommend Permanent Disbarment

In October 2010, when the Board recommended that Castro be permanently denied admission to The Florida Bar, Bar Admission Rule 3-23.6(d) did not authorize the Board to recommend permanent denial. In its Answer brief, the Board fails to explain why its counsel advised the hearing panel in closing argument that Board rules did not allow them to recommend permanent denial. *See*

Castro Initial Brief, at 17. The Answer brief contends the Board's now pending recommendation was proper because "this Court had already issued its decisions in *W.F.H.* and *Helmich*." Answer Brief, at 11. But those cases were extant when the Board was advised by counsel that it could not permanently preclude Castro. The Board defends its recommendation because "this argument as to whether or not the board had the authority to recommend permanent exclusion is academic at best." Answer Brief, at 12. Every legal argument has an element of being academic, but here the principle is proven: the Board *did not* have authority under the Rules to recommend Castro's permanent exclusion.

Furthermore, both *Florida Board of Bar Examiners re W.F.H.*, 933 So. 2d 482 (Fla. 2006) and *Florida Board of Bar Examiners re Bruce L. Helmich*, No. SC07-255 (Fla. Sept. 11, 2007), are cases involving the permanent denial of applications from individuals who had never previously been admitted to the Bar. Castro is exercising the readmission possibility inherent to his 10 year disbarment order. Disbarment does not serve only a punishing function; it "serves best to encourage rehabilitation." *The Florida Bar v. Liberman*, 43 So. 3d 36, 39 (Fla. 2010).

The Board alleges that "Castro's case contains an aggravating factor not present in the facts of *W.F.H.*"; *i.e.*, Castro was an attorney. Answer Brief, at 12.

But it is futile to compare the facts of the two cases. *Castro*, unlike *W.F.H,* does not involve the murder of an individual, racial discrimination, and the cover-up of a crime that resulted in riots.[1] At Castro's hearing, a Board panel member attempted to compare the *W.F.H.* case to *Castro*'s. T: 221-223. Castro then recalled one of his witnesses, a former judicial official who was familiar with the *W.F.H.* decision. He described the facts, i.e., that W.F.H. had been a police officer who "essentially was involved in a murder that he failed to report to his superiors, a crime where he actually hid evidence, so he was committing another crime and hiding evidence there." T:249. The witness further testified that "what [Castro] did was wrong . . . [B]ut it is not the kind of conduct that I would say that no amount of rehabilitation would allow you to be readmitted into the Florida Bar." T: 249-250.

Helmich's case is also inapposite. Helmich was convicted of attempting to extort 2½ million dollars from the president of Delta Airlines and the manager of the Hartsfield International Airport in Atlanta. Helmich placed two bombs in the

[1]Although the Board heavily relies on *W.F.H.*, the briefs in that case were available only to the Board's General Counsel and the Clerk of Court denied Castro's request for copies because the file is confidential. Letter of Chief Deputy Clerk of Court, March 15, 2011.

Atlanta airport and intended to steal a military helicopter gunship. His conduct involved the use of threatened force, violence and fear. (Specification 1, Board Answer Brief, at 6). A second important difference is Helmich's lack of candor while at law school and with the Board. The Board saw it as "'a clear picture of an individual who is willing to misstate the truth to enable him to achieve his objectives'" (Board Answer Brief, at 15). According to the Board, the four witnesses that Helmich presented did not have "'a clear understanding of all the issues that had led to the applicant being denied admission.'" (Board Answer Brief, at 17). The Board also concluded that Helmich was not providing exceptional service to his community.

The facts in *Castro* are a far cry from the facts in *Helmich*. Twenty-four witnesses testified on behalf of William Castro, and 190 lawyers, judges, a retired justice, and lay people submitted letters supporting his readmission. They were all well aware and had a clear understanding of Castro's past misconduct. However, they were also familiar with Castro's extraordinary record of service to the community. While the Board in Hemlich used seventeen pages in its Answer Brief to argue that Helmich was not rehabilitated, the Board here did not address the cascade of unrebutted evidence introduced to show Castro's rehabilitation. The Board's analogy to *Helmich* is devoid of merit.

"Egregious" is not the touchstone suggested by the Board. *See* Answer Brief, at 7-8. *Cf. The Florida Bar v. Tipler*, 8 So.3d 1109 (Fla. 2009)(attorney not permanently disbarred for his egregious misconduct despite Court's uncertainty about his amenability to rehabilitation).[2] Moreover, this Court has held that a judgment disbarring a lawyer for twenty years based on "extremely egregious" misconduct would still allow him to reapply for admission to The Florida Bar after the expiration of his disbarment period. *See Florida Board of Bar Examiners v. Ramos*, 17 So.3d 268 (Fla. 2009).[3]

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[2] Tipler was a continuing and multiple offender of the Rules:

> Tipler has broken numerous Bar rules. He satisfied his own sexual appetite with a client as part of a sex-for-fees arrangement. He altered evidence and caused a witness to unknowingly give false testimony. He has charged his clients excessive fees and stolen their money. He has failed to maintain a trust account. He has broken public confidence in the profession of the practice of law by neglecting his clients and failing to prosecute their cases. He has labored under a conflict of interest. He has prejudiced the administration of justice by misrepresenting facts to multiple courts. And, throughout the disciplinary process in these cases, he has been dilatory, deceitful, and evasive. Tipler has thus engaged in an ongoing pattern of egregious misconduct. Although we question whether Tipler is truly amenable to rehabilitation, we take into account the mitigating factors found by the referee in Case No. SC03-149 and choose not to permanently disbar Tipler at this time.

Id. at 1121.

[3] In relevant part, this Court stated:

The Board's objection to Castro's readmission is an improper attempt to re-litigate the period and terms of his disbarment and alter the finality of the 1998 Judgment, contrary to the concepts of finality, predictability, and stability accorded to prior decisions. *See Florida Department of Transportation v. Juliano*, 801 So.2d 101, 105 (Fla. 2001).

B. The Board Did Not Dispute the Clear and Convincing Evidence of Castro's Rehabilitation

The case law is consistent: "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). Castro's conduct underlying his 1998 disbarment Judgment was wrong, to be sure, but the Board's refusal to recognize that there

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> Ramos has repeatedly argued that a twenty-year disbarment is an unusual sanction. We acknowledge that such a sanction is not typical. However, we also recognize that Ramos' ongoing and pervasive misdeeds placed him in a category beyond the typical misappropriation case. He was the subject of numerous disciplinary cases. Also, his misdeeds were extremely egregious. Further, *if Ramos had been permanently disbarred, he would never be permitted to seek readmission to The Florida Bar*. *See Fla. Bar v. Thompson*, 994 So.2d 306 (Fla.2008)(imposing a permanent disbarment "without leave to apply for readmission").

Id. at 272 n. 6 (emphasis added).

was no prior history of discipline, and that there is overwhelming evidence of rehabilitation, undermines the Board's recommendation. *Compare The Florida Bar v. Williams*, 604 So.2d 447 (Fla. 1992) and *The Florida Bar v. Knowles*, 572 So.2d 1373 (Fla. 1991), where the presence of these factors – cumulative misconduct, history of discipline and no rehabilitation – supported disbarment. Here, the absence of the first two factors, and the presence of the latter, support readmission.

The Board did not weigh Castro's offense against all the overwhelming evidence presented that show Castro's extraordinary rehabilitation over 18 years and 13,000 hours of service, which included 1) providing foster care for children (which lead to adoption); encouraging and guiding others through the adoption process, 2) volunteering as a Guardian Ad Litem in the criminal courts, representing as a lay person children who are victims of or witnesses to crimes, 3) serving on a Foster Care Review panel which provides the juvenile court with a report and recommendations regarding the placement and dispositional alternatives for children in foster care, 4) directing a multi-parish commitment to helping foster and migrant families year-round, 5) feeding the homeless in downtown Miami, 6) organizing a Florida Bar CLE series entitled "My Faith in Practice", 7) serving at Catholic weekend retreats, 8) teaching a confirmation class to 13-15 year olds, and

9) volunteering as a host and producer of recorded and live talk show programming on the local Catholic radio station.

Rather than focus on or address this extraordinary record, the Board treated this case as if it were an initial determination on the facts for which Castro was convicted and disbarred. This Court already addressed those facts and it rejected permanent disbarment. That decision controls the legal standard; Castro's rehabilitation evidence now provides the factual basis for readmission. Contrary to the Board's finding that "no amount of rehabilitation will ever suffice to allow the applicant's readmission to the Florida legal profession," the Court's acceptance of the recommendations of the referee and The Florida Bar, and its imposition of a 10 year disbarment, left the door open for Castro to prove that his post-1994 conduct warranted his readmission based upon a showing of a sufficient amount of rehabilitation.

It was Castro's burden to "show clear and convincing evidence of rehabilitation." *Florida Board of Bar Examiners re Marks*, 959 So. 2d 228, 232 (Fla. 2007). He did so and the Board has not contested any of the evidence of Castro's character, fitness, and candor that "clearly and convincingly outweighs the past misconduct." *Florida Board of Bar Examiners re M.B.S.*, 955 So.2d 504, 509 (Fla. 2007). As demonstrated through witnesses, letters and other documents,

Castro has impacted positively the lives of thousands of people through his personal participation in service and earned significant support from the South Florida community, as evidenced by the 32 current or former judges and over 100 attorneys, all whom were fully aware of Castro's misconduct and recommended his readmission. Moreover, the record contains no objection to his readmission from any source or a report of any kind which adversely reflects upon how Castro has conducted himself for the past 19 years.

The Board relies on the Latin expression contained in the seal of the Supreme Court of Florida: *Sat Cito Si Recte*; *i.e.*, "soon enough if done rightly" or "soon enough if correct." The phrase reminds us of "the importance of taking the time necessary to reach the correct result."[4] The Board does not argue that this Court did not take the necessary time to evaluate the referee's recommendation and decide that Castro could be readmitted upon a proper showing of rehabilitation. Taking the time necessary to achieve the right result now means that the applicable law and evidence should be followed and William Castro be readmitted.

CONCLUSION

William Castro made a mistake and has done everything in his power to amend it. The Board's citation-less offer of a quote from self-help author Stephen R. Covey (Answer Brief, p. 8), only confirms the Board's selective approach to authority and authorities. Mr. Covey has also said that correcting our mistakes allows us to become empowered again. *Stephen R. Covey, The Seven Habits of Highly Effective People* 91 (Free Press, 2003). William Castro has met that challenge.

This Court should reject the Board's recommendation and decide that William Castro be approved for readmission to the Bar because he has earned the privilege of practicing law again, based upon his satisfactory compliance with all the Bar Admission and Florida Bar Rules that pertained to his application for readmission.

[4] http://www.floridasupremecourt.org/about/history/seal.shtml

Respectfully submitted,

BRUCE S. ROGOW
Florida Bar No. 067999
BRUCE S. ROGOW, P.A.
500 East Broward Blvd., Suite 1930
Fort Lauderdale, FL 33394
Ph: (954) 767-8909
Fax: (954) 764-1530
brogow@rogowlaw.com

By:
BRUCE S. ROGOW
Counsel for Petitioner

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 12 day of May, 2011:

THOMAS A. POBJECKY
GENERAL COUNSEL
FLORIDA BOARD OF BAR
EXAMINERS
1891 Eider Court
Tallahassee, FL 32399

_____
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