IN THE SUPREME COURT OF FLORIDA

Florida Board Of Bar Examiners	**)**	
Re: Question as to Whether Undocumented	**)**	**Case No. SC11-2568**
Immigrants Are Eligible for Admission to	**)**	
The Florida Bar	**)**	

REPLY TO BAR APPLICANT'S RESPONSE
TO THE BOARD'S PETITION FOR ADVISORY OPINION

The Florida Board of Bar Examiners files this reply to the response of the Applicant served by his attorneys, Talbot D'Alemberte and Patsy Palmer, on March 7, 2012.

Jurisdiction

The Court has jurisdiction of this matter. Art.V, § 15, Fla. Const. *See also In re Questions of Law Certified by the Florida Board of Bar Examiners,* 183 So. 2d 688 (Fla. 1966); *In re Question of Law Certified by the Florida Board of Bar Examiners*, 265 So. 2d 1 (Fla. 1972); *In re Florida Board of Bar Examiners Re: Question as to whether their Employees are State Employees*, 268 So. 2d 371 (Fla. 1972); *In re Questions of Law Certified by the Florida Board of Bar Examiners*, 278 So. 2d 266 (Fla. 1973); *In re Florida Board of Bar Examiners in re Questions of Law Certified*, 350 So. 2d 1072 (Fla. 1977); *In re Florida Board of Bar Examiners. In re*

Certified Question (Chapter 77-63 Laws of Florida) Admission of Exams to Blind and Deaf, 353 So. 2d 98 (Fla. 1977); *In re Florida Board of Bar Examiners. In re Certified Question Felony Convictions Federal Youth Corrections Act*, 361 So. 2d 424 (Fla. 1978); *Florida Board of Bar Examiners re Interpretation of Article I, Section 14d of the Rules of the Supreme Court Relating to Admissions to the Bar*, 581 So. 2d 895 (Fla. 1991).

Question

Are undocumented immigrants eligible for admission to The Florida Bar?

Preliminary Statement

The board will use the following designations:

(Response) references the Applicant's response titled Bar Applicant's Response to the Petition of the Florida Board of Bar Examiners.

(Response App) references the appendix filed by the Applicant with his response.

(Reply App) references the appendix filed with this reply.

Statements of the Case and Facts

The board accepts only the facts as contained in the Applicant's statement. The board submits the following additional facts.

Since 2008, the board has required bar applicants to provide proof of citizenship or immigration status. This requirement is listed under Step 4 of the board's Checklist to File a Bar Application and reproduced below:

> 7. Proof of citizenship
>
> - If you are a citizen of the United States, submit with your Bar Application a certified copy of your birth certificate, or provide a photocopy of your certificate of naturalization, or certificate of citizenship for submission to the United States Citizenship and Immigration Services for verification of authenticity.
> - If you are not a citizen of the United States, provide a photocopy of the immigration document that documents your status for submission to the United States Citizenship and Immigration Services for verification of authenticity.
> - For more information on how to obtain documents to prove citizenship or immigration status, read *Must I provide documentation of my U.S. citizenship or immigration status?* in our FAQ.

http://www.floridabarexam.org/ at Checklist to File a Bar Application.

The checklist requirement is further explained on the board's website. That explanation is reproduced below.

> **Must I provide documentation of my U.S. citizenship or immigration status?**
>
> Yes, all applicants are required to document their citizenship or immigration status.
>
> **U.S. citizen**:
>
> If you are a U.S. citizen and were born in the U.S., the board will accept a certified copy of your birth certificate. You should obtain a certified copy of your birth certificate from the appropriate

government office in the state where you were born. You can locate the appropriate office to contact by visiting the Vital Records website.

If you are a U.S. citizen who was born abroad, the board will accept a certified copy of a Certification of Birth (DS-1350) or a certified copy of the Consular Report of Birth Abroad (FS-240). For more information, visit the U.S. Department of State website.

The board does not accept hospital birth certificates, photocopies, notarized photocopies, or foreign birth certificates.

U.S. citizen via naturalization:

The board will accept a photocopy of your Certificate of Naturalization for submission to the United States Citizenship and Immigration Services (USCIS) for verification of authenticity.

Certified copies of a valid U.S. Passport record may also be submitted as proof of citizenship; however, this process can take 4-6 weeks. For more information, visit the U.S. Department of State website.

Not a citizen of the United States:

Provide a photocopy of the immigration document that documents your status for submission to the United States Citizenship and Immigration Services (USCIS) for verification of authenticity. The USCIS has indicated a copy of these documents may be made to the board for submission to USCIS, regardless of the statement prohibiting copying of these documents. For more information on how to obtain copies of immigration documents or duplication of these documents, visit the U.S. Citizenship and Immigration Services website.

http://www.floridabarexam.org/ at Frequently Asked Questions

On March 8, 2011, the board received the Applicant's Petition for Waiver of Rule Requiring Immigration Status. (Response App 71-76) On March 17, 2011, the board received the Applicant's Florida Bar Application. By letter dated March 18, 2011, the board acknowledged receipt of the application and other documents from the Applicant. (Reply App 000001)

The board's acknowledgement contained the following request:

Outstanding Request(s) for Information and/or Documentation

The following amendment(s) or document(s) are required from you for the board's investigation:

- ☐ If you are a citizen of the United States, submit a certified copy (**not** a photocopy) of your birth certificate; or provide a photocopy of your certificate of naturalization, or certificate of citizenship for submission to the United States Citizenship and Immigration Services for verification of authenticity. If you are not a citizen of the United States, provide a photocopy of the immigration document that documents your status for submission to the United States Citizenship and Immigration Services for verification of authenticity.

(*Id*.)

By letter dated April 28, 2011, the board advised the Applicant that his petition had been granted. (Reply App 000003) The board's staff then conducted its background investigation of the Applicant as it does for all bar applicants. The staff completed its investigation in early November 2011 and the full board considered the Applicant's file at its November 17-19, 2011 board meeting.

At that meeting, the board ruled to defer further consideration on the Applicant's qualifications and to seek an advisory opinion from the Court pertaining to the immigration status of Florida bar applicants. The board informed the Applicant of its ruling by Notice of Board Action dated November 23, 2011. (Reply App 000004)

In response to a request for clarification from the Applicant, the board explained its decision in greater detail to the Applicant by letter dated December 8, 2011. (Reply App 000005) That letter contained the following language: "Upon completion of the board's investigation, the board determined that it would defer further consideration of your client's bar application until such time as the Court

provides an advisory opinion regarding whether an undocumented immigrant is eligible for admission to The Florida Bar." (*Id*.)

The board filed its Petition for Advisory Opinion with the Court on December 13, 2011. The board served the Applicant with a copy of its petition. By decision dated February 16, 2012, the Court "determined that a full response to the petition should be filed by Talbot D'Alemberte, Esq.,…" The decision also directed the board to serve a reply.

Issues Raised by the Applicant

1. THE BOARD HAS AUTHORITY FROM THE COURT TO CONDUCT A CHARACTER AND FITNESS BACKGROUND INVESTIGATION OF ALL APPLICANTS SEEKING ADMISSION TO THE FLORIDA BAR.

A. The board did not engage in improper rule-making; the board engaged in proper investigating.

The Applicant begins his argument by criticizing the board's partial reliance upon past petitions for advisory opinions filed by board with the Court. The Applicant argues: "[I]t is striking to note that, though the Board cites seven similarly styled cases dating from 1966 to 1991, none deals with the issue before this Court." (Response 5) But the Applicant's argument merely states the obvious for if the Court had dealt with this issue in the past, then there would be no reason for the Court to deal with it now.

The Applicant also argues that "the Board is without authority to invent a new rule" by requiring him to submit proof of his citizenship status. (Response 7) First and foremost in response, the board requires bar applicants to provide proof of their citizenship or immigration status and that requirement applies to all bar applicants and not just the Applicant.

As to the board's authority, rule 1-3 of the Rules of the Supreme Court Relating to Admissions to the Bar (hereinafter Rules) states:

> **1-13 Florida Board of Bar Examiners.** The Florida Board of Bar Examiners is an administrative agency of the Supreme Court of Florida created by the court *to implement the rules relating to bar admission.*

(*Emphasis* added)

Specific rules that address the board's background investigation are set forth below.

> **2-22 Character and Fitness Investigation.** On the filing of a Bar Application or a Registrant Bar Application, *the board will initiate a character and fitness investigation under these rules*. When a law student registrant files a Supplement to Registrant Bar Application, the board will update the character and fitness investigation conducted following such student's filing of the Registrant Bar Application.

(*Emphasis* added)

> **3-14 Bar Application and Supporting Documentation.**
>
> **3-14.1 Filed as an Applicant.** Applicants are required to file complete and sworn Bar Applications. Transcripts required by this rule must be sent directly to the board from the educational

institutions. *The application will not be deemed complete until all of the following items have been received by the board*:

(a) an authorization and release on a form available on the board's website requesting and directing the inspection of and furnishing to the board, or any of its authorized representatives, all relevant documents, records, or other information pertaining to the applicant, and releasing any person, official, or representative of a firm, corporation, association, organization, or institution from any and all liability in respect to the inspection or the furnishing of any information;

(b) a Certificate of Dean certifying the applicant's graduation from a law school accredited by the American Bar Association;

(c) an official transcript of academic credit from each law school attended including the law school certifying that the applicant has received the degree of bachelor of laws or doctor of jurisprudence;

(d) if the applicant received an undergraduate degree, then an official transcript from the institution that awarded the degree;

(e) if the applicant has been admitted to the practice of law in 1 or more jurisdictions, evidence satisfactory to the board that the applicant is in good standing in each jurisdiction, and a copy of the application for admission filed in each jurisdiction;

(f) an affidavit on a form available on the board's website attesting that the applicant has read Chapter 4, Rules of Professional Conduct, and Chapter 5, Rules Regulating Trust Accounts, of the Rules Regulating The Florida Bar; and

(g) *supporting documents and other information as may be required in the forms available on the board's website, and other documents, including additional academic transcripts, as the board may require.*

(*Emphasis* added)

In conducting the Court-mandated investigation of all bar applicants, the board relies primarily upon the Florida Bar Application. The bar application has 35 primary requests for information or items, specifically, items 1-30 and 100-104. (Response

App 43-62) For example, the bar application includes items requesting the following information:

- ✓ Item **1.d. Driver license** (Response App 43).
- ✓ Item **5. Support Obligations** (Response App 44).
- ✓ Item **6.a. Residences** (Response App 44).
- ✓ Item **10. Personal References** (Response App 47).
- ✓ Item **14.a. Financial Obligations** (Response App 53).
- ✓ Item **22.a. Traffic Violations; License Revocations or Suspensions** (Response App 56).
- ✓ Item **30. Unlicensed Practice of Law** (Response App 59).

Some of the bar application items also requests additional documentation based on a bar applicant's response including the following:

- ✓ Report of Separation, DD Form 214 as may be required by **Item 13.a Military Service** (Response App 52).
- ✓ A financial affidavit as may be required by **Item 14.a.** (Response App 53).
- ✓ Litigation documents as may be required by **Item 16.a.** (Response App 54).

Most of the information and documents requested in the bar application are not specifically authorized by provisions in the Rules. The reason is that the Court created the board to implement its bar admission rules. *See* Rule 1-13 of the Rules. And those rules require the board to conduct a character and fitness investigation. *See* Rule 2-22.

The Applicant apparently believes that Florida's bar admission process would be much better if the Florida Supreme Court were to micromanage its administrative agency including what information and documents the board should obtain from bar applicants when conducting a background investigation. The Court has not taken that approach in the past. Just because information requested by the board impacts a particular bar applicant negatively does not make the request for that information improper.

B. The board properly relied upon the decision reached in the case of *Godoy v. The Office of Bar Admissions, the Board to Determine fitness of Bar Applicants*.

The Applicant begins this argument by stating: "Remarkably, the Board tells the Court that it adopted its 'policy' after reading a decision to a Georgia rule…." (Response 7) One can only wonder if the board had not cited the federal decision of *Godoy v. The Office of Bar Admissions, the Board to Determine fitness of Bar Applicants*, then would the Applicant have begun this argument with the following: Remarkably, the Board fails to tell the Court of any authority for requiring bar applicants to provide proof of their citizenship or immigration status.

The board is puzzled as to how it did something "remarkable" by simply informing the Court of a federal case involving the same issue presented here except it involved the bar examiners in the neighboring state of Georgia. The board submits that the decision was relevant to the Court when it filed its original Petition for

Advisory Petition; the board submits that it is still relevant. The board finds it remarkable that the Applicant failed to cite to any contrary authority.

The Applicant attempts to support his position by relying on the decision of *In re Griffiths*, 413 U.S. 717 (1973). (Response 8-9) But as to this nearly 40 year old case, the Applicant "concedes that the *Griffiths* case relates to a resident alien and not to an 'undocumented resident alien'…." (Response 9)

More importantly, the federal district court in *Godoy* was well-aware of the *Griffiths* decision. In reaching its ruling, the *Godoy* court reasoned:

> Plainly, a state bar may not erect barriers to the practice of law in violation of the Equal Protection Clause. *See, e.g.*, *In re Griffiths*, 413 U.S. 717, 93 S.Ct. 2851, 37 L.Ed.2d 910 (1973) (court rule restricting admission to the bar to citizens of the United States held unconstitutional); *Schware v. Bd. of Bar Exam'rs of N.M.*, 353 U.S. 232, 238-39, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957) ("A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment."). Moreover, where, as here, that classification is predicated upon considerations of alienage (non-U.S.citizen) or national origin ("foreign-born"), it becomes subject to strict judicial scrutiny. *See* *In re Griffiths*, 413 U .S. at 721; *Fernandez v. State of Georgia*, 716 F.Supp. 1475, 1478-79 (M.D.Ga.1989). "In order to justify the use of a suspect classification, a State must show that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is 'necessary ... to the accomplishment' of its purpose or the safeguarding of its interest." *In re Griffiths*, 413 U.S. at 721-22.
>
> Accepting Plaintiff's assertion that the policy at issue here is subject to this sifting level of scrutiny, it is the view of this Court that Defendants have carried their burden of showing the targeted classification is a valid one. It is Defendants' position that the challenged request for documents is designed to allow a non-United

> States citizen or foreign-born applicant to "demonstrat[e] that he or she is lawfully in the United States and will remain in legal status through the administration of the bar exam he or she wishes to take." (See Aff. of Hulett H. Askew [30] at ¶ 5.) They contend that the Bar's interest in obtaining such proof is constitutionally permissible and substantial, in that "compliance with all laws, including immigration laws, is a standard expected of all applicants and lawyers." (*Id.*)

Godoy v. The Office of Bar Admissions, the Board to Determine fitness of Bar Applicants, CIVIL ACTION NO.1:05-CV-0675-RWS (N.D. Ga. July 24, 2006); also reported at 2006 WL 2085318 (N.D.Ga.) at *4.

In the *Godoy* case, the Georgia bar examiners apparently required additional documentation from non-citizen and foreign-born bar applicants but did not require documentation from United States citizens. *Id.* at *4. Thus, the board's requirement rests on even stronger constitutional grounds in that the board's requirement of providing proof of citizenship or immigration status is applicable to all Florida bar applicants.

Lastly, the *Godo*y court provides the basis for the board's requirement. This Court requires the board to conduct "a character and fitness investigation." Rule 2-22 of the Rules. As the *Godoy* court persuasively held:

> The Supreme Court has recognized that "a State has a constitutionally permissible and substantial interest in determining whether an applicant possesses 'the character and general fitness requisite for an attorney and counselor-at-law.' " *In re Griffiths*, 413 U.S. at 722. This Court finds consonance in these permissible interests and those articulated by Defendants here. An applicant's willingness to maintain an unlawful residence in the United States, like his

> ongoing participation in other illegal activities, has an undeniable bearing on that applicant's character and fitness to practice law.

Id. at *5.

C. The board implemented its requirement of proof of citizenship or immigration status in good faith; the requirement serves a valid purpose.

As the court in the *Godoy* case held, verification of bar applicants' legal status in the United States is a reasonable inquiry into their character and fitness. The board is not alone in the bar admissions field in its view that this is a reasonable inquiry.

In 2011, the Council of Bar Admissions Administrators conducted a survey of the jurisdictions as to the issue of citizenship and legal residency. In addition to Florida, 21 other bar examining authorities make inquiry into that issue on their bar application. (Reply App. 000006-14)

In addition to Florida, California is currently addressing the issue before this Court and New York apparently will be soon. http://www.abajournal.com/news/article/cuny_law_grad_reveals_undocumented_status_fears_he_cant_practice_despite_pa One issue that has been mentioned in the California case is the impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 as to that federal law's prohibition against public State benefits including professional licensure for undocumented aliens. http://www.abajournal.com/news/article/can_an_undocu-mented_immigrant_be_admitted_to_practice_california_supreme_co/

The Applicant cites the past programs of "Operation Pedro Pan" and the one involving Cuban-Americans who were lawyers in Cuba. (Response 10-11) But by focusing on these programs, the Applicant "misses the forest for the trees." *Florida Board of Bar Examiners re J.C.B.*, 655 So.2d 79, 81 (Fla. 1995). For example, as to Operation Pedro Pan, "Catholic Welfare Bureau was authorized by the U.S. Department of State to notify parents in Cuba that visa requirements had been waived for their children. This enabled the children to travel by commercial flights to Miami." ("The History of Pedro Pan" located online at http://pedropan.org/category/history)

Regarding the program for Cuban-Americans who were lawyers in Cuba, the following law is noteworthy:

> The Cuban Adjustment Act of 1996 (CAA) provides for a special procedure under which Cuban natives or citizens and their accompanying spouses and children may get a green card (permanent residence). The CAA gives the Attorney General the discretion to grant permanent residence to Cuban natives or citizens applying for a green card if:
>
> - They have been present in the United States for at least 1 year
> - They have been admitted or paroled
> - They are admissible as immigrants
>
> Their applications for a green card (permanent residence) may be approved even if they do not meet the ordinary requirements under Section 245 of the Immigration and Nationality Act (INA). Since the caps on immigration do not apply to adjustments under the CAA, it is not necessary for the individual to be the beneficiary of an immigrant visa petition. Additionally, a Cuban native or citizen who arrives at a place other than an open port-of-entry may still be eligible for a green card if USCIS has paroled the individual into the United States.

The website of the U.S. Citizenship and Immigration Services located online at http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=6d893a4107083210VgnVCM100000082ca60aRCRD&vgnextchannel=6d893a4107083210VgnVCM100000082ca60aRCRD

The underlying fact presented by the board's pending petition is completely different than the ones underlying the programs cited by the Applicant. Here, the Applicant is unable to establish legal residency. The board is asking the Court for direction as to the consequences, if any, for present and future bar applicants who are undocumented immigrants.

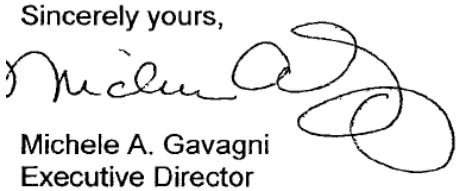
The Applicant also argues that he should be admitted to The Florida Bar because he "can practice in other jurisdictions." (Response 12) But that argument ignores the obvious issue here. If the Applicant is admitted to The Florida Bar, this Court is stating to the public that he is entitled to practice law in Florida. And that statement carries a clear but inaccurate implication that the Applicant is also available for employment for compensation as an attorney in Florida.

The board's decision to require proof of citizenship or immigration status is a reasonable one and is constitutionally permissible based on existing authority. The board now properly seeks guidance from the Court as to this issue of first impression as to whether a bar applicant who cannot establish legal residency in the United States is eligible for admission to The Florida Bar.

D. The board did not waive the issue of legal immigration status as to the Applicant regarding his pending application for admission to The Florida Bar.

In his last argument under his first issue, the Applicant contends that he should be admitted in that the board waived its requirement of submitting evidence of his immigration status. (Response 13-14) It is clear that the board granted the Applicant's petition to go forward with the filing of his bar application and with his sitting for the bar examination without requiring him to submit the documentation regarding his immigration status. It is clearly disputed as to what was meant by the granting of that position.

In a letter dated December 8, 2011, the board's executive director explained to the Applicant's attorney the board's position:

> I am in receipt of your Notice of Appearance dated December 1, 2011. The petition filed on behalf of your client on March 23, 2011, requested the board waive the requirement that your client provide proof of citizenship or immigration status. The board granted that petition. However, at that time, the board did not waive the board's responsibility to review your client's immigration status as it relates to character and fitness. Upon completion of the board's investigation, the board determined that it would defer further consideration of your client's bar application until such time as the Court provides an advisory opinion regarding whether an undocumented immigrant is eligible for admission to The Florida Bar.
>
> * * *
>
> As counsel for the applicant, you will be served with a copy of the board's petition early next week.
>
> Sincerely yours,
>
> 
>
> Michele A. Gavagni
> Executive Director

(Reply App 000005)

The board's position seems to be the more reasonable one. It does not make sense that the board would have a requirement that has made thousands of bar applicants since 2008 provide evidence of their citizenship or legal immigration status and when an applicant is unable to submit the required evidence because of his undocumented status, then the board will just simply waive the requirement forever for that particular applicant. Now that would be a good reason to conclude that the board's requirement is unwise because its sole purpose would be to burden unnecessarily those applicants who can actually demonstrate that they are lawfully in this country.

2. THE BOARD IS NOT CONFUSED BY THE FACTS; THE BOARD HAS REQUESTED AN ADVISORY OPINION FROM THE COURT AS TO HOW THE LAW SHOULD BE APPLIED TO THE UNDISPUTED FACTS.

A. The Applicant entered the U.S. legally.

On March 8, 2011, the board received the Applicant's Petition for Waiver of Rule Requiring Immigration Status. (Response App 71-76) In his petition, the Applicant gave the following history

> 4. The petitioner's history. When he was nine years old, the petitioner immigrated from Mexico to the United States with his family. His parents had been concerned that their child would not have adequate food and schooling in Mexico, and decided to bring him to this country for better opportunities. They came on tourist visas; neither he nor his parents returned to Mexico. The petitioner is now 24 years old and has lived in the United States without incident since coming here as a child.

(*Id*. at 73)

Thus, from the outset, the Applicant clearly stated that he and his parents initially entered the United States legally. They, however, failed to return to Mexico upon expiration of their tourist visas. Language in the board's Petition for Advisory Opinion stating or suggesting that the applicant and his parents entered the United States illegally resulted from inaccurate wordings by the undersigned counsel and not from confusion by the board.

B. The Applicant has registered for the draft; the Court's decision in the *J.E.G.R.* case is persuasive.

The board does not dispute that the applicant has registered for the draft. (Response App 10)

As to the case of *Florida Board of Bar Examiners re J.E.G.R.*, 725 So.2d 358 (Fla. 1998), the board does not dispute that the facts there differ greatly from the

Applicant's facts. In its Petition for Advisory Opinion, the board pointed out that the bar applicant in *J.E.G.R.* "had been found guilty of desertion from the U.S. Marine Corp Reserves prior to his unit being deployed for Operation Desert Storm." (Pet 6)

The facts in *J.E.G.R.*, however, are not what are important when applied to the pending case before the Court. Instead, it is the holding. In its holding in *J.E.G.R.*, this Court appears to recognize that eligibility for citizenship, like restoration of civil rights, is essential for all individuals wishing to practice law in Florida.

In his response, the Applicant states that he "is not ineligible for citizenship,…" (Response 16) It is noteworthy that the Applicant uses a double negative. If the Applicant felt he could, it seems reasonable that he would have simply represented to the Court that he is eligible for citizenship. Thus, the Court's ruling in *J.E.G.R.* that the bar applicant there must establish his eligibility for citizenship is also relevant to the Applicant here.

C. Federal law makes it unlawful for the Applicant to work as an attorney for compensation.

The board does not dispute that the Applicant could work in other countries as an attorney or perform pro bona services in this country. But more importantly, the board agrees with the following statement by the Applicant: "Federal law (8 U.S.C. §1324) forbids him from working in the United States for compensation,…" (Response 17) And therein lies the crux of the issue confronting the board and now

the Court. And that issue is: Should a bar applicant who cannot legally work for compensation in Florida be admitted to practice law in Florida?

If the Court should answer "no" to that question, then no additional consideration is required. If the Court should answer "yes" to the question, then other considerations would naturally result. For example, would there be any ethical obligation by undocumented immigrants who are admitted Florida attorneys to disclose their citizenship status to prospective clients? Would The Florida Bar be under any obligation to ensure that members of the public would not be exposed to legal consequences if they were to use the legal services of undocumented immigrants admitted to practice law in Florida?

The Court may determine that questions like those above will require the Court to request amicus curiae briefs from other individuals or agencies like The Florida Bar or Florida's Attorney General. There are also other agencies and organizations that might present to the Court different perspectives than those organizations that have thus far moved for leave to file an amicus curiae brief. An online search of "immigration reform" produces many organizations with differing views including the following:

- ✓ Federation for American Immigration Reform;
- ✓ Reform Immigration for America;
- ✓ Justice for Immigrants;

- ✓ Americans for Immigration Reform; and
- ✓ Immigration Reform Law Institute

The board now finds itself in an adversarial role in responding to the arguments made by the Applicant critical of the board's requirement pertaining to proof of citizenship or immigration status. Yet, it must be remembered that board has not made a recommendation as to the Applicant at this point. Instead, the board petitioned the Court for guidance. Thus, in that the board is not advocating the Applicant's ineligibility before the Court, then the Court may be best served by hearing from other sources on the pending issue in addition to those already lined up in support of the Applicant's position.

D. The Applicant has obtained an Individual Taxpayer Identification Number From the IRS.

The board does not dispute that the Applicant has a tax id number. (Response App 9)

The Applicant's title to this sub-issue states in part: "The Applicant…Is Filing in Accordance With the Law." (Response 17) On his bar application, the Applicant reported the following as to the filing of any federal tax returns since 2005:

15.a. Taxes

No Have you filed every personal income tax return that is due or past due? If no, please list each return that you have not filed and provide an explanation of your reasons for not filing the return.

Year of Return not Filed: 2005

Type of Return: Federal

Explanation: During 2005, I did not make sufficient income to file an income tax return.

Year of Return not Filed:	2006
Type of Return:	Federal
Explanation:	During 2006, I did not make sufficient income to file an income tax return.
Year of Return not Filed:	2007
Type of Return:	Federal
Explanation:	During 2007, I did not earn sufficient income to file an income tax return.
Year of Return not Filed:	2008
Type of Return:	Federal
Explanation:	During 2008, I did not earn sufficient income to file an income tax return.
Year of Return not Filed:	2009
Type of Return:	Federal
Explanation:	During 2009, I did not earn sufficient income to file an income tax return.
Year of Return not Filed:	2010
Type of Return:	Federal
Explanation:	During 2010, I did not earn sufficient income to file an income tax return.

(Response App 53-54)

Thus, based on the above-reproduced bar application disclosures, the Applicant has *not* been filing tax returns in accordance with the law. Although this point may appear overly technical, this clarification avoids any confusion as to whether the Applicant has actually filed tax returns in the past.

E. The Applicant's disclosure before a legislative committee was worth mentioning for two reasons.

The Applicant found the board's reference in its petition to a news article about the applicant to be "another very curious submission." (Response 18) In its Petition for Advisory Opinion, the board stated:

> Lastly, the applicant apparently announced his undocumented status in a public forum. As reported in news articles, the applicant addressed a House committee of the Florida legislature in April 2011 where he identified himself as "undocumented." http://www.azcentral.com/news/articles/2011/04/14/20110414florida-immigration-law-arizona.html

(Pet 9)

There are two reasons for above-quoted reference. First, it confirms that there is no factual dispute between the board and the Applicant as to the Applicant's undocumented status. Second, in bar admissions cases, the Court usually maintains confidentiality in those cases regarding character and fitness issues (except for disbarred and resigned attorneys that are public cases). In bar admissions cases involving administrative rulings of the board, the Court has typically not made them confidential.

In the pending case, the fact that the Applicant publicly announced his undocumented status might have been helpful to the Court in determining whether the pending case should be confidential. Another more recent news article appears to confirm that the Applicant's confidentiality is not a concern in this case based on statements made to the press regarding the Applicant's pending bar application. http://www.tampabay.com/news/courts/undocumented-immigrant-asks-florida-supreme-court-for-chance-to-practice/1218848

As noted by the above-quoted language appearing in the board's Petition for Advisory Opinion, there was no statement (implied or otherwise) that the Applicant

behaved improperly, let alone unlawfully, by announcing publicly his immigration status. Yet, the Applicant argues to the Court that "[h]is speech is protected under the First Amendment." (Response 18) (Citation omitted) The board is baffled by how the Applicant got down this path that he now believes his constitutional right to free speech is somehow at issue before the Court.

3. THE BOARD HAS DEFERRED FINAL CONSIDERATION OF THE APPLICANT'S QUALIFICATION DUE TO ITS PENDING PETITION FOR ADVISORY OPINION BEFORE THE COURT.

As set forth in the statement of the facts above, the board has deferred further consideration of the Applicant's bar application pending an advisory opinion from the Court as to whether an undocumented immigrant is eligible for admission to The Florida Bar.

As stated in the board's Response to Motion to Expedited Resolution, the board's background investigation of the Applicant has been completed. The board, however, often continues to receive information and documents once a bar applicant's initial background investigation has been completed. That has happened in the Applicant's case.

If the Court should rule in the pending case that undocumented immigrants are eligible for admission to The Florida Bar, then the board would need to review all additional information received since last November relevant to the character and

fitness of the Applicant before making its final decision on his qualifications. In the meantime, the applicant has requested copies of these documents per rule 1-63.6 of the Rules. The board will provide copies of the requested documents to the Applicant and will work with the Applicant in an effort to address any matters of an investigative nature prior to the Court issuing its decision to the board's pending petition.

Under this point, the Applicant argues in part: "The openness with which [the Applicant] has handled the facts of his immigration status demonstrates that he has the character to be a Florida lawyer." (Response 19) The board agrees that the Applicant has been open as evidenced, for example, by the following reported statement attributed to him: "I am undocumented, unapologetic, and unafraid." http://www.tampabay.com/news/courts/undocumented-immigrant-asks-florida-supreme-court-for-chance-to-practice/1218848

The Applicant ends his argument under this issue with the following statement: "The question of whether federal immigration law will allow him to be employed as a lawyer in Florida is not an issue the Board is qualified or authorized to determine." (Response 19) The board sees the issue a bit more broadly than the Applicant because of the ethical ramifications and considerations of the public as referenced in the board's response under 2.C. above. But the board agrees that the Court, not the

board, will be making the decision here. That is exactly why the board petitioned the Court for an advisory opinion.

Stated succinctly, the Applicant seems to be telling the Court in his response that because he graduated from law school and because he passed the bar examination, he is entitled to being admitted immediately to The Florida Bar because the board had no business being concerned about him being an undocumented immigrant. As the Court considers this important issue, it is beneficial for everyone involved to recall the recent words of Justice Pariente: "[W]e must always remember that the practice of law is not a right but a privilege." *Florida Board of Bar Examiners re Castro*, __ So.3d __, 2012 WL 399811 (Fla.) at *4, 37 Fla. L. Weekly S92 (Fla. Feb. 9, 2012).

Conclusion

The board requests the Court to issue an advisory opinion to the question set forth in the board's original petition that will give guidance to the board as to the handling of Florida bar applicants who are undocumented immigrants.

If the Court should rule that undocumented immigrants are ineligible for admission to The Florida Bar, then the board requests the Court to confirm that its decision is without prejudice to the Applicant to reapply should his undocumented immigration status become lawfully documented in the future.

If the Court should rule that undocumented immigrants are eligible for admission to The Florida Bar, then the board requests the Court to advise the board if it should continue requiring proof of citizenship or immigration status from bar applicants, and if so, for what purpose.

Lastly, if the Court should rule that undocumented immigrants are eligible for admission to The Florida Bar, then the board requests the Court to remand the case back to the board so the board can make a final review and recommendation as to the applicant's qualifications.

Dated this 29th day of March, 2012.

Respectfully submitted,

Florida Board of Bar Examiners
Alan H. Aronson, 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 #353061

Certificate of Service

I hereby certify that a true and correct copy of the foregoing reply has been served by U.S. Mail this 29th day of March, 2012 to Talbot D'Alemberte, Attorney for the Applicant, Post Office Box 10029, Tallahassee, Florida 32303-2029.

_____
Thomas Arthur Pobjecky

Certificate of Type Size and Style

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

_____
Thomas Arthur Pobjecky