

IN THE SUPREME COURT OF FLORIDA

**FILED**

IN RE: Application of Joseph J. Higgins  
for Admission to The Florida Bar

Case No. 93,712  
Confidential

SID J. WHITE  
AUG 17 1998

PETITION FOR REVIEW OF DECISION BY THE FLORIDA  
BOARD OF BAR EXAMINERS DENYING JOSEPH J. HIGGINS  
THE RIGHT TO RE-APPLY TO THE FLORIDA BAR

CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

This petition has been filed within sixty (60) days of the decision of The Florida Board of Bar Examiners denying Applicant Joseph J. Higgins the right to reapply to The Florida Bar. Pursuant to Rule 2-3.0.2 Rules of the Supreme Court relating to admission to the Bar, this Honorable Court has jurisdiction in the matter pursuant to Article 5, Section 15 of the Constitution of the State of Florida.

STATEMENT OF THE CASE AND FACTS

This is an appeal of Applicant/Petitioner Joseph J. Higgins of the decision by the Florida Board of Bar Examiners pursuant to the letter of the Board dated June 18, 1998 denying Petitioner's request to reapply to The Florida Bar which was served on the Florida Board of Bar Examiners on or about June 14, 1998.

A copy of Petitioner's letter dated June 14, 1998 to the Board and the Board's denial of Petitioner's request by letter dated June 18, 1998 are attached hereto as Exhibits "A" and "B" respectively.

Petitioner was disbarred by consent plea by this Court effective January 19, 1987. A copy of this Court's order is attached and incorporated herein as Exhibit "C". Pursuant to the aforesaid, Petitioner was disbarred for a period of three (3) years and that time has since passed.

Rule 2-13.1 allows reapplication after a period of five years or such other period as set by the Court. Petitioner has complied with all requirements of his felony probation and received early termination as well as restoration of his civil rights. Petitioner submits his application for clemency, Exhibit "D" and his Restoration of Civil Rights, Exhibit "E" for the consideration of this Honorable Court. Petitioner has no disciplinary proceedings against him in Florida or any other jurisdiction. Petitioner's resignation in Florida was based upon a felony conviction in the United States District Court. Petitioner had been a member of The Florida Bar since 1974 and was continuously in good standing with The Florida Bar until Petitioner made an error in judgment for which this Court has by and through Exhibit "C" severely punished him. To now deny Petitioner the right to reapply in Florida would be to deny the authority of the Supreme Court of Florida to set standards for reapplication based upon discipline and based upon actions of the Supreme Court of Florida.

Petitioner further discloses the following, to-wit: subsequent to this Court's Order of January 19, 1987 Petitioner in good faith entered into a further consent plea agreement with the New Jersey Bar wherein Petitioner, with no intention of reapplying to New Jersey, agreed to permanent disbarment in New Jersey. The New Jersey Supreme Court, based upon the aforesaid representations of Petitioner, entered its order approximately fifteen (15) months after this Court's punishment of Petitioner. A copy of the aforesaid order is marked Exhibit "F", and the same is unjustly

precluding Petitioner from reapplication to The Florida Bar which respectively Petitioner submits is being retrospectively applied.

I. RULE 2-13.1 IF APPLIED AS SUGGESTED BY THE FLORIDA BOARD OF BAR EXAMINERS WOULD BE AN EX POST FACTO APPLICATION OF THE RULES TO PETITIONER AND WOULD BE AN UNFAIR DENIAL OF BASIC DUE PROCESS

At the time Petitioner resigned from the Bar in New Jersey, Florida had no rule requiring eligibility for readmission in another jurisdiction before application would be permitted in Florida. Petitioner states that had he known such a rule existed he would have considered a different action in New Jersey and to apply Rule 2-13.1 to Petitioner on ex post facto basis would be to deny him basic due process rights.

In addition to the aforesaid, it is clear and unambiguous that the Florida Supreme Court stated that the aforesaid amendments, Rule 2-13.1, were "effective upon the issuance of this opinion". The said opinion of this Court was issued April 25, 1991. Therefore, Petitioner contends that the amendment cannot be retrospectively applied and amounts to an ex post facto amendment of his agreement with this Court.

Law and equity demand that if the amendment does not specifically state that it is to be retrospectively applied, the same cannot be applied and Petitioner has the absolute right of application to The Florida Bar and the Florida Bar examination as an operation of law. More specifically the Order of this Honorable Court set the disbarment time for a period of three years, not life. Nor does this Court's Order state that Petitioner would be required to be bound by any other jurisdiction's disbarment,

subsequent to the entry of this Court's lawful Order.

II. RULE 2-13.1 DELEGATES ADMISSION AUTHORITY TO A FOREIGN JURISDICTION BY REQUIRING PETITIONER'S READMISSION IN NEW JERSEY

This presents the Court with a strange Catch 22 in that Florida denies reciprocity in Bar admission to New Jersey attorneys yet appears in this case to completely and without question defer to a New Jersey's decision referencing applicant Higgins discipline that occurred subsequent to the punishment of Petitioner by this Court. Giving full faith and credit to this action in New Jersey makes no sense especially when the Florida Supreme Court found Petitioner eligible to reapply after three years. Quite simply, New Jersey should not be able to tell Florida what to do in this case and surely this cannot be the intent of Rule 2-13.1 or 2-13.2.

III. PETITIONER NEVER INTENDED TO BE DISBARRED FROM THE STATE OF FLORIDA FOR LIFE AND THE FLORIDA SUPREME COURT RECOGNIZED THAT REPRESENTATION REFLECTED IN EXHIBIT "C"

Petitioner made a mistake, paid for that mistake and his civil rights were restored by the Governor of Florida on November 5, 1987.

In April 1991, fifteen months subsequent to the court's discipline of Petitioner, the Florida Board of Bar Examiners presented to this Court, among other recommendations, Article III, Section 2f, which states:

"A person who has been disbarred from the practice of law in a foreign jurisdiction shall not be eligible to apply for admission to The Florida Bar or the Florida Bar Examination for a period of five years from the date of disbarment or such longer period set by the foreign jurisdiction for readmission to the foreign jurisdiction."

Petitioner submits that the plain language of the aforesaid amendment contemplates a termination of a disbarment and that the same does not contemplate a permanent life time refusal to allow Petitioner to apply to The Florida Bar as does the specific language of the Florida Supreme Court in Exhibit "C".

The amendment aforesaid is ambiguous and prejudicial to Petitioner for the reasons stated herein. Further, Petitioner submits the aforesaid is unconstitutional as it contemplates a termination date and in the instant cause there is no termination date in the foreign jurisdiction. As a direct and proximate result the denial of the right of Petitioner to apply to The Florida Bar amounts to cruel and unusual punishment for a debt to society that has been paid with all civil rights restored to the wrongdoer.

IV. UNCONSTITUTIONAL VIOLATION OF THE RIGHT OF CONTRACT

Further, Petitioner submits that his voluntary agreement for disbarment for a period of three (3) years constituted a contract into which Petitioner would not have entered but for the applicable rules in existence at the time of his voluntary submission. Accordingly, Petitioner submits that the change in the Florida Bar rules abrogated those rights of Petitioner, ex post facto, all in violation of the United States Constitution, Article I, §10.


CONCLUSION

This Honorable Court should reverse the Board's of Bar Examiners' erroneous finding denying Petitioner Higgins' request to reapply to The Florida Bar. Petitioner has met all of the conditions of his probation and provided substantial assistance to

United States Attorney. Petitioner has had his civil rights restored and completed his felony probation with early termination. The action in New Jersey on which the Board wishes to base its denial occurred after Florida discipline had been decided by this Honorable Court.

To defer to the Supreme Court of New Jersey and/or retroactively apply the amendment aforesaid in this matter would be to abdicate the authority of this Honorable Court. Accordingly, the prospective applicant, Joseph J. Higgins, respectfully requests an Order of this Court permitting his reapplication to The Florida Bar and/or the Florida Bar examination.

Respectfully submitted,



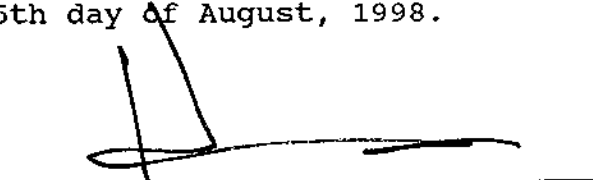
---

HOWARD MESSING, ESQ.  
Florida Bar No. 163858  
Nova Southeastern University  
Shepard Broad Law Center  
3305 College Avenue  
Fort Lauderdale, Florida 33314

Counsel for Applicant/Petitioner  
Joseph J. Higgins

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent via regular U. S. Mail to Ms. Kathryn Ressel, Executive Director, Florida Board of Bar Examiners, 1891 Eider Court, Tallahassee, Florida 32399-1750, on this 15th day of August, 1998.



---

HOWARD MESSING, ESQ.

14 June 1998

Ms Kathryn Ressel  
Executive Director  
Florida Board of Bar Examiners  
1891 Eider Court  
Tallahassee, Florida 32399-1750

Dear Ms Ressel;

I am writing in response to your letter of November 24, 1997 (a copy of which is attached) reference the reapplication of Joseph J. Higgins, pursuant to rule 2-13.1 and 2-13.2.

In Response to your questions in the above-cited letter Mr. Higgins would offer the following:

1. Mr. Higgins has no disciplinary proceedings pending against him in Florida or any other jurisdiction.
2. Although convicted of a Felony, Mr. Higgins has had his civil rights restored in Florida. (A copy of his Certificate of Restoration of Civil Rights dated 11/5/97 is Attached)
3. He successfully completed his Felony Probation with early termination on 11/16/92.
4. Mr. Higgins became a member of the bars of New Jersey (in 1958) and Florida (in 1974). When he applied for the Florida Bar he was a member in good standing of the New Jersey Bar.
5. At the time of his suspension by the Florida Bar in late 1986 or early 1987 Mr. Higgins was a Member in good standing of the New Jersey Bar.
6. As a result of his discipline in Florida, Mr. Higgins entered a consent agreement To his disbarment in New Jersey (a copy of that agreement is attached).
7. His Disbarment Order from the New Jersey Supreme Court states "he (is) permanently restrained and enjoined from practicing law".

Mr. Higgins discipline in New Jersey was a result of his conduct and discipline in Florida. It is our belief that Rule 2-13.2 applies to initial applications and not to re-applications as in this case. Any other reading would be most unfair especially in a case such as this where the foreign jurisdiction does not allow reapplication, while

**EXHIBIT "A"**

**Florida does, especially where New Jersey based its discipline on Florida's actions and Florida conduct.**

**Mr. Higgins Court ordered disbarment in Florida expired eight years ago, he provided significant and substantial assistance to the Office of the United States Attorney, he received an early termination of probation for good conduct and he has remained current in the law, working as a law clerk and he is now anxious to return to his chosen profession (one he first joined in 1958).**

**Also, Rule 2-13.2 I believe became effective after Mr. Higgins New Jersey disbarment and to apply the Rule Ex Post Facto to him would be unfair and a denial of basic due process. Mr. Higgins states that he would not have entered such a consent agreement with New Jersey had he been aware that it might become a permanent bar to reapplication in Florida (his home for almost 23 years) despite the fact that Florida's disbarment was for a period of three years with reapplication permitted thereafter.**

**Further it seems a strange Catch 22 that Florida denies reciprocity to New Jersey attorneys yet defers completely, and without question, to New Jersey's decisions reference Attorney discipline. This is especially unfair when New Jersey's action was subsequent to and based solely on Mr. Higgins discipline in Florida. Giving full faith and credit to this action of New Jersey makes no sense, especially when The Florida Supreme Court found Mr. Higgins eligible to reapply after three years. Quite simply New Jersey should not be able to tell Florida what to do in this case. Surely, this can not be the intent of Rule 2-13.2.**

**Your kind assistance with this request for an administrative ruling permitting Mr. Higgins to reapply to The Florida Bar is most appreciated.**

**Sincerely yours;**

**Howard Messing  
Attorney at Law**



# Florida Board of Bar Examiners

ADMINISTRATIVE BOARD OF THE SUPREME COURT OF FLORIDA

RONALD R. AUSTIN  
CHAIR

FRANKLIN R. HARRISON  
VICE CHAIR

MEMBERS  
KAREN COOLMAN AMLONG  
FERNANDO S. ARÁN  
IRWIN J. BLOCK  
ALVIN CASSEL  
MICHAEL B. COLGAN  
VALERIE J. DAVIS  
I. MARTIN FORD  
GARY D. FOX  
RANDALL W. HANNA  
C. JEFFREY MCINNIS  
ROYCE B. WALDEN  
ANTONIA WILLIAMS-GARY  
JOHN A. YANCHUNIS



TIPPIN-MOORE BUILDING  
1891 EIDER COURT  
TALLAHASSEE, FLORIDA 32399-1750

(850) 487-1292  
FAX (850) 414-6822  
WWW.BAREXAM.ORG/FLORIDA

KATHRYN E. RESSEL  
EXECUTIVE DIRECTOR

THOMAS A. POBJECKY  
GENERAL COUNSEL

YENNA H. COLVIN  
DIRECTOR OF ADMINISTRATION

June 18, 1998

Professor Howard R. Messing  
Nova Southeastern University  
Shepard Broad Law Center  
3305 College Avenue  
Ft. Lauderdale, FL 33314

Dear Professor Messing:

This will acknowledge receipt of a your letter dated June 14, 1998.

Your attention is invited to the case of FBOBE re R.L.V.H., 587 So.2d 462 (Fla. 1991) which addressed the same issue raised by you in your letter. The Court in R.L.V.H. held that it would not allow an applicant to practice law in Florida as long as he was permanently disbarred in a foreign jurisdiction.

Pursuant to Rule 2-13.1 of the Rules of the Supreme Court Relating to Admissions to the Bar, your client is not eligible to apply for admission to The Florida Bar as long as he remains permanently disbarred in the State of New Jersey. You may wish to consider seeking relief from the New Jersey Supreme Court.

I would also direct your attention to the recent Supreme Court Order dated June 4, 1998 in Case No. 91,713 that amends the Rules of The Supreme Court Relating to Admissions to the Bar. As it relates to Mr. Higgins, you might be interested specifically in those changes that now require public formal hearings in readmission proceedings for attorneys who have been disbarred or who resigned pending disciplinary proceedings.

If you have any questions, do not hesitate to write.

Sincerely yours,

Kathryn E. Ressel  
Executive Director

EXHIBIT "B"

KER:yc:tm

# Supreme Court of Florida

No. 69,395

THE FLORIDA BAR, Complainant,

v.

JOSEPH J. HIGGINS, Respondent.

[December 18, 1986]

PER CURIAM.

This matter is before the Court on Petition for Approval of Consent Judgment to violations of Disciplinary Rules 1-102(A)(1), 1-102(A)(3), 1-102(A)(4), 1-102(A)(6) of the Code of Professional Responsibility and article XI, Rules 11.02(3)(a) and 11.02(3)(b) of the Integration Rule of The Florida Bar. We approve the petition and we hereby disbar respondent, Joseph J. Higgins, from the practice of law in the State of Florida for a period of three (3) years effective January 19, 1987, thereby giving respondent thirty (30) days to close out his practice and take the necessary steps to protect his clients. Respondent shall accept no new business from the date of this opinion.

Judgment for costs in the amount of \$150.00 is hereby entered against respondent, for which sum let execution issue.

It is so ordered.

MCDONALD, C.J., and ADKINS, BOYD, OVERTON, EHRLICH, SHAW and BARKENT, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS DISBARMENT.

PUBLIC RECORD

EXHIBIT "C"

25 10 203

Original Proceeding - The Florida Bar

John F. Harkness, Jr., Executive Director and John T. Berry,  
Staff Counsel, Tallahassee, Florida; and Richard B. Lies, Bar  
Counsel, Fort Lauderdale, Florida,

for Complainant

Bernard Berman, Fort Lauderdale, Florida,

for Respondent

SID J. WHITE, CLERK  
**Supreme Court of Florida**  
500 SOUTH DUVAL STREET  
TALLAHASSEE 32399-1927  
(850) 488-0125

Mr. Howard Messing  
Shepard Broad Law School  
3305 College Avenue  
Ft. Lauderdale, Florida 33314

8/20/98

filed 8/17/98

FLORIDA BOARD OF BAR  
EXAMINERS  
RE: JOSEPH J. HIGGINS

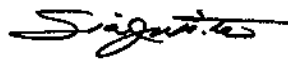
CASE NO. 93,712 (CONFIDENTIAL)

I have this date received the below-listed pleadings or documents:

Petition for Review of Decision by the Florida Board of Bar Examiners Denying Joseph J. Higgins the Right to Re-Apply to the Florida Bar (Original & 7).  
Notice of Scrivener's Error.

Please make reference to the case number in all correspondence and pleadings.

Most cordially,



Clerk, Supreme Court

**ALL PLEADINGS SIGNED BY  
AN ATTORNEY MUST INCLUDE  
THE ATTORNEY'S FLORIDA  
BAR NUMBER.**

SJW/bhp

cc: Ms. Kathryn E. Ressel