

18-8678
No. 19-_____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
MAR 26 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

MIZELL CAMPBELL JR.,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

Petition for a Writ of Certiorari

MIZELL CAMPBELL JR., J.D.
P.O. BOX 7645
FORT LAUDERDALE, FL 33338
(850) 254-1265
mizellesq@hotmail.com

QUESTIONS PRESENTED FOR REVIEW

- Whether an African-American lawyer facing disciplinary proceedings was deprived of his rights to Due Process and a Fair and Impartial Tribunal under the 14th Amendment as interpreted by this court in Marshall v. Jerrico, 446 U.S. 238 (1980) when the White-American Judge assigned as the Referee, interjected at the trial during The Florida Bar's presentation of its case in chief, with a racially charged narrative and expounded to a witness upon his 40 years of experience as a lawyer and compared the African-American lawyer's conduct to that of himself, the Judge's colleagues and other members of The Florida Bar and apologized to the witness for the "transgressions" of the African-American lawyer and suggested that said lawyer was unfit to practice, and then ultimately issued a ruling of permanent disbarment, which The Florida Supreme Court adopted in a one paragraph ruling that failed to cite any case law and failed to explain why the arguments of the African-American lawyer in his appeal were rejected?
- Whether a lawyer facing disciplinary proceedings was deprived of his rights to Due Process and a Neutral Judiciary under the 14th Amendment as interpreted by this court in Tumey v. Ohio, 273 U.S. 510 (1927), when the Judge assigned as the Referee was under investigation by the Clerk and Comptroller for Palm Beach County, Division of Inspector General, the local newspaper, *The Palm Beach Post*, and The State of Florida's Office of Public and Professional Guardians, for a series of rulings he had made in cases granting thousands of dollars of fees to a professional guardian, who is the wife of a fellow Judge, and said fellow Judge was

recommended to be investigated by The Florida Bar, and when the Judge assigned as the Referee was also the presiding Judge for an ongoing foreclosure case for one of the witnesses and the lawyer facing disciplinary proceedings was the defense lawyer for that witness in the ongoing foreclosure case, and one of the issues at trial was the amount of attorney's fees that were due and owing the attorney from the witness for a series of cases that he had represented her and her family in?

- Whether a lawyer facing disciplinary proceedings was deprived of his rights under the 5th Amendment as interpreted by this court in Spevack v. Klein, 385 U.S. 511 (1967) when the now-retired Chief Prosecutor of the 17th Judicial State Attorney's Office for Broward County, Florida, attended the proceedings, after having contacted the lawyer by phone on numerous occasions to advise the lawyer that he was under criminal investigation, and ultimately being advised that the lawyer had retained criminal defense counsel and after contacting the lawyer's criminal defense counsel, still attended the proceedings, without advising the lawyer or the lawyer's criminal defense counsel that he would attend the proceedings, thus placing the lawyer in a position where if he testified in his own defense, he would be testifying in the presence of the State Attorney, regarding the matters that he was under criminal investigation for, without the benefit of the advice and presence of his retained criminal defense counsel?

LIST OF PARTIES

The caption contains the names of all of the parties to the proceedings and they are also listed below:

- 1) MIZELL CAMPBELL JR., Petitioner;
- 2) THE FLORIDA BAR, Respondent.

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PETITION FOR A WRIT OF CERTIORARI**OPINIONS BELOW**

December 6, 2018 Order of Disbarment from The Florida Supreme Court.

January 2, 2019 Order Denying Motion For Rehearing of December 6, 2017 Order from The Florida Supreme Court.

JURISDICTION

This Petition is timely as pursuant to Supreme Court Rule 13, Review On Certiorari: Time For Petitioning, the time to file a Petition For a Writ of Certiorari runs from the date of entry of the judgment or order sought to be reviewed, but if a petition for rehearing is timely filed in the lower court by any party, the time to file the petition for writ of certiorari runs from the date of the denial of rehearing. In this matter, a timely filed petition for rehearing was filed in The Florida Supreme Court on December 13, 2018, 7 days after the December 6, 2018 order sought to be reviewed, and was denied on January 2, 2019. Thus the deadline for a Petition For a Writ of Certiorari is 90 days from January 2, 2019, which makes the deadline for this Petition, April 1, 2019.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the 5th Amendment and 14th Amendment of the U.S. Constitution.

STATEMENT OF THE CASE

1. The process for suspending an attorney from the practice of law is set forth in Rules 3-5.2(a) of the Rules Regulating The Florida Bar.

2. Upon the filing of a Petition, supported by an affidavit, an attorney can be suspended.

3. There is nothing set forth in the process for an attorney to have any Due Process or hearing until after the attorney has been suspended from the practice of law.

4. After an attorney has been suspended, a Motion To Dissolve Suspension can be filed pursuant to Rules 3-5.2(g) of the Rules Regulating The Florida Bar and argued, but by this time the suspension order has already been publicized in newspapers and media outlets and attorneys are required to serve it on all existing clients, present it to all judges for all cases they are counsel of record for, and on other bars that they may be a member of.

5. In other words, by the time an attorney files a Motion To Dissolve Suspension, the damage to that attorney's career, earning capacity and reputation has already begun.

6. Most suspensions take place within one to two days of the Petition being filed and very few attorneys ever file a Motion To Dissolve Suspension.

7. Most attorneys never get a chance to file anything in response to the Petition before they are suspended.

8. It was this process that Mizell Campbell Jr. ("Mr. Campbell") was subjected to.

9. Mr. Campbell is not aware of any case in the state of Florida where an attorney is suspended and subsequently gets the suspension lifted at a hearing on a Motion To Dissolve Suspension and Mr. Campbell is not aware of any case in the state of Florida in the last 25 years where The Florida Supreme Court denies a Petition For

Emergency Suspension.

10. While it may be outside of the scope of this brief, it is the position of Mr. Campbell that the entire emergency suspension process in the state of Florida is lacking in Due Process.

11. After having practiced law in the state of Florida since 2003 with no discipline, in September of 2017, The Florida Bar based on the affidavit of Carl Totaro ("Mr. Totaro"), the auditor for The Florida Bar, filed a Petition for the Emergency Suspension of Mr. Campbell, based on allegations of misappropriation of funds from Mr. Campbell's law firm's trust account.

12. Mr. Campbell filed a Response in opposition to the Petition, however, Mr. Campbell was suspended by The Florida Supreme Court on or about October 12, 2017, with an effective date of 30 days after the issuance of the suspension and given the opportunity to allow his pleadings that had been filed in response to the Petition to be treated as a Motion For Dissolution of Suspension.

13. Judge David French ("Judge French" or the "Referee") was assigned as the Referee by The Florida Supreme Court. Judge French is now retired, but was a Palm Beach County, Florida Judge, while all of the allegations in the Petition were set in Broward County, Florida, where Mr. Campbell practiced.

14. At a Motion For Dissolution of Suspension hearing, which was held on October 19, 2017 before Judge French, Mr. Campbell argued against the suspension and that was based on several issues, not the least of which was that Mr. Campbell had discovered that the auditor Mr. Totaro had a criminal background and had omitted to inform the Florida Board of Accountancy about this when he applied to become a

Certified Public Accountant ("CPA") in 1997.

15. The criminal background that Mr. Campbell had discovered for Mr. Totaro at that time showed that he had been arrested in Broward County, Florida for Assault of a Law Enforcement Officer, Disorderly Intoxication, Leave Accident/Attend Vehicle with more than \$50 of Damage and Fail To Report/Render Aid, among other charges.

16. These incidents dated back to several cases in the early 1980's and after he had become an auditor for The Florida Bar in 2007 and after had had become a CPA and omitted anything about his criminal background in that process, in 2009, Mr. Totaro attempted to expunge parts of his criminal record.

17. In an attempt to discover more information about Mr. Totaro, Mr. Campbell submitted Interrogatories to The Florida Bar, and after the hearing on October 19, 2017, he received responses to them and discovered that in addition to the criminal background that he had discovered for Mr. Totaro, according to the Florida Department of Law Enforcement ("FDLE") report attached to the Interrogatory responses, Mr. Totaro had a criminal background which included additional arrest for Fraud, False Information To Law Enforcement Officer Concerning Capital Felony, Indecent Exposure and Assault on Police Officer, among other charges.

18. At the October 19, 2017 hearing on the Motion To Dissolve Suspension, Mr. Campbell representing himself asked Mr. Totaro under oath as to why he omitted his criminal history from his application in 1997 to become a CPA and he stated under oath that at the time he thought all of his criminal issues were resolved, due to his father always paying his legal bills and retaining an attorney for him.

19. Like Judge French, Mr. Totaro is also a White-American.

20. Mr. Campbell is an African-American.

21. Judge French upheld the suspension after the hearing and it became effective on or about November 13, 2017.

A. Trial Proceedings

22. Mr. Campbell was put on trial by The Florida Bar from January 8 – 9, 2018 and The Florida Bar sought to have him permanently disbarred.

23. Mr. Campbell represented himself.

24. Mr. Totaro was again the expert witness for The Florida Bar.

25. Attorney Frances Brown-Lewis (“Prosecutor Brown-Lewis”) was the prosecutor.

26. Prior to the trial, Mr. Campbell had filed on December 7, 2017 a Motion for Continuance.

27. In said pleading, Mr. Campbell requested that the trial in this matter be continued and at the telephonic hearing held on that request, he advised the Referee that he needed additional time to prepare for the trial and that due to an ongoing investigation by the Broward County 17th Judicial Circuit State Attorney’s Office, he may not be able to testify at any upcoming trial, upon counsel of criminal defense counsel who had advised him to not testify with the ongoing investigation still pending.

28. The trial was rescheduled from a December, 2017 date to the new date of January 8 – 9, 2018.

29. In the interim, Mr. Campbell received on December 19, 2017 responses to Interrogatories that he had served on The Florida Bar and those responses to Interrogatories set forth under oath that The Florida Bar had not at anytime since the investigation of Mr. Campbell started in August of 2016, spoken with or communicated

with Francisco Javier Carlin ("Mr. Carlin") in order to substantiate the allegations of Complainant, Alan Mehrez ("Mr. Mehrez").

30. Both Mr. Mehrez and Mr. Carlin were two of the accusers of Mr. Campbell and Mr. Carlin's accusation was presented in the form of an affidavit that Mr. Campbell had challenged due to issues with its execution, which was not done in compliance with Florida's rules for the execution of affidavits.

31. Specifically, on October 15, 2016, Mr. Campbell had stated the following to The Florida Bar when this matter was still in Tallahassee, Florida at the Attorney Client Assistance Program Level, "Further review of the Complaint shows that the alleged affidavit of Francisco Javier Carlin ("Mr. Carlin") is not properly notarized, as there is a hand written statement that is not legible, setting forth that he produced a driver's license and there is nothing set forth as to which county or state it was executed in and the notary Stephen D. McCullough appears to be a registered agent of one of Mr. Mehrez's new corporations that was formed after the closing. The affidavit appears to have been tampered with or altered and given the other evidence as to credibility that I presented, I would request that this matter not move forward until the parties complaining, at least present credible evidence."

32. The Florida Bar also provided two address in its responses to Interrogatories for Mr. Carlin.

33. Mr. Campbell immediately reached out to The Florida Bar to schedule a deposition of Mr. Carlin and schedule a deposition of Mr. Carlin to take place at The Florida Bar's office in Sunrise, Florida and received from the Referee subpoenas for the deposition of Mr. Carlin. Mr. Campbell provided those subpoenas for service to a process

server and the process server was not able to locate Mr. Carlin at any of the address that The Florida Bar had provided in its responses to Interrogatories.

34. Mr. Campbell on January 5, 2018, filed a Second Motion For Continuance, and filed the Returns of Service, showing that Mr. Carlin had not been found at any of the addresses.

35. The basis of the Second Motion For Continuance was that the trial should be continued until The Florida Bar had located and spoken with Mr. Carlin.

36. The Referee denied the Second Motion For Continuance and this matter proceeded forward to the two day trial that is the subject of this appeal.

37. Prior to the two day trial and immediately after the filing of The Florida Bar's Petition, in October of 2017, Mr. Campbell was contacted by David Schulson, Esq. ("Mr. Schulson") Chief Prosecutor for the Public Corruption Unit of the 17th Judicial State Attorney's Office and told that he was the target of a criminal investigation, which was based on the allegations in The Florida Bar's Petition.

38. Mr. Campbell also was told by Mr. Schulson, that The Florida Bar worked very closely with him, in his investigation and prosecution of attorneys who found themselves, the subject of Bar complaints.

39. Mr. Schulson is now retired, having done so at the end of 2018.

40. Lastly, Mr. Campbell was asked if he would be retaining criminal defense counsel or representing himself.

41. Mr. Campbell stated that he would be retaining criminal defense counsel and that he would not be making any statement at the time to Mr. Schulson or the 17th Judicial State Attorney's Office.

42. In subsequent telephone conversations, Mr. Campbell provided Mr. Schulson with the name of his criminal defense counsel and confirmed with her that she had been contacted by him.

43. On day one of the trial, given that Mr. Campbell had invoked the witness sequestration rule, the only persons in the courtroom were the Referee, Mr. Totaro, who was on the witness stand, Prosecutor Brown-Lewis, who was asking Mr. Totaro questions on direct examination and Mr. Campbell who was sitting down at the defense table alone and the court reporter and other courtroom personnel (i.e. bailiff).

44. There were no members in the audience. A man entered the courtroom wearing dark dress slacks and a white long sleeve button down shirt. He was carrying a writing instrument and some papers. He sat down and stayed in the courtroom for approximately an hour.

45. This was during the afternoon session of day one of the trial.

46. At some point he got up to leave and the Referee advised Prosecutor Brown-Lewis that she needed to wrap up for the day and that the trial would resume in the morning.

47. As Mr. Totaro was leaving the witness stand, he approached Prosecutor Brown-Lewis and inquired of her as to if she was aware that the man who was in the courtroom was Mr. Schulson, the Chief Prosecutor for the Public Corruption Unit of the 17th Judicial State Attorney's Office. It was at this point that Mr. Campbell was able to ascertain who the man in the courtroom had been.

48. As Mr. Campbell was exiting the courtroom on day one, the now identified Chief Prosecutor for the Public Corruption Unit of the 17th Judicial State Attorney's

Office, Mr. Schulson, was re-entering the courtroom and he introduced himself to Mr. Campbell, shook Mr. Campbell's hand and Mr. Campbell inquired of him, as to if he had confirmed that Mr. Campbell was represented by criminal defense counsel.

49. Mr. Schulson responded that he had and that he had sent Mr. Campbell's criminal defense counsel documents to review.

50. During a subsequent meeting with his criminal defense counsel, Mr. Campbell learned that after attending day one of the trial, Mr. Schulson sent an e-mail to Mr. Campbell's criminal defense counsel, advising her that he had attended day one of the trial.

51. Starting in the Fall of 2015 and continuing until October of 2017, Mr. Campbell was working with Novelette Fay Hanse ("Ms. Hanse") in ongoing efforts to save multiple properties that she had acquired under her name and under the name of other family members.

52. Unbeknownst to Mr. Campbell, while he was actively working to save those properties from foreclosure Ms. Hanse was actively working with The Florida Bar to substantiate allegations related to her nephew Calvin Ivey ("Mr. Ivey").

53. Mr. Ivey is alleged in Count VI of the Bar's Petition in this matter to have not received funds that he was due and owing, and that said funds were provided to Mr. Ivey from Mr. Campbell, by way of being paid to Ms. Hanse.

54. Attached to the Petition are e-mails between Mr. Campbell and Ms. Hanse and in those e-mails, Ms. Hanse's e-mail address is equalhomes@gmail.com.

55. On or about December 6, 2016, Ms. Hanse using the e-mail address equalhomes@gmail.com sent Mr. Campbell an e-mail setting forth that on a property

located at 1205 Longlea Terrace, “She wants to pay the HOA to stop this. Look into this and put in a motion. Call me after you review. I think something has to be filed today because on Monday they want to enter a default.”

56. “She” turned out to be Kareen Christian (“Ms. Christian”), the daughter-in-law of Ms. Hanse, and that case turned out to be Meadow Wood Homeowners’ Association, Inc. v. Kareen Christian, Palm Beach County Case Number 50-2016-CA-010140-XXXX-MB (the “Meadow Wood Case”).

57. The Summons for the case shows that service was to be on Ms. Christian at the address of 1205 Longlea Terrace.

58. This case was at all times relevant, assigned to Judge French, who remained on the case, even after being assigned as the Referee in this matter and hearing the Motion For Dissolution of Petition on October 19, 2017, in the same court room that he heard matters related to the Meadow Wood Case.

59. Indeed, on January 10, 2018, the day after he had sat as a Referee in the trial in this matter, Judge French entered an Order in favor of Ms. Christian, which canceled the Association sale on her property and that Order had Mr. Campbell listed in the Service List.

60. At all times, Mr. Campbell never had any contact with Ms. Christian and instead, as was the pattern in his dealings with Ms. Hanse, all communications were through Ms. Hanse, as the properties were usually in other people’s names or corporations’ names, however in reality the properties were under the custody or control of Ms. Hanse, who often rented them to tenants.

61. Ms. Hanse testified against Mr. Campbell during the trial on January 8,

2018 and during cross examination, the Meadow Wood Case came up, as the allegation of The Florida Bar and Ms. Hanse is that monies were due and owing to Ms. Hanse from Mr. Campbell's representation of Mr. Ivey, however on cross examination, Mr. Campbell pointed out that in fact Ms. Hanse owed Mr. Campbell money from his representation of her daughter-in-law Ms. Christian in the Meadow Wood Case.

62. This presented a case where Judge French was both the Referee at the trial in this matter and hearing testimony regarding a case, the Meadow Wood Case, in which he was also the assigned Judge and which he was actively making rulings on, including rulings which benefitted the witness Ms. Hanse.

63. On December 11, 2016, Ms. Hanse sent Mr. Campbell an e-mail from equalhomes@gmail.com reminding him that he needed to file a motion regarding the 1205 Longlea property.

64. On December 11, 2016, Ms. Hanse sent Mr. Campbell yet another e-mail from equalhomes@gmail.com reminding him that he needed to do some work on "Kareen's file" and that something needed to be filed as far as an Answer and Affirmative Defenses before the 12th.

65. On December 11, 2016, after being paid \$250 of the total promised to be paid by Ms. Hanse, Mr. Campbell put in a Notice of Appearance, Motion For Telephonic Conciliation Conference and an Answer and Affirmative Defenses in the Meadow Wood Case.

66. On January 4, 2017, the Plaintiff, Association filed a Reply To Affirmative Defenses, on February 10, 2017, the Plaintiff, Association filed a Motion For Summary Judgment and finally on February 21, 2017, the Plaintiff, Association filed a Notice of

Hearing, setting their Motion For Summary Judgment to be heard before the presiding Judge on April 18, 2017.

67. On April 18, 2017, a Final Judgment was issued, setting a Sale Date of August 16, 2017.

68. At the directions of Ms. Hanse, Mr. Campbell filed a Bankruptcy Action on behalf of Ms. Christian, who presented Mr. Campbell with a Power of Attorney, which she claimed was provided to her from Ms. Christian and which she claimed gave her the authority to proceed on behalf of Ms. Christian.

69. On August 16, 2017, Mr. Campbell filed a Suggestion of Bankruptcy, after filing a Bankruptcy Action for Ms. Christian.

70. The Suggestion of Bankruptcy stopped the Foreclosure Sale from taking place.

71. On September 12, 2017, Ms. Hanse sent Mr. Campbell an e-mail from equalhomes@gmail.com advising him that Ms. Christian would have her finances in order and complete the Short Sale by the time a new Sale Date came around, as the Bankruptcy had been dismissed, when Ms. Christian refused to take the required Bankruptcy Course, despite Mr. Campbell reminding Ms. Hanse that it needed to be done, in order for the Bankruptcy to continue.

72. Judge French became the assigned Judge on the Meadow Wood Case on September 22, 2017, when the case was assigned to him by the Clerk of Court and a mere few weeks later, he was assigned as the Referee in this matter.

73. On September 27, 2017, Ms. Hanse sent Mr. Campbell an e-mail from equalhomes@gmail.com inquiring as to if Mr. Campbell would be attend the "hearing in

the morning for 1205 Longlea Terr.”?

74. The hearing was on the Plaintiff's Motion To Reschedule Sale Date.

75. The Florida Bar's Petition in this matter was filed against Mr. Campbell on September 28, 2017 and Mr. Campbell, representing himself was consumed with responding to the Petition, while at the same time, attempting to manage his case load.

76. Mr. Campbell did not realize until March 14, 2018 that the Referee in this matter was also the Judge in the Meadow Wood Case.

77. Despite having been withdrawn from the Meadow Wood Case by operation of the suspension Order, which he notified Ms. Hanse of and which Ms. Hanse was no doubt aware of, as she was actively working with The Florida Bar as a witness in the Mr. Ivey matter, on November 1, 2017, Ms. Hanse sent an e-mail from equalhomes@gmail.com demanding that Mr. Campbell call her on the 1205 Longlea Terrace property as “Karen is not her now she is in Canada” and Ms. Hanse was attempting to locate the original of the Power of Attorney.

78. This was not an uncommon occurrence for Ms. Hanse to contact Mr. Campbell with an emergency to try to stop a Foreclosure Sale of a property that she had placed into the name of a relative.

79. On November 1, 2017, Mr. Campbell sent an email from equalhomes@gmail.com demanding that he withdraw from the 1205 Longlea Terrace property, as according to Ms. Hanse, Mr. Campbell was holding up the closing of the Sale and still owed Calvin (this referred to the same Mr. Ivey that is in Court VI of the Bar's Petition) money. Further, during this e-mail, a dispute arose as to Ms. Hanse having only paid \$250 to Mr. Campbell for all of the work on the Meadow Wood Case, at which point

Ms. Hanse stated that Mr. Campbell had agreed orally to do all the work on that case “pro-bono”.

80. This was an issue that Mr. Campbell inquired about on cross-examination at the trial.

81. The Referee demonstrated bias and prejudice in favor of Ms. Hanse when, he refused to allowed Mr. Campbell to cross examine her regarding a criminal conviction for mortgage fraud. When Mr. Campbell asked Ms. Hanse about the criminal conviction for mortgage fraud, the Referee shouted, “Sir, that’s inappropriate” without any objection having been raised by the Bar.

82. At the time of his assignment as Referee in this matter and throughout all of the proceedings in this matter, Judge French remained as the assigned Judge on the Meadow Wood Case, despite Ms. Hanse being the party that benefitted from any positive rulings in that matter.

83. Indeed, in the bank foreclosure that is ongoing in this matter for 1205 Longlea Terrace and which Mr. Campbell also represented Ms. Christian on, Ms. Hanse has actually been joined as a party to that case, as it is not clear if Ms. Christian actually owns the 1205 Longlea Terrace property, as based on information and belief, Ms. Hanse merely put the property in her name and the property is actually through probate owned by Ms. Hanse.

84. On December 29, 2017, despite being the Referee in this matter, a hearing was scheduled before Judge French for January 10, 2018 in the Meadow Wood Case. Mr. Campbell is listed in the Service List.

85. In an Order dated January 10, 2018, Judge French denied a Third Party

Bidder's Motion To Dismiss and Mr. Campbell is listed in the Service List.

86. At a hearing held on February 12, 2018, Judge French entered a ruling in favor of Ms. Christian, which canceled the February 12, 2018 Foreclosure Sale of the 1205 Longlea Terrace property.

87. *A mere two days later*, on February 14, 2018 Judge French signed and filed his Report of Referee in this matter. Said Report of Referee recommended a permanent disbarment of Mr. Campbell.

88. On day two of the trial, the Bar called as a witness, Jillian Vincent ("Ms. Vincent"). The Referee engaged in the following conversation with the witness:

89. THE COURT: Madam, we have over 100,000 attorneys in the state of Florida. I've been doing this for over 40 years. And I'm proud of what I've done, and I'm proud of my colleagues that work with me every day. I can assure you, by far the vast majority of all attorneys respect their fiduciary duties, and they do the best they can for their clients, and they provide an absolutely valuable service, not only to our democracy, but to the people in this community on a daily basis. Please forgive any transgressions that have occurred, and may this -- single episode, all right?

90. THE WITNESS: Okay.

91. THE COURT: You have a great day.

92. THE WITNESS: Thank you. You as well.

93. This shows a high level of impartiality on the part of the Referee towards Mr. Campbell and demonstrates the level of hostility that was directed towards Mr. Campbell by the Referee over the two day trial.

94. Given the racial make-up of the participants and the fact that a majority of the members of The Florida Bar are White-Americans and have traditionally been White-Americans, Mr. Campbell feels that the comments of the Referee as to people who should not be members of The Florida Bar was a racially charged comment, in addition to being an improper interjection.

95. Pursuant to an ongoing investigative report by the *Palm Beach Post*, Judge French has been repeatedly named as a Judge that had a conflict of interest as it relates to him sitting as a Judge in cases where Elizabeth “Betsy” Savitt (“Ms. Savitt”) was a professional guardian, in charge of cases involving the estates of seniors.

96. This investigation has been ongoing since 2016 and resulted in Judge French being ordered to recuse himself from all cases involving Ms. Savitt, however according to a *Palm Beach Post* article dated September 6, 2018, Judge French: A) Appointed Ms. Savitt to a guardianship case after he was ordered to recuse himself from her cases, in violation of an order from the chief judge and B) Is named in an Administrative Complaint by the Office of Public and Professional Guardians, as having a conflict of interest in his role as a Judge sitting over cases involving Ms. Savitt.

97. Said Administrative Complaint was litigated and resulted in Ms. Savitt being removed as a guardian from any cases on or about March 21, 2019.

98. It was also revealed that the actions against Ms. Savitt were based on a report (the “report”) by the Inspector General of The Clerk & Controller in Palm Beach County, and that said report alleges “wrongdoing by sitting judges.”

99. On the night of September 8, 2018, the *Palm Beach Post* obtained and released the report and an article and Judge French is named in the report as having among other things, along with other Judges “approved \$21,500 in retainers taken by Savitt from her wards’ banking accounts that the report said violates Florida guardianship law.”

100. Specifically on Page 17 of the report, there is a graph of the cases where Judge French approved these retainers.

101. The report means that during the January 2018 trial of Mr. Campbell where Judge French sat as the Referee, he was already named in the report as having violated the law.

102. Judge French's name is all over the report and he figures very prominently in all aspects of Ms. Savitt's activities according to the report and the report also includes the fact that there was an ongoing criminal investigation regarding the Ms. Savitt matter and that The Florida Bar is recommended to investigate these issues.

103. Mr. Campbell is concerned as to what effect the looming release of the report, the ongoing criminal investigation and potential investigation of attorneys and Judges involved in Ms. Savitt's matter may have had on Judge French's fairness and/or conduct during his time as a Referee in this matter, and as to if The Florida Bar was aware of these issues during the time that Judge French was the Referee.

B. Post-Trial Proceedings Before Florida Supreme Court

104. All of these issues and all of the materials set forth in this appeal were also presented to The Florida Supreme Court during the appeal below.

105. None of these issues swayed The Florida Supreme Court, who on December 6, 2018 entered a one paragraph Order of permanent disbarment that cited to no case law and did not address the 5th Amendment and 14th Amendment arguments or address any of the U.S. Supreme Court cases that Mr. Campbell raised.

106. On December 13, 2018, Mr. Campbell filed a timely Motion For Rehearing.

107. On January 2, 2019, The Florida Supreme Court denied the Motion For Rehearing with a one sentence Order.

108. If the U.S. Supreme Court grants Mr. Campbell certiorari, it will be the first time that a court has given him a written opinion as to the 5th and 14th Amendment arguments that are raised in this matter.

REASONS FOR GRANTING THE WRIT

The issue of diversity in the legal profession has been an urgent and pressing concern for the judiciary and for Bar associations across the United States for years. To allow a White-American judge and a White-American auditor with unexplained criminal charges and who omitted his criminal background in order to become a CPA, to permanently disbar an African-American lawyer, when combined with the racially charged interjection of the White-American judge, the conflict of interest of the White-American judge and the presence at the trial of the criminal prosecutor, who had knowledge of Mr. Campbell being represented by counsel, casts a dark shadow on diversity in the legal profession, raises questions as to if African-American lawyers can get a fair trial when they are accused of misconduct and raises questions as to whether there exists a double standard for conduct, when the issues regarding Judge French and Mr. Totaro are compared with the alleged misconduct of Mr. Campbell. Furthermore, the participants in Mr. Campbell's trial acted in violation of the 5th and 14th Amendment as interpreted by the U.S. Supreme Court in the cases that Mr. Campbell argued to The Florida Supreme Court and which are again presented in this Petition.

I. THE FLORIDA SUPREME COURT ERRED IN DISBARRING MR. CAMPBELL, AS HE WAS DEPRIVED OF THE 14TH AMENDMENT DUE PROCESS RIGHT TO A FAIR AND IMPARTIAL TRIBUNAL BY THE CONDUCT OF THE REFEREE AND SAID DENIAL IS FUNDAMENTAL ERROR WHICH MAY BE RAISED FOR THE FIRST TIME ON APPEAL.

Marshall v. Jerrico, Inc., 446 U.S. 238 (1980) is a holding from the U.S. Supreme Court that conduct from a judge that deprives a litigant of a fair and impartial tribunal is fundamental error that may be raised for the first time on appeal and is a violation of the 14th Amendment's Due Process guarantee.

The Florida Supreme Court in the case of Porter v. State of Florida, 723 So. 2d 191 (Fla. 1998), held that the defendant was denied an impartial Judge, and denied his rights under the Due Process Clause of the United States Constitution when the Judge's statements in a newspaper indicated that he had already made up his mind as to the defendant's penalty before the penalty proceedings began. Mr. Campbell argues that this is significant to his case, in that the statements of the Referee in this matter show that by day two of the trial, before the Bar had even finished presenting its case in chief, the Referee had already made up his mind as to the penalty of a permanent disbarment, as he had essentially told the witness Ms. Vincent that Mr. Campbell was not fit to be a member of the Bar, in comparison to the "over 100,000 attorneys in the state of Florida" who the Referee assured the witness Ms. Vincent were attorneys who fitted the category of being in the group of as he described it, the "vast majority of all attorneys respect their fiduciary duties, and they do the best they can for their clients, and they provide an absolutely valuable service, not only to our democracy, but to the people in this community on a daily basis."

In overturning the Judge in Porter, the Florida Supreme Court cited to Marshall, *supra* and was clear that a Judge must be impartial at all times during a trial, including in the process of weighing aggravating and mitigating circumstances, which requires that a Judge cannot be “pre-committed” to a particular sentence or penalty. It is not clear to Mr. Campbell, why the Florida Supreme Court did not issue a similar ruling in this matter.

A case from the Oklahoma Supreme Court is possibly instructive in this matter. In Bowen v. State of Oklahoma, 270 P. 3d 133 (Supreme Court of Oklahoma 2011), the court reversed a disciplinary proceeding before the Oklahoma Real Estate Appraiser Board (the “Board”) and in doing so held that due to a conflict of interest, the totality of the circumstances created an appearance of impartiality/conflict of interest such that the board’s disciplinary proceeding must be nullified and invalidated. In doing so, the Oklahoma Supreme Court stated, “The interest in a professional license is substantial. When it is necessary to procure a license in order to carry on a chosen profession or business, the power to revoke a license, once granted, and thus destroy in a measure the means of livelihood, is penal in nature and therefore should be strictly construed. The loss of a professional license is more than a monetary loss; it is a loss of a person's livelihood and loss of a reputation. Because the interest at stake in the loss of a license, and the potential damage to a professional reputation resulting from disciplinary proceedings is so great, we require a clear and convincing evidence standard of proof. To resolve this cause, we need not reach the question of whether the Board met its necessary standard proof to discipline the appraiser. Rather, this cause concerns the much more fundamental question

of whether the appraiser could receive a neutral, fair, and impartial hearing before the Board.”

The ruling in Bowen, *supra* cited to Marshall, *supra* and stated, “Due process ‘entitles a person to an impartial and disinterested tribunal in both civil and criminal’ adjudicative proceedings. Marshall v. Jerrico, Inc., 446 U.S. 238, 242, 100 S.Ct. 1610, 1613, 64 L.Ed.2d 182 (1980); Gibson v. Berryhill, 411 U.S. 564, 578-79, 93 S.Ct. 1689, 1697-98, 36 L.Ed.2d 488 (1973). The lack of due process resulting from a biased tribunal cannot be corrected on appeal. Ward v. Village of Monroeville, Ohio, 409 U.S. 57, 61, 93 S.Ct. 80, 83-84, 34 L.Ed.2d 267 (1972)” See also Robinson v. Florida Board of Dentistry, Dept. of Prof. Reg., 447 So. 2d 930 (Fla. 3d DCA 1984) (citing in part to the Due Process requirements of Marshall, in reversing a penalty against Dr. Robinson, a dentist who had appeared before the Board); U.S. v. Nickl, 427 F. 3d 1286 (10th Cir. 2005) (citing to Marshall and setting forth that “A Judge’s actual state of mind or prejudice is not at issue”, “The standard is purely objective” and “[t]he inquiry is limited to outward manifestations and reasonable inferences drawn therefrom”)

Mr. Campbell recognizes that The Florida Bar proceedings are quasi-judicial in nature, however the U.S. Supreme Court in a case that cited to Marshall has held that “Due process demands impartiality on the part of those who function in judicial or quasi-judicial capacities.” Schweiker v. McClure, 456 U.S. 188, 195 (1982)

In responding to the arguments regarding the conduct of the Referee, The Florida Bar never disputed that the Referee made the statements from the transcript, instead in its Answer Brief, The Florida Bar stated that the Referee sought to provide assurances to

the witness Ms. Vincent and that “There is no indication in the record that the Referee, at the conclusion of Ms. Vincent’s testimony, had made up his mind regarding Mr. Campbell’s guilt.”

The Florida Bar never set forth a single case to negate the holding of the U.S. Supreme Court in Marshall *supra* and there is no case that Mr. Campbell is aware of which stands for the proposition that a Referee or Judge can interact with a witness during a trial in the way that Judge French did with Ms. Vincent, and interject with a racially charged narrative, as long as he does so, after that witness has finished testifying.

The United States Supreme Court has been clear for years that the issue of racial discrimination in the judicial process offends the protections of the 14th Amendment. Batson v. Kentucky, 476 U.S. 79 (1986)

It should be noted that Ms. Vincent testified during The Florida Bar’s case in chief, and before Mr. Campbell had even had a chance to present his case and before Mr. Totaro was even finished with his testimony and before Mr. Totaro had been cross-examined by Mr. Campbell. Immediately after Ms. Vincent finished her testimony, Mr. Totaro returned to the witness stand and picked back up with his testimony, as Ms. Vincent’s testimony was taken out of turn, to allow her to return back to work.

In other words, the Referee made his statements very early in the proceedings and before the case had concluded.

The Order from The Florida Supreme Court is in complete violation of Marshall and in violation of other cases from The Florida Supreme Court that have upheld Marshall and in violation of the 14th Amendment’s guarantee of Due Process.

II. THE FLORIDA SUPREME COURT ERRED IN DISBARRING MR. CAMPBELL, AS HE WAS DEPRIVED OF THE 5TH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION BY THE CONDUCT OF THE CHIEF PROSECUTOR OF THE 17TH JUDICIAL CIRCUIT STATE ATTORNEY'S OFFICE FOR BROWARD COUNTY, FLORIDA .

The Fifth Amendment to the U.S. Constitution provides that no person 'shall be compelled in any criminal case to be a witness against himself.' It protects witnesses against making disclosures which they reasonably believe might incriminate them in future proceedings." This protection is also set forth in Fla. Const. Art. 1 §9.

The Report of Referee sets forth that "The Respondent chose not to testify on his own behalf on the advice of counsel as there is an ongoing investigation concerning his conduct. Respondent submitted no exhibits."

This statement is correct and is supported by the statement from the Respondent on day two of the trial, when he stated, "I'm not going to be testifying on advice of counsel that's representing me in another ongoing investigation with this."

In situations where a defendant asserts the privileged against self-incrimination, courts have characterized the defendant as an involuntary party to the litigation. Minor v. Minor, 232 So. 2d 746 (Fla. 2d DCA 1970)

Pursuant to Rules 3-7.6(j) of the Rules Regulating The Florida Bar, "Unless Respondent claims a privilege or right properly available under applicable federal or state law, Respondent may be called as a witness by the Florida bar to make specific and complete disclosures of all matters material to the issues."

Clearly, this rule anticipates that Mr. Campbell is able to claim a privilege or right, such as the Fifth Amendment.

In the case of Spevack v. Klein, 385 U.S. 511 (1967), the United States Supreme Court set forth that an attorney should be able to invoke his Fifth Amendment privilege against self-incrimination during disciplinary proceedings without fear that the invocation would result in disbarment. Specifically, in Spevack, the United States Supreme Court stated that comments by the prosecution on the accused's silence or instructions by the court that such silence is evidence of guilt are forbidden.

The attorney in Spevack, just like Mr. Campbell in this proceeding was charged with professional misconduct based on financial records and reused to testify based on an argument that testifying would violate his Fifth Amendment rights.

Pursuant to Rules 3-7.6(f)(1) of the Rules Regulating The Florida Bar, "A disciplinary proceeding is neither civil nor criminal but is a quasi-judicial administrative proceeding." Mr. Campbell recognizes that the case law pertaining to civil and criminal proceedings is not directly applicable, however it is submitted that the dire consequences to livelihood and reputation caused by attorney discipline constitute significant penalties which could compel an attorney to relinquish Fifth Amendment rights, if doing so would allow the attorney to explain the charges against him.

The Fifth Amendment privilege against self-incrimination is to be liberally construed and may be invoked as long as a reasonable possibility of prosecution exists for crimes suggested by the response. See also Maness v. Meyers, 419 U.S. 449, 95 S.Ct. 584, 42 L.Ed.2d 574 (1975); Zicarelli v. New Jersey Investigation Comm'n, 406 U.S. 472, 92 S.Ct. 1670, 32 L.Ed.2d 234 (1972); Marchetti v. United States, 390 U.S. 39, 88 S.Ct. 697, 19 L.Ed.2d 889 (1967); Hoffman v. United States, 341 U.S. 479, 71 S.Ct. 814, 95 L.Ed. 1118 (1951)

The Order from The Florida Supreme Court is in complete violation of Spevack and in violation of the 5th Amendment's guarantee that no person 'shall be compelled in any criminal case to be a witness against himself.'

III. THE FLORIDA SUPREME COURT ERRED IN DISBARRING MR. CAMPBELL, AS HE WAS DEPRIVED OF THE 14TH AMENDMENT DUE PROCESS RIGHT TO A NEUTRAL JUDICIARY BY THE IMPERMISSIBLE CONFLICT OF INTEREST THAT THE REFEREE LABORED UNDER.

The Order from The Florida Supreme Court is in complete violation of Tumey v. Ohio, 273 U.S. 510 (1927) and its holding that a litigant is entitled under the 14th Amendment to a Due Process Right to a Neutral Judiciary.

The issue of a Neutral Judiciary was again examined by the United States Supreme Court in the case of Caperton v. A.T. Massey Coal Co., Inc., 129 S. Ct. 2252 (2009), where citing to Tumey, this Court wrote that in examining impartiality and propriety, "the question is whether, 'under a realistic appraisal of psychological tendencies and human weakness,' the interest 'poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented'."

The situation of Judge French as outlined above, presented a situation where, again quoting language from Caperton, *supra*, "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable."

Judge French should have been recused from being the Referee in Mr. Campbell's trial. In the fairly recent case of Williams-Yulee v. The Florida Bar, 135 S. Ct. 1656 (2015), the United States Supreme Court examined the history of Judges being elected and/or retained in office in the state of Florida, and the history of corruption scandals of the 1970's and the Code of Judicial Conduct that the Florida Supreme Court adopted. In

upholding restrictions on the personal solicitation of campaign funds, the United States Supreme Court held that the State of Florida has a compelling interest in judicial integrity.

Mr. Campbell argues that said compelling interest in judicial integrity should likewise apply in this matter where Judge French acted in violation of Canon 3(E)(1) of the *Florida Code of Judicial Conduct* which provides that “a judge shall disqualify himself in a proceeding in which his ‘impartiality might reasonably be questioned’”

The Order from The Florida Supreme Court is in complete violation of Tumey and in violation of the 14th Amendment’s Due Process Right to a Neutral Judiciary.

CONCLUSION

The petition for writ of certiorari should be granted for the foregoing reasons.

DATED this 26th day of March, 2019

Respectfully submitted,

Mizell Campbell Jr., J.D.

MIZELL CAMPBELL JR., J.D.
P.O. BOX 7645
FORT LAUDERDALE, FL 33338
(850) 254-1265
mizellesq@hotmail.com