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DECISION AFFIRMING DISTRICT COURT'S ORDERS DISMISSING COMPLAINT UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (JULY 17, 2019)

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

WILLIAM CASTRO,

Plaintiff-Appellant,

v.

R. FRED LEWIS, in His Official Capacity as Justice of the Florida Supreme Court, BARBARA J. PARIENTE, in her official capacity as Justice of the Florida Supreme Court, JORGE LABARGA, in his Official Capacity as Justice of the Florida Supreme Court, PEGGY A. QUINCE, in Her Official Capacity as Justice of the Florida Supreme Court, CHARLES T. CANADY, in His Official Capacity as Justice of the Florida Supreme Court, RICKY POLSTON, in His Official Capacity as Justice of the Florida Supreme Court, C. ALAN LAWSON, in His Official Capacity as Justice of the Florida Supreme Court, THOMAS ARTHUR POBJECKY, in His Individual Capacity,

Defendants -Appellees.

No. 17-15638

Before: MARCUS, Jill PRYOR
and ANDERSON, Circuit Judges

PER CURIAM

Plaintiff-Appellant William Castro appeals from the district court's orders granting the motions to dismiss filed by the Justices of the Florida Supreme Court sued in their official capacity (the "Justices") and Thomas Arthur Pobjecky, the General Counsel of the Florida Board of Bar Examiners (the "Board"). On appeal, Castro argues that the district court erred by: (1) dismissing the complaint against all the appellees for lack of subject matter jurisdiction under the *Rooker-Feldman*[1] doctrine; and (2) dismissing the complaint against Pobjecky for lack of standing. After thorough review, we affirm.[2]

We review *de novo* the district court's dismissal for lack of subject matter jurisdiction based on the Rooker-Feldman doctrine. *See Lozman v. City of Riviera Beach*, 713 F.3d 1066, 1069 (11th Cir. 2013).

The relevant background is this. In 1994, Castro, a former criminal defense attorney in Florida, was charged and convicted in federal court on several felony charges, including bribery, arising out of his arrangement with a state court judge who agreed to appoint Castro as a court-appointed defense attorney

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[1] *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L.Ed. 362 (1923); *D.C. Ct. of App. v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L.Ed.2d 206 (1983).

[2] Because we affirm the district court's dismissal of Castro's claims against all of the appellees on *Rooker-Feldman* grounds, we do not address any of the remaining arguments made on appeal.

in exchange for a percentage of the money Castro earned from the appointments. As a result of his criminal conviction, the Florida Supreme Court entered an order in April 1994 suspending Castro from the practice of law in Florida; it ultimately disbarred him in November 1998, effective, *nunc pro tunc*, May 12, 1994, and prohibited him from seeking readmission for a period of ten years. *See Fla. Bar v. Castro*, 728 So.2d 205 (Fla. 1998) In accordance with the 1998 disbarment order, Castro applied for readmission to the Florida Bar in 2007, and the Florida Board of Bar Examiners conducted a formal hearing in 2010. Following the hearing, the Board's five-member formal hearing panel was not in agreement and split three to two to deny admission. There was some discrepancy over how much longer Castro would be denied admission; while the hearing panel's majority indicated on the record that Castro should be given a permanent denial for being part of "a court corruption scheme" that was so egregious and extreme, the panel's note-taker, who was in the two-member minority, completed a "Findings Worksheet" that did not have an option for permanent denial and checked an option for a recommendation of denial for a two-year period. The Board sent Castro a "Notice of Board Action," indicating that the panel had decided to deny admission with a two-year disqualification period.

Using the formal hearing record, Pobjecky, as the Board's General Counsel, then drafted the Board's recommendation to the Florida Supreme Court, which provided that "[t]he board recommends that William Castro not be readmitted to The Florida Bar." The Board received the draft recommendation, along with the "Findings Worksheet" and a cover letter from the

Board's Executive Director noting that different from the Findings Worksheet, the draft recommendation "does not set forth a specific period of disqualification" and asked that "[i]f you disagree with this approach, please state what action you wish to take." The recommendation was approved by the Board, without any changes to the length of disbarment or otherwise, and sent to the Florida Supreme Court.

On Castro's petition seeking review of the Board's recommendation, the Florida Supreme Court issued a decision permanently denying Castro readmission to the Florida Bar. *See Fla. Bd. of Bar Exam'rs re: Castro*, 87 So.3d 699, 702 (Fla. 2012), *cert. denied*, *Castro v. Fla. Bd. of Bar Exam'rs*, 568 U.S. 932, 133 S. Ct. 339, 184 L.Ed.2d 240 (2012) The Florida Supreme Court detailed Castro's "scheme involving bribery and kickbacks to a sitting judge," and described this "misconduct, involving corruption within the legal system," as "particularly egregious." *Id.* It decided that although Castro had engaged in thousands of community service hours "in an effort to show his rehabilitation," "we agree with the Board's conclusion that no demonstration of rehabilitation would ever suffice to allow Castro's readmission to the legal profession." *Id.* Justice Pariente filed a special concurrence, ultimately agreeing with the majority's decision. *Id* at 703-04.

At that point, Castro reviewed the record from the Board hearing (which he had received on a compact disc ("CD") two years earlier), and concluded that the formal hearing panel had instead recommended a denial of admission with an opportunity to reapply in two years instead of a permanent denial. Based on his review of the records, he moved to vacate the Florida Supreme Court's decision, which he claimed

had been fraudulently procured by the Board's misconduct. In response to the Florida Supreme Court's order for Castro to show cause why his motion should not be dismissed as unauthorized, Castro argued that it had the inherent authority to do so and authority under the Florida Constitution. In its response, the Board acknowledged the Florida Supreme Court's "general jurisdiction of this matter," and addressed the merits of Castro's allegations of misconduct. The Board noted that due to initial confusion, the Notice of Board Action erroneously, and regrettably had informed Castro that the panel voted for a denial of admission with a two-year reapplication period, but when the Board later sent the final recommendation to Castro, the cover letter noted that the final recommendation differed from the Notice of Board Action he'd received. The Board's response to the Florida Supreme Court's show-cause order added that when the panel received the draft recommendation for its approval, the enclosed cover letter specifically had highlighted the inconsistency in the length of disbarment between the Findings Worksheet and the draft recommendation, but that the panel had approved the draft recommendation as written with no comment. The Board concluded its response by arguing that the Florida Supreme Court should dismiss Castro's motion as unauthorized because there was no fraud, misrepresentation or other misconduct by members of the formal hearing panel, and no reason for the case to be reopened. Upon receiving the responses to its show-cause order, the Florida Supreme Court summarily dismissed the motion to vacate as unauthorized. Castro again filed a petition for writ of certiorari, which the United States Supreme Court also denied.

See Castro v. Fla. Bd. of Bar Exam'rs, 572 U.S. 1034, 134 S. Ct. 1761, 188 L.Ed.2d 593 (2014).

Thereafter, Castro filed a complaint in federal district court against the Justices in their official capacity, and Pobjecky in his individual capacity. The complaint alleged that the disbarment procedure had violated Castro's substantive due process rights and liberty interest to pursue his chosen profession; procedural due process rights to notice and opportunity to be heard; procedural due process right to an impartial tribunal; and right of access to the courts. The complaint also included a count for common law fraud under Florida law against Pobjecky. Thereafter, the United States District Court for the Northern District of Florida granted the Justices' motion to dismiss for lack of subject matter jurisdiction based on the *Rooker-Feldman* doctrine, and, later, granted Pobjecky's motion to dismiss based on Castro's lack of standing, and alternatively, the *Rooker-Feldman* doctrine. The district court then entered an amended order removing language indicating that the dismissal was with prejudice, and denied Castro's motion for reconsideration. Castro timely appealed the orders dismissing his complaint.

In this case, the district court properly dismissed Castro's lawsuit against all of the appellees for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine is a jurisdictional rule created by the Supreme Court that precludes the lower federal courts from reviewing state court judgments. *Alvarez v. Att'y Gen. for Fla.*, 679 F.3d 1257, 1262 (11th Cir. 2012) The *Rooker–Feldman* doctrine "is confined to cases of the kind from which [it] acquired its name: cases brought by

state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L.Ed.2d 454 (2005) In order to determine which claims invite rejection of a state court decision, we consider "whether a claim was either (1) one actually adjudicated by a state court or (2) one 'inextricably intertwined' with a state court judgment." *Target Media Partners v. Specialty Mktg. Corp.*, 881 F.3d 1279, 1286 (11th Cir. 2018) A federal claim is inextricably intertwined with a state court judgment "if it asks to effectively nullify the state court judgment, or it succeeds only to the extent that the state court wrongly decided the issues" *Id.* (quotation omitted). A federal claim is not "inextricably intertwined" "when there was no reasonable opportunity to raise that particular claim during the relevant state court proceeding." *Id.* (quotation omitted). Thus, for a federal claim to be inextricably intertwined with a state court judgment, the federal claim must raise "a question that was or should have been properly before the state court." *Id.*

Here, the district court lacked jurisdiction over Castro's lawsuit under the *Rooker-Feldman* doctrine because his claims are "inextricably intertwined" with the Florida Supreme Court's judgment permanently denying his admission to the Bar. Castro's complaint alleged that Pobjecky, as the Board's General Counsel, drafted proposed factual findings, legal conclusions and a recommended disposition for review by the Board panel that conducted Castro's readmission hearing. Using a transcribed portion of the panel's

deliberations in drafting this document, Pobjecky allegedly committed fraud by providing that the Board recommended a permanent denial. The Board panel approved Pobjecky's draft as written. Castro appealed the Board's recommendation to the Florida Supreme Court, which agreed with the Board's recommendation and ordered that Castro's prior conduct warranted permanent denial of readmission to the Bar. On Castro's motion to vacate, the Florida Supreme Court rejected Castro's argument alleging fraud in the drafting of the Board's recommendation. Based on these allegations, Castro's federal complaint raised due process claims, as well as a count for common law fraud against Pobjecky.

For starters, challenges to decisions by state supreme courts disciplining attorneys for misconduct often are precluded by the *Rooker-Feldman* doctrine. In *Doe v. Fla. Bar*, 630 F.3d 1336, 1340-41 (11th Cir. 2011), we affirmed the *Rooker-Feldman* dismissal of a plaintiff's § 1983 claims arising out of the Florida Bar's use of confidential peer reviews as part of the attorney certification process, because her claims would require the district court to review the Florida Supreme Court's decision on her certification application. And in *Berman v. Fla. Bd. of Bar Exam'rs*, 794 F.2d 1529 (11th Cir. 1986), an unsuccessful bar applicant brought § 1983 claims arising out of the Florida Bar's refusal to apply a repealed rule that had exempted graduates of Florida law schools from taking the bar exam. We affirmed the district court's *Rooker-Feldman* dismissal, holding that it lacked jurisdiction over a claim "that a state court's judicial decision in a particular case has resulted in the unlawful denial of admission to a particular bar

applicant." *Id* at 1530 As we've said, "it is clear that the *Rooker–Feldman* doctrine forbids frustrated Florida bar applicants from seeking an effective reversal of the Florida Supreme Court's decision in federal district court." *Dale v. Moore*, 121 F.3d 624, 627 (11th Cir. 1997); *see also Johnson v. Supreme Court of Ill.*, 165 F.3d 1140, 1141 (7th Cir.1999) ("[T]he *Rooker–Feldman* doctrine eliminates most avenues of attack on attorney discipline.").

Castro claims that Pobjecky fraudulently prepared a document that ultimately was before the Florida Supreme Court when it considered his readmission to the Bar, which is similar to the circumstances in *Dale*, 121 F.3d at 627 There, we held that a plaintiff's disability discrimination claims against the Florida Bar were barred by the *Rooker-Feldman* doctrine, where he was challenging a mental health report the Bar had prepared about him in connection with his application to the Bar. *Id.* Even though the Florida Supreme Court admitted Dale to the Florida Bar, we held that Dale's claim was "inextricably intertwined" with the state court's decision on his bar application because it would have required the federal district court to review the Florida Bar's inquiry into his fitness to practice law and the report it prepared for purposes of his bar admission. *Id.* So too here. By asking the federal court to review the Board's inquiry into Castro's eligibility for readmission and the recommendation it gave to the Florida Supreme Court, Castro's claims are inextricably intertwined with the state court's decision on his application for readmission.

To the extent Castro argues that the source of his injury was the allegedly fraudulent Board's recommendation prepared by Pobjecky, and not the Florida

Supreme Court's ultimate decision denying his readmission, that is a distinction without a difference. When the Florida Supreme Court reviewed the Board's recommendation in denying his readmission, it considered the record and issued its own decision permanently denying him readmission to the Bar, which included a separate concurrence from one of the Justices. As we see it, Castro suffered no injury until the Florida Supreme Court itself denied him readmission.[3]

Indeed, Castro's prayer for relief shows that he is asking the district court to review and vacate the Florida Supreme Court's final judgment. Castro directly asks for an order from the district court vacating the Florida Supreme Court's final judgment. He also seeks relief that would accomplish the same result indirectly. He seeks a mandatory injunction requiring the Justices to admit him to the Bar or to issue a judgment imposing a two-year readmission ban, as well as a declaration that the Justices will continue to unlawfully enforce the final judgment unless enjoined, and an injunction against its enforcement. Throughout his prayer for relief, he refers repeatedly to the judgment as "unlawful." Based on the prayer for relief, we likewise reject Castro's argument that he is not claiming that the Florida Supreme Court ruled erroneously. The relief

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[3] Because the complaint alleges that the fraudulent conduct occurred during the course of Castro's bar readmission proceedings, Castro appears to be alleging "intrinsic fraud" in the Florida Supreme Court proceedings; intrinsic fraud "applies to fraudulent conduct that arises within a proceeding and pertains to the issues in the case that have been tried or could have been tried." *Parker v. Parker*, 950 So.2d 388, 391 (Fla. 2007) (quotation omitted). However, we know of no court to have ever recognized an intrinsic fraud exception to the *Rooker–Feldman* doctrine.

Castro seeks plainly asks the district court to find that the Florida Supreme Court wrongly decided Castro's case, "effectively nullif[ying] the state court judgment." *Target Media Partners*, 881 F.3d at 1286 (quotation omitted).[4]

Castro tries to avoid *Rooker-Feldman* by claiming he did not have an opportunity to raise his instant claims in state court. But Castro admits that before he sought readmission by the Florida Supreme Court, he was aware of at least these revealing documents—the Notice of Board Action that informed Castro that the panel voted for a denial of admission with a two-year reapplication period, and a cover letter to Castro (accompanying the final recommendation) that noted that the final recommendation differed from the Notice of Board Action in its length of disbarment. In addition, Castro admits that he had received a CD with even more information about the Board's decision-making process, including the internal report of Board proceedings that allegedly revealed Pobjecky's fraud, but he did not review the contents of the CD. All of these materials were transmitted to the Florida Supreme Court for its review of the Board's recommendation. *See* Fla. Bar Admiss. R. 3-40.1 ("At the time of the

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[4] While the complaint seeks damages from Pobjecky, it provides no basis for any entitlement to damages. Rather, the complaint concedes that damages would not afford Castro the relief he seeks, averring that "[a] damages award against Defendant Pobjecky alone would constitute an inadequate legal remedy" unless the Florida Supreme Court's judgment permanently disbarring him were overturned. In other words, Castro's damages claim could succeed "only to the extent that the state court wrongly decided the issues" when it permanently disbarred him, and was "inextricably intertwined" with the state court decision. *See Alvarez*, 679 F.3d at 1263 (quotation omitted).

filing of the answer brief, the executive director will transmit the record of the formal hearing to the court."). And in Castro's 2012 petition for certiorari, which he filed with the United States Supreme Court before he allegedly reviewed the contents of the CD, he expressly cited to the Notice of Board Action, as well as a cover letter from the Executive Director to the Board, which explained that the Findings Worksheet from the Board had checked a two-year disbarment period, while the Board majority had voted for permanent disbarment, and gave the Board the option to change the disbarment period in the final recommendation.

Thus, even before Castro initially sought review of the Board's recommendation in the Florida Supreme Court, he was on notice that there was an inconsistency in the record concerning the length of his disbarment period, and could have either sought more information from the Board, or reviewed the CD he already had in hand, which contained the additional information that formed the basis for his claims in federal court. We've held that a federal claim is "inextricably intertwined" for *Rooker-Feldman* purposes "when there was [a] reasonable opportunity to raise that particular claim during the relevant state court proceeding." *Target Media Partners*, 881 F.3d at 1286 (quotation and citation omitted). So while we've held that a plaintiff did not have a reasonable opportunity to raise a claim in state court where a judgment was entered pursuant to ex parte proceedings of which he had no actual notice, *Wood v. Orange Cty.*, 715 F.2d 1543, 1548 (11th Cir. 1983), we've also held that a plaintiff had a reasonable opportunity to raise disability discrimination claims against the Florida Bar in state court where he was given notice of a mental health

report the Bar had prepared about him and the Bar's rules permitted him to complain about the Bar's recommendation to the Florida Supreme Court, yet he failed to do so, *Dale*, 121 F.3d at 627 We've also held that plaintiffs had a reasonable opportunity to present constitutional claims during state juvenile court proceedings where "[t]he plaintiffs were both parties to the state court proceeding, and ... they were present and participated in the state court proceedings," yet failed to raise those claims. *Goodman ex rel. Goodman v. Sipos*, 259 F.3d 1327, 1334 (11th Cir. 2001) Here, before Castro appeared in the Florida Supreme Court the first time around, he knew that the Board had conducted disbarment proceedings, he had access to all of the information forming the basis of his instant claims, and, at the very least, he had a reasonable opportunity to assert these claims in state court, even though he failed to do so. Because his instant claims "should have been properly before the state court" when he initially sought review, Castro's claims are inextricably intertwined with the state court judgment. *Target Media Partners*, 881 F.3d at 1286.[5]

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[5] Moreover, once Castro unsuccessfully sought review of the Florida Supreme Court's first decision in the United States Supreme Court, he reviewed the contents of the CD and filed a motion with the Florida Supreme Court to vacate its disbarment order, raising all the same claims he raises now Although the Florida Supreme Court summarily dismissed Castro's motion to vacate, the court requested responses from both parties, who admitted the court had jurisdiction over the motion and argued the fraud claims on the merits. As we've said in this context, "the Supreme Court made clear in *Feldman* [that] the form of a proceeding is not significant, because '[i]t is the nature and effect which is controlling.' " *Doe*, 630 F.3d at 1341 (quoting *Feldman*, 460 U.S. at 482, 103 S. Ct. 1303). There is little to suggest that as a procedural matter, the Florida Supreme Court could not

Accordingly, the district court properly dismissed Castro's complaint for lack of subject matter jurisdiction based on the Rooker-Feldman doctrine.

AFFIRMED.

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have granted Castro relief based on the information contained in his motion to vacate. Thus, not only did Castro have a reasonable opportunity to raise his claims in his first appearance before the Florida Supreme Court, but it's likely that he actually raised these claims in the motion to vacate, further supporting the "inextricably intertwined" nature of the claims.

ORDER DENYING PETITION FOR REHEARING EN BANC AND PANEL REHEARING (SEPTEMBER 20, 2019)

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

WILLIAM CASTRO,

Plaintiff-Appellant,

v.

R. FRED LEWIS, in his official capacity
as Justice of the Florida Supreme Court,
BARBARA J. PARIENTE, in her official capacity
as Justice of the Florida Supreme Court,
JORGE LABARGA, in his official capacity
as Justice of the Florida Supreme Court,
PEGGY A. QUINCE, in her official capacity
as Justice of the Florida Supreme Court,
CHARLES T. CANADY, in his official capacity
as Justice of the Florida Supreme Court,
RICKY POLSTON, in his official capacity
as Justice of the Florida Supreme Court,
C. ALAN LAWSON, in his official capacity
as Justice of the Florida Supreme Court,
THOMAS ARTHUR POBJECKY,
in his individual capacity,

Defendants-Appellees.

No. 17-15638-AA

Appeal from the United States District Court
for the Northern District of Florida

BEFORE: MARCUS, JILL PRYOR and ANDERSON,
Circuit Judges.

PER CURIAM

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 3 5) The Petition for Panel Rehearing is also denied. (FRAP 40)

ENTERED FOR THE COURT:

/s/ Stanley Marcus
United States Circuit Judges

AMENDED PARTIAL FINAL JUDGMENT OF THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA (MARCH 13, 2018)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT FLORIDA
TALLAHASSEE DIVISION

WILLIAM CASTRO,

v.

JORGE LABARGA, ET AL.

Case No. 4:17-CV-236-MW/CAS

Plaintiff's federal claims, Counts I, II, III, IV, are dismissed without prejudice for lack of subject matter jurisdiction against the Defendant Justices.

Jessica J. Lyublanovits
Clerk of Court

/s/ Cindy Markley
Deputy Clerk

Dated: March 13, 2018

ORDER OF THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA (MARCH 12, 2018)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT FLORIDA
TALLAHASSEE DIVISION

WILLIAM CASTRO,

Plaintiff,

v.

JORGE LABARGA, ET AL,

Defendants.

Case No. 4:17-CV-236-MW/CAS

Before: Mark E. WALKER,
United States District Judge.

Mark E. Walker, United States District Judge

This matter is before this Court on remand for the limited purposes of correcting its November 20, 2017, order and partial final judgment.

This Court dismissed Plaintiff's claims against Defendant Justices for lack of subject matter jurisdiction. But this Court improperly did so with prejudice. Haste makes waste: this Court's Order, ECF No. 56, and the Clerk's Judgment, ECF No. 57, should have noted that the claims against Defendant Justices

were dismissed without prejudice. This Order directs the Clerk to vacate the judgment, ECF No. 57 By separate amended order, this Court corrects the scrivener's error in this Court's Order on Plaintiff's Motions for Reconsideration, ECF No. 56, and directs the Clerk to enter an amended judgment pursuant to the Eleventh Circuit's order remanding the case for this limited purpose. *See* Fed. R. Civ. P. 60(a).

SO ORDERED on March 12, 2018.

AMENDED[1] ORDER GRANTING MOTION TO DISMISS OF THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA (JANUARY 4, 2018)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT FLORIDA
TALLAHASSEE DIVISION

WILLIAM CASTRO,

Plaintiff,

v.

JORGE LABARGA, ET AL,

Defendants.

Case No. 4:17-CV-236-MW/CAS

Before: Mark E. WALKER,
United States District Judge.

1 This Amended Order is identical to this Court's prior Order, ECF No. 62, except that it corrects a scrivener's error to properly reflect that all claims against Defendant Pobjecky are dismissed without prejudice and directing the Clerk to enter judgment stating that the claims are dismissed without prejudice. *See* Fed. R. Civ. P. 60(a) ("The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice.").

Mark E. Walker, United States District Judge

This Court heard Defendant Pobjecky's Motion to Dismiss, ECF No. 12, on December 7, 2017. For the reasons set out on the record at the hearing and summarized below, Defendant Pobjecky's Motion to Dismiss, ECF No. 12, is GRANTED.

Plaintiff lacks standing to proceed in this case. No matter how Plaintiff seeks to recast or repackage his claim, his injury ultimately boils down to the Florida Supreme Court's permanent denial of his application for readmission to the Florida Bar. This injury is fairly traceable to the Florida Supreme Court's decision to deny readmission and not to Defendant Pobjecky's alleged fraud. *See, e.g., Lujan v. Defs. Of Wildlife*, 504 U.S. 555 (1992); *see also Peregood v. Cosmides*, 663 So.2d 665, 668 (Fla. 5th DCA 1995) ("To establish standing it must be shown that the party suffered injury in fact (economic or otherwise) for which relief is likely to be redressed and, in non-constitutional situations, that the interest sought to be protected falls within a statutory or constitutional guarantee. . . . ").

Alternatively, Plaintiff's federal claims for damages against Defendant Pobjecky are inextricably intertwined with the final state court judgment, barring further review in federal court under the *Rooker-Feldman* doctrine.

The Clerk is directed to enter final judgment stating, "Plaintiff's state and federal claims are dismissed for lack of standing against Defendant Pobjecky, and Plaintiff's federal claims are further barred by the *Rooker-Feldman* doctrine." The Clerk shall close the file.

SO ORDERED on January 4, 2018.

ORDER GRANTING DEFENDANT JUSTICES' MOTION TO DISMISS DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA (OCTOBER 31, 2017)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT FLORIDA
TALLAHASSEE DIVISION

WILLIAM CASTRO,

Plaintiff,

v.

JORGE LABARGA, ET AL,

Defendants.

Case No. 4:17-CV-236-MW/CAS

Before: Mark E. WALKER,
United States District Judge.

Mark E. Walker, United States District Judge

This Court has considered, without hearing, Defendant Justices' motion to dismiss, ECF No. 38. For the reasons stated below, the motion, ECF No. 38, is GRANTED.

Plaintiff William Castro ("Plaintiff") applied for readmission to the Florida Bar in 2007 after serving a ten-year disbarment for his prior misconduct as an attorney. *Id.* at 2. After conducting a formal hearing

in 2010, the Florida Board of Bar Examiners ("Board") recommended that the Florida Supreme Court deny Plaintiff readmission to the Florida Bar. *Id.* at 2-3. The Florida Supreme Court subsequently approved the Board's recommendation. *See Florida Bd. of Bar Exam'rs re: Castro*, 87 So.3d 699, 702 (Fla. 2012) That same year, Plaintiff petitioned the United States Supreme Court to review the Florida Supreme Court's decision permanently disbarring Plaintiff. Plaintiff's petition was subsequently denied. *See Castro v. Florida Bd. of Bar Exam'rs*, 568 U.S. 932 (2012).

Thereafter, Plaintiff discovered evidence that he believes proves the Board—specifically, Defendant Thomas Pobjecky ("Defendant Pobjecky")—engaged in misconduct that led to his permanent disbarment. ECF No. 1, at 20-22. As a result, Plaintiff moved for leave to file a motion to vacate the Florida Supreme Court's decision to permanently disbar him. After the Florida Supreme Court ordered the parties to brief the issue, it denied Plaintiff's motion for leave to file the motion to vacate and dismissed his motion to vacate as unauthorized. *Id.* at 30; ECF No. 1-9, at 2. Plaintiff subsequently filed a second petition for writ of certiorari challenging the Florida Supreme Court's denial of his motion to vacate, which the United States Supreme Court also denied *See Castro v. Florida Bd. of Bar Exam'rs*, 134 S. Ct. 1761 (2014).

Plaintiff now brings suit against Defendant Pobjecky in his individual capacity, as well as Justices Jorge Labarga, R. Fred Lewis, Barbara J. Pariente, Peggy A. Quince, Charles T. Canady, Ricky Polston, and C. Alan Lawson (collectively "Defendant Justices") in their official capacities as justices of the Florida

Supreme Court.[1] ECF No. 1, at 1. Plaintiff alleges Defendant Justices violated his substantive and procedural due process rights (Counts I-III), and his constitutional right of access to courts (Count IV). *Id.* at 34-44. Defendant Justices move to dismiss all counts against them. ECF No. 38.

The relief Plaintiff seeks is a direct attack on the Florida Supreme Court's decision to deny his bar application. An appeal from a Florida Supreme Court decision does not lie to a United States District Court. *Berman v. Fla. Bd. Of Bar Exam'rs*, 794 F.2d 1529, 1530 (11th Cir. 1986) If Defendant Justices denied Plaintiff due process, their actions would properly be reserved for review by the United States Supreme Court. This principle is known as the *Rooker-Feldman* doctrine.[2]

Under the *Rooker-Feldman* doctrine, federal district courts lack subject matter jurisdiction over "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) Plaintiff essentially argues the *Rooker-Feldman* doctrine does not apply for three reasons. This Court disagrees with each.

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[1] Plaintiff originally brought suit in the Southern District of Florida. *Castro v. Labarga*, No. 1:16-cv-22297-JEM (June 20, 2016). After venue was transferred to the Northern District of Florida, Plaintiff voluntarily dismissed his case, but has since refiled his complaint. ECF No. 38, at 4.

[2] *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

First, Plaintiff contends the *Rooker-Feldman* doctrine does not apply because his injuries were not caused by a state-court judgment. ECF No. 43, at 8. Specifically, Plaintiff argues the source of his injuries was Defendant Pobjecky's alleged misconduct, not the Florida Supreme Court's judgment. *Id.* at 14-15. However, the Florida Supreme Court—not the Board—is vested with the sole authority to regulate the admission or denial of Florida bar applicants. *See* Fla. Const. art. V, § 15; Fla Stat. § 454.021 (2016) Therefore, the source of Plaintiff's injuries—i.e., permanent disbarment and the alleged denial of due process—is the Florida Supreme Court's judgment, not any alleged misconduct by Defendant Pobjecky.

Second, similarly, Plaintiff contends his injuries were not caused by a state-court judgment because the Florida Supreme Court was unaware of Defendant Pobjecky's alleged misconduct when it permanently denied his application, and because he did not have a reasonable opportunity to raise his federal constitutional claims. ECF No. 43, at 8, 10-13. But the Florida Supreme Court did consider Defendant Pobjecky's alleged misconduct when it denied Plaintiff's motion for leave to file a motion to vacate its decision permanently denying Plaintiff's admission to the bar. ECF No. 1, at 30; ECF No. 1-9, at 2. Likewise, Plaintiff had a reasonable opportunity to raise his federal claims in state court because he did, in fact, raise his federal claims when he moved for leave to file a motion to vacate the Florida Supreme Court's judgment. *See* ECF No. 1, at 22-30. The Florida Supreme Court did not arbitrarily dismiss Plaintiff's motion for leave to file a motion to vacate, but instead ordered Plaintiff to show cause why his

motion to vacate should not be dismissed as unauthorized. *See* ECF No. 1-6, at 2. After considering arguments from both Plaintiff and the Board, the Florida Supreme Court ultimately denied Plaintiff's motion to vacate. *See* ECF No. 1, at 23-30.

Plaintiff had another opportunity to raise his federal claims when he filed a second petition for writ of certiorari with the United States Supreme Court challenging the denial of his motion for leave to file a motion to vacate. *See Castro v. Florida Bd. of Bar Exam'rs*, 134 S. Ct. 1761 (2014) Plaintiff had multiple opportunities to raise his federal claims,[3] which were denied by both the Florida Supreme Court and the United States Supreme Court.

Third, and finally, Plaintiff contends the *Rooker-Feldman* doctrine does not apply because he is not asking this Court to review and reverse or vacate a state-court judgment. ECF No. 43, at 9. But both the permanent denial of Plaintiff's bar application and the dismissal of Plaintiff's motion to vacate are state-court judgments.[4] *Doe v. Florida Bar*, 630 F.3d 1336,

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[3] Plaintiff's reliance on *Wood v. Orange County*, 715 F.2d 1543 (11th Cir. 1983) is misplaced. Specifically, the plaintiffs in Wood were not provided a reasonable opportunity to raise their federal claims because they never filed a motion to set aside or vacate the state court's judgment. *See id.* at 1548 By contrast, Plaintiff filed his motion to vacate the Florida Supreme Court's judgment in state court which provided him with a reasonable opportunity to raise his federal claims.

[4] Indeed, despite Plaintiff's argument in his reply to Defendant Justices' motion to dismiss, Plaintiff asserted in his second petition for writ of certiorari that the Florida Supreme Court's "order [denying leave to file a motion to vacate] is final, as it is subject to no further review or correction in any other state tribunal and constitutes an effective determination of the litiga-

1341 (11th Cir. 2011); *Wood v. Orange Cty.*, 715 F.2d 1543, 1548 (11th Cir. 1983) ("A denial of a [motion to vacate] is, . . . appealable . . . as a separate judgment in its own right."); *see also Deveaux v. HSBC Bank USA, N.A.*, No. 15-24659-CIV-WILLIAMS, 2016 WL 6662469, at *2 (S.D. Fla. Feb. 24, 2016) The only way Plaintiff's claims succeed is if this Court reviews those judgments and decides the Florida Supreme Court wrongly decided the issues before it. In other words, these claims are dead center of the *Rooker-Feldman* doctrine.

In sum, because Plaintiff is a losing party in state court who is complaining of injuries caused by the state-court judgments, this Court lacks jurisdiction under the *Rooker-Feldman* doctrine.

Accordingly,

IT IS ORDERED:

1. Defendant Justices' Motion to Dismiss, ECF No. 38, is GRANTED.
2. Counts I, II, III, and IV of Plaintiff's complaint as to Defendant Justices, ECF No. 1, are DISMISSED for lack of subject matter jurisdiction.
3. This Court does not direct entry of judgment as to the dismissed claims pursuant to Fed. R. Civ. P. 54(b) This Court will do so after all claims are resolved against all parties.

SO ORDERED on October 31, 2017.

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tion." Petition for a Writ of Certiorari at 20, *Castro v. Florida Bd. of Bar Exam'rs*, 134 S. Ct. 1761 (2014) (No. 13-857).

ORDERING DENYING CERTIORARI SUPREME COURT OF THE UNITED STATES (MARCH 31, 2014)

SUPREME COURT OF THE UNITED STATES

WILLIAM CASTRO,

Petitioners,

v.

FLORIDA BOARD OF BAR EXAMINERS.

No. 13-857

OPINION

Petition for writ of certiorari to the Supreme Court of Florida denied.

COMPLAINT FILED IN FEDERAL DISTRICT COURT (FEBRUARY 24, 2017)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

WILLIAM CASTRO,

Plaintiff,

v.

JORGE LABARGA, R. FRED LEWIS, BARBARA J. PARIENTE, PEGGY A. QUINCE, CHARLES T. CANADY, RICKY POLSTON, and C. ALAN LAWSON, In Their Official Capacities as Justices of the Florida Supreme Court, and THOMAS ARTHUR POBJECKY, In His Individual Capacity

Defendants.

Case No.

The Plaintiff, WILLIAM CASTRO ("Plaintiff Castro"), sues the Defendants Jorge Labarga, R. Fred Lewis, Barbara J. Pariente, Peggy A. Quince, Charles T. Canady, Ricky Polston, and C. Alan Lawson, in their official capacities as Justices of the Florida Supreme Court (collectively "Defendant Justices"), and Defendant Thomas Arthur Pobjecky ("Defendant Pobjecky"), in his individual capacity, states:

PRELIMINARY STATEMENT

1. Corruption strikes at the very heart of our justice system. So it is when a state court official surreptitiously falsifies and changes a tribunal's decision, he not only violates a litigant's federal constitutional rights but undermines the public's trust and confidence in the impartiality of the judiciary and the integrity of its participants. That such shocking, prejudicial misconduct was committed by the chief legal officer of the agency entrusted to investigate the character and fitness of applicants to The Florida Bar and make admission recommendations to the Florida Supreme Court only magnifies its egregiousness. This lawsuit exposes that official's wrongful actions and the ongoing unconstitutional enforcement of a fraudulently-procured judgment by the state's highest court. It seeks both legal and equitable remedies in this Court appropriate to the federal constitutional violations committed by that state official, the refusal of state supreme court justices to even address claims relating to those flagrant violations on the merits and the continuing nature of the injuries suffered.

2. Almost 20 years ago, the Florida Supreme Court approved the recommendations of an appointed Circuit Court Judge Referee and The Florida Bar that Plaintiff Castro be disbarred for ten years *nunc pro tunc* to the effective date of his 1994 suspension. Relying upon that judgment and Bar Admission rules that allowed a former attorney not permanently disbarred to be readmitted upon successful completion of the Bar examinations and proof of rehabilitation by clear and convincing evidence, Plaintiff Castro applied for admission in 2007 to the Florida Board of Bar Examiners ("Board").

3. After Plaintiff Castro passed the Florida bar examination, the Board held a formal hearing in July 2010 in Coral Gables, Florida to determine whether he was rehabilitated. Plaintiff Castro's evidence of his having performed over 13,000 community service hours was undisputed, and 32 current or former federal and state court judges and over 100 attorneys testified or submitted letters corroborating Plaintiff Castro's rehabilitation and urging his readmission. The Board neither contested the overwhelming evidence of Plaintiff Castro's rehabilitation nor offered evidence of any wrongdoing since his disbarment.

4. During his summation, the Board's Associate General Counsel conceded the overwhelming amount of rehabilitation, acknowledged that the Board did not have authority to recommend permanent denial, and argued for a two-year deferment.

5. One week after that hearing, the Board advised Plaintiff Castro that his application had been denied but that he could reapply in another two years. While that decision was deemed final under Bar Admission Rules, the period within which to appeal that denial to the Florida Supreme Court would not commence until the Board filed its Findings of Fact, Conclusions of Law and Recommendation with the Florida Supreme Court.

6. Almost four months later, the Board submitted a radically-different Findings of Fact, Conclusions of Law and Recommendation to the Florida Supreme Court which indicated that the "board conclude[d] that no amount of rehabilitation w[ould] ever suffice to allow the applicant's readmission to the Florida legal profession. . . . [based on] the egregious nature of the applicant's prior misconduct that eventually

resulted in his criminal conviction, incarceration, and disbarment."

7. Not knowing how or why the recommendation of the Board hearing panel had changed, Plaintiff Castro unsuccessfully appealed the Board's permanent denial recommendation to the Florida Supreme Court and the United States Supreme Court.

8. But on October 3, 2012 (just 2 days after the United States Supreme Court denied his petition for a writ of certiorari), Plaintiff Castro discovered the existence of a transcript of the Board hearing panel's confidential post-deliberations discussions in which the panel chair announced that its collective admissions recommendation was denial (with three panelists voting for denial and two others voting for Plaintiff Castro's admission) but with a two-year disqualification period before he could reapply. Plaintiff Castro later obtained a Findings Worksheet, akin to a verdict form, from the Board, which confirmed that the panel had actually recommended a two-year period of disqualification, *not* permanent exclusion.

9. Within five weeks of discovering that the Board hearing panel had not recommended permanent exclusion as reported, Plaintiff Castro filed an *ex parte*, sealed motion to vacate the fraudulently-procured judgment in the Florida Supreme Court in November 2012, requesting an evidentiary hearing to address federal claims relating to such misconduct and identify who perpetuated the fraud.

10. During the course of that litigation, Defendant Pobjecky, then General Counsel for the Florida Board of Bar Examiners, was identified as the perpetrator of this fraud.

11. Defendant Pobjecky knew that: a) the Board's formal hearing panel had decided by a 3-2 vote to deny Plaintiff Castro's application for readmission to The Florida Bar with a two-year waiting period to reapply; and b) the version of Florida Bar Admission Rule 3-23.6(d) then in effect precluded the Board from recommending any denial period greater than 5 years.

12. Defendant Pobjecky nonetheless:

a) changed the Board hearing panel's decision from a two-year denial recommendation to permanent denial without notice to Plaintiff Castro;

b) helped Michele A. Gavagni ("Gavagni"), Executive Director of the Florida Board of Bar Examiners, prepare an *ex parte* communication to two of the five formal hearing panel members concerning the recommendation the collective panel had made and requesting approval of the fraudulent recommendation he drafted;

c) submitted that fraudulently-altered Board findings and recommendation to the Florida Supreme Court for review; and

d) misrepresented to the Florida Supreme Court in an appellate answer brief that the Board had recommended Plaintiff Castro's permanent exclusion from The Florida Bar, and then advocated for approval of that fraudulently-altered permanent denial recommendation.

13. In October 2013, the Florida Supreme Court refused to address Plaintiff Castro's motion to vacate on the merits by dismissing it as "unauthorized".

14. Plaintiff Castro brings this action against a) the Defendant Justices in their official capacities seeking prospective equitable and declarative relief to halt the continuing federal constitutional violations committed by Defendant Pobjecky by vacating the fraudulently-procured Florida Supreme Court judgment permanently denying Plaintiff Castro admission to The Florida Bar which Defendant Justices will unlawfully continue to enforce unless relief is granted, and b) Defendant Pobjecky in his individual capacity seeking compensatory and punitive damages for violating Plaintiff Castro's federal constitutional rights.

15. Plaintiff Castro also seeks a *de novo* review of his application for readmission to The Florida Bar untainted by the misconduct committed by Defendant Pobjecky.

16. Based upon the Florida Supreme Court's 1998 ten-year disbarment order, the Bar Admission rules Plaintiff Castro relied upon to apply for readmission and post-misconduct rehabilitation Plaintiff Castro established at the formal hearing by clear and convincing evidence, principles of fundamental fairness not only preclude Plaintiff Castro's permanent denial from the practice of law in Florida based solely on the identical misconduct upon which the Florida Supreme Court approved the earlier ten-year disbarment but also compel his readmission to The Florida Bar.

GENERAL ALLEGATIONS

17. Plaintiff Castro is a United States citizen residing in Miami-Dade County, Florida.

18. The Florida Supreme Court is a public entity duly organized and existing pursuant to Article V of the Florida Constitution. It has "exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted" under Article V, Section 15, of the Florida Constitution. The Florida Supreme Court is located in Tallahassee, Florida.

19. The Defendant Justices are United States citizens, who at all times relevant to the allegations contained in this complaint, were and are state officers, *i.e.*, Justices of the Florida Supreme Court, located in Tallahassee, Florida, and acted and act within the course and scope of such state government employment under color of law. While the Defendant Justices perform their adjudicatory official duties in the Northern District of Florida, they perform other official duties in every federal district in Florida, including the Southern District of Florida. By virtue of their state offices, the Defendant Justices have sole responsibility for enforcing the fraudulently-procured judgment permanently denying Plaintiff Castro admission to The Florida Bar based on the unconstitutional acts and conduct complained of herein. Accordingly, the Defendant Justices are sued in their official capacities in connection with their present and prospective unlawful enforcement of that judgment, which violates, and will continue to violate, Plaintiff Castro's federal civil rights.

20. The Florida Bar is a public agency within the judicial branch of government established and regulated under the authority of the Florida Supreme Court pursuant to Article V, Section 15, of the Florida Constitution. It was created by the Florida Supreme Court to enforce the professional responsibilities of attorneys, and the procedures for implementing these duties are set forth in the Rules Regulating the Florida Bar. The primary responsibility of the Florida Bar is to investigate complaints against members of the Bar and make recommendations to the Florida Supreme Court regarding appropriate disciplinary actions.

21. The Board is a public agency within the judicial branch of government established and regulated under the authority of the Florida Supreme Court pursuant to Article V, Section 15, of the Florida Constitution and Rule 1-12 of the Rules Of The Supreme Court Relating To Admissions To The Bar. The Board investigates the character and fitness of applicants to The Florida Bar and recommends the admission of every applicant to the Florida Supreme Court who has complied with all the requirements of the applicable rules, who has attained passing scores on the examination, and who has demonstrated the requisite character and fitness for admission.

22. Defendant Pobjecky is a United States citizen residing in West Palm Beach, Florida, located in the Southern District of Florida, who at all times relevant to the allegations contained in this complaint, served as the General Counsel for the Florida Board of Bar Examiners and acted within the course and scope of such state government employment under color of law. Defendant Pobjecky retired from his position with the Board on May 31, 2012. He is sued in his individual

capacity for compensatory and punitive damages for acts which violated, and continue to violate, Plaintiff Castro's federal civil rights.

23. Michele A. Gavagni ("Gavagni") is a United States citizen residing in Tallahassee, Florida, that at all times relevant to the allegations contained in this complaint was and is currently employed by the Florida Board of Bar Examiners as its Executive Director and acted and acts within the course and scope of such state government employment under color of law.

24. Plaintiff Castro does not herein seek any damages award against any Defendant which would be paid from the State of Florida public treasury, directly or indirectly.

25. Since the Florida Supreme Court refused to address the merits of Plaintiff Castro's claims that the underlying misconduct committed by Defendant Pobjecky violated his federal constitutional rights in the procurement of its judgment permanently denying Plaintiff Castro admission to The Florida Bar and a substantial live controversy exists because the unlawful enforcement of that judgment will occur indefinitely into the future, this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and 2201 and 42 U.S.C. § 1983. Plaintiff Castro also invokes the supplemental jurisdiction of this Court over his state claim against Defendant Pobjecky for common law fraud pursuant to 28 U.S.C. § 1367(a) because it forms part of the same case or controversy.

26. Venue is proper in this district under subsections (b)(1) and (b)(2) of 28 U.S.C. § 1391 because all the Defendants live in Florida and Defendant

Pobjecky resides in this district, and a substantial part of the events or omissions giving rise to Plaintiff Castro's claims occurred in the Southern District of Florida.

FACTUAL ALLEGATIONS

Events Preceding Plaintiff Castro's Application for Readmission to the Florida Bar

27. Plaintiff Castro was admitted to The Florida Bar in 1981.

28. In 1992, Plaintiff Castro was criminally charged in federal court with RICO conspiracy, bribery and mail fraud in connection with having paid a state court judge a percentage of the fees he earned from cases he was appointed to represent indigent criminal defendants.

29. While the evidence at his trial showed that no ruling or outcome of any criminal defendant's case was compromised or affected, no overbilling occurred and each appointed defendant received effective representation, Plaintiff Castro did obtain an unfair financial advantage over other attorneys who could have been properly appointed.

30. As a result of his convictions for those federal crimes, the Florida Supreme Court suspended Plaintiff Castro from the practice of law effective May 12, 1994.

31. The Florida Bar then charged Plaintiff Castro in a complaint with having been convicted of those crimes and violating several Rules Regulating the Florida Bar.

32. The Florida Supreme Court appointed a Referee (Circuit Court Judge) to conduct these proceedings.

33. While permanent disbarment, precluding readmission to The Florida Bar, was a possible sanction under Rule 3-7.10(n)(1) of the Rules Regulating the Florida Bar, The Florida Bar filed a Petition for Approval of the Conditional Guilty Plea and Consent Judgment with the Florida Supreme Court which provided for disbarment for a period of ten years. That Court was not required to accept the Referee's recommendation, and could have lengthened the disbarment period or permanently disbarred Plaintiff Castro.

34. In a judgment dated November 12, 1998, the Florida Supreme Court approved the recommendations of the Referee and The Florida Bar that Plaintiff Castro be disbarred for ten years *nunc pro tunc* to the effective date of the 1994 suspension, followed by an opportunity for him to demonstrate post-disbarment rehabilitation. In doing so, the Florida Supreme Court adopted the Referee's finding that Plaintiff Castro's "plea and The Florida Bar's recommendation as to the terms of discipline [were] both fair to [Castro] and in the public's best interest."

35. Inherent in that judgment was a determination that no evidence existed tending to show that Plaintiff Castro was beyond redemption or could not be rehabilitated. It thus precluded a subsequent finding that no amount of rehabilitation would ever be sufficient to warrant readmitting Plaintiff Castro.

Plaintiff Castro's Application for Readmission to the Florida Bar and Proceedings before the Florida Board of Bar Examiners

36. Under Rule 3-5.1(f) of the Rules Regulating the Florida Bar, "[a] former member who has not been permanently disbarred may only be readmitted again upon full compliance with the rules and regulations governing admissions to the bar."

37. Having relied on the Florida Supreme Court's 1998 judgment and the rules which allowed for readmission upon a showing of rehabilitation by clear and convincing evidence and successful completion of the bar examination, Plaintiff Castro applied to the Board for readmission to The Florida Bar, paid the $5,100 application fee and passed the relevant bar examinations in 2007.

38. After Plaintiff Castro filed his application, the Board filed Specifications against him, based on his previous disbarment and its underlying conduct.

39. Plaintiff Castro admitted both the disbarment and the underlying misconduct and pleaded rehabilitation as an affirmative defense.

40. The Board held a formal hearing in Coral Gables, Florida in July 2010. Gavagni was present during that hearing.

41. Plaintiff Castro and his counsel presented evidence of rehabilitation at the hearing, documenting over 13,000 hours of community service and the supporting testimony or letters from 32 current or former judges (including the Chief Judge for the United States District Court for the Southern District of Florida

and a former Florida Supreme Court Justice) and over 100 attorneys.

42. The Board did not present any evidence contesting or objecting to Plaintiff Castro's evidence of rehabilitation or current moral character from any source or which adversely reflected upon how Plaintiff Castro had conducted himself for the previous 19 years.

43. Based on the evidence presented at the 2010 formal hearing, the 1998 ten-year judgment, and the rules in effect at the time of his application for readmission and formal hearing, Plaintiff Castro satisfied all the standards to warrant his readmission to The Florida Bar.

44. In closing argument, then Associate Board Counsel Robert G. Blythe instructed the hearing panel that Bar Admission rules did not allow the Board to recommend a lifetime ban. He told the Board the longest period they could deny Plaintiff Castro's application under the Rules before he could reapply was five years, but that he was only asking for 2 years because, while conceding that Plaintiff Castro had performed a lot of community service, he could always do more.

45. Counsel for the Board also advised the panel that they had "an awful lot of balancing to do to determine whether what the applicant ha[d] done [wa]s sufficient in light of the seriousness of the underlying misconduct."

46. At the conclusion of the formal hearing, Board panel members convened for closed deliberations to determine whether Plaintiff Castro had engaged in sufficient rehabilitation to warrant his admission

despite his previous disbarment and the related underlying conduct.

47. On July 22, 2010, Gavagni executed a Notice of Board Action letter received via certified US mail by Plaintiff Castro's counsel in Plantation, Florida informing Plaintiff Castro that the Board had decided that he had "not established the character and fitness standards required" and "that the 2-year denial period would be applicable before an application to establish rehabilitation . . . w[ould] be accepted." *See* copy of letter, attached hereto as Exhibit A.

48. That letter also advised Plaintiff Castro that the Notice of Board Action was "intended to advise [him] of the board's action, but [was] not formal notice of the 'board's recommendation' under rules 3-30 or 3-40.1 for purposes of calculating the 60-day period for filing either a petition for board reconsideration or a petition for Supreme Court review."

49. Uncertain whether he would accept the Board's decision and wait two years to reapply or appeal the Board's two-year denial decision to the Florida Supreme Court, Plaintiff Castro ordered a copy of the formal hearing transcript from the Board.

50. On August 26, 2010, Plaintiff Castro's counsel received a copy of the formal hearing transcripts from the Board.

51. Upon reviewing that copy, Plaintiff Castro and his counsel found what they believed were many substantive and typographical errors. Since he had already paid for the transcripts, Plaintiff Castro contacted the court reporting firm that transcribed the proceedings and requested a compact disc ("CD") of the transcripts of the formal hearing.

52. In early September 2010, Plaintiff Castro received a CD from the court reporting firm via United States mail which purportedly contained the transcripts of the July 15, 2010 formal hearing before the Board's panel.

53. However, since Plaintiff Castro and his counsel had already begun making corrections from the copy of the transcripts provided by the Board, he did not check to see whether the CD did, in fact, contain the hearing transcripts, and placed it in an accordion file with copies of other documents presented at the formal hearing.

54. On October 19, 2010, Gavagni executed the Board's Findings of Fact, Conclusions of Law, and Recommendation. *See* copy of Board's Findings of Fact, Conclusions of Law, and Recommendation, attached hereto as Exhibit B.

55. In a cover letter, Gavagni wrote that "[t]he final recommendation of the board as outlined in the findings differs from that referenced in the July 22, 2010, Notice of Board Action. The findings and recommendation are controlling." *See* copy of cover letter, attached hereto as Exhibit C.

56. Both the Board's Findings of Fact, Conclusions of Law, and Recommendation and Gavagni's cover letter were received via certified US mail by Plaintiff Castro's counsel in Plantation, Florida.

57. The Findings of Fact, Conclusions of Law and Recommendation stated that the "board conclude[d] that no amount of rehabilitation w[ould] ever suffice to allow the applicant's readmission to the Florida legal profession. . . . [based on] the egregious nature of the applicant's prior misconduct that eventually

resulted in his criminal conviction, incarceration, and disbarment."

58. This different recommendation exceeded not only the maximum five-year disqualification period for reapplication that the Board could recommend under Bar Admission rules but also the two-year disqualification recommendation that the Board originally rendered.

59. Plaintiff Castro's counsel, with no reason to believe that anything unlawful or irregular had occurred, surmised that the difference between the findings/decision contained in the Notice of Action and the Findings of Fact, Conclusions of Law, and Recommendation was attributable to a reporting error by the Board's staff, concluding that they must have initially notified Plaintiff Castro incorrectly that his application for admission was denied for two years, when in fact, the Board panel's decision had actually recommended permanent denial.[1]

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[1] On December 16, 2010, two months after the Board's action here, the Florida Supreme Court amended Bar Admission Rule 3-23.6(d), adding, for the first time, the possibility of permanent preclusion. *See In re Amendments to the Rules of the Supreme Court Relating to Admissions to the Bar,* 52 So.3d 652, 654-55, 659 (Fla. 2010), which added this sentence to the end of Rule 3-23.6(d): "In a case involving extremely grievous misconduct, the board has the discretion to recommend that the applicant or registrant be permanently prohibited from applying or reapplying for admission to the Florida Bar." However, that provision did not apply when Plaintiff Castro was disbarred by the Florida Supreme Court; it did not apply when he applied for readmission following the passage of his 10-year waiting period; it did not apply when he gathered and submitted the evidence supporting his application; and it did not apply when he had his

The Florida Supreme Court's Decision

60. The Board's Findings of Fact, Conclusions of Law and Recommendation left Plaintiff Castro with no alternative but to appeal the permanent denial recommendation to the Florida Supreme Court, which he did on December 14, 2010.

61. In the Board's Answer Brief filed on April 25, 2011, Defendant Pobjecky entitled his argument "The Board Properly Recommended Castro's Permanent Exclusion" and repeatedly represented to the Florida Supreme Court that the Board had recommended that Plaintiff Castro's application for admission to The Florida Bar be permanently denied. Defendant Pobjecky argued "that [Castro's] egregious conduct fully justifie[d] the board's recommendation that he be permanently excluded from readmission to The Florida Bar." He also stated that "[i]n its recommendation in the pending case, the board got it right. The board urges this Court to affirm the board's recommendation and to exclude [Petitioner] from seeking readmission to The Florida Bar." In closing, Defendant Pobjecky urged that "Court to affirm the board's recommendation that Castro not be admitted to The Florida Bar and that Castro be permanently excluded from reapplying."

62. On February 9, 2012, the Florida Supreme Court approved the Board's recommendation that Plaintiff Castro be permanently denied admission to The Florida Bar. *Florida Board of Bar Examiners re Castro*, 87 So.3d 699 (Fla. 2012). It agreed with the Board's "determin[ation] that no amount of rehabilitation would ever be sufficient to warrant readmit-

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hearing in July 2010 or when the Board issued its findings in October 2010.

ting Castro to the Bar" and "conclusion that no demonstration of rehabilitation would ever suffice to allow Castro's readmission to the legal profession".

63. Although the Florida Supreme Court found that Plaintiff Castro had "engaged in thousands of hours of community service, benefiting both his church and the legal community as a whole, in an effort to show his rehabilitation", it concluded that notwithstanding Plaintiff Castro's "admirable" commitment to community service and "substantial" evidence of rehabilitation, "no demonstration of rehabilitation would ever suffice to allow Castro's readmission to the legal profession." *Id.* at 701-2.

64. Defendant Justice Pariente's concurring opinion summarized Plaintiff Castro's evidence of rehabilitation:

> The witnesses who testified at [Castro]'s hearing included many leaders in the legal and judicial community . . . [who] described [Castro] as a changed person and recommended his readmission without hesitancy.
>
> [* * *]
>
> The evidence established that [Castro] logged over 13,000 hours of community service during the past eighteen years—equivalent to an impressive 700 hours of service per year. He has volunteered for the Guardian ad Litem (GAL) program, where he has been described as a "wonderful asset." The Senior Staff Attorney of the criminal court's GAL program recounted several different cases on which [Castro] served. She believed that [Castro]'s efforts in one GAL case saved

a child's life and further described him as a "relentless advocate" and "meticulous."

[Castro] is also a licensed foster-care parent, and he and his wife later adopted each of the three children they had fostered. The judge who approved the adoptions described how she "grew to admire and respect Willie" and had "no doubt that he would be a very positive member of the Bar." [Castro] has led CLE seminars in which he has taken "accountability for what he has done." One witness who previously worked with [Castro] in organizing a seminar involving ethics and the law stated that during the time she has known him, [Castro] made her "want to be a better lawyer." Another witness testified as to his service to the community, and especially to children, describing him as a "person that is just doing everything that he can to be able to give to people, to give of himself, of his time, of his talent, and to really make a difference in people's lives." Further, [Castro] has organized programs for migrant children, and one witness testified that these migrant children "wouldn't have anything or much if it wasn't for the efforts that Willie had done."

By all accounts, [Castro] has lived an exemplary life since his criminal charges, felony convictions, and prison sentence. Based on what I perceive to be overwhelming evidence of his rehabilitation, I would state that [Castro] has demonstrated all seven elements of rehabilitation required by Rule

> 3–13 of the Bar Admission Rules for admission when the applicant has previously engaged in disqualifying conduct.

Id. at 702-3. Justice Pariente recognized in her concurring opinion that the majority's decision effectively "change[d] Castro's sanction of a ten-year disbarment imposed in 1994 to one of a permanent disbarment." *Id.* at 703.[2]

65. Plaintiff Castro filed a motion for rehearing, which was denied by the Florida Supreme Court on April 26, 2012.

Petition for a Writ of Certiorari

66. Plaintiff Castro filed a Petition for Writ of Certiorari to the Florida Supreme Court at the United States Supreme Court on July 25, 2012. He raised the following question for review:

> Whether Castro's substantive due process rights under the Fourteenth Amendment to the United States Constitution and principles of fundamental fairness were violated when the Florida Supreme Court disregarded its own final judgment disbarring Castro for 10 years by later permanently denying his readmission based solely on the same

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[2] Plaintiff Castro is the only former attorney licensed in Florida not permanently disbarred for his misconduct who, upon completion of the ordered disbarment period and reapplying for admission to The Florida Bar without having committed any post-disbarment acts impugning his moral character, has ever been permanently denied readmission to The Florida Bar by the Florida Supreme Court based solely upon the identical misconduct underlying his original disbarment.

misconduct which formed the basis of the original disbarment judgment and without considering any evidence of rehabilitation.

67. The United States Supreme Court denied certiorari on October 1, 2012 (docket number 12-124). *See Castro v. Florida Board of Bar Examiners*, 133 S. Ct. 339 (2012)(mem.).

Plaintiff Castro's Motion to Vacate Judgment Based on Fraud Committed by the Florida Board of Bar Examiners

68. On October 3, 2012 (two days after the United States Supreme Court denied Plaintiff Castro's petition for writ of certiorari), Plaintiff Castro reviewed the boxes and files which contained his application to The Florida Bar, the formal hearing, and his appeals to the Florida Supreme Court and the United States Supreme Court, in order to decide which documents to retain or discard.

69. While doing so, Plaintiff Castro found the CD that the court reporting firm had mailed him which purportedly contained the transcripts of the formal hearing.

70. Upon inserting the CD into the computer, Plaintiff Castro noticed that not only did it contain the two transcripts of the formal hearing but also a transcript of the Board panel's confidential post-deliberations report of its collective recommendation.[3]

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[3] Prior to 1994, the Board adopted a policy of having deliberations of the formal hearing panel transcribed to augment the information contained on the Findings Worksheet that is completed by a designated note-taker on the formal hearing panel.

Plaintiff Castro had no reason to know that the CD contained this confidential transcript. *See* copy of Board panel transcript, attached hereto as Exhibit D.

71. As announced by the panel's chairperson, those findings, dated July 15, 2010, at 6:15pm, revealed that the five-member panel voted shortly after the formal hearing in Coral Gables, Florida, to deny Plaintiff Castro admission to The Florida Bar. Three panelists voted for denial and the two others voted to admit Plaintiff Castro outright.

72. After their collective decision had been announced on the record, two panel members in that transcript alluded to a Florida Supreme Court case in which a first-time applicant had been permanently denied admission to The Florida Bar. However, neither of them nor the third panelist who voted for denial indicated that either the panel's or their individual recommendation was for permanent denial.

73. To the contrary, all panel members agreed upon a finding of a two-year disqualification period (the same denial period recommended by Board counsel during closing argument), which "is presumed to be the minimum period of time required before an applicant or registrant may reapply for admission and establish rehabilitation". Rule 3-23.6(d) of *The Rules of the Supreme Court Relating to Admissions to the Bar*.

74. Moreover, panelists, even those who voted for denial, described Plaintiff Castro's rehabilitation during deliberations as "massive", "voluminous" and "impressive".

75. Since it was apparent that the panel's original two-year denial recommendation had been changed and

the permanent denial recommendation contained in the Board's Findings of Fact, Conclusions of Law and Recommendation was unsupported by the record and false, Plaintiff Castro's counsel, within 5 weeks of discovering the contents of the CD, filed a sealed, *ex parte* motion to vacate the judgment of the Florida Supreme Court entered on February 9, 2012 (which approved the Board's recommendation that Plaintiff Castro be permanently denied admission to The Florida Bar).

76. Although neither Plaintiff Castro nor his counsel knew the identity of the person or persons involved in changing the panel's recommendation, the motion filed with the Florida Supreme Court generally alleged that the Board, its members, employees and/or others associated or acting in concert with the Board, committed fraud, misrepresentation or other misconduct by changing, without authority, the formal hearing panel's July 15, 2010 unanimous two-year denial decision (as reflected in its post-hearing deliberations transcript) to a permanent denial recommendation that was incorporated in the Board's October 19, 2010 Findings of Fact, Conclusions of Law and Recommendation and submitted to the Florida Supreme Court for review.

77. Plaintiff Castro requested an evidentiary hearing before an independent entity (other than the Board) upon the allegations concerning the Board's actions, at which evidence and argument could be received to determine how the initial two-year denial recommendation was changed and who was involved or knew about it.

78. As a result of the Board's actions, Plaintiff Castro argued that his federal procedural and sub-

stantive due process rights to have his readmission application adjudged fairly and impartially before the Board and the Florida Supreme Court were violated when the Board arbitrarily and without notice changed the findings and recommendation of the formal hearing panel and issued a "different" Findings of Fact, Conclusions of Law and Recommendation.

79. But for the mailing of the compact disc to Plaintiff Castro that inadvertently contained the confidential Board transcript which included the panel chairperson's post-deliberation announcement that their collective decision was for denial of Plaintiff Castro's application by a three-to-two vote with a two-year waiting period to reapply, the alleged fraud would have never been discovered.

80. Plaintiff Castro did not know or have reason to know that such misconduct had occurred when the Florida Supreme Court approved the fraudulently-altered findings and recommendation and entered its final judgment permanently denying his admission to The Florida Bar.

Order to Show Cause

81. On May 6, 2013, the Florida Supreme Court, indicating that Plaintiff "Castro ha[d] provided no authority in his motion or any other filing setting forth the authority upon which this Court can grant leave to Castro to file a motion to vacate the final disposition of the Court and reopen the case for consideration of new information", ordered Plaintiff Castro to show cause why his Verified Motion to Vacate Judgment Based on Fraud, Misrepresentation or Other Misconduct Committed by the Florida Board of Bar Examiners "should not be dismissed as unauthorized."

See copy of Order to Show Cause, attached hereto as Exhibit E.

Plaintiff Castro's Response to Order to Show Cause

82. On May 22, 2013, Plaintiff Castro filed a response to the Order to Show Cause.

83. Plaintiff Castro argued that although the Florida Rules of Appellate Procedure did not contain a rule allowing a litigant to move to vacate a judgment or decision issued by an appellate court based on fraud or other misconduct, the Florida Supreme Court had the inherent authority and duty to review any specific allegation of fraud, misrepresentation or other misconduct committed by a party in the procurement of a final judgment entered by that Court in order to protect the rights of the aggrieved party and further the administration of justice, and if proven, to vacate that judgment. Plaintiff Castro pointed out that that Court's inherent authority to review a claim that a party procured a judgment of that Court through fraud, misrepresentation or other misconduct could also be gleaned from its promulgation of other procedural rules.

The Board's Reply

84. In its June 3, 2013 Reply, "[t]he Board acknowledge[d] that [while] the [Florida Supreme] Court ha[d] general jurisdiction of this matter pursuant to Article V, Section 15 of the Florida Constitution," it argued that "[t]here [was] no specific grant of jurisdiction for the underlying motion to vacate judgment. . . . [or] reason for this case to be reopened". The Board opposed any further inquiry of the underlying allegations by the Florida Supreme Court, attributing

what occurred to "some unfortunate miscommunication between the hearing panel members and the board's staff" and advocated that the motion to vacate should be dismissed as unauthorized.

85. In that Reply, Petitioner first learned that Defendant Pobjecky, then the Board's General Counsel, had drafted the Findings of Fact, Conclusions of Law and Recommendation (although it was Gavagni who signed it). Specifically, the Board's Reply represented that "[a]fter the transcript of the full hearing and the deliberations were received, the General Counsel at the time, Thomas Arthur Pobjecky, drafted the Findings of Fact, Conclusions of Law, and Recommendation." According to the Reply, Defendant Pobjecky drafted the Findings of Fact, Conclusions of Law, and Recommendation because a Board policy precluded "the attorney who represents the Office of General Counsel at the formal hearing [with having any] involvement with preparing the Findings."[4]

86. With its Reply, the Board filed an Appendix containing select previously-undisclosed confidential Board documents. But, as the evidence the Board actually disclosed in its Appendix to its Reply conclusively proved, there was no miscommunication between the hearing panel members and Board staff, as the "Findings Worksheet"[5] which was completed and

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[4] Since at least 1959, it has been the Board's practice to have one of its attorneys prepare the findings of fact in Bar applicant matters. In 2005, Defendant Pobjecky determined that these Findings would be drafted by an attorney on the Board's staff other than the attorney who presented the case at the formal hearing.

[5] A formal hearing panel's Findings Worksheet is akin to a jury's verdict form that represents the decision of the Board's

provided immediately after the conclusion of the panel's deliberations to Board staff in Coral Gables, Florida, contained the panel's denial recommendation/findings for 2 years, not permanent exclusion. *See* copy of Findings Worksheet, attached hereto as Exhibit F.

87. In the Board's Reply, Plaintiff Castro also first learned that Gavagni had sent a letter dated September 15, 2010 to two of the five hearing panelists—the panel's presiding officer and note-taker (who recorded the panel's decision reflected in the Findings Worksheet)—enclosed with a copy of the Findings Worksheet and the General Counsel's draft of the Findings of Fact and Conclusions of Law, pursuant to a purported Board policy requiring their approval.[6] *See* copy of Gavagni's letter, attached hereto as Exhibit G.

88. In that letter, which Defendant Pobjecky helped prepare but did not sign, Gavagni stated:

> Enclosed is a draft of Findings of Fact and Conclusions of Law. Also enclosed is a copy of the notes of the panel's findings as recorded by Ms. Doyle. It is the board's policy that the presiding officer of the formal hearing panel and the board member assigned note taking responsibility review and approve the Findings prior to mailing.

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panel, as trier of the facts, based on its review and weighing of the evidence presented and argument of counsel at the formal hearing.

[6] From at least 1994 through 2010, the Board's policy was to have the drafted findings of fact reviewed by the presiding officer and note-taker from the formal hearing panel for approval.

> The findings Recommendation would normally state the length of the disqualification period when there is a recommendation of denial (*e.g.* two years as checked on the findings worksheet in this case). In this case and as stated in the Conclusions of Law, the panel majority decided that no amount of rehabilitation would be sufficient for the applicant to overcome his past egregious conduct. Thus, the Recommendation does not set forth a specific period of disqualification. If you disagree with this approach, please state what action you wish to take.
>
> We will forward the Findings as drafted to the applicant after September 27, 2010, if you do not advise any changes be made before that date.

89. According to the Board's Reply, that letter "specifically highlighted the inconsistency between the Findings Worksheet and the draft Findings" and that "[t]he drafter of the Findings did everything he could to ensure the Findings accurately reflected the panel's decision."

90. Defendant Pobjecky's duties in drafting the Findings of Fact, Conclusions of Law and Recommendation was simply to summarize the evidence presented at the hearing and report the Board hearing panel's admission recommendation. It was not to serve as an advocate for any particular recommendation or be critical of or alter the hearing panel's recommendation.

91. Defendant Pobjecky interjected himself in this process as both an advocate and *de facto* sixth

panelist when he omitted to include the two-year denial recommendation reflected in both the Findings Worksheet and deliberations transcript and drafted a Conclusions of Law which misrepresented what the formal hearing panel had concluded, knowing that Gavagni would communicate *ex parte* with the panel chair and notetaker and provide them with his fabricated Conclusions of Law for approval.

92. Defendant Pobjecky did this knowing that it would never be discovered by anyone (including Plaintiff Castro)–except the Executive Director of the Florida Board of Bar Examiners–due to the confidential nature of internal Board actions.

Plaintiff Castro's Sur-Reply

93. In his June 6, 2013 Sur-Reply, Plaintiff Castro argued that Defendant Pobjecky falsified the panel's findings by substituting their collective judgment in favor of a conclusion and recommendation that was never agreed upon by them. He pointed out that the available evidence showed that no communication breakdown ever existed, as Defendant Pobjecky:

a) knew that the Board had issued a Notice of Board Action letter on July 22, 2010 informing Plaintiff Castro that they had decided that he had "not established the character and fitness standards required" and "that the 2-year denial period would be applicable before an application to establish rehabilitation . . . w[ould] be accepted";

b) possessed the transcript of Plaintiff Castro's formal hearing;

c) knew that the "Findings Worksheet" reflected the panel's two-year denial recommendation;

d) knew that the panel Chair had announced the panel's decision (as reflected in a transcript) after the confidential deliberations as "a three-two vote to deny a recommendation for readmission to the Supreme Court. The findings-for two years"; and

e) knew that the version of Rule 3-23.6(d) then in effect prohibited the Board from recommending any denial period greater than 5 years.

94. No Bar Admission rule or other legal authority permitted any Board member, employee or agent (including the Board's Executive Director or General Counsel) to 1) unilaterally reject, modify, make new findings, or substitute the formal hearing panel's admission decision after the panel deliberates and issues its findings and recommendation, or 2) compel or request the formal hearing panel to reconvene collectively or otherwise communicate with each other to renew deliberations or reconsider their findings and recommendations subsequent to their original deliberations or issuance of their original decision.

95. In her letter to the panel's presiding officer and note-taker, Gavagni went beyond simply asking them to clarify some alleged inconsistency between the Findings Worksheet and the Findings recommendation. Instead of allowing the two panelists to decide whether there was a discrepancy and if so, what the panel's collective recommendation was, Gavagni, without notice to Plaintiff Castro's counsel or seeking leave of the Florida Supreme Court, incor-

rectly informed them that "the panel majority [had] decided that no amount of rehabilitation would be sufficient for the applicant to overcome his past egregious conduct" and forwarded the falsified recommendation Defendant Pobjecky drafted for their approval.

96. Moreover, Gavagni failed to provide those two panelists with the post-deliberations transcript of the formal hearing panel's findings so they could see for themselves that the panel majority never agreed upon that conclusion or recommended permanent denial.

97. By calling upon two of the five panelists to provide a recommendation in conformance with the false Conclusions of Law Defendant Pobjecky drafted, Gavagni's letter not only interfered with the panel's original documented two-year denial recommendation but also prompted the two panelists to effectively re-deliberate (without the necessary five-member panel quorum). Relying upon the presumed correctness of the Conclusions of Law drafted by Defendant Pobjecky and Gavagni's letter corroborating it, the two panelists ostensibly approved the fabricated permanent denial recommendation.

98. Clearly uncomfortable with the Board's request to provide a new recommendation consistent with the Conclusions of Law that Board counsel drafted that were false, the panel's note-taker, in response to an email sent to her by Gavagni, expressed her "hope that the report [would] indicate[] that the findings were not unanimous but reached in a 3-2 vote for witholding [*sic*] admission", not permanent denial.

99. Neither the panel's two-year disqualification recommendation nor the actual 3-2 vote for denial was included in the Board's Findings of Fact, Conclusions of Law and Recommendation Defendant Pobjecky drafted and Gavagni executed.

Florida Supreme Court's Order Dismissing Motion to Vacate Judgment

100. On October 18, 2013, the Florida Supreme Court dismissed Plaintiff Castro's motion to vacate as "unauthorized". *See* copy of Order, attached hereto as Exhibit H.

101. In so doing, the Florida Supreme Court refused to even consider, much less reach the merits of, Plaintiff Castro's federal claims concerning the alleged misconduct committed by the General Counsel of the Florida Board of Bar Examiners.

Petition for a Writ of Certiorari

102. Plaintiff Castro filed a Petition for Writ of Certiorari to the Florida Supreme Court at the United States Supreme Court on January 16, 2014. He raised the following question for review:

> Whether the Florida Supreme Court violated Castro's procedural and substantive due process rights under the Fourteenth Amendment to the United States Constitution by summarily dismissing Castro's motion to vacate its judgment permanently denying him admission to The Florida Bar or, in the alternative, conduct an evidentiary hearing, in light of proof that the Florida Board of Bar Examiners fraudulently changed a

hearing panel's decision.

103. The Court denied certiorari on March 31, 2014 (docket number 13-857). *Castro v. Florida Board of Bar Examiners*, 134 S. Ct. 1761 (2014)(mem.).

Other Acts and Declarations Attributable to Defendant Pobjecky

104. In February 2007, an article was published in The Bar Examiner by Defendant Pobjecky, entitled Beyond Rehabilitation: Permanent Exclusion from the Practice of Law. He argued that courts should adopt a bright-line test to permanently deny applicants guilty of serious past misconduct from practicing law. He stated that "[s]uch rules give notice to law schools, law students, and prospective bar applicants of the types of behavior that will permanently exclude individuals from the legal profession." *Id.* at 16. Defendant Pobjecky did not address whether such rules should apply to a previously-disbarred attorney who later seeks readmission. Lastly, Defendant Pobjecky concluded that "most importantly, the adoption of a per se approach supports the notion that the general integrity of the judicial system is paramount to the individual claim of rehabilitation by a particular bar applicant." *Id.*

105. On December 10, 2008, Defendant Pobjecky, on behalf of the Board, filed a petition for approval of certain amendments to The Rules of the Supreme Court Relating to Admissions to the Bar in case number SC08-2296. With respect to Rule 3-23.6(d), the Board recommended that it "be amended to clarify the rule. The proposed amendment would also authorize the board to recommend permanent denial for 'extremely grievous misconduct.'"

106. Defendant Pobjecky intentionally omitted including the true two-year denial recommendation in the Findings of Fact, Conclusions of Law and Recommendation he drafted and substituted the fabricated language denoting permanent denial because he did not want to mislead Plaintiff Castro into thinking that his past rehabilitation, including the over 13,000 hours of community service hours he had performed, was insufficient and that he could later establish rehabilitation by performing additional community service, and then be admitted to The Florida Bar. However, nowhere did the majority of the panel members agree or make any finding that Plaintiff Castro's denial was permanent or that he could never show sufficient rehabilitation to warrant his readmission.

107. Had he reported the formal hearing panel's actual two-year denial recommendation, Defendant Pobjecky believes that he would have then falsified the findings because the evidence of rehabilitation Plaintiff Castro presented at the formal hearing was clearly sufficient to gain admission after engaging in disqualifying conduct. Defendant Pobjecky changed the panel's recommendation because he felt he knew what was right and he did it.

108. After having served as General Counsel for the Board since 1985, Defendant Pobjecky retired on May 31, 2012–less than 4 months after the Florida Supreme Court affirmed the Board's permanent denial recommendation.

Plaintiff Castro's Present Status with the Florida Bar

109. Plaintiff Castro remains permanently ineligible to reapply or be readmitted to The Florida Bar unless relief is granted.

Plaintiff Castro Seeks Prospective Injunctive Relief Against the Defendant Justices and Damages Award Against Defendant Pobjecky

101. A damages award against Defendant Pobjecky alone would constitute an inadequate legal remedy. While the harm caused by Defendant Pobjecky can be reduced to a monetary amount, it would be insufficient to compensate Plaintiff Castro for *all* the harm he continues to suffer. Unless this Court grants declaratory and prospective injunctive relief against the Defendant Justices, Plaintiff Castro will indefinitely continue to be irreparably harmed by the unlawful enforcement of the judgment issued by the Florida Supreme Court permanently denying him admission to The Florida Bar which was fraudulently-procured by Defendant Pobjecky.

COUNT I

Violation of Plaintiff Castro's Federal Substantive Due Process Rights And Liberty Interest To Pursue His Chosen Profession (28 U.S.C. § 2201 and 42 U.S.C. § 1983) (All Defendants)

111. Plaintiff Castro incorporates by reference paragraphs 1 through 110.

112. In this Count, Plaintiff Castro seeks declaratory and prospective injunctive relief against the Defendant Justices in their official capacities and compensatory and punitive damages against Defendant

Pobjecky in his individual capacity pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983.

113. Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, a person has a liberty interest to pursue his chosen occupation free from arbitrary and unreasonable State governmental interference.

114. A State cannot exclude a person from the practice of law for reasons or in a manner that contravene the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

115. Based on the Findings Worksheet and the transcript of the panel's announced decision after deliberations, Defendant Pobjecky knew that the formal hearing panel had decided by a 3-2 vote to deny Plaintiff Castro's application for readmission to The Florida Bar, with a two-year waiting period to reapply.

116. Defendant Pobjecky knew that the version of Florida Bar Admission Rule 3-23.6(d) then in effect prohibited the Board from recommending any denial period greater than 5 years.

117. Defendant Pobjecky committed egregious misconduct in connection with Plaintiff Castro's application for readmission to The Florida Bar by:

a) arbitrarily and capriciously drafting a Findings of Fact, Conclusions of Law and Recommendation which changed the Board hearing panel's decision from a two-year denial recommendation to permanent denial;

b) helping Gavagni draft an *ex parte* letter to two of the five Board panel members two months after the panel had recommended

denial of Plaintiff Castro's application with a two-year waiting period to reapply which requested they consider approving a permanent denial recommendation based on the misrepresentation that "the panel majority decided that no amount of rehabilitation would be sufficient for the applicant to overcome his past egregious conduct";

c) submitting the fraudulently-altered Board findings and recommendation Defendant Pobjecky drafted to the Florida Supreme Court for review; and

d) misrepresenting to the Florida Supreme Court in an appellate answer brief that the Board had recommended Plaintiff Castro's permanent exclusion from The Florida Bar and then advocating for approval of that fraudulently-altered permanent denial recommendation.

118. Defendant Pobjecky knew or should have known that his conduct violated Plaintiff Castro's clearly established federally-protected constitutional substantive due process rights and liberty interest to pursue his chosen profession under the Fourteenth Amendment to the United States Constitution of which a reasonable person would have known.

119. Defendant Pobjecky's wrongful acts were not undertaken pursuant to the performance of his official duties or within the scope of his authority relating to the examination, character and fitness qualification, and licensing of persons seeking to be admitted to the practice of law.

120. As a result of the misconduct committed by Defendant Pobjecky, Plaintiff Castro will forever be completely deprived of his liberty interest to pursue his chosen profession in Florida under the Fourteenth Amendment to the United States Constitution.

121. The Defendant Justices presently and will prospectively act in violation of the federal Constitution by unlawfully enforcing the fraudulently-procured judgment issued by the Florida Supreme Court which permanently denied Plaintiff Castro admission to The Florida Bar based on the constitutional violations committed by Defendant Pobjecky unless relief is granted.

122. Defendant Pobjecky's conduct set forth herein was motivated by an evil motive or intent, or involved reckless or callous indifference to Plaintiff Castro's federally-protected rights.

123. By reason of the above-described acts, Plaintiff Castro was required to and did retain undersigned counsel to institute and prosecute the instant civil action and to render legal assistance to Plaintiff Castro so that he might vindicate the loss and impairment of his above-mentioned rights.

COUNT II

Violation of Plaintiff Castro's Federal Constitutional Procedural Due Process Rights to Notice and Opportunity to be Heard (28 U.S.C. § 2201 and 42 U.S.C. § 1983) (All Defendants)

124. Plaintiff Castro incorporates by reference paragraphs 1-110.

125. In this Count, Plaintiff Castro seeks declaratory and prospective injunctive relief against the Defendant Justices in their official capacities and compensatory and punitive damages against Defendant Pobjecky in his individual capacity pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983.

126. Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, a person has a right to notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

127. A State cannot completely exclude a person from practicing law unless the requirements of procedural due process are met, including notice and a full and fair hearing in which that person is given an opportunity to contest the bases of the recommendations against him.

128. Plaintiff Castro was denied procedural due process that was constitutionally adequate under the Fourteenth Amendment to the United States Constitution.

129. Plaintiff Castro was entitled to notice and an opportunity to contest the changing of the Board panel's original two-year denial recommendation.

130. Defendant Pobjecky changed the Board hearing panel's two-year denial recommendation to permanent exclusion from The Florida Bar without furnishing Plaintiff Castro notice and an opportunity to challenge the Board's authority to unilaterally second-guess and alter the Board panel's original recommendation and contest any such change.

131. Since Defendant Pobjecky changed the Board panel's recommendation without Plaintiff Castro's knowledge, Plaintiff Castro was also denied his procedural due process right to seek direct judicial review the actions of the Board and Defendant Pobjecky at the Florida Supreme Court.

132. Defendant Pobjecky knew or should have known that his conduct violated Plaintiff Castro's clearly established federally-protected constitutional due process rights under the Fourteenth Amendment to the United States Constitution of which a reasonable person would have known.

133. Defendant Pobjecky's wrongful acts were not undertaken pursuant to the performance of his official duties or within the scope of his authority relating to the examination, character and fitness qualification, and licensing of persons seeking to be admitted to the practice of law.

134. The Defendant Justices presently and will prospectively act in violation of the federal Constitution by unlawfully enforcing the fraudulently-procured judgment issued by the Florida Supreme Court which permanently denied Plaintiff Castro admission to The Florida Bar based on the constitutional violations committed by Defendant Pobjecky unless relief is granted.

135. Defendant Pobjecky's conduct set forth herein was motivated by an evil motive or intent, or involved reckless or callous indifference to Plaintiff Castro's federally-protected rights.

136. By reason of the above-described acts, Plaintiff Castro was required to and did retain undersigned counsel to institute and prosecute the instant civil

action and to render legal assistance to Plaintiff Castro so that he might vindicate the loss and impairment of his above-mentioned rights.

COUNT III

Violation of Plaintiff Castro's Federal Constitutional Procedural Due Process Right to an Impartial and Disinterested Tribunal (28 U.S.C. § 2201 and 42 U.S.C. § 1983) (All Defendants)

137. Plaintiff Castro incorporates by reference paragraphs 1-110.

138. In this Count, Plaintiff Castro seeks declaratory and prospective injunctive relief against the Defendant Justices in their official capacities and compensatory and punitive damages against Defendant Pobjecky in his individual capacity pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983.

139. Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, a person is entitled to an impartial and disinterested tribunal.

140. Plaintiff Castro was entitled to an impartial and disinterested recommendation from the Board hearing panel free from tampering or external interference from Defendant Pobjecky and Gavagni.

141. Defendant Pobjecky and Gavagni exercised conflicting executive, prosecutorial and adjudicative functions in the Board's processing of Plaintiff Castro's application for readmission to The Florida Bar by initiating, conducting and/or approving *ex parte* communications with two hearing panel members two months after the five-member formal hearing

panel had decided to recommend that Plaintiff Castro's application be denied with a right to reapply after two years and which resulted in the Board's issuance of a fraudulently-altered permanent denial recommendation to the Florida Supreme Court.

142. Defendant Pobjecky violated Castro's due process right to an impartial and disinterested tribunal under the Fourteenth Amendment to the United States Constitution through his actions which interfered with the sanctity of the Board hearing panel's deliberations by second-guessing and altering its collective decision.

143. As a result of their actions, Defendant Pobjecky denied Castro:

a) his right to representation by counsel;

b) an opportunity to challenge the authority of the Board to communicate with Board panelists about their recommendation;

c) a Board hearing panel's recommendation based solely on evidence and argument presented at the hearing; and

d) a Findings of Fact, Conclusions of Law, and Recommendation which reflected the unadulterated decision of the Board hearing panel.

144. The Board's tainted recommendation could not be constitutionally redeemed by the subsequent direct review in the Florida Supreme Court.

145. Defendant Pobjecky knew or should have known that his conduct violated Plaintiff Castro's clearly established federally-protected constitutional rights to an impartial and disinterested tribunal

under the Fourteenth Amendment to the United States Constitution of which a reasonable person would have known.

146. Defendant Pobjecky's wrongful acts were not undertaken pursuant to the performance of his official duties or within the scope of his authority relating to the examination, character and fitness qualification, and licensing of persons seeking to be admitted to the practice of law.

147. The Defendant Justices presently and will prospectively act in violation of the federal Constitution by unlawfully enforcing the fraudulently-procured judgment issued by the Florida Supreme Court which permanently denied Plaintiff Castro admission to The Florida Bar based on the constitutional violations committed by Defendant Pobjecky unless relief is granted.

148. Defendant Pobjecky's conduct set forth herein was motivated by an evil motive or intent, or involved reckless or callous indifference to Plaintiff Castro's federally-protected rights.

149. By reason of the above-described acts, Plaintiff Castro was required to and did retain undersigned counsel to institute and prosecute the instant civil action and to render legal assistance to Plaintiff Castro so that he might vindicate the loss and impairment of his above-mentioned rights.

COUNT IV

Violation of Plaintiff Castro's Federal Constitutional Right of Access to Courts (28 U.S.C. § 2201 and 42 U.S.C. § 1983) (All Defendants)

150. Plaintiff Castro incorporates by reference paragraphs 1-110.

151. In this Count, Plaintiff Castro seeks declaratory and prospective injunctive relief against the Defendant Justices in their official capacities and compensatory and punitive damages against Defendant Pobjecky in his individual capacity pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983.

152. Access to the courts is a federal constitutional right, grounded in the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment, and the Fourteenth Amendment.

153. A right of court access is constitutionally impeded where a state agent intentionally conceals, misrepresents or alters information which renders a person's right to seek redress in an underlying action inadequate, ineffective, or meaningless.

154. Defendant Pobjecky intentionally created and submitted a fraudulently-altered Board panel findings and recommendation to the Florida Supreme Court for review, concealing from that Court and Plaintiff Castro the true Board panel findings and recommendation, and then arguing for approval of his fabricated permanent denial recommendation in proceedings before the Florida Supreme Court knowing it was false.

155. Plaintiff Castro was entitled to have the Florida Supreme Court to directly review the Board hearing panel's two-year denial recommendation. However, by changing the record that was supposed to be reviewed by the Florida Supreme Court, Defendant Pobjecky deliberately and maliciously interfered with Plaintiff Castro's right to appeal the formal hearing panel's actual two-year disqualification recommendation to the Florida Supreme Court or his option to wait the recommended two-year disqualification period to reapply and forced Plaintiff Castro to appeal the fraudulent Board findings recommending permanent denial.

156. Thus, the issue on appeal to that Court was not whether Plaintiff Castro had presented sufficient evidence of his rehabilitation to be readmitted (in conformance with his 1998 ten-year disbarment judgment and the version of Rule 323.6(d) in effect at the time of Petitioner's hearing) but whether the latter judgment and almost over 20 years of rehabilitative efforts could be legally and equitably ignored to deny him admission permanently.

157. As a result of the misconduct committed by Defendant Pobjecky, Plaintiff Castro's right of access to the Florida Supreme Court was not adequate, effective, or meaningful and he is permanently denied admission to The Florida Bar.

158. Defendant Pobjecky knew or should have known that his conduct violated Plaintiff Castro's clearly established federally-protected constitutional right of access to the courts under the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment, and the Fourteenth Amend-

ment to the United States Constitution of which a reasonable person would have known.

159. Defendant Pobjecky's wrongful acts were not undertaken pursuant to the performance of his official duties or within the scope of his authority relating to the examination, character and fitness qualification, and licensing of persons seeking to be admitted to the practice of law.

160. The Defendant Justices presently and will prospectively act in violation of the federal Constitution by unlawfully enforcing the fraudulently-procured judgment issued by the Florida Supreme Court which permanently denied Plaintiff Castro admission to The Florida Bar based on the constitutional violations committed by Defendant Pobjecky unless relief is granted.

161. Defendant Pobjecky's conduct set forth herein was motivated by an evil motive or intent, or involved reckless or callous indifference to Plaintiff Castro's federally-protected rights.

162. By reason of the above-described acts, Plaintiff Castro was required to and did retain undersigned counsel to institute and prosecute the instant civil action and to render legal assistance to Plaintiff Castro so that he might vindicate the loss and impairment of his above-mentioned rights.

COUNT V

Common Law Fraud under Florida Law Compensatory and Punitive Damages (Defendant Pobjecky)

163. Plaintiff Castro incorporates by reference paragraphs 1-110.

164. This is an action for common law fraud under Florida law.

165. In this Count, Plaintiff Castro seeks compensatory and punitive damages against Defendant Pobjecky in his individual capacity.

166. Based on the Findings Worksheet and the transcript of the panel's announced decision after deliberations, Defendant Pobjecky knew that the formal hearing panel had decided by a 3-2 vote to deny Plaintiff Castro's application for readmission to The Florida Bar, with a two-year waiting period to reapply.

167. Defendant Pobjecky knew that the version of Florida Bar Admission Rule 3-23.6(d) then in effect prohibited the Board from recommending any denial period greater than 5 years.

168. Nonetheless, Defendant Pobjecky drafted a Conclusions of Law which stated that the "board conclude[d] that no amount of rehabilitation w[ould] ever suffice to allow the applicant's readmission to the Florida legal profession. . . . [based on] the egregious nature of the applicant's prior misconduct that eventually resulted in his criminal conviction, incarceration, and disbarment", knowing at that time that what he wrote was false.

169. Defendant Pobjecky knowingly made that false statement in the Conclusions of Law he drafted for the purpose of inducing the hearing panel's presiding officer and note-taker to act in reliance thereon and approve the fabricated permanent denial recommendation.

170. Defendant Pobjecky helped Gavagni prepare an *ex parte* letter she sent to those two panelists requesting them to approve the Conclusions of Law Defendant Pobjecky drafted, representing that "the panel majority decided that no amount of rehabilitation would be sufficient for the applicant to overcome his past egregious conduct".

171. That statement was made for the purpose of inducing the hearing panel's presiding officer and note-taker to act in reliance thereon and approve the fabricated permanent denial recommendation.

172. Relying upon the presumed correctness of the Conclusions of Law drafted by Defendant Pobjecky and Gavagni's letter corroborating it, the two panelists ostensibly approved the fabricated permanent denial recommendation.

173. By changing the panel's denial recommendation from a two-year waiting period to permanent exclusion, Defendant Pobjecky deprived Plaintiff Castro of his right to appeal the formal hearing panel's actual two-year disqualification recommendation to the Florida Supreme Court and forced him to appeal the fraudulent Board findings recommending permanent denial.

174. Defendant Pobjecky's conduct set forth herein was motivated by an evil motive or intent, or involved

reckless or callous indifference to Plaintiff Castro's rights.

PRAYER FOR RELIEF

Wherefore, Plaintiff Castro requests that this Court enter judgment against all the Defendants, and

a) declare that the detrimental impact of the ongoing constitutional violations in Counts I, II, III and IV and the unlawful judgment permanently denying Plaintiff Castro's admission to The Florida Bar continues into the present and future unless relief is granted; and

b) declare that, as to Counts I, II, III and IV, the Defendant Justices will presently and prospectively unlawfully enforce the judgment permanently denying Plaintiff Castro's admission to The Florida Bar unless relief is granted; and

c) issue a prospective injunction, as to Count I, II, III and IV, enjoining the Defendant Justices from unlawfully enforcing the judgment permanently denying Plaintiff Castro's admission to The Florida Bar in derogation of the United States Constitution; and

d) issue a prospective injunction, as to Count I, II, III and IV, ordering the Defendant Justices to vacate the Florida Supreme Court's unlawful 2012 judgment permanently denying Plaintiff Castro's admission to The Florida Bar; and

e) declare that the Fourteenth Amendment to the United States Constitution, fundamental fairness and *res judicata* principles preclude Plaintiff Castro's permanent denial from the practice of law in Florida based solely on the identical misconduct upon which the Florida Supreme Court approved the 1998 ten-year disbarment; and

f) declare that the evidence presented at the Board's 2010 formal hearing Plaintiff Castro demonstrated by clear and convincing evidence all seven elements of rehabilitation required by Rule 3-13 of the Bar Admission Rules for admission when the applicant has previously engaged in disqualifying conduct; and

g) issue a prospective injunction, as to Count I, II, III and IV, ordering the Defendant Justices to admit Plaintiff Castro to The Florida Bar; or

h) issue a prospective injunction, as to Count I, II, III and IV, ordering the Defendant Justices to reinstate and review the Board's original two-year denial recommendation in light of the Florida Supreme Court's 1998 judgment, the admission rules Plaintiff Castro relied upon to apply for readmission and the post-misconduct rehabilitation Plaintiff Castro established at the formal hearing by clear and convincing evidence; and

i) declare, as to Count I, that Defendant Pobjecky violated Plaintiff Castro's substantive due process rights and liberty interest to

pursue his chosen profession under the Fourteenth Amendment to the United States Constitution in the procurement of the Florida Supreme Court's unlawful judgment permanently denying Plaintiff Castro admission to The Florida Bar; and

j) declare, as to Count II, that Defendant Pobjecky violated Plaintiff Castro's procedural due process rights under the Fourteenth Amendments to the United States Constitution in the procurement of the Florida Supreme Court's unlawful judgment permanently denying Plaintiff Castro admission to The Florida Bar; and

k) declare, as to Count III, that Defendant Pobjecky violated Plaintiff Castro's due process right to an impartial and disinterested forum under the Fifth and Fourteenth Amendments to the United States Constitution in the procurement of the Florida Supreme Court's unlawful judgment permanently denying Plaintiff Castro admission to The Florida Bar; and

l) declare, as to Count IV, that Defendant Pobjecky violated Plaintiff Castro's right of access to the Florida Supreme Court under the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment, and the Fourteenth Amendment to the United States Constitution in the procurement of the Florida Supreme Court's unlawful judgment permanently denying Plaintiff Castro admission to The Florida Bar;

m) declare, as to Count V, that Defendant Pobjecky fraudulently procured the issuance of a judgment by the Florida Supreme Court which affirmed a falsified Board findings and recommendation Defendant Pobjecky drafted; and

n) award compensatory and punitive damages against Defendant Pobjecky; and

o) award costs of this action, including reasonable attorneys fees, against the Defendant Justices and Defendant Pobjecky, to Plaintiff Castro; and p)

p) grant such other equitable and further relief as the Court may deem appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Castro demands a trial by jury for all of the issues pled so triable.

Dated this 24th day of February, 2017.

Respectfully submitted,

/s/ Mycki Ratzan
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DECISION AFFIRMING BOARD'S PERMANENT DENIAL RECOMMENDATION, SUPREME COURT OF FLORIDA (FEBRUARY 9, 2012)

IN THE SUPREME COURT OF FLORIDA

FLORIDA BOARD OF BAR EXAMINERS RE WILLIAM CASTRO

No. SC10-2439

PER CURIAM

This case is before the Court on the petition of William Castro seeking review of the Florida Board of Bar Examiners' Findings of Fact, Conclusions of Law, and Recommendation on his application for admission to The Florida Bar.We have jurisdiction. See art. V, § 15, Fla. Const. For the reasons expressed below, we approve the Board's action regarding Castro's application and permanently deny him admission to the Bar.

BACKGROUND

William Castro was admitted to The Florida Bar in 1981 and practiced law as a criminal defense attorney. He was later charged and convicted in federal court on several felony charges, including bribery. As a result of his criminal conviction, in April 1994 the Court entered an order suspending Castro from the

practice of law in Florida, and ultimately disbarred him in November 1998, effective, nunc pro tunc, May 12, 1994, and prohibited him from seeking readmission for a period of ten years. *See Fla. Bar v. Castro*, 728 So.2d 205 (Fla.1998).

In December 2007, Castro executed an application for readmission to the Bar. He has successfully completed all portions of the Florida Bar Examination. However, during its background investigation, the Board identified certain information that reflected adversely on Castro's character and fitness. Following an investigative hearing, the Board served Castro with three Specifications. Castro filed an answer to these Specifications. A public formal hearing was held in July 2010.

Specification 1 concerns Castro's criminal charges and conviction. It alleges that in 1988, Castro was approached by Judge Roy Gelber, who had the authority to appoint him as a court-appointed defense attorney for defendants appearing in Judge Gelber's courtroom. Judge Gelber offered to give Castro numerous court appointments as a "Special Assistant Public Defender" in exchange for a percentage of the money Castro earned from the appointments. Castro agreed to participate in this arrangement. He was later charged in federal court with one count of conspiracy to commit racketeering, twenty-seven counts of mail fraud, and one count of bribery. Castro was convicted of the charges (except he was acquitted on one count of mail fraud). On March 17, 1994, he was sentenced to serve thirty-seven months in prison, followed by three years of supervised release. Castro has served his sentence, and his civil rights were restored in 2006. Castro admitted the allegations contained in Specification 1.

Accordingly, the Board found these allegations were proven and were individually disqualifying for admission to The Florida Bar.

Specification 2 concerns Castro's suspension and disbarment. On April 12, 1994, this Court initially entered an order suspending Castro from the practice of law. Later, the Bar filed a formal Complaint against him alleging the following violations of the Rules Regulating the Florida Bar (Bar Rules): 4–3.5(a) (a lawyer shall not seek to influence a judge, juror, prospective juror, or other decision maker except as permitted by law or the rules of court); 4–8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer); 4–8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); 4–8.4(d) (a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice); and 4–8.4(f) (a lawyer shall not knowingly assist a judge or judicial officer in conduct that is in violation of applicable rules of judicial conduct or other law). In August 1998, Castro submitted a Conditional Guilty Plea for Consent Judgment. Following the consent judgment, on November 12, 1998, the Court entered an order disbarring Castro from the practice of law with a ban on seeking readmission for ten years effective, *nunc pro tunc*, May 12, 1994. Castro also admitted the allegations in Specification 2. The Board found these allegations were proven and were individually disqualifying for admission to the Bar.

In Specification 3, the Board alleged that Castro's Conditional Guilty Plea for Consent Judgment included

certain false or misleading statements. However, the Board found that these allegations were not proven.

In his answer to the Specifications, Castro pled the affirmative defense of rehabilitation. He presented substantial evidence in this regard, including twenty-three witnesses who testified on his behalf at the public formal hearing. Castro also testified at the hearing. He estimated that he has dedicated about 13,300 hours to community service over the last eighteen years. He has participated in a variety of community service activities, including volunteer work with his church; teaching confirmation classes; serving as a foster parent and as a member of a foster care review panel; working as a Guardian ad Litem in the Criminal Law Project; and organizing a Continuing Legal Education series for the Bar called, "My Faith in Practice."

Based on the evidence and testimony presented at the formal hearing, the Board found that the allegations in Specification 1 and 2 were proven, and were individually disqualifying from readmission to the Bar. The Board also found that Castro's presentation failed to mitigate the seriousness of his misconduct. In particular, the Board noted the "egregious nature" of Castro's actions, stating, "The applicant's criminal actions covered an extended period of time and involved multiple kickbacks to a judge." Accordingly, the Board concluded "that no amount of rehabilitation will ever suffice to allow the applicant's readmission to the Florida legal profession that he dishonored when he participated in the corruption of the judicial system that he had sworn as an officer of the court to respect and uphold." The Board recommends that Castro be permanently precluded from

seeking readmission to The Florida Bar. Castro has petitioned this Court for review.

ANALYSIS

In a Bar admission proceeding, the burden is upon the applicant to demonstrate his or her good moral character. *See Fla. Bd. of Bar Exam'rs re H.H.S.*, 373 So.2d 890, 891 (Fla.1979). We have previously held that disbarment alone is disqualifying for admission to the Bar unless an applicant can show clear and convincing evidence of rehabilitation. *See Fla. Bd. of Bar Exam'rs re Papy*, 901 So.2d 870, 872 (Fla.2005). In determining whether an applicant has sufficiently demonstrated rehabilitation, the "nature and seriousness of the offense are to be weighed against the evidence of rehabilitation." *Fla. Bd. of Bar Exam'rs re M.L.B.*, 766 So.2d 994, 996 (Fla.2000) (quoting *Fla. Bd. of Bar Exam'rs re D.M.J.*, 586 So.2d 1049, 1050 (Fla.1991)). Thus, the "more serious the misconduct, the greater the showing of rehabilitation that will be required." *Fla. Bd. of Bar Exam'rs re J.J.T.*, 761 So.2d 1094, 1096 (Fla.2000).

Here, the Board determined that no amount of rehabilitation would ever be sufficient to warrant readmitting Castro to the Bar. We agree. As a member of the Bar in this state, Castro had an obligation to respect and uphold the judicial system and the legal profession. He violated this obligation when he participated in a scheme involving bribery and kickbacks to a sitting judge. This type of misconduct, involving corruption within the legal system, is particularly egregious. It is clear that since his criminal conviction and disbarment, Castro has engaged in thousands of hours of community service, benefiting both his church

and the legal community as a whole, in an effort to show his rehabilitation. While his commitment to community service is admirable, we agree with the Board's conclusion that no demonstration of rehabilitation would ever suffice to allow Castro's readmission to the legal profession. *Cf. Fla. Bd. of Bar Exam'rs re W.F.H.*, 933 So.2d 482 (Fla.2006) ("[T]he total circumstances and underlying facts of the instant case, which involve misconduct by a sworn law enforcement officer, are so egregious and extreme, and impact so adversely on the character and fitness of W.F.H., that the recommendation of the Florida Board of Bar Examiners must be approved. We further conclude that under the totality of the circumstances, the grievous nature of the misconduct mandates that W .F.H. not be admitted to the Bar now or at any time in the future.")

CONCLUSION

Accordingly, for the reasons discussed above, we approve the Board's Findings of Fact, Conclusions of Law, and Recommendation, and permanently deny William Castro admission to The Florida Bar.

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

PARIENTE, J., SPECIALLY CONCURS WITH AN OPINION

PARIENTE, J., specially concurring.

I have struggled with this case. On the one hand, the conduct giving rise to this petition clearly undermines the public's trust in the judicial system. On the other hand, as former Justice Raoul Cantero testified, William Castro's case is "one where [he has] seen more rehabilitation over a greater period of time than any other case." Indeed, it was not just Raoul Cantero who testified on Castro's behalf. Castro submitted letters from 190 individuals and presented many witnesses who testified in favor of his readmission to the Florida Bar, all setting forth specific examples of how he has demonstrated extraordinary conduct.

The witnesses who testified at Castro's hearing included many leaders in the legal and judicial community, including: Arturo Alvarez; Francisco Angones; David Rothman; Circuit Judge Beatrice Butchko; Circuit Judge Stanford Blake; Circuit Judge Diane Ward; and now Circuit Judge Victoria Brennan. Each described Castro as a changed person and recommended his readmission without hesitancy. Judge Blake, who has known Castro since he was a young attorney, testified that he was "absolutely convinced Willie is a very good person that made a very bad mistake."

The evidence established that Castro logged over 13,000 hours of community service during the past eighteen years—equivalent to an impressive 700 hours of service per year. He has volunteered for the Guardian ad Litem (GAL) program, where he has been described

as a "wonderful asset." The Senior Staff Attorney of the criminal court's GAL program recounted several different cases on which Castro served. She believed that Castro's efforts in one GAL case saved a child's life and further described him as a "relentless advocate" and "meticulous."

Castro is also a licensed foster-care parent, and he and his wife later adopted each of the three children they had fostered. The judge who approved the adoptions described how she "grew to admire and respect Willie" and had "no doubt that he would be a very positive member of the Bar." Castro has led CLE seminars in which he has taken "accountability for what he has done." One witness who previously worked with Castro in organizing a seminar involving ethics and the law stated that during the time she has known him, Castro made her "want to be a better lawyer." Another witness testified as to his service to the community, and especially to children, describing him as a "person that is just doing everything that he can to be able to give to people, to give of himself, of his time, of his talent, and to really make a difference in people's lives." Further, Castro has organized programs for migrant children, and one witness testified that these migrant children "wouldn't have anything or much if it wasn't for the efforts that Willie Castro had done."

By all accounts, Castro has lived an exemplary life since his criminal charges, felony convictions, and prison sentence. Based on what I perceive to be overwhelming evidence of his rehabilitation, I would state that Castro has demonstrated all seven elements of rehabilitation required by Rule 3–13 of the Bar Admission Rules for admission when the applicant has

previously engaged in disqualifying conduct. Given his rehabilitation, the question I have struggled with is whether the conduct that led to Castro's ten-year disbarment qualifies as the type of conduct for which no amount of rehabilitation will ever suffice to earn him readmission to the Bar.

In essence, the Court's pronouncement today is a decision to change Castro's sanction of a ten-year disbarment imposed in 1994 to one of a permanent disbarment.[1] After careful consideration of the circumstances involved here, and despite the evidence of Castro's rehabilitation, I have ultimately come down on the side of agreeing with the Board and the majority that the crimes in this case—egregious acts of corruption, which stem from the bribery of a judge and the receipt of multiple kickbacks from that judge over an extensive period of time—so dishonored our judicial system that "no demonstration of rehabilitation would ever suffice to allow Castro's readmission to the legal profession." Majority op. at 6. In reaching this decision, I have considered the other side of this equation—that it was the judge who approached Castro and that there is no evidence Castro handled the cases to which he was appointed in any way other than in a professional manner. Nevertheless, I am unable to cast aside my concern that the essential illegality at issue here goes to the very core of our public's trust and confidence in the judicial system.

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[1] I do not believe a sanction of permanent disbarment is necessarily warranted in all situations where applicants commit felonies prior to admission. In my view, the imposition of the sanction of permanent disbarment can vary depending on the type of felony and the circumstances under which it was committed.

Although this judgment of permanent disbarment may appear to be harsh, we must always remember that the practice of law is not a right but a privilege, and it was Castro's own illegal actions that caused his downfall. I would hope that Castro will still be motivated to continue his involvement in the wonderful community activities that have been described by his scores of supporters and that he will continue to teach others the lessons that he has learned. While these lessons may be too late in his case, Castro's efforts may encourage, inspire, and motivate others to be better lawyers and human beings, all of whom may look at each day as an opportunity to give back to our community in a meaningful way.

LETTER FROM FLORIDA BOARD OF BAR EXAMINERS TO CYNTHIA HESSE, ESQUIRE, NOTICE OF BOARD ACTION (JULY 22, 2010)

IN RE:
APPLICATION OF CASTRO WILLIAM FOR ADMISSION TO THE FLORIDA BAR

File No. 18000

To: Cynthia Hesse, Esquire
540 SW 62nd Ave.
Plantation, FL 33317-3937

The Florida Board of Bar Examiners, while In formal session on July 15-17, 2010, subsequent to your client's appearance, decided that your client has not established the character and Fitness Standard required under rule 3-23.6(d), Rules of the Supreme Court Relating to Admissions to the Bar available on the website above. The board determined that the 2-

year denial period would be applicable before an application to establish rehabittation under rule 2-14 will be accepted.

This Notice is intended to advise you of the board's action, but is not formal notice of the "board's recommendation" under rule 3-30 or 3-40.1 for purpose of calculating the 60-day period for filing either a petition for board reconsideration or a petition for Supreme Court review. The 60-day period for filing a petition begins on the date you receive the board's written Findings of Fact and Conclusion of Law. The board's finding and conclusion of law will be mailed to you within 60 days of receipt if the normal hearing transcript.

The applicant is responsible for the cost of the formal hearing transcript under rule 3-23.8 When we receive a statement from the court reporter, We will send an invoice.

Dated this 22nd day of July, 2010

Reported by,

/s/ Michele A. Gavagni
Executive Director

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION (OCTOBER 19, 2010)

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: APPLICATION OF WILLIAM CASTRO FOR ADMISSION TO THE FLORIDA BAR,

File No. 18000

FINDINGS BACKGROUND

The applicant, William Castro, was born on April 22, 1955, in Havana, Cuba. The applicant attended several undergraduate schools, and received his Bachelor of Arts degree in May 1977 from Columbia University, New York, New York. The applicant entered the University of Pennsylvania Law School on September 7, 1977, and he received the degree of Juris Doctor on May 19, 1980.

The applicant was originally admitted to practice law in Florida in 1981. By order dated April 12, 1994, the Supreme Court of Florida suspended the applicant from the practice of law. By order dated November 12, 1998, the Court disbarred the applicant for ten years *nuns pro tunc* May 12, 1994.

The applicant's civil rights were restored on June 15, 2006. The applicant sought readmission to The Florida Bar by executing a Florida Bar Application

on December 13, 2007. The applicant successfully completed the February 2007 General Bar Examination and the August 2007 Multistate Professional Responsibility Examination.

During the course of the character and fitness investigation conducted by the board, certain items of information that reflected adversely upon the applicant's character and fitness under the provisions of Rules 2-12, 3-10, 3-11 and 3-12 of the Rules of the Supreme Court Relating to Admissions to the Bar (hereinafter designated as the "Rules") came to the board's attention. The board undertook an extensive investigation of the applicant's activities in question.

The board requested the applicant to appear for an investigative hearing and the applicant did so appear on January 23, 2009. Following the investigative hearing, the board determined that Specifications should be prepared and served upon the applicant and that the matter of the applicant's character and fitness be considered at a public formal hearing.

The Office of General Counsel served the Specifications on March 4, 2009, and the applicant received them on March 6, 2009. The formal hearing procedures attached to the Specifications advised the applicant of the following rights: a public formal hearing on the Specifications, the presentation of witnesses and any other evidence that might be pertinent to the issues, and access to the board's subpoena power.

The applicant filed an Answer to the Specifications on May 12, 2009. By letter dated June 24, 2009, the applicant's attorney requested that the public formal hearing be scheduled during the board's next available

meeting in Miami or Coral Gables, Florida. The public formal hearing was convened on July 15, 2010, in Coral Gables, Florida. The applicant and his counsel, Randolph Braccialarghe and Cynthia Hesse, appeared at the hearing. Robert G. Blythe represented the Office of General Counsel.

The Specifications previously served upon the applicant read as follows:

Specification 1

In October 1981, you were admitted to The Florida Bar. in or about 1988, you were practicing law as a criminal defense lawyer in Miami, Florida, when you were approached by Judge Roy Gelber, who had the authority to appoint you as court-appointed defense counsel for defendants appearing in his court. Judge Gelber told you that he was having financial problems. Judge Gelber offered to give you numerous court appointments as a Special Assistant Public Defender in exchange for you giving him a percentage of the money you earned. You agreed to engage in this conduct.

In or about 1991, a criminal case was brought against you in federal court. In a Superseding Indictment, you were charged with the following: one count of racketeering, extortion, conspiracy to commit extortion, and attempt to commit extortion; 27 counts of mail fraud; and one count of bribery. You were found guilty of all of these counts, except for one mail fraud count.

On March 17, 1994, you were sentenced to 37 months imprisonment and three years of supervised release. On June 15, 2006, your civil rights were

restored, except for the right to own, possess, or use firearms.

Specification 2

As a result of the conduct and conviction described in Specification 1 above, on April 12, 1994, the Supreme Court of Florida issued an Order suspending you from the practice of law in Florida. On April 22, 1994, The Florida Bar filed a Complaint against you in the Supreme Court of Florida. In this Complaint, The Florida Bar alleged you violated the following Rules Regulating The Florida Bar:

- Rule 4-3.5(a) (A lawyer shall not seek to influence a judge, juror, prospective juror, or other decision maker except as permitted by law or the rules of court.)
- Rule 4-8.4(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.)
- Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.)
- Rule 4-8.4(d) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice.)
- Rule 4-8.4(f) (A lawyer shall not knowingly assist a judge or judicial officer in conduct that is in violation of applicable rules of judicial conduct or other law.)

On August 11, 1998, you signed a Conditional Guilty Plea for Consent Judgment in which you agreed

to a ten-year disbarment *nuns pro tunc* to May 12, 1994. By Order dated November 12, 1998, the Supreme Court of Florida disbarred you for ten years, and entered a judgment for costs totaling $897.14.

Specification 3

As part of the proceedings described in Specification 2 above, on August 11, 1998, you signed a Conditional Guilty Plea for Consent Judgment. In paragraph 4 of this pleading, you made the following statement: "Respondent has maintained throughout trial and continues to maintain that he is innocent of the charges brought against him." This statement by you was false, misleading, or lacking in candor in that you had knowingly committed the crimes for which you were convicted.

FINDINGS OF FACT

Specification 1 was amended during the formal hearing without objection. (Formal Hearing Transcript, pages 11-12, hereinafter designated by "T," followed by the page number) Specification 1 as amended pertains to the applicant's criminal prosecution in response to a federal grand July's Superseding Indictment charging the applicant with several of the following criminal offenses: one count of conspiracy to commit racketeering; 27 counts of mail fraud; and one count of bribery. (Formal Hearing Record—Board Exhibit 2 at Specification 1 hereinafter referred to as "FHR-BE" followed by the Exhibit number)

As alleged in Specification 1, the applicant was found guilty of all counts, except for one mail fraud count. *(Id.)* On March 17, 1994, the court sentenced

the applicant to 37 months imprisonment and three years of supervised release. *(Id.)*

By his Answer to Specifications, the applicant admitted the allegations of Specification 1 as amended. (FHR-BE 3 at answer to Specification 1) The formal hearing record also contains copies of documents pertaining to the allegations of Specification 1. (Formal Hearing Record—Office of General Counsel Exhibits 2 through 4 hereinafter referred to as "FHR-OGCE" followed by the Exhibit number)

Based on the record before it, the board finds that the allegations of Specification 1 have been proven. The language of this Specification, reproduced above under the Findings Background, is hereby adopted by the board as its specific findings of fact. The board further finds that the proven allegations of Specification 1 are individually disqualifying for admission to The Florida Bar.

As alleged in Specification 2, the Supreme Court of Florida initially suspended the applicant based on his felony convictions. (FUR-BE 2 at Specification 2) In response to a Complaint filed against the applicant by The Florida Bar, the applicant executed a Conditional Guilty Plea for Consent Judgment by which he agreed to disbarment for ten years from the date of his suspension. (*Id.*) The referee accepted the applicant's plea and the Supreme Court of Florida approved the referee's report resulting in the applicant's disbarment *nuns pro tunc* May 12, 1994, for ten years. (*Id.*)

By his Answer to Specifications, the applicant admitted the allegations of Specification 2. (F1-1R-BE 3 at answer to Specification 2) The formal hearing

record also contains copies of documents pertaining to the allegations of Specification 2. (FHR-OGCE 5-6)

Based on the record before it, the board finds that the allegations of Specification 2 have been proven. The language of this Specification, reproduced above under the Findings Background, is hereby adopted by the board as its specific findings of fact. The board further finds that the allegations of Specification 2 are individually disqualifying for admission to The Florida Bar.

Specification 3 concerns the applicant's Conditional Guilty Plea for Consent Judgment executed by the applicant in connection with his bar disciplinary proceedings in 1998. This Specification alleges that this document contained a misrepresentation by the applicant. (FUR-BE 2 at Specification 3)

By his Answer to Specifications, the applicant denied that he intended any misrepresentation in the Conditional Guilty Plea for Consent Judgment. (FHR-BE 3 at answer• to Specification 3) Based on the record before it, the board finds that Specification 3 has not been proven.

By his Answer to Specifications, the applicant pled the affirmative defense of rehabilitation. (FHR-BE 3 at Affirmative Defense of Rehabilitation) The applicant introduced 218 exhibits into the record. (T 22; Formal Hearing Record—Applicant Exhibits 1-218, hereinafter referred to as "FHR-AE" followed by the Exhibit number) These exhibits included character letters and responses to inquiries by the board during its background investigation. (FHR-AE 3-190) The exhibits also included documents pertaining to his

service to his community, including his church. (FHR-AE 191-197, 206-218)

The applicant also presented character witnesses during the formal hearing. Lorn Green testified on the applicant's behalf. (T 24-29) Mr. Green previously submitted a character letter in support of the applicant's readmission. (FHR-AE 3) The applicant ran Mr. Green's company for five years while Mr. Green attended a seminary. (T 27) The applicant "did an excellent job." (T 27)

Terry Fogel testified on the applicant's behalf. (T 29-39) Ms. Fogel previously submitted a character letter in support of the applicant's readmission. (FHR-AE 4) She met the applicant at a CLE seminar called "Our Faith in Practice." (T 30) For a number of years, she has worked with the applicant in putting on seminars regarding ethical issues in the practice of law. (T 32-34) When discussing his prior misconduct, the applicant "took accountability for what he had done." (T 35) During the time she has known him, the applicant has made Ms. Fogel "want to be a better lawyer." (T 35)

Miguel Itchon testified on the applicant's behalf. (T 40-44) Mr. Itchon previously submitted a character letter in support of the applicant's readmission. (FHR-AE 5) He discussed the applicant's involvement in their community including the applicant's work with migrant workers in Homestead, Florida. (T 42-43)

Inaki Saizarbitoria testified on the applicant's behalf (T 44-50) Mr. Saizarbitoria previously submitted a character letter in support of the applicant's readmission. (FHR-AE 6) Based on firsthand knowledge,

Mr. Saizarbitoria described the applicant's contributions to their community especially to children. (T 46-48) In the applicant, Mr. Saizarbitoria sees "a person that is just doing everything that he can to be able to give to people, to give of himself, of his time, of his of talent and to really make [*sic*] difference in people's lives, deep differences. . . . " (T 48)

Juan Carlos Freyre testified on the applicant's behalf. (T 51-58) Mr. Freyre previously submitted a character letter in support of the applicant's readmission. (FHR-AE 7) The applicant represented Mr. Freyre in his difficulties with the criminal justice system. He owes "a great deal to Mr. Castro" who assisted Mr. Freyre in turning his life around following his last incarceration in prison. (T 54) He described the applicant as "a person that has dedicated himself to helping other people." (T 56)

Alice Keller testified on the applicant's behalf. (T 59-61) Ms. Keller previously submitted a character letter in support of the applicant's readmission. (FHR-AE 8) The applicant had taught the confirmation class at church that Ms. Keller's son attended. (T 59) The applicant was the best religious instructor that her son had. (T 60) The applicant taught her son "to care for those who could not do as well for themselves as he could, to bring those along that had been left behind and to practice his faith." (T 60)

Frances Feinberg testified on the applicant's behalf. (T 62-71) Ms. Feinberg previously submitted a character letter in support of the applicant's readmission. (FHR-AE 10) She is the senior staff attorney for the criminal court's Guardian ad item Program. (T 62-63) She has known the applicant for over three years in the applicant's capacity as a guardian. (T 63)

Ms. Feinberg recounted several difficult cases handled by the applicant. In one case, Ms. Feinberg believes that the applicant saved the child's life. (T 66) Ms. Feinberg described the applicant as "a relentless advocate" and "meticulous." (T 68-69)

Dr. Alfredo Rabassa testified on the applicant's behalf. (T 72-80) Dr. Rabassa previously submitted a character letter in support of the applicant's readmission. (FHR-AE 12) Dr. Rabassa met the applicant on a religious retreat in 1996 known as the Emmaus retreat. (T 72) Since then, they have worked together putting on many retreats. (T 73, 76) The applicant has also organized programs for foster children. (T 76-78) Dr. Rabassa addressed the applicant's reputation in his community: "The mutual respect that Willie has developed over the years has been one of his offering unconditionally of himself, and I think that that is something that we don't see often in this community." (T 79)

Father Fernando Heria testified on the applicant's behalf. (T 81-97) Father Heria previously submitted a character letter in support of the applicant's readmission. (FHR-AE 13) Father Heria is pastor at Saint Brendan Catholic Church and a member of The Florida Bar. (T 83) He knew the applicant as a fellow criminal defense attorney during the 1983-1985 time period. (T 83-84) After his return from Rome in 2000, Father Heria met the applicant during an. Emmaus retreat. (T 86) The applicant impressed Father Heria "in a very positive way because it took a lot of guts to be able to speak frankly about what [the applicant] had done wrong in his life and how he had tried to—began to make amends and heal from that experience." (T 86)

Josephine Vila testified on the applicant's behalf. (T 97-104) Ms. Vila previously submitted a character letter in support of the applicant's readmission. (FHR-AE 14) Because of the applicant's encouragement and assistance, Ms. Vila became a foster parent and she subsequently adopted a child. (T 98) She has also been involved with the applicant's programs for migrant children. Ms. Vila added: "These are children that wouldn't have anything or much if it wasn't for the efforts that Willie Castro had done." (T 101) The applicant is the godfather of her son because, being a single mom, she wanted her "son to be surrounded with good men, good role models." (T 103)

Vincent Flynn testified on the applicant's behalf. (T 105-128) Mr. Flynn previously submitted a character letter in support of the applicant's readmission. (FHR-AE 15) He is a criminal defense attorney. (T 105-106) As practicing attorneys, he and the applicant shared office space the early 1980s. (T 106, 115) In 1991, the applicant retained Mr. Flynn to represent the applicant in his criminal case. (T 106-107) Mr. Flynn discussed the circumstances surrounding the inclusion of the language in the Conditional Guilty Plea for Consent Judgment contained in Specification 3 and alleged to be false, misleading, or lacking in candor. (T 111-114) The language came from Mr. Flynn. (T 112) He "wrote it word for word." (T 119)

Juan Zorrilla testified on the applicant's behalf. (T 129-132) Mr. Zorrilla previously submitted a character letter in support of the applicant's readmission. (FHR-AE 16) He is a practicing attorney who hired the applicant as a legal assistant in 2004. (T 129) The applicant worked fulltime for Mr. Zorrilla for about nine months. (T 129) Mr. Zorrilla continues to

use the applicant for projects. (T 129) Mr. Zorrilla found the applicant to be "very smart and very affable." (T 131) They "got along really well." (T 131)

Dr. Orlando Silva testified on the applicant's behalf. (T 133-140) Dr. Silva previously submitted a character letter in support of the applicant's readmission. (FHR-AE 11) Dr. Silva met the applicant on an Emmaus retreat in 2001. (T 133134) The applicant was instrumental in getting Dr. Silva involved in medical missions to foreign countries several times a year. (T 134-135) The applicant had also assisted in securing volunteers and donations for the missions. (T 135-136) Regarding the applicant's influence, Dr. Silva stated: "I have seen and learned so much from him, not only from his humility but from his conviction in helping others through his honestly [*sic*] and his testimony." (T 138)

Fernando Garcia testified on the applicant's behalf. (T 141-149) Mr. Garcia previously submitted a character letter in support of the applicant's readmission. (FHR-AE 17) He is an attorney having been admitted to The Florida Bar in 1980. (T 141) He has known the applicant since high school. (T 141-142) The applicant changed Mr. Garcia by getting him to become involved in the community. (T 143) As to the applicant's readmission: "Admitting somebody like Willie would be a great thing because he just—his heart is in helping people and rehabilitating others, as he did with me." (T 143)

Juan Gonzalez testified on the applicant's behalf. (T 150-158) Mr. Gonzalez previously submitted a character letter in support of the applicant's readmission. (FHR-AE 18) He is an attorney having been admitted to The Florida Bar in 1983. (T 150) He has

known the applicant since high school. (1 150) As to the applicant's rehabilitation, Mr. Gonzalez stated: "It is not just the fact that he has worked so hard in the community. It is the fact that he has done the retreats; that he has adopted children, been a good father, good husband, good friend." (T 155)

Raoul Cantero testified on the applicant's behalf. (T 159-171, 247-258) Mr. Cantero previously submitted a character letter in support of the applicant's readmission. (FHR-AE 19) He met the applicant back in 1994 on an Emmaus retreat. (T 159) The applicant encouraged and pushed Mr. Cantero to establish religious retreats at his own church. (T 160-161) Mr. Cantero noted that he had reviewed a number of cases in the area of bar admissions and reinstatements of suspended attorneys during his tenure on the Supreme Court of Florida. As to the applicant's rehabilitation, Mr. Cantero stated: "Willie's case is the one where I have seen more rehabilitation over a greater period than any other case." (T 164)

Arturo Alvarez testified on the applicant's behalf. (T 171-177) Mr. Alvarez previously submitted a character letter in support of the applicant's readmission. (FHR-AE 20) He is an attorney having been admitted to The Florida Bar in 1973 and he served as the president of the Cuban American Bar Association. (T 171-172) He has also served on judicial nominating commissions since 1992. (T 172) Mr. Alvarez hired the applicant "to do some work in the criminal defense area. . . ." (T 174) As a result, Mr. Alvarez got to know the applicant better. (T 174) Mr. Alvarez "was very much impressed by the dignity, the humility, the contrition and the willingness to re-establish himself." (T 175)

Circuit Judge Beatrice Butchko testified on the applicant's behalf. (T 177-186) Judge Butchko previously submitted a character letter in support of the applicant's readmission. (FHR-AE 21) She has been a judge since 2006 and she has known the applicant since 1989. (T 178-179) Most recently, the applicant appeared before Judge Butchko because the applicant and his wife were the foster parents of a child whose case was before the judge. (T 181-182) Judge Butchko "grew to admire and respect Willie" during that process. (T 181) As to the applicant's readmission, Judge Butchko stated: "I have no doubt that he would be a very positive member of the Florida Bar." (T 183)

Circuit Judge Stanford Blake testified on the applicant's behalf. (T 187-200) Judge Blake previously submitted a character letter in support of the applicant's readmission. (FHR-AE 22) He has been a judge since 1995 and he has known the applicant since the applicant was a young attorney. (T 187) More recently, the applicant put on a seminar on morality, ethics, and the law where Judge Blake was a speaker. (T 188) Judge Blake recommends the applicant's readmission without any hesitancy. He explained: "I'm absolutely convinced Willie is a very good person that made a very bad mistake." (T 192)

Circuit Judge Diane Ward testified on the applicant's behalf. (T 200-212) Judge Ward previously submitted a character letter in support of the applicant's readmission. (FHR-AE 23) She has been a judge since 2003 and she has known the applicant since they worked together at the Public Defender's Office. (T 201) She has maintained contact with the applicant. (T 204) Judge Ward is aware of the applicant's assistance to an assistant public defender throughout the

process of her adoption of a child. (T 205) She described the applicant as "wonderful, a man of great character . . . [and] highly recommend him to be readmitted to the bar." (T 205) She also knows that the applicant "has been a wonderful asset to the Guardian ad Litem program." (T 207)

County Judge Victoria Brennan testified on the applicant's behalf. (T 213-225) Judge Brennan previously submitted a character letter in support of the applicant's readmission. (FHR-AE 24) She has been a judge since 2006 and she has known the applicant for 20 years. (T 214) When Judge Brennan was a young lawyer, she knew the applicant. She did not like him and found him to be "arrogant, smug . . . a jerk." (T 215) A few years ago, she saw him at a party and she was favorably impressed in that the applicant "was definitely a different person . . . " (T 216) Judge Brennan does not think that the applicant "is ever going to forget he needs to be constantly vigilant, grateful and give back to his community and continue in his path of faith." (T 220)

David Rothman testified on the applicant's behalf. (T 226-246) Mr. Rothman previously submitted a character letter in support of the applicant's readmission. (FHR-AE 25) He first met the applicant when the applicant worked at the Public Defender's Office. (T 229) He was impressed by the applicant's courtroom skills but Mr. Rothman was put off by the applicant's arrogance. (T 229-230) Following the applicant's release from prison, he noticed that the applicant had changed. (T 233-235) As to the applicant's readmission, Mr. Rothman stated that the applicant "would be a remarkable member of the bar." (T 236)

Francisco Angones appeared at the formal hearing on the applicant's behalf and called by the attorney for the Office of General Counsel. (T 267-281) Mr. Angones responded to questions about his service on the Character and Fitness Commission and its recommendations that would make convicted felons ineligible to practice law and disbarment permanent. He supported both of those recommendations. (T 268-269) Mr. Angones responded to additional questioning about the appropriateness of having exceptions to those recommendations as in the applicant's case. (1 269-280)

During his formal hearing presentation, the applicant testified on his own behalf. (T 286-323) The applicant highlighted his rehabilitation. The applicant has actively participated in Emmaus retreats. (T 286-291) During the last 18 years, he has attended over 50 religious retreats for the full weekend and another 50 retreats that he attended a portion of the weekend. (T 290) The applicant discussed his service during his term in prison. (T 291-295)

The applicant also discussed his service with other programs, including the following: foster parenting (T 306-309); a CLE program titled "My Faith in Practice" (T 314-315); and as guardian ad litem in the Criminal Law Project (T 315-316). As to his number of hours of community service, the applicant testified: "So I went back and over a 18-year period and very conservatively I performed 13,300 hours, approximately." (T 322-323) The applicant also responded to questioning by opposing counsel and members of the board. (T 323-370)

Upon consideration of the applicant's formal hearing presentation, the board finds that his evidence

fails to establish a defense to the allegations of the Specifications except for Specification 3 that the board finds not proven. The board further finds the applicant's evidence fails to mitigate the seriousness of proven Specifications 1 and 2 that the board finds individually disqualifying. Lastly, the board finds that the applicant's formal hearing presentation failed to convince the board that he should be readmitted to The Florida Bar in light of the egregious nature of his misconduct.

CONCLUSIONS OF LAW

In 2006, the Supreme court of Florida issued a decision wherein the Court concluded that the bar applicant should be permanently barred from admission to The Florida Bar. The Court reasoned:

> Upon consideration of W.F.H.'s Petition for Review filed in the above cause, based on the totality of the circumstances, the findings of fact and conclusions of law, the recommendation of the Florida Board of Bar Examiners that W.F.H. not be admitted to The Florida Bar is approved. This Court concludes that the total circumstances and underlying facts of the instant case, which involve misconduct by a sworn law enforcement officer, are so egregious and extreme, and impact so adversely on the character and fitness of W.F.H., that the recommendation of the Florida Board of Bar Examiners must be approved. We further conclude that under the totality of the circumstances, the grievous nature of the misconduct mandates that W.F.H. not be admitted to the Bar now

> or at any time in the future. Accordingly, W.F.H.'s petition is hereby denied.

Florida Board of Bar Examiners re: WF.H., 933 So.2d 482 (Fla. 2006), *cert. denied,* 549 U.S. 1020 (2006).

William Castro appeared before the board as a convicted felon and disbarred attorney. There is no dispute as to the egregious nature of the applicant's prior misconduct that eventually resulted in his criminal conviction, incarceration, and disbarment. The applicant's criminal actions covered an extended period of time and involved multiple kickbacks to a judge. As stated in one of the character letters submitted on the applicant's behalf: "There is no crime that directly and adversely affects more the public's confidence in the judicial system than bribery, even with the simple goal of obtaining court appointments for attorneys." (FHR-AE 27 at April 21, 2008, letter of Federico A. Moreno, Chief U.S. District Judge, Southern District of Florida)

As the Florida Supreme Court held in the *W.F.H.* case, the board concludes that no amount of rehabilitation will ever suffice to allow the applicant's readmission to the Florida legal profession that he dishonored when he participated in the corruption of the judicial system that he had sworn as an officer of the court to respect and uphold. Based on the record before it, the board concludes that the applicant fails to meet the standards of conduct and fitness required under the provisions of rule 3 of the Rules.

RECOMMENDATION

The board recommends that William Castro not be readmitted to The Florida Bar.

DATED this 19th day of October, 2010.

/s/ Michele A. Gavagni
Executive Director
Florida Board of Bar Examiners

LETTER FROM FLORIDA BOARD OF BAR EXAMINERS TO MS. CYNTHIA HESSE, ESQUIRE (OCTOBER 19, 2010)

Florida Board of Bar Examiners
ADMINISTRATIVE BOARD OF THE SUPREME COURT OF FLORIDA

J. JEFFRY WAHLEN
CHAIR

JERRY M. GEWIRTZ
VICE CHAIR

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VALERIE J. DAVIS
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MICHELE A. GAVAGNI
EXECUTIVE DIRECTOR

THOMAS ARTHUR POBJECKY
GENERAL COUNSEL

JOSEPH J. FIGO
DIRECTOR OF ADMINISTRATION

In Re: Castro, William
File No. 18000

To: Cynthia Hesse, Esquire
540 SW 62nd Ave.
Plantation, FL 33317-3937

Dear Ms. Hesse:

Enclosed you will find the Findings of Fact, Conclusions of Law, and Recommendation regarding your client's application for readmission to The Florida Bar. The final recommendation of the board as outlined in the findings differs from that referenced in the July 22, 2010, Notice of Board Action. The findings and recommendation are controlling.

Sincerely yours,

/s/ Michele A. Gavagni
Executive Director

TRANSCRIPT OF BOARD HEARING PANEL'S POST-DELIBERATIONS (JULY 15, 2010)

FLORIDA BOARD OF BAR EXAMINERS

PUBLIC HEARING

RE: APPLICATION OF WILLIAM CASTRO

Date and Time: Thursday, 6:15 p.m.

[Transcript p. 1 to 7]

This panel has determined in a three-two vote to deny a recommendation for readmission to the Supreme Court. The findings—for two years.

The findings of the panel that Specification I as amended was admitted proven and individually disqualifying.

Specification II was admitted proven, individually disqualifying.

Specification III was admitted in part, not proven.

MR. LAWRENCE: Right, not proven.

MS. DAVIS: And individually disqualifying. The comments by the panel.

MS. DOYLE: I don't have to write comments?

MS. DAVIS: Rehabilitation was massive. The affirmative defense was given and the—Dave Rowland is going to sum up the two vote.

MR. ROWLAND: The two vote—and, Judy, pipe in when you want to was. If there was ever a case for rehabilitation, this would have been it, realizing the concession for court corruption was a very high bar hurdle. This applicant performed over 13,000 community service hours. This Board member does not see anybody coming ever close to performing that number, realizing the three vote that does not seem to be the issue.

The issue for them seem to be the criminal conduct and our position was that this was a rehab hearing and this was—he had been punished for the criminal conduct.

The rehabilitation hearing, he brought in judges, Florida Bar presidents, members of the former Board of Bar Examiners—

MS. DOYLE: A priest.

MR. ROWLAND:—a priest who testified to his good moral character and all of the other elements in the rules dealing with rehabilitation, and the two believe all elements of rehabilitation had been satisfied.

MS. DAVIS: The three vote is that although the rehabilitation was voluminous, important—

MR. KUVIN: Impressive.

MS. DAVIS: Life-changing that some parts when you change your life you still carry the— If you are dishonorably discharged, you probably never get

to join the service again. There are some privileges once you lose, your law enforcement certification or your teaching certification or your Bar license that—I don't know how you rehab from being part of a court corruption scheme. And that, I think, has led the three-vote to say if the Court decides—and, to me, this would be a major statement to the Bar Examiners that with massive rehabilitation that the underlying action of an attorney can go away.

From what I saw in the case of—what are the initials—W.F.H. leads me to believe that the Court says there are cases where the answer is no.

When I am in doubt to the Court, I'm not going to recommend.

MR. LAWRENCE: And I just want to—

MS. DAVIS: Still on the record.

MR. LAWRENCE: I just want to put on the record that like the applicant in W.F.H., the misconduct in this case by a sworn officer of the Court is so egregious and extreme and it has impacted so adversely on the character and fitness of this particular applicant that the recommendation of this panel can be nothing but to keep him out. Because it was over a pattern—period of time. It was pervasive. It wasn't a one-time isolated event. It was well thought out, well executed scheme, artifice conspiracy over a period of time that there is no showing that we can justify or minimize the egregious misconduct in this case performed by a lawyer, which is a higher standard than a non-lawyer or someone who is seeking admission to the Florida Bar for the first time.

MS. DAVIS: Are we good?

MR. KUVIN: Yes.

MR. ROWLAND: Yes.

MS. DAVIS: Then we are off the record.

(Thereupon, these proceedings were concluded at 6:30 p.m.)

STATE OF FLORIDA COUNTY OF DADE

I, JANICE D. JONES, do hereby certify that the matter of In Re: William Castro came on before the Florida Board of Bar Examiners, File No. 18000, that I was authorized to and did report the deliberations of said public hearing on July 15, 2010, and that the foregoing pages, numbered from 1 to including 6, represent a true and accurate record of the proceedings in the above-mentioned case.

WITNESS my hand in the City of Miami this 30th day of July, 2010.

Janice D. Jones
RPR

ORDER TO SHOW CAUSE
SUPREME COURT OF FLORIDA
(MAY 6, 2013)

SUPREME COURT OF FLORIDA

FLORIDA BOARD OF BAR EXAMINERS

v.

RE: WILLIAM CASTRO

Cause No. SC10-2439

William Castro has filed "Petitioner's Ex Parte Motion for Leave of Court to File Motion to Vacate Judgment" and "Petitioner's Verified Motion to Vacate Judgment Based on Fraud, Misrepresentation or Other Misconduct Committed by the Florida Board of Bar Examiners" in which he asks the Court to reopen this closed case and consider additional information. This case was final on April 26, 2012, when the Court denied Castro's motion for rehearing of its February 9, 2012, order approving the Florida Board of Bar Examiners' findings of fact, conclusions of law, and recommendation that Castro be permanently denied admission to The Florida Bar. Castro has provided no authority in his motion or any other filing setting forth the authority upon which this Court can grant leave to Castro to file a motion to vacate the final disposition of the Court and reopen the case for consideration of new information. William Castro is therefore ordered to

show cause by May 22, 2013, why his motion should not be dismissed as unauthorized. The Florida Board of Bar Examiners may serve a reply on or before June 3, 2013.

As William Castro's motion was not served on the Florida Board of Bar Examiners, a copy of the motion is attached to the Florida Board of Bar Examiners' copy of this order and provided to both parties.

A True Copy Test:

/s/ Thomas D, Hall
Clerk, Supreme Court

FLORIDA BOARD OF BAR EXAMINERS' FINDINGS WORKSHEET, PUBLIC FORMAL HEARING (JULY 15, 2010)

APPLICANT: Castro, William
NOTETAKER: Judy Doyle
FILE NO.: 18000
PRESIDING OFFICER: Valerie J. Davis
HEARING DATE: 07/15/10

Spec #1

Applicant: √ Admits

Panel Finds: √ Proven
√ Individually disqualifying

Spec #2

Applicant: √ Admits

Panel Finds: √ Proven
√ Individually disqualifying

Spec #3

Applicant: √ Admits in Part

Panel Finds: √ Not Proven
√ Not disqualifying

PANEL ACTION OPTIONS AFTER A FORMAL HEARING PROVIDED BY RULE 3'23.6 (A-D) AS QUOTED BELOW:

DENY Option D:

√ Comment: Rule 3-23.6 (as amended by the court on May 1, 2008) provided: "ln cases of denial, a 2-

year disqualification period is presumed to be the minimum period of time required before an applicant or registrant may reapply for admission and establish rehabilitation. In cases involving significant mitigating circumstances, the board has the discretion to recommend that the applicant or registrant be allowed to reapply for admission within a specified period of less than 2 years. In cases involving significant aggravating factors (including but not limited to material omissions or misrepresentations in the application process), the board has the discretion to recommend that the applicant or registrant be disqualified from reapplying for admission for a specified period greater than 2 years but not more than 5 years."

√ 1) Recommend applicant's denial for the standard 2-year.

LETTER FROM FLORIDA BOARD OF BAR EXAMINERS TO FORMAL HEARING PANEL (SEPTEMBER 15, 2010)

Florida Board of Bar Examiners
ADMINISTRATIVE BOARD OF THE SUPREME COURT OF FLORIDA

J. JEFFRY WAHLEN
CHAIR

JERRY M. GEWIRTZ
VICE CHAIR

MEMBERS
ALAN H. ARONSON
REGINALD J. CLYNE
VALERIE J. DAVIS
JUDY DOYLE
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MICHELE A. GAVAGNI
EXECUTIVE DIRECTOR

THOMAS ARTHUR POBJECKY
GENERAL COUNSEL

JOSEPH J. FIGO
DIRECTOR OF ADMINISTRATION

In Re: Castro, William
File No. 18000

To: Cynthia Hesse, Esquire
540 SW 62nd Ave.
Plantation, FL 33317-3937

Dear Board Members:

Enclosed is a draft of Findings of Fact and Conclusions of Law. Also enclosed is a copy of the notes of the panel's findings as recorded by Ms. Doyle. It is the board's policy that the presiding officer of the formal hearing panel and the board member assigned note taking responsibility review and approve the Findings prior to mailing.

The findings Recommendation would normally state the length of the disqualification period when there is a recommendation of denial (e.g. two years as checked on the findings worksheet in this case). In this case and as stated in the Conclusions of Law, the panel majority decided that no amount of rehabilitation

would be sufficient for the applicant to overcome his past egregious conduct. Thus, the Recommendation does not set forth a specific period of disqualification. If you disagree with this approach, please state what action you wish to take.

We will forward the Findings as drafted to the applicant after September 27, 2010, if you do not advise any changes be made before that date.

Sincerely yours,

/s/ Michele A. Gavagni
Executive Director

ORDERING DENYING CERTIORARI
SUPREME COURT OF THE UNITED STATES
(OCTOBER 1, 2012)

SUPREME COURT OF THE UNITED STATES

WILLIAM CASTRO,

Petitioner,

v.

FLORIDA BOARD OF BAR EXAMINERS.

No. 12-124

OPINION

Motion of Florida Association of Criminal Defense Lawyers—Miami Chapter for leave to file a brief as amicus curiae granted. Petition for writ of certiorari to the Supreme Court of Florida denied.

ORDER DISMISSING MOTION TO VACATE, SUPREME COURT OF FLORIDA (OCTOBER 18, 2013)

SUPREME COURT OF FLORIDA

FLORIDA BOARD OF BAR EXAMINERS

Petitioner(s)

v.

RE: WILLIAM CASTRO

Respondent(s)

Cause No. SC10-2439

Petitioner's "Ex Parte Motion for Leave of Court to File Motion to Vacate Judgment and Index of Appendices Under Seal" filed in this Court on November 7, 2012, is hereby denied.

Petitioner's "Verified Motion to Vacate Judgment Based on Fraud, Misrepresentation or Other Misconduct Committed by the Florida Board of Bar Examiners" filed in this Court on November 7, 2012, is hereby dismissed as unauthorized.

A True Copy Test:

/s/ Thomas D, Hall
Clerk, Supreme Court