

SUPREME COURT OF THE UNITED STATES

NADIA MARY METROKA,
Petitioner,

v.

THE FLORIDA BAR, et al.,
Respondents.

SUPPLEMENTAL BRIEF REGARDING PROCEDURAL DEFAULT

Petitioner respectfully submits this supplemental brief to clarify that the judgment below does not rest on an independent and adequate state procedural ground and therefore does not bar this Court's review.

The Decision Below Independently Reached the Merits

This Court's review is not barred where a state tribunal alternatively reaches the merits of a federal claim. *Harris v. Reed*, 489 U.S. 255, 263 (1989); *Michigan v. Long*, 463 U.S. 1032, 1040–41 (1983).

Although a procedural default was entered during the disciplinary proceedings, the Referee expressly determined that the same result would follow on the merits:

“Irrespective of the default entered, the undersigned Referee has independently reviewed the formal Complaint with exhibits and heard arguments of both parties’ Motions for Summary Judgment and would affirm my decision as to guilt. ... [T]he Referee would have entered an Order granting the Bar’s Motion for Summary Judgment ... on the merits of the summary judgment evidence.”

The Referee thus independently adjudicated the allegations after reviewing the evidentiary record and fully briefed motions. Because the outcome did not depend upon default, the judgment does not rest on an independent state procedural ground.

Federal Review Therefore Remains Available

A procedural bar forecloses review only when the state court clearly and expressly relies on that bar as the basis of judgment. *Harris*, 489 U.S. at 263. Here, the tribunal below expressly concluded that the same findings would obtain absent default, and those determinations were adopted by the Florida Supreme Court.

At most, the procedural posture presents a vehicle consideration, not a jurisdictional limitation. Treating the case as procedurally barred would leave in place disbarment based on conduct Petitioner contends constitutes protected expression, notwithstanding the Referee's merits determination.

CONCLUSION

Because the judgment below rests on an alternative merits holding, procedural default does not bar this Court's review of the federal questions presented.

Respectfully submitted,


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