Litigation Update

by Fred P. Parker III and Brad Gilbert

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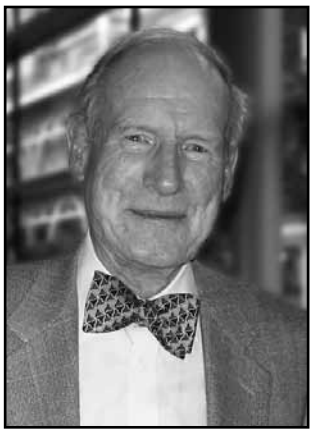

Bar Examination

Cheating; permanent denial of application

In re Rojas, 929 So. 2d 1229, 2004-1819 (La. 2006)

Liliana G. Rojas failed the February 2004 Louisiana bar examination. The Committee on Bar Admissions opposed her application to take the July 2004 bar examination, based on an indication that she had either cheated or attempted to cheat on the February examination by speaking to the applicant next to her. Rojas applied to the Louisiana Supreme Court seeking permission to take the July 2004 examination, but her application was denied. The Office of Disciplinary Counsel was appointed to conduct an investigation, and the Court appointed a commissioner to take evidence and report back to the Court whether Rojas possessed the appropriate character and fitness to be admitted to the bar and allowed to practice in Louisiana.

The commissioner conducted a character and fitness hearing, in which the matter was consolidated with *In re Valentina LaMont*, the case of the applicant to whom Rojas spoke during the exam. At the conclusion of the hearing, the commissioner's report found that Rojas spoke to LaMont during the Civil Code III examination in violation of the committee's rule that there be no talking during the examination and that "the purpose of their talking was to in some way cheat on the exam, since there are no other reasonable hypotheses for the talking."

THE COURT STATED THAT "[C]HEATING ON THE BAR EXAMINATION IS A PARTICULARLY EGREGIOUS ACT OF DISHONESTY WHICH WE CANNOT EXCUSE OR OVERLOOK." THE COURT ORDERED THAT THE APPLICATION BY ROJAS TO SIT FOR THE LOUISIANA BAR EXAMINATION BE PERMANENTLY DENIED.

After hearing oral argument and reviewing the evidence and the commissioner's report, the Court found that it was established by the record that Rojas spoke to the applicant seated next to her during the Civil Code III examination administered in February 2004, and it further found that such conduct constituted cheating. The Court stated that "[c]heating on the bar examination is a particularly egregious act of dishonesty which we cannot excuse or overlook." The Court ordered that the application by Rojas to sit for the Louisiana Bar Examination be permanently denied.

CHARACTER AND FITNESS

Discipline for failure to disclose on the bar application

In re Margherio, M.R. 24956, 2011 PR00028 (IL 2011)

In 2004, Scott Margherio filed an application to the Illinois Board of Admissions to the Bar (IBAB) in which he failed to disclose various matters including honor code violations at his law school and certain arrests. In May 2006 and again in June 2006 Margherio was arrested for driving under the influence (DUI) in Illinois. One of the charges was dismissed, and in June 2007 he pled guilty to the other charge and received court supervision. He did not supplement his application with information about the 2006 DUI charges, but he later disclosed that information to an IBAB inquiry panel.

In September 2008 Margherio was again arrested in Illinois and charged with DUI after his vehicle was involved in a collision. He failed the field sobriety tests and refused to submit to a breath alcohol content test. Following a request by the IBAB, he submitted an additional character and fitness questionnaire, but he did not disclose the 2008 DUI arrest on the additional questionnaire.

In March 2009 Margherio entered a plea of guilty to the DUI charges and was sentenced to 24 months' probation with conditions and fines. The board asked Margherio to provide additional information about his consumption of alcohol and efforts to establish sobriety. At no time did he disclose the September 2008 DUI or the fact that he had not maintained abstinence from alcohol.

In May 2009 Margherio met with a character and fitness inquiry panel and failed to disclose his 2008 DUI to the panel; instead, he maintained that he had "hit bottom" in 2006 after his second DUI that year and falsely claimed that he had been sober since

entering a care facility in June 2006. In May 2009 the inquiry panel voted to certify his application, and Margherio was admitted to practice law in Illinois.

In October 2010, Margherio appeared in the circuit court of Hardin County, Illinois, with the intention of entering his appearance for a defendant in a criminal case. When Margherio entered the courtroom, witnesses observed that he smelled of alcohol. While waiting for the defendant's case to be called, Margherio fell asleep at the counsel table and then staggered when called to the bench by the presiding judge, the Honorable Paul Lamar. Judge Lamar questioned Margherio about his alcohol use, and Margherio denied using alcohol that morning. He agreed to submit to a breath alcohol content test, which showed a content of .06. Judge Lamar subsequently held a contempt hearing and found Margherio in direct criminal contempt, sentencing him to three days in jail. An ethics complaint was filed against Margherio, which also alleged his failure to disclose his 2008 DUI arrest on his bar application. At the disciplinary hearing, two of the three members of the inquiry panel who had voted to certify Margherio's application testified that had they been aware of the 2008 DUI arrest and conviction, they would have voted to deny his certification. Margherio was disbarred.

In re Osredkar, 25 A.D.3d 199, 805 N.Y.S.2d 760 (2005)

Peter Osredkar was admitted to the practice of law in New York in 2000 and was formerly engaged in the practice of law in Syracuse, although at the time of trial he resided in the state of Oregon. The Grievance Committee in New York filed a petition charging him with making materially false statements in his application for admission to the New York State Bar and with omitting material facts from his application. A referee was appointed to conduct a hearing. Prior to the hearing, the committee filed a motion to suspend Osredkar as an immediate threat to the public interest on the ground that he had filed an application for admission in the state of Washington that contained false statements and that he had failed to disclose in that application the pendency of the New York proceeding. Osredkar failed to respond to this motion and did not appear at the scheduled hearing. The referee filed a report based upon exhibits received in evidence and on documents previously submitted by Osredkar.

The referee found that Osredkar, in his application for admission to the bar, had failed to disclose certain legal employment, a material fact requested in the application, and also found that prior and subsequent to his admission to the bar, Osredkar had made false and misleading statements regarding his employment history on his resume, fabricated letters of recommendation, and falsified his law school transcript. The referee also found that Osredkar had made false statements during the New York proceeding, including a claim that one of the letters of recommendation had been fabricated by his 13-year-old daughter.

The Court noted that the referee found no mitigating factors. Certain aggravating factors found by the referee and considered by the Court included the false statements made by Osredkar during the investigation and proceedings, Osredkar's behavior toward the referee and the committee's counsel, and the fact that Osredkar failed to controvert the allegations made by the committee in regard to his attempt

to gain admission to the bar in another jurisdiction (Washington) without disclosing that the New York proceeding was pending. The Court concluded that Osredkar had demonstrated that he lacked the requisite character and fitness to practice law. Consequently, the Court declined to merely revoke Osredkar's admission and place him in the position that he was in at the time of his original application, finding that disbarment was a more appropriate measure. Osredkar was disbarred.

Rehabilitation; felony convictions

Matter of Wiesner, 94 A.D.3d 167, 943 N.Y.S.2d 410 (NY 2012)

On March 20, 2012, the New York State Supreme Court, Appellate Division, First Department, ruled four to one to grant admission to the bar to Neal Eugene Wiesner after 10 previous rejections. Wiesner passed the bar examination in 1994 but had been denied admission to the bar due to two major felony convictions.

Between 1980 and 1982, Wiesner ran putative sleep clinics in which licensed doctors supplied phony prescriptions to individuals who wished to abuse Quaaludes. Wiesner conspired with several doctors and a pharmacist to distribute illegal drugs to customers. In 1987, Wiesner was indicted and pled guilty to violating federal narcotics laws and to the distribution and possession of Quaaludes.

Wiesner was also convicted of criminal acts committed in 1983 against his former girlfriend. As federal authorities closed in on his Quaalude distribution business, Wiesner became despondent and took a gun to his ex-girlfriend's apartment. He held her there for seven hours until she escaped by jumping out of a second-floor window, sustaining serious injuries. Wiesner fired several shots in her direction but did not hit her. As a result of these actions, Wiesner was convicted of attempted murder, burglary, unlawful imprisonment, criminal possession of a weapon, and criminal use of a firearm.

Wiesner was incarcerated for five years, after which he enrolled in college and then in CUNY School of Law. His first application to the bar was submitted to the Committee on Character and Fitness in 1995. That application was not approved, nor were nine successive motions by Wiesner to renew his application. Wiesner also lost two federal lawsuits challenging the First Department's denial. In 2009, the First Department granted Wiesner's tenth motion to renew his application. Following an evidentiary hearing in 2010, the Committee on Character and Fitness voted 20 to 3 to admit Wiesner.

The Court agreed with the Committee on Character and Fitness and held that crimes committed by Wiesner "in an earlier life" should no longer be an impediment to his admission to the bar in New York. The Court focused its analysis on the issue of rehabilitation. The majority stated that the "operative question is whether the record demonstrates that [Wiesner] has completely rehabilitated himself . . . so that he may now be said to possess the requisite character and fitness to practice law."

The Court noted that Judicial Law § 90, which directs the Appellate Division to admit individuals to the practice of law who possess the requisite character and fitness, "reflects no intent to impose a continuing punishment on an applicant with a criminal past."

The Court found that Wiesner's conduct since being released from prison demonstrated a "clearer image of his current character and what it portends for the future of his legal career." In particular, the Court noted that Wiesner had been admitted to the bar in a number of other jurisdictions, where he had been practicing law for several years without incident. Wiesner also presented a number of character witnesses, many of them highly regarded lawyers, who testified to his integrity, honesty, diligence, and ethical rigor.

THE COURT NOTED THAT JUDICIAL LAW § 90, WHICH DIRECTS THE APPELLATE DIVISION TO ADMIT INDIVIDUALS TO THE PRACTICE OF LAW WHO POSSESS THE REQUISITE CHARACTER AND FITNESS, "REFLECTS NO INTENT TO IMPOSE A CONTINUING PUNISHMENT ON AN APPLICANT WITH A CRIMINAL PAST."

The First Department's majority held that a criminal past is not necessarily a permanent bar to admission if sufficient time has passed and the applicant can provide sufficient proof of his or her rehabilitation. "Although our approval in the past was impeded by the brevity of time, a sufficient time period has now passed without incident in [Wiesner's] life—during which he has been a practicing attorney in good standing and has contributed to society—that we are now persuaded that a change in circumstances warrants a different result."

The Court concluded that there was "no sound basis to further impede [Wiesner's] quest to be admitted to the bar in the jurisdiction where, in an earlier life, he violated the law."

The minority justice, in an impassioned 46-page dissent, said that Wiesner should not have been admitted because "he approached these applications with a sense of entitlement" and because, although he had "started down the road to redemption and rehabilitation," he had not yet "gotten there."

Rehabilitation; felony convictions; permanent disbarment

Florida Board of Bar Examiners re William Castro, No. SC10-2439, 2012 WL 399811 (FL 2012)

On February 9, 2012, the Supreme Court of Florida permanently denied the admission of William Castro to the Florida Bar. The Court found that Castro's prior conduct as a practicing attorney had been so "egregious" that no amount of time or rehabilitation would ever suffice to allow his readmission to the legal profession.

William Castro was admitted to the Florida Bar in 1981 and practiced law as a criminal defense attorney. In 1994, he was convicted of bribery, conspiracy to commit racketeering, and 26 counts of mail fraud. The charges arose out of Castro's participation in a scheme involving kickbacks to a sitting judge. In 1988, Castro was approached by Judge Roy Gelber, who had the authority to appoint Castro as a court-appointed defense attorney for defendants appearing in the judge's courtroom. Judge Gelber offered to appoint Castro as a "Special Assistant Public Defender" in exchange for a percentage of the money earned from the appointments, and Castro agreed to participate in this arrangement.

From 1989 through 1991, Judge Gelber appointed Castro to 64 cases and received approximately $77,000 in kickbacks. (Gelber had also made similar arrangements with other lawyers in Miami while in office. The corruption in the Circuit Court of Dade County was the focus of an FBI sting investigation called "Operation Court Broom" in which several judges and lawyers were convicted.)

On April 12, 1994, the Supreme Court of Florida suspended Castro from the practice of law. The suspension was followed by a Bar Complaint against Castro alleging numerous violations of the Rules Regulating the Florida Bar:

> 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.

THE BOARD CONCLUDED THAT "NO AMOUNT OF REHABILITATION WILL EVER SUFFICE TO ALLOW [CASTRO'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."

As a result of Castro's conduct, the Supreme Court of Florida entered an order on November 12, 1998, disbarring him from the practice of law with a ban on seeking readmission for 10 years, nunc pro tunc (retroactively) to May 12, 1994.

In December 2007, Castro reapplied for admission to the Florida Bar. To support his case, he pled rehabilitation. Castro testified that during the time he was disbarred he had dedicated more than 13,000 hours to community service (over 700 hours per year over 18 years). He further stated that he had participated in numerous community service activities, volunteered at his church, served as a foster parent, worked as a guardian ad litem in the Criminal Law Project, and organized a Continuing Legal Education series for the Florida Bar. Castro also presented numerous character witnesses, including many leaders in the legal and judicial community, one of whom testified that Castro was "a very good person that made a very bad mistake."

The Florida Board of Bar Examiners reviewed Castro's petition but recommended that he be permanently precluded from seeking readmission to the bar. The board focused on the egregious and corrupt nature of Castro's criminal actions. The board concluded that "no amount of rehabilitation will ever suffice to allow [Castro'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."

Castro petitioned the Supreme Court of Florida for review. However, the Court agreed with the board. The Court admitted that Castro had fully demonstrated his rehabilitation but said that his criminal actions, which went "to the very core of [the] public's trust and confidence in the judicial system," were the type of conduct for which no amount of rehabilitation would ever be sufficient to warrant readmission. The decision of the Court was unanimous.

FRED P. PARKER III is the Executive Director of the Board of Law Examiners of the State of North Carolina.

BRAD GILBERT is Counsel and Manager of Human Resources for the National Conference of Bar Examiners.