SUPREME COURT
STATE OF FLORIDA

CASE NO.: SC09-3

IN RE: ADVISORY OPINION TO  
RE: COMMISSION OF 
GOVERNOR  
ELECTED JUDGE

________________________________________

BRIEF BY THE FLORIDA BAR

________________________________________

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STATEMENT OF THE CASE AND FACTS

William S. Abramson is an attorney who was admitted to The Florida Bar in November, 1992. In the August 26, 2008 primary election for circuit court judge in the Fifteenth Judicial Circuit, Mr. Abramson defeated incumbent Judge Richard I. Wennet. At the time Mr. Abramson qualified as a candidate for the election and on August 26, 2008, (the day of the election) Abramson was a member in good standing of The Florida Bar. However, a complaint had been filed against Abramson in April, 2007 and a referee's report was issued on April 29, 2008, recommending sanctions. On December 18, 2008, the Supreme Court entered an order In the matter of the Florida Bar v. William Abramson Case No: SC-07-713, which suspended William Abramson from the practice of law for 91 days effective 10 days from the date of said Order. The Court stated that a full opinion would follow. See Appendix A.

On January 8, 2009, the Court issued its full opinion, per curiam, ruling that William Abramson "is hereby suspended for 91 days and thereafter until he is reinstated." The full opinion is attached hereto as Appendix B.

In its opinion, the Court reviewed the referee's report regarding William Abramson and approved the Findings of Fact and recommendations of guilt but disapproved the recommendation of sanction. The Court found that the appropriate sanction in Abramson’s case was a suspension of 91 days "requiring Abramson to demonstrate rehabilitation, including a demonstration that he is cognizant of and suitably remorseful of his misconduct prior to being reinstated as
member in good standing of The Florida Bar." The Court did not address the issue of whether Abramson was qualified to assume judicial office in that opinion. The Court’s opinion noted that Abramson’s suspension took effect on January 2, 2009.

Abramson had previously been disciplined by the Court on two occasions, and the Court found that his misconduct in the current matter was egregious. He was found to have been disrespectful and confrontational with the presiding Judge in an ongoing courtroom proceeding. The misconduct occurred in the presence of a pool of prospective jurors in a criminal case.

Article IV, Section 1(a) of the Florida Constitution authorizes the Governor to commission all officers of the State, including judicial officers. On January 5, 2009, the Honorable Kathleen J. Kroll, Chief Judge of the Fifteenth Judicial Circuit of Florida, wrote to the Governor citing Article V, Section 8 of the Florida Constitution and Rules Regulating The Florida Bar (specifically Rule 3-5.1e) which provides that during suspension a member continues to be a member of The Florida Bar (but without the privilege of practicing) and further providing, on a suspension of greater than 90 days, that proof of rehabilitation is required. Judge Kroll noted that Abramson shall not become eligible for all privileges of members of The Florida Bar until the Court "enters an order reinstating the respondent to membership in The Florida Bar."

Judge Kroll wrote:

Thus it appears that upon the 92nd day when the suspension expires Mr. Abramson will no longer be a

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1 See The Florida Bar v. Abramson, 790 So.2d 1108 (Fla. 2001) and The Florida Bar v. Abramson, 826 So.2d 993 (Fla. 2002).
member of the Bar unless and until he has been reinstated. Should Mr. Abramson not be reinstated to membership in The Florida Bar then it appears that he would not meet qualifications to be eligible for the office of circuit judge as the Florida Constitution so requires.

Judge Kroll requested the Governor to seek an advisory opinion which he has now done, resulting in these proceedings.

No Florida Court has ever addressed the question as to whether a suspended member of The Florida Bar satisfies Article V, Section 8 eligibility requirements for judicial service.

SUMMARY OF THE ARGUMENT

The term of the office for which Abramson was elected began on January 6, 2009. At the time he was under a 91 day suspension from The Florida Bar. Pursuant to Section 114.01(h), Florida Statutes (2008), an office is deemed vacant upon the failure of the person elected to qualify within 30 days of the commencement of the term of office. Since Abramson will be suspended long past February 5, 2009, he cannot qualify within the requisite time period.

Article V, Section 8 of the Florida Constitution provides that no person is eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Section 8 goes on to provide that a person is qualified for county judge in counties having a population of 40,000 or less if the person is a member in good standing of the bar of Florida. It would be incredible to believe that it was the intent of this section to require
greater qualifications for county judges in small counties than for a circuit judge or even a Supreme Court justice.

Abramson will argue the Constitution only requires that he be a member of The Florida Bar and that it matters not if he is ever reinstated. However, the courts of this state recognize that the Constitution should not be construed to reach an absurd result. It is absurd to believe that the framers of the constitution intended that a lawyer suspended from membership in the Bar should be allowed to be a circuit judge.
ARGUMENT

The question before this Court is whether or not an attorney who has been suspended by the Court for a period of more than 90 days qualifies for the position of Circuit Judge under the Constitution and laws of the State of Florida. This is a question of law. Therefore, the standard of review is de novo.

Article V, Section 8 of the Florida Constitution sets forth the eligibility requirements to serve on Florida’s Courts.

Eligibility – No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. No justice or judge shall serve after retaining the age of seventy years except upon temporary assignment or to complete a term one-half of which has been served. No person is eligible for the office of justice of the Supreme Court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida. No person is eligible for the office of circuit court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. No person is eligible for the office of county court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, no person is eligible for the office of county court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, a person shall be eligible for election or appointment to the office of county court judge in a county having a population of 40,000 or less if the person is a member in good standing of the bar of Florida. (emphasis added).

It is implicit in the applicable Article that one must be a member in good standing of The Florida Bar to assume the office of circuit judge. While the
Article itself says that "no person is eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of The Florida Bar," when discussing the qualifications for county court judge in a county having a population of 40,000 or less the same article provides that one is eligible "if the person is a member in good standing of The Florida Bar." Clearly, if membership in good standing is required for county court judge in a rural county, it certainly is required for circuit judge in one of the most populous circuits in the state.

Under the Rules Regulating The Florida Bar, Rule 1-3.2(a) defines a member "in good standing" as follows:

**Members in Good Standing.** Members of The Florida Bar in good standing shall mean only those persons licensed to practice law in Florida who have paid annual membership fees or dues for the current year and who are not retired, resigned, delinquent, inactive, or suspended members.

While Rule 3-5.1(e) of the Rules Regulating The Florida Bar provides that a lawyer under suspension is still a member of the Bar, other provisions of the Rule require that a lawyer suspended for more than 90 days must reapply for membership in the Bar.

Thus, Rule 3-5.1(e) explains:

A suspension of more than 90 days shall require proof of rehabilitation and may require passage of all or part of the Florida bar examination and the respondent shall not become eligible for all privileges of members of The Florida Bar until the Court enters an order reinstating the respondent to membership in The Florida Bar. No suspension shall be ordered for a specific period of time in excess of three years.
In addition, Rule 3-7.10(a) provides:

An attorney who has been suspended or placed on the inactive list for incapacity not related to misconduct maybe reinstated to membership in The Florida Bar pursuant to this rule. The proceedings under this rule are not applicable to suspension for nonpayment of membership fees.

In any event, the Bar Rules are detailed and specific with regard to what must be done to be reinstated to membership in The Florida Bar. A petition must be filed, and there must be a determination of fitness by a referee after conducting a hearing. After conducting the hearing, the referee files the report and record in the Supreme Court of Florida. See Florida Bar Rule 3-7.10(h). "If the petitioner is found unfit to resume the practice of law, the petition is dismissed. If the petitioner is found fit to resume the practice of law, the referee shall enter a report recommending, and the court may enter an order of, reinstatement of the petitioner in The Florida Bar." If the suspension or incapacity of the petitioner has continued for more than three years, the reinstatement may be conditioned upon furnishing proof of competency. Rule 3-7.10(j).

If an adverse determination is found, no petition for reinstatement can be filed within a year of said adverse determination. Rule 3-7.10(k). A suspended attorney seeking reinstatement to the State Bar must establish by clear and convincing evidence that he has met the criteria set forth in the applicable Bar Rule under the decision in The Florida Bar ex rel: McGraw, 903 So.2d 905 (Fla. 2005).

Due to Mr. Abramson’s suspension, it is evident that Abramson cannot timely qualify to serve as circuit court judge in the Fifteenth Judicial Circuit. His
91 day suspension continues beyond 91 days and remains in effect until rehabilitation and reinstatement.

Section 114.01(h), Florida Statutes provides that an office is deemed vacant "(u)pon the failure of a person elected or appointed to office to qualify for office within 30 days from the commencement of the term of office."

If an elected or appointive officer fails to qualify within the time prescribed, the case law is clear that the office is deemed vacant, and an executive appointment can be made until the election and qualification of a successor at the next general election. State ex rel. Landis v. Byrd, 163 So. 248 (Fla. 1935) and In re: Advisory Opinion to the Governor, 192 So.2d 757 (Fla. 1966).

This Court has previously entered an advisory opinion indicating that, if one does not meet the qualifications to serve as a circuit judge, then the Governor is not authorized to sign the unqualified candidate’s Commission. In the case of In re: Advisory Opinion to the Governor, Governor Haydon Burns requested an advisory opinion from this Court. On November 8, 1966, Stephen R. Booher had been elected to the Office of Circuit Judge for the Seventeenth Judicial Circuit, Group 9, in and for Broward County, Florida. At the time of the election, Judge Booher was eligible for the office of circuit judge pursuant to Article V, Section 13, of the Florida Constitution. However, in the same election an amendment to Article V of the Constitution was approved instituting the requirement that, to be a circuit court judge, one must be currently, and for the period of five years prior, be a member of The Florida Bar. At the time that he was due to take office, Judge Booher would have only been a member of The Florida Bar in Florida for four years.
This Court noted that Article XVI, Section 2 of the Florida Constitution provides that each officer of the State had to take an oath stating that "I am duly qualified to hold office under the Constitution of the State." This Court found that Judge Booher did not, nor would he within the time allowed by law, possess the qualifications then required by the Constitution to hold the office of a judge of a Circuit Court. The Court advised the Governor "you are not authorized to sign his commission as provided by Section 14 of Article IV of the Florida Constitution for the term commencing January 3, 1967."

Sister states, in construing similar provisions relating to qualifications to hold the office of judge, appear to have uniformly construed those statutes and constitutional provisions to prohibit suspended members of state bars from qualifying for judicial office.

In State ex rel Willis v. Montport, 159 P 889 (Wa. 1916), the pertinent portion of the Constitution of the State of Washington provided that "no person shall be eligible to the office of judge . . . unless he shall have been admitted to practice in the courts of record in this state." An attorney who was, at the time, currently serving a one year suspension argued that he should be permitted to run for judge because he had been admitted in the courts of record in the state. The Washington Supreme Court first noted:

It is, no doubt, correct to say that a constitutional provision should be given a strict construction, especially where its terms are clear; but the rule is that the reason and intention of the lawgiver will control the strict letter of the law when the latter would lead to palpable injustice, contradiction, and absurdity.
Referring to the dispute at hand, the court stated:

When the Constitution was framed and when it was adopted, it was clearly not the intention of the people in adopting it to authorize a person to be elected judge who was not, at the time of his election, entitled to practice as an attorney in the courts of record in the state.

Rejecting the contention that he was still a member of the bar, the court explained:

The fact that the petitioner is suspended rather than disbarred for all time is of no special importance, because under his suspension he is disbarred during that time from practice in the courts and from being eligible to any office or employment by reason of the fact that he had, at one time, been admitted to practice. When he was suspended from exercising the rights of an attorney at law, that suspension was as effective during the time there as a removal.

In Elie v. Karst, 5904 So.2d 929 (La. 4th Cir. Ct. App. 1992), the court reached a similar conclusion when it held that an attorney under suspension was not qualified to be a candidate for judge even though the state’s Constitution only required that a person should "have been admitted to the practice of law for at least five years prior to his election."

In Hanson v. Cornell, 12 P.2d 802 (Kan.1932), the Supreme Court of Kansas construed a statutory provision that read in pertinent part:

That no person shall be qualified to hold the office of judge of the district court...unless such person is at least thirty years of age and shall have been regularly admitted to the practice of law in the state and engaged in the active and continuous practice of law,...for a period of at least four years prior to the date of the general election at which such person is to be voted for.
Even though he was then currently under suspension, the lawyer who sought to run for judge argued that he had previously practiced continuously for more than four years. Rejecting this literal interpretation of the statutory language, the court stated:

Obviously the Legislature intended that for one to be qualified to hold the office of judge of the district court, or of the Supreme Court of this state, his admission to practice law created a status which continued and under which he was engaged in the active and continuous practice of law up to the time of his election to such office.

One of the requirements of the Kentucky Constitution to be eligible to serve as a judge of the district court is that the person must be licensed to practice law in the state. In Cornett v. Judicial Retirement and Removal Commission, 625 S.W.2d 564 (Ky. 1981), the Commission, which was seeking to disbar a sitting judge because of his Federal Court conviction, had temporarily suspended the judge. The Kentucky Supreme Court held that the judge could not be disbarred until his conviction had been affirmed. However, of significance to the instant case, the Court stated that since the judge was temporarily suspended from the practice of law, he was temporarily disqualified to serve as a judge.

In Johnson v. State Bar of California, 73 P.2d 1191 (Cal. 1937) a lawyer who had been suspended from membership in the Bar made a sworn declaration for candidacy to be a judge in which he stated that he was "a lawyer, practicing, and admitted to the practice since 1927 in California" and described his present
occupation as "lawyer." In concluding to disbar the lawyer for making a deceptive, dishonest, and untruthful statement, the California Supreme Court stated:

Article VI, sec. 23, of the California Constitution provides that: ‘No person shall be eligible to the office of…a judge of a superior court,…unless he shall have been admitted to practice before the supreme court of the State for a period of at least five years immediately preceding his election or appointment to such office.’ It follows that no one is eligible to hold the office of superior judge who has not been an admitted practitioner before the Supreme Court of this state for a period of five consecutive years immediately preceding his election or appointment to such office. Certainly an attorney who has been suspended from the practice of law during this period cannot successfully claim to be eligible.

In Opinion No. 80-123, dated April 3, 1980, the Attorney General of California was asked if a person was eligible to be elected a judge of the Superior Court if, during the ten years prior to the election, he had been suspended from membership in the state bar for over two years for nonpayment of dues. The California Constitution had been amended since the Supreme Court’s holding in Johnson v. State Bar of California, 73 P.2d 1191 (Cal. 1937) as discussed above. Similar to the Florida Constitution, the California Constitution now tied eligibility to membership in the bar. Thus, Article VI, Sec. 15 of the California Constitution stated:

A person is ineligible to be a judge of a court of record unless for 5 years immediately preceding selection to a municipal court or 10 years immediately preceding selection to other courts, the person has been a member of the State Bar or served as a judge (sic) of a court of record in this State. A judge eligible for municipal court
service may be assigned by the Chief Justice to serve on any court.

Reasoning that a person who has been suspended from membership is not a member of the bar for that period, the Attorney General concluded that the person was ineligible to be a judge.

Here, The Florida Bar concedes that the words "member in good standing of the bar of Florida" are only found following the section relating to rural, less populated County Court seats under Article V, Section 8, of the Florida Constitution. This Court has, however, repeatedly held that the principal goal in constitutional construction is to "ascertain the intent of the framers" (of a constitutional provision) and to construe the provision "in such manner as to fulfill the intent of the people, never to defeat it." Caribbean Conservation Corp. Inc. v. Florida Fish & Wildlife Conservation Comm’n, 838 So.2d 492, 501 (Fla. 2003). It is the Bar’s position that the intent was not to have stricter eligibility requirements for small county judicial offices than for circuit judges.

As this court explained in Coastal Florida Police Benev. Ass’n v. Williams, 838 So.2d 543 (Fla. 2003):

We recognize the rule that constitutional language must be allowed to "speak for itself." Application of that rule, however, must be tempered by judicial deference to offsetting and equally constraining rules. We refer to two fundamental principles of constitutional adjudication. First constitutions "receive a broader and more liberal construction than statutes." Second, constitutional provisions should not be construed so as to defeat their underlying objectives.
Constitutions are "living documents," not easily amended, which demand greater flexibility in interpretation than that required by legislatively enacted statutes. Consequently, courts are far less circumscribed in construing language in the area of constitutional interpretation than in the realm of statutory construction. When adjudicating constitutional issues, the principles, rather than the direct operation or literal meaning of the words used, measure the purpose and scope of a provision. Coastal at 548.

This court has also stated that a literal interpretation of a statute should not be given when to do so would lead to a ridiculous or unreasonable conclusion. Maddox v. State, 923 So.2d 442, 447 (Fla. 2006). See In re: Advisory Opinion to Governor, 374 So.2d 959 (Fla. 1979) (constitutional construction which leads to absurd results must be avoided).

Allowing a suspended member of The Florida Bar to serve as a circuit court judge would mean that a person, who could not appear as an officer of the court in a given courtroom, could instead preside over proceedings in a courtroom where he was barred from appearing as a lawyer. As the Court noted in Department of Environmental Protection v. Millender, 666 So.2d 882, 886 (Fla. 1986) "An interpretation of a constitutional provision which would lead to an absurd result will not be adopted when a contra interpretation is more in keeping with the obvious intent and purpose sought to be accomplished."

Article V, Section 13 of the Constitution also appears to support the idea that circuit judges should be fully qualified members of the Bar. Article V, Section 13 says: "Prohibited activities --All justices and judges shall devote full time to their
judicial duties. They shall not engage in the practice of law or hold office in any political party."

Florida’s statutory scheme makes it illegal for an attorney under suspension to function as a lawyer. Section 454.31, Florida Statutes provides:

Any person who has been knowingly disbarred and who has not been lawfully reinstated or is knowingly under suspension from the practice of law by any circuit court of the state or by the Supreme Court of the State who practices law in this state or holds himself or herself out as an attorney at law or qualified to practice law in this state commits a felony of the third degree punishable as provided in s. 775.082, Florida Statutes, s. 775.083, Florida Statutes or s. 775.084, Florida Statutes.

Insuring the public trust and confidence in the judiciary is fundamental. The preamble to our Code of Judicial Conduct explains:

The role of the judiciary is essential to American concepts of justice and the rule of law. "Intrinsic to all sections of this code are the precepts that judges, individually and collectively must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.

How could the public have any confidence in a legal system that would permit an attorney who has been suspended from The Bar for misconduct to become a circuit judge?

CONCLUSION

In light of the foregoing, The Florida Bar requests that the Court advises the Governor that Mr. Abramson does not meet the qualifications for circuit judge as provided under Article V, Section 8 of the Florida Constitution.
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to the following this 20th day of January, 2009.

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