The Florida Bar v. Lee Howard Gross

MARSHAL: PLEASE RISE. PLEASE BE SEATED.

CHIEF JUSTICE: THE NEXT CASE ON THE MORNING'S DOCKET IS THE FLORIDA BAR VERSUS LEE HOWARD GROSS. IT LOOKS LIKE THE PARTIES ARE READY. YOU MAY PROCEED.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. JUSTICE PARIENTE, ASSOCIATE JUSTICES OF THE SUPREME COURT, COUNSEL FOR THE FLORIDA BAR. MY NAME IS RICHARD MARX, AND I REPRESENT THE RESPONDENT, LEE HOWARD GROSS. MR. GROSS IS SITING WITH ME AT COUNSEL TABLE. HE IS ALSO MY LEGAL ASSISTANT. THIS MATTER IS BEFORE THE COURT ON PETITION FOR REVIEW OF THE ORDER, THE REPORT, OF REFEREE PAUL SIEGEL, WHO RECOMMENDED DISBARMENT. LET ME START BY SAYING TO THE COURT, I RECOGNIZE CLEARLY, THE OFFENSES THAT WERE DONE BY THE RESPONDENT IN THIS CASE. I KNOW THE SERIOUSNESS OF THEM, AND I KNOW THE PROBLEM WITH CONVINCING THE COURT IN MY POSITION. BECAUSE WHEN YOU TELL ANYBODY THE NUMBER OF OFFENSES AND THE SERIOUSNESS OF IT, THEY RECOGNIZE WE HAVE A PROBLEM HERE. NOW, LET ME START BY SAYING THIS, THE FLORIDA BAR TOOK THE POSITION THAT THE TOTALITY OF THE OFFENSES WAS SUCH THAT DISBARMENT WAS REQUIRED AND OVERCAME ANY MITIGATION. AND IN EFFECT, THE REFEREE SO FOUND. THE FACT OF THE MATTER IS, IN THIS CASE, IN THIS CASE, WE HAVE A COMPLETE CASE, IF YOU READ THE TRANSCRIPT, THE TRIAL, OF DEVASTATION FROM BEGINNING TO END, IN THE LIFE OF THE RESPONDENT.

WELL, DIDN'T THE REFEREE, REALLY, TAKE THAT INTO CONSIDERATION, HERE, AND EVEN BASED ON THAT, SAID THAT THIS, RECOMMENDED THAT THIS DISBARMENT COMMENCE BACK AT THE TIME OF THE SUSPENSION, SO HE HAS REALLY TAKEN INTO CONSIDERATION, HERE, IT SEEMS TO ME, THE FACT THAT MR. GROSS HASN'T GONE TO REHAB, AND THAT HE WAS HAVING A DRUG AND/OR ALCOHOL PROBLEM. THAT HE FELT REMORSE FOR WHAT HAD GONE ON, AND THAT HE WAS IMPAIRED.

YES. HE DID SAY THAT. THE PROBLEM, JUSTICE QUINCE, IS THAT THE PENALTY OF DISBARMENT IS SUCH DIFFERENT THAN THE PENALTY OF SUSPENSION, AND THIS COURT 49 DAYS AGO, ANNOUNCED IN THE SHARUZ CASE, PLEASE EXCUSE ME WITH THE PRONUNCIATION, THE CRITICAL STATEMENTS AS TO THIS COURT'S VIEW ON DISBARMENT, AND WHAT THIS COURT DID, I BELIEVE, IN THIS CASE, WAS TO RESURRECT THIS CONCEPT THAT REALLY WAS IN EXISTENCE BUT SOMEHOW WAS NOT BEING UTILIZED IN THESE CASES. YOU SEE, THIS COURT STATED VERY CLEARLY, REMOVE FROM THE BAR, SHOULD THERE FOR NEVER BE DECREED OR ANY PUNISHMENT LESS SEVERE, WOULD ACCOMPLISH THE END. NOW, IN 1982, THE SUPREME COURT OF THE STATE OF FLORIDA, IN THE LARKIN DECISION --

THIS COURT HAS ALSO MADE IT ABUNDANTLY CLEAR THAT STEALING MONEY FROM A TRUST ACCOUNT, THE PRESUMPTION IS DISBARMENT, CORRECT?

YES, SIR.

AND HERE, THERE ISN'T ANY QUESTION THAT THIS DEFENDANT OR THIS RESPONDENT TOOK MONEY FROM TRUST ACCOUNTS, ISN'T THAT CORRECT?

YES, SIR.

AND SO THE PRESUMPTION IS DISBARMENT. WHICH I DO NOT HAVE REASON TO QUESTION, THESE MATTERS OF MITIGATION OR IN A SENSE, WHAT I WOULD TERM THEM, REHABILITATION, BY REASON OF OVERCOMING THESE ADDICTIONS, AND THOSE ARE MATTERS FOR, TO BE DEALT WITH IN READMITTANCE AFTER THE PERSON IS DISBARRED, IF THE PERSON CHOOSES TO REAPPLY FOR ADMISSION TO THE BAR. ISN'T THAT THE PROPER PROCEDURE?

WELL, I HAVE TO, QUITE FRANKLY, DISAGREE WITH YOU, SIR. THE PROCESS IS IMPOSSIBLE TO PERFORM, AND IT WOULD BE NAIVE IN MY OPINION, AND BASED ON MY EXPERIENCE, TO SAY THAT ONCE A LAWYER IS DISBARRED, HE GOES TO THE READMISSION PROCESS AS IF IT WERE SOMETHING RELATIVELY SIMPLISTIC. THE HISTORY IS THAT, ONCE DISBARRED --

NO ONE IS ARGUING THAT IT IS SIMPLISTIC TO GET BACK INTO THE BAR, ONCE YOU HAVE BEEN DISBARRED, BUT IT IS POSSIBLE, AND THERE ARE ANY NUMBER OF LAWYERS WHO HAVE BEEN DISBARRED AND BEEN READMITTED TO THE BAR. ISN'T THAT A FACT?

NO, JUSTICE QUINCE, IT IS NOT A FACT, BECAUSE THE TRUTH OF THE MATTER IS THAT, GETTING BACK IN IS VIRTUALLY IMPOSSIBLE. AND EVERY LAWYER KNOWS THAT, WHO HAS EXPERIENCED THE FLORIDA BOARD OF BAR EXAMINERS. IT IS NOT POSSIBLE. A, IT IS IMPOSSIBLE THE FIRST TIME. NOBODY, NOBODY GETS IN THE FIRST TIME, AND THE SECOND TIME AROUND IS DOUBTFUL.

ARE THERE ANY STATISTICS TO THAT EFFECT?

I HAVE EXPERIENCE TO THAT EFFECT, AND THERE IS NO DOUBT IN MY MIND ABOUT IT. I AM AS POSITIVE OF THAT AS ANYTHING.

HOW MANY INCIDENTS HERE OF STEALING FROM THE TRUST ACCOUNT, OCCURRED AND OVER HOW LONG A PERIOD OF TIME?

THERE WAS APPROXIMATELY, OVER A FOUR OR FIVE-YEAR PERIOD, THE BAR CONTENDS $10,000. AT THE END, THERE WAS $5,000 MISSING.

SO WHY WAS THERE RESTITUTION, AS A PART OF THE REFEREE'S REPORT, HE IS SUGGESTING THAT THERE BE RESTITUTION OF OVER $40,000, BEFORE BEING READMITTED, ASSUMING HE IS DISBARRED.

BECAUSE THERE WAS MONEY OWED TO OTHER PEOPLE FOR THE DEFAULT OVER HIS INABILITY TO PRACTICE LAW, SO THERE WAS A QUESTION OF HIS INABILITY TO PERFORM, SO THERE IS NO QUESTION ABOUT THAT.

SO ALL OF THIS MONEY WAS STOLE TONE FEED A DRUG HABIT?

ABSOLUTELY. AND SO OVER A FIVE-YEAR PERIOD, THIS WAS A MAN PRACTICING LAW WHILE SIGNIFICANTLY IMPAIRED, AND NOBODY WENT TO COURT AND HAD ALL OF THESE, AND THE ONLY WAY IT SHOWED UP, THE PRIMARY WAY, WAS JUST BY STEALING FROM CLIENTS' TRUST ACCOUNTS?

BASICALLY YOU ARE RIGHT, JUDGE.

ISN'T THERE, THOUGH, SOMETHING TO THAT? THAT IS THAT THIS ISN'T SOMETHING AT A SHORT PERIOD OF TIME THAT ALL OF A SUDDEN SOME MONEY WAS TAKEN, THAT THE LENGTH OF THIS MISCONDUCT, IS ACTUALLY SHOCKING!

I THINK I HAVE GOT TO RESPOND THIS WAY. YOU ARE ABSOLUTELY CORRECT. THAT IT IS SHOCKING, AND PROBABLY THE RULES OF THE FLORIDA BAR SHOULD BE AMENDED TO PROVIDE SOME METHOD WHICH DOES NOT EXIST TODAY, TO, WHAT IS THE WORD I AM THINKING FOR,

INTERCEDE IN THE EVENT A LAWYER IS KNOWN TO BE DOING THE WRONG THING. THE SAME WAY, ACROSS THE STREET FROM THE DADE COUNTY COURTHOUSE, USED TO BE A NOTORIOUS BAR CALLED, I THINK IT WAS SALLY'S OR SOMETHING, AND LAWYERS WERE THERE EVERYDAY. THERE WAS A WHOLE FLOCK OF LAWYERS.

THERE ARE WAYS FOR THE FLORIDA BAR TO INTERCEDE, AND EVERY YEAR WE HAVE A LARGE NUMBER OF PETITIONS FROM THE BAR, FOR MEAD SUSPENSIONS, WHEN THEY ACTUALLY DISCOVER THINGS LIKE THIS ARE GOING ON. BUT YOU NEED TO COME BACK TO THE BASICS OF HERE YOU HAVE NOT ONLY ONE INCIDENT OR TWO INCIDENTS OR THREE INCIDENTS. YOU HAVE A LARGE NUMBER OF INCIDENTS OVER A LARGE PERIOD, LONG PERIOD OF TIME, AND IT IS WAY PAST MANY OF THE DECISIONS THAT WE HAVE RENDERED, WHERE EVEN ONE OF THESE INCIDENTS OF STEALING FROM A TRUST ACCOUNT, WILL JUSTIFY DISBARMENT, AND SO I AM HAVING DIFFICULTY WITH, HERE WE HAVE GOT A TRIAL JUDGE THAT SAT AS A REFEREE, THAT HEARD ALL OF THIS, AND WE HAVE ALL THE PRESUMPTIVE PENALTIES THAT ARE AGAINST, AND YOU, WE CERTAINLY APPRECIATE YOUR CANDOR FROM THE OUTSET, BECAUSE, REALLY, I GUESS THAT IS THE ONLY WAY THAT YOU CAN HOPE TO ACCOMPLISH ANYTHING FOR YOUR CLIENT, IS TO SAY THAT YOU REALLY HAVE AN ENORMOUS MOUNTAIN TO CLIMB HERE, BUT I AM HAVING DIFFICULTY, AFTER WE HAVE HAD WITH ONE JUDGE, A REFEREE ALREADY HEAR THIS, AND IN TERMS OF PROTECTING THE PUBLIC FROM THIS KIND OF, WHAT KIND OF A SIGNAL OR A MESSAGE WOULD WE SEND OUT, WITH ANYTHING LESS THAN A DISBARMENT?

JUSTICE, I HAVE GOT TO BACK TO LARKIN IN 1982, WHEN THE PREDECESSOR TO THIS COURT WAS SO FAR SEEING INTO THE FUTURE, WHEN THEY RECOGNIZED THE PROBLEM WITH ALCOHOLISM AND THEY STATED IN THAT OPINION, THAT IT WAS TIME TO DO SOMETHING ABOUT IT, AND IT WAS AT THIS POINT THAT THIS COURT STARTED TO MOVE INTO THE 21 CENTURY IN THE FIELD OF ALCOHOL AND ADDITION. IT WAS AT THIS POINT THAT FLA CAME INTO EXISTENCE AT THAT TIME THIS POINT IN 1986.

YES, AND WE ARE IN THERE, BUT WE ARE TALKING ABOUT, YOU KNOW, A, ONE TIME, TWO TIMES, THREE TIMES, FOUR TIMES. THERE IS SOME RESPONSIBILITY, WHERE IF FLA INC. WAS THERE FOR MR. GROSS, IF HE UNDERSTOOD WHAT WAS GOING ON THE FIRST TIME HE STOLE FROM HIS CLIENTS' TRUST ACCOUNT, BUT THIS IS AN AFTER-THE-FACT I AM CAUGHT. NOW I AM GOING INTO REHABILITATION. ISN'T THAT BASICALLY WHAT HAPPENED HERE?

JUSTICE PARIENTE, THAT IS WHAT HAS HAPPENED HERE, BUT THE PROBLEM IS, AND THE POINT I NEED TO MAKE, IT IS IMPERATIVE THAT I MAKE THIS POINT, A REVIEW OF THE TESTIMONY OF OUR EXPERT WITNESSES, DR. ZIMMER CLEARLY TELLS BECAUSE THIS IS ALL B IF YOU DON'T UNDERSTAND ADDICTION, YOU ARE NEVER GOING TO UNDERSTAND WHAT HAPPENED HERE, AND THAT IS WHAT THIS IS ALL ABOUT.

IF WE HOLD ADDICTION IN THIS CASE, DISBARMENT WAS NOT APPROPRIATE, THEN THERE WILL BE VIRTUALLY NO CASE IN WHICH DISBARMENT WOULD BE APPROPRIATE, SIMPLY BECAUSE THERE WAS AN ALCOHOL OR A DRUG ADDICTION INVOLVED?

NO, SIR. JUSTICE CANTERO, THAT IS NOT ACCURATE, BECAUSE THIS IS THE CASE. THE FACTS OF THIS CASE ARE UNIQUE, BECAUSE IN ALL OF THE CASES I HAVE READ, THAT THIS COURT HAS REVIEWED AND RULED UPON, THE FACTS HERE ARE DIFFERENT. THIS IS SHUMINER IN REVERSE. IN SHUMINER, HE WENT OUT AND BOUGHT A JAGUAR AND WAS PRACTICING LAW. LEE GROSS WAS DESTROYED. HE ENDS UP BEING EVICTED FROM HIS OFFICE, EVICTED FROM HIS HOUSE.

COULD WE APPROACH THIS, THERE IS NO ONE HERE ON THIS ENTIRE PANEL THAT DOES NOT HAVE COMPASSION, UNDERSTANDING AND DOES NOT HAVE CONCERN FOR THE WELL-BEING OF MR. GROSS, AND CERTAINLY I DON'T BELIEVE THERE IS ANYONE HERE THAT HAS ANY LACK OF A CONCERN FOR HIS WELL-BEING, BUT THAT IS A DIFFERENT ISSUE THAN WITH REGARD TO

IMPOSING HARM UPON THE PUBLIC, AND THE LAST THREE YEARS, WE HAVE DISBARRED ATTORNEYS FOR FAR, FAR LESS, WHO HAVE HAD HISTORIES OF WONDERFUL BEHAVIOR, HELPING PUBLIC, HELPING THE BAR, AND IT SEEMS AS THOUGH WE ARE GOING IN THE WRONG DIRECTION, IF WE FOLLOW YOUR SCENARIO THAT SAYS THE WORST YOU ARE, THE LEAST THE PENALTY SHOULD BE, AND I AM HAVING TROUBLE DEALING WITH. THAT.

JUSTICE LEWIS, YOU ARE RIGHT, AND I UNDERSTAND THAT HAS BEEN MY PROBLEM, AND THE PROBLEM IS IN TRYING TO CONVEY TO THE COURT WHAT ADDICTION DOES TO THE INDIVIDUAL. ONCE YOU CROSS THAT LINE, FROM BEING A REGULAR DRINKER INTO AN ALCOHOLIC, EVERYTHING CHANGES. THE THOUGHT PROCESSES CHANGE, AND DR. ZIMMER ADDRESSED THAT CLEARLY. I MEAN --

IN THIS SITUATION, WHAT IS REALLY TROUBLING TO ME, IS THAT NOT ONLY WAS THIS MAN STEALING FROM HIS CLIENT, HE FORGED THE JUDGE'S SIGNATURE ON AN ORDER. HE FORGED A CLIENT'S SIGNATURE ON A CHECK. HE FORGED A CLIENT'S SIGNATURE ON A PLEA OF GUILTY. THESE ARE SOME VERY, VERY SERIOUS, NOT JUST ALLEGATIONS BUT HE ADMITTED!

JUSTICE QUINCE, AS ALL DUE RESPECT, I UNDERSTAND THAT, AND IF YOU UNDERSTAND WHAT ADDICTION DOES TO SOMEBODY, THE NUMBER OF EFFECTS IS IMMATERIAL.

ISN'T THIS SORT OF LIKE WE HAVE ANALOGIZED DISBARMENT TO THE DEATH PENALTY FOR LAWYERS. WE HEAR EVERYDAY, IN THIS COURTROOM, ABOUT DEFENDANTS WHO CLAIM THAT THEY HAVE DONE A TERRIBLE DEED, AND THEY WERE ON CRACK COCAINE. THEY WERE ADDICTED. AND WE UNDERSTAND THAT. BUT THAT DOESN'T END UP EXCUSING THEM FROM RESPONSIBILITY. MAYBE THERE ARE CASES WHERE THE MITIGATION OUTWEIGHS AGGRAVATION, BUT ISN'T THAT WHAT WE ARE LOOKING AT? IN OTHER WORDS THE SERIOUSNESS OF THE ACTS IN THIS CASE, ARE SO FAR BEYOND, THAT THE, NO MATTER HOW COMPELLING THIS MITIGATION IS, DISBARMENT IS WARRANTED. AND YOU ARE IN YOUR VERY MUCH INTO YOUR REBUTTAL. I DON'T KNOW IF YOU WANT TO SAVE ANY TIME.

I JUST WANT TO RESPOND THIS WAY. DISBARMENT, SUSPENSION, SUSPENSION IS A VERY SERIOUS PENALTY. IT IS A THREE-TO-FOUR-YEAR PENALTY. IT IS NOT LIKE IF YOU CHOSE SUSPENSION OVER DISBARMENT, YOU ARE NOT JUST LETTING HIM WALKOUT. YOU ARE NOT LETTING HIM WALKOUT. IS HE BEING PUNISHED, AND I WANT THE COURT FOUND THAT. A THREE-YEAR SUSPENSION IS A SEVERE PUNISHMENT.

WE UNDERSTAND EVEN A 91-DAY SUSPENSION IS A SEVERE SUSPENSION. WE UNDERSTAND THAT, MR. MARX. THANK YOU. MR. MULLIGAN.

GOOD MORNING. MAY IT PLEASE THE COURT. WILLIAM MULLIGAN ON BEHALF THE FLORIDA BAR.

IS THERE EVER A SITUATION WHERE A PERSON, THE ADDICTION EVIDENCE IS SO COMPELLING, THAT IT CAN OUTWEIGH THIS TYPE OF SERIOUS MISCONDUCT, AND HOW DO WE APPROACH THESE ADDICTION CASES?

THANK YOU, JUSTICE. I WOULD RESPOND THAT THERE MAY AND CASE WHERE YOU HAVE A CLEAR ADDICTION, WHERE YOU COULD ADDRESS CERTAIN TYPES OF MISAPPROPRIATION, CERTAIN TYPES OF MISCONDUCT, BUT FIRST OFF AS HAS BEEN NOTED ALREADY, THE SERIOUSNESS OF THIS MISCONDUCT, AS JUSTICE QUINCE BROUGHT OUT THE MISCONDUCT AND OTHER OFFENSES COULD SERIOUSLY WARRANT DISBARMENT, I DON'T SEE ANY TYPE OF MITIGATION IN THIS CASE FOR THAT.

THE FIVE-YEAR PERIOD, YOU WOULD THINK IN A FIVE-YEAR PERIOD, YOU WOULD THINK THERE MUST HAVE BEEN A TIME THAT HE WASN'T FALLING APART, THAT HE WAS PRACTICING LAW, AND WAS HE MAKING MONEY? I MEAN WHAT IS THE WHOLE PICTURE DURING THIS FIVE-YEAR PERIOD?

IS THIS A PERSON THAT IS NOT GOING IN THE OFFICE EVERYDAY? TELL US, GIVE US THAT PICTURE OF WHAT THE EVIDENCE SHOWS.

YES, JUSTICE. THE EVIDENCE SHOWS MR. MARX WOULD HAVE THE COURT BELIEVE THAT MR., THE RESPONDENT WAS IN A DOWNWARD SPIRAL AND HE WAS TOTALLY OUT OF CONTROL THE WHOLE TIME, AS THIS WAS GOING DOWN. HOWEVER, THERE IS EVIDENCE IN THE RECORD THAT DOES REFLECT OTHERWISE THERE. IS EVIDENCE THAT, IN THE TIME FRAME OF THE MISCONDUCT FROM 1995 TO 2002, YOU HAVE THE MISAPPROPRIATION ANSWER ALL OF THE OTHER MISCONDUCT THAT IS CHARGED. NOW, WE HAVE EVIDENCE THAT IS IN THE RECORD OF ONE OF THEM BEING THE FLORIDA BAR'S EXHIBIT NO. 10, WHERE IN A TRANSCRIPT WAS SUBMITTED DURING DISCOVERY OF THIS CASE, BY MR., BY THE RESPONDENT MR. GROSS, WHERE A COURT IS COMMENDING HIM IN 2001, OF A FINE JOB THAT HE DID ON A CASE. ADDITIONALLY WE HAVE AN ATTORNEY THAT WORKED WITH HIM FROM 1999 TO 20002, AN ATTORNEY BY THE NAME OF RE MENDELSON, WHERE HE TESTIFIED THAT IN A NUMBER OF CASES HE HANDLED THEM WELL AND DID A VERY GOOD JOB AS AN ATTORNEY DEFENDING HIS CLIENTS.

WAS THERE ANYONE IN THE WHOLE COURSE OF THIS TIME THAT TESTIFIED AT THIS HEARING, THAT MR. GROSS WAS OBVIOUSLY SUFFERING FROM ADDICTION DURING THIS PERIOD, THAT HE WAS SHOWING UP IN COURT INTOXICATED, THAT ANYONE WHO KNEW HIM WOULD HAVE KNOWN HE WAS HAVING SOME KIND OF PROBLEM?

JUSTICE QUINCE, HE HAD WITNESSES, OBVIOUSLY, TESTIFY IN HIS BEHALF. HE HAD TWO DOCTORS, DR. ZIMMER AND DR. --

WE KNOW THEY WOULDN'T HAVE BEEN OBSERVING HIM DURING THIS TIME PERIOD.

HAD HE A LOT OF CHARACTER WITNESSES THAT TESTIFIED. HE DIDN'T HAVE ANYBODY THAT I RECALL THAT TESTIFIED ABOUT HIS BEHAVIOR IN COURT. ANYTHING OBSERVING, LIKE YOU ARE INDICATING, ANY KIND OF SUBSTANCE ABUSE, SHOWING UP IN COURT DRUNK, ANYTHING OF THAT NATURE OR WITH ALCOHOL ON HIS BREATH. THEY DID HAVE TESTIMONY OF WITNESSES THAT SAID HE APPEARED TO BE PARTYING VERY HARD AND THAT HE WAS STARTING TO LIVE A VERY DIFFICULT LIFESTYLE WITH ALCOHOL. THAT CAME IN, AND THAT WAS MENTIONED, BUT ONCE AGAIN, IT IS THE FLORIDA BAR'S POSITION THAT HE HASN'T SHOWN THAT THE SUBSTANCE ABUSE, THE ALCOHOL, DRUGS, WHATEVER, EXACTLY, WAS A DIRECT CAUSE OF THE MISCONDUCT. NOW, I HAVE REVIEWED CASE LAW REGARDING THE SUSPENSION CASES, AND --

IN OTHER WORDS, WHAT WAS THE EXPLANATION FOR WHAT WAS HE DOING WITH THIS MONEY THAT HE WAS TAKING?

WELL, YOUR HONOR, BASICALLY, HE WAS, AS THE EXPRESSION GOES, ROBBING PETER TO PAY PAUL. HE WOULD TAKE THE MONEY FROM ONE CLIENT TO PAY ANOTHER CLIENT, SO HE WAS BACK AND FORTH USING IT TO PAY RENT. HE WAS USING IT TO PAY PERSONAL EXPENSES.

SO HIS PRACTICE WAS NOT GOING WELL DURING THIS TIME.

ONE WOULD PRESUME HIS PRACTICE WAS NOT GOING WELL.

WAS HE A SOLE PRACTITIONER?

YES, YOUR HONOR, TO MY KNOWLEDGE.

AND HE HAD JUST BEEN ADMITTED TO THE BAR IN 1991, SO THIS IS SOMETHING WE HAVE IN TERMS OF LOOKING AT LESSONS FOR THE FUTURE, SOMEONE WITH A -- SOMEONE WHO IS A SOLE PRACTITIONER, NO ONE TO HELP HIM OUT. HE IS NOT DOING PARTICULARLY WELL IN THE PRACTICE OF LAW, SO THE ASSUMPTION ACTION THE BAR'S POSITION IS THAT -- THE ASSUMPTION,

THE BAR'S POSITION IS THAT TAKING THIS MONEY MIGHT NOT BE PAYING FOR A COCAINE HABIT BUT, REALLY, TO MAKE UP FOR SOME OTHER MISMANAGEMENT IN THE OFFICE. IS THAT WHAT THE POSITION --

YOUR HONOR, IT IS HARD TO SAY EXACTLY. I WOULD SAY OBVIOUSLY WE HAD TESTIMONY THAT HE WAS USING MONEY TO PAY OTHER BILLS THAT WERE NOT RELATED TO THE PRACTICE OF LAW. WE HAVE INDICATIONS THAT IT WAS USED TO PAY FOR HIS CLIENTS, THE ONES THAT THEY WERE SUPPOSED TO BE USING MONEY FOR, SO CLEARLY.

THE BAR ISN'T CLAIMING THAT HE WAS STEALING THIS MONEY FOR MAY FOR AN EXTRAVAGANT LIFESTYLE.

THAT HAS NOT BEEN THE CLAIM.

SHOW, IN TERMS OF TIMING, IF WE WERE TO GRANT THE DISBARMENT, BUT THAT IT WOULD BE EFFECTIVE RETROACTIVE TO THE SUSPENSION. IN EFFECT, HOW MUCH LONGER WOULD HE REMAIN SUSPENDED WITHOUT THE RIGHT TO REAPPLY FOR ADMISSION FROM TODAY, FOR INSTANCE?

YES, YOUR HONOR. HE WAS, THE DISBARMENT WAS EFFECTIVE NUNC PRO TUNC. SO IT WOULD BE RUNNING FIVE YEARS FROM THAT TIME PERIOD.

FROM 2002.

BUT I THINK WHAT MS.^MARKS WAS POINTING OUT AND WE CERTAINLY UNDERSTAND THAT DISBARMENT, IN MANY CASES SUSPENSION, AND A THREE-YEAR SUSPENSION IN MANY CASES BEING A FIVE-YEAR OR MORE SUSPENSION, BUT THE PROCESS IS DIFFERENT, BECAUSE WITH DISBARMENT THERE HAS TO BE THE TAKING OF THE BAR EXAM AGAIN, AND YOU GO THROUGH THE WHOLE CHARACTER AND FITNESS EVALUATION OF THE BOARD OF BAR EXAMINERS FORM THE INITIAL PART IS NOT UNDER THE CONTROL OF THE BAR TO GET HIM IN, BUT HE IS STARTING OUT WITH, REALLY, SEVERAL MARKS ON HIM, BECAUSE HE IS GOING TO HAVE TO SHOW SIGNIFICANT REHABILITATION, IN ADDITION TO TAKING THE BAR EXAM. SO IT IS NOT THERE, IS NO WAY THAT WE WOULD EVER SAY A FIVE-YEAR DISBARMENT IS EQUIVALENT TO SAY, EVEN IF WE HAD THEM, FIVE-YEAR SUSPENSIONS. DO YOU AGREE WITH THAT?

JUSTICE PARIENTE, I COULDN'T AGREE WITH YOU MORE.

IT IS THE BAR'S FEELINGS, THAT EVEN, AND THIS IS WHAT I WANT TO UNDERSTAND, THEN, IS THAT EVEN THOUGH WE HAVE NOW, HE ADMITTED ALL HIS WRONGDOING AND HE IS UNDER ACTIVE TREATMENT THROUGH FLA INC., THAT IT WOULD NOT BE A GOOD THING TO HAVE, EVEN HIM BE ABLE TO SHOW REHABILITATION IN THREE YEARS, AND EXPLAIN WHY YOU THINK THAT IS THE CASE.

YES, JUSTICE. I WOULD GO BACK TO A COMMENT THAT JUSTICE CANTERO MADE, THAT I THINK IS EXACTLY THE REASON. AND THAT IS WE HAVE A THREE-PRONG SYSTEM OF LAWYER DISCIPLINE. AND THE FIRST PRONG BEING THAT IT WOULD BE FAIR TO SOCIETY, THE SECOND BEING FAIR TO THE ATTORNEYS, AND, THIRD, WHICH IS CONSISTENT WITH WHAT JUSTICE CANTERO WAS TALKING ABOUT, IS THE DETERRENCE EFFECT. IF WE HAVE A CASE LIKE THIS ONE, WHICH IS AN UNBELIEVABLE GROUP OF INSTANCES OF MISCONDUCT, IT WILL AND CASE THAT WILL CAUSE THE TERRIBLE, TERRIBLE PRECEDENT TO HAVE TO DEAL WITH IN THE FUTURE. FIRST OFF, I WOULD LIKE TO NOTE THE REFEREE'S RECOMMENDED DISCIPLINE IS PRESUMED TO BE CORRECT, UNLESS IT IS FOUND TO BE CLEARLY ERRONEOUS.

WHEN WAS THE FIRST TIME HE GOT ATTEMPTED TO GET, TREATMENT FOR THESE ADDICTIONS? AND WE KEEP ON, ALCOHOL AND DRUG AS IF THEY ARE ALL JUST TOGETHER. WHAT WAS HIS

PRIMARY ADD SIX?

YOUR HONOR, MY UNDERSTANDING WAS IT WAS ALCOHOL AND COCAINE. THAT WAS MY UNDERSTANDING. ALSO --

WHEN WAS THE FIRST TIME THAT HE ATTEMPTED TO GET TREATMENT FOR THESE ADDICTIONS?

YOUR HONOR THERE, IS NO INDICATION OF ANY TREATMENT PRIOR TO HIM GETTING EMERGENCY SUSPENDED. SO AS THE COURT PREVIOUSLY BROUGHT UP, THIS WAS AN INSTANCE OF SOMEONE THAT HAD TO BE BROUGHT TO TREATMENT, KICKING AND SCREAMING BASICALLY.

WHAT WERE THE EXPERT'S TESTIMONY, IN TERMS OF GIVING A HISTORY OF HOW AND WHEN HE FIRST BECAME ADDICTED AND THEN WHAT HIS COURSE WAS AFTER THAT?

YES, YOUR HONOR.

ARE YOU FAMILIAR WITH THAT?

YES, I AM, JUSTICE. I WOULD MENTION THAT, THERE ARE TWO EXPERTS, DR. ZIMMER AND DR. WAHLMOTH. NEITHER ONE OF THEM COULD TESTIFY TO THE DURATION.

NEITHER OF THEM TESTIFIED AS TO THE ORIGIN OF THE ADDITION ISSUE, AND THEN THE PROGRESSION OF IT?

WELL, THERE WAS TESTIMONY THAT HE WAS SERIOUSLY IN THE THROES OF ALCOHOL AND SUBSTANCE ABUSE. THEY COULD NOT, ONCE AGAIN, SAY WHAT THE DURATION WAS. THEY BELIEVED IT WAS GOING ON FOR PARED OF TIME.

WAS THAT SELF-REPORT SOMETHING.

EVERYTHING WAS SELF-REPORTING, WHICH IS ANOTHER PROBLEM I HAVE WITH THIS CASE, BECAUSE BOTH DOCTORS TESTIFIED THAT, IN THE EARLY STAGES OF RECOVERY, WHICH THE RESPONDENT MR. GROSS WAS AT THE TIME AND STILL IS, I BELIEVE, THE PEOPLE ARE KNOWN TO BE DISHONEST, FREQUENTLY, PEOPLE IN THIS TYPE OF SITUATION, YET BOTH OF THEM, THE DOCTORS, BOTH, GOT THEIR INFORMATION STRICTLY FROM MR. GROSS. THEY DIDN'T GET IT FROM --

THIS IS A SITUATION WHERE YOU COULD BE CAUGHT WITH YOUR HAND IN A COOKIE JAR AND THEN ALL OF A SUDDEN WE CAN FIND A WAY OUT OF THIS, SELF-REPORT AND CREATE THINGS THAT WE DON'T HAVE ANY MEDICAL HISTORY TO GO ON, IS THAT RIGHT?

NOT AT ALL. NOT AT ALL, YOUR HONOR.

I NOTED THAT AT LEAST ONE OF THE DOCTORS RECOMMENDED IN-PATIENT THERAPY FOR MR. GROSS. HAS HE TAKEN ADVANTAGE OF THAT?

YOUR HONOR, I AM NOT AWARE IF MR. GROSS HAS GONE INTO IN-PATIENT TREATMENT. I KNOW HE WAS ADVISED OF THAT BY FLA, WHEN HE WAS FIRST IN CONTACT WITH THEM AFTER THE EMERGENCY SUSPENSION, AND HE DECLINED. HE BALKED AT THE IDEA TO GO TO FLA.

THE FLORIDA BAR IS ABLE TO SHOW THAT HE WAS ADMITTED IN 1991, AND THESE ACTS OCCURRED STARTING IN 19, THE EARLIEST IS 1995 ?

1995. CORRECT.

AND THEN CONTINUING, WHEN WAS THE LATEST, THE LAST ONE THE BAR WAS ABLE TO SHOW?

IT WENT UP UNTIL 2002.

WHEN HE GOT SUSPENDED.

CORRECT.

SO A SEVEN-YEAR PERIOD OF TIME.

THAT'S RIGHT.

DO WE HAVE ANY CASE WHERE THERE HAS BEEN STEALING FROM TRUST ACCOUNTS, FORGING DOCUMENTS, WHATEVER, THAT WE HAVE SAID THAT A PUNISHMENT LESS THAN DISBARMENT WAS WARRANTED?

YOUR HONOR, I AM NOT AWARE OF ANY CASE. HE, MR. MARX SPECIFICALLY REFERS TO CASE SHUMINER, FLORIDA BAR VERSUS SHUMINER. THE ATTORNEY STOLE SOMETHING LIKE $20,000 AND THAT WAS ALL THAT WAS INVOLVED AND HE USES THAT CASE TO SAY IT WAS WORSE THAN THIS CASE, BECAUSE THE ATTORNEY BOUGHT A CAR WITH SOME OF THAT MONEY. WELL, I DON'T SEE HOW THE TWO EVEN COMPARE. THIS CASE HAS, AS WE HAVE DISCUSSED, OVER $100,000 FROM 13 CLIENTS, MISAPPROPRIATION. WE HAVE FORGERIES OF TWO DIFFERENT ORDERS, COURT ORDERS. WE HAVE FORGERIES OF A CLIENT'S INSURANCE CHECK, THAT WAS ALL OF HERS THAT HE TOOK. WE HAVE FORGERY AFTER PLEA AGREEMENT WHICH THE LADY ENDED UP SPENDING TIME IN JAIL, PARTLY DUE TO THAT, BECAUSE SHE WAS NOT AWARE THAT THE CASE WAS PLED OUT. WE HAVE SERIOUS NEGLECT WHERE AN ATTORNEY, WHERE MR. GROSS HAD NOT HANDLED THE CASE, AND THERE WAS A JUDGMENT ISSUED AGAINST THE CLIENT AND HE HAD TO PAY OVER $7,000 AS A RESULT OF MR. GROSS'S SERIOUS NEGLECT. WE HAVE SUBPOENAS, THREE DIFFERENT OCCASIONS THE FLORIDA BAR WAS ISSUING SUBPOENAS, REQUESTING INFORMATION, ONE OF WHICH, ONE TIME IN 1999, WE HAD ISSUED A SUBPOENA REQUESTING INFORMATION, AND THE RESPONDENT FAILED TO EVEN DISCLOSE ONE OF HIS TRUST ACCOUNTS. DIDN'T EVEN MENTION IT. AND LATER ON, WE WERE ABLE TO DISCOVER IT IN THE INVESTIGATION. AND THIS IS JUST A BRIEF THUMBNAIL SKETCH OF THE MISCONDUCT THAT WE ARE TALKING ABOUT.

SO WHAT YOU ARE SAYING IS TO ACTUALLY PUT ALL OF THIS ACTION OVER A SEVEN-YEAR PERIOD, WHEN HE IS ALSO FUNCTIONING AS LAWYER IN OTHER WAYS, AND JUST PUT IT ALL ON THAT THIS IS ALL JUST A RESULT OF A SELF-REPORTED ADDICTION, THAT WAS FIRST TREATED OR AT LEAST BROUGHT TO LIGHT AFTER THE SUSPENSION, AND IT IS JUST NOT SOMETHING THAT YOU KNOW, WOULD MAKE THIS THE TYPE OF COMPELLING MITIGATION TO PUT THIS IN A CLASS BY ITSELF?

THAT IS CORRECT, JUSTICE. COUNSEL HAS MENTIONED RECENT CASE DECIDED BY THIS COURT, CHERIAS. HE ALSO MENTIONED AN ACTION OF MISCONDUCT, WHICH IS NOTHING IN THE SAME BALLPARK. THEY DON'T INVOLVE MISAPPROPRIATION CASES, SO I DON'T SEE HOW IT WAS RELEVANT. HE IS USING IT TO ARGUE THAT DISBARMENT IS SOMETHING WHERE THERE IS NO REHABILITATION ABLE TO BE SHOWN.

WHAT DO WE KNOW ABOUT THE ATTORNEY'S PERSONAL BACKGROUND AND THE EFFECT OF THE ADDICTION ON HIS PERSONAL OR FAMILY LIFE IN THIS CASE? DO WE HAVE ANY INFORMATION ABOUT THAT? TELL ME WHAT THAT IS.

JUSTICE, WHAT I, FROM WHAT HE TESTIFIED TO, MR. GROSS, HE HAD INDICATED THAT HE, IT COST HIM A LOT OF FAMILY RELATIONSHIPS AND FRIENDSHIPS, I BELIEVE.

THAT IS SORT OF A VAGUE, DO WE HAVE ANYTHING MORE PRECISE THAN THAT?

WELL --

IS HE MARRIED?

NO.

HAS HE BEEN DIVORCED?

NO, HE IS NOT MARRIED TO MY KNOWLEDGE, AND THAT NEVER CALM, WHETHER HE WAS MARRIED OR SINGLE, SO I AM NOT AWARE OF THAT, SO I DON'T HAVE A GREAT BACKGROUND AS TO HIS FAMILY CONNECTIONS, OTHER THAN THAT HE HAD MENTIONED AT SOME POINT DURING THE FINAL HEARING, THAT IT COST A BIG RIFT WITH HIS PARENTS, I BELIEVE, THAT THIS SITUATION THAT HE WAS GOING THROUGH.

HOW ABOUT EDUCATIONAL BACKGROUND, WORK HISTORY, THAT KIND OF THING? WHAT DOES THE RECORD SHOW WITH REGARD TO THAT?

I KNOW THAT HE WENT TO THE UNIVERSITY OF MIAMI. I BELIEVE THAT HE WENT TO COLLEGE, UNIVERSITY OF LAW SCHOOL IN MIAMI. I BELIEVE THAT HE WENT TO COLLEGE UP IN NEW YORK. UNDERGRADUATE WORK HISTORY IS MY KNOWLEDGE HE WORKED BRIEFLY UP IN NEW YORK THEN CAME BACK DOWN TO SOUTH FLORIDA AND WORKED FOR A PERIOD OF TIME WITH A PARTNER, AND THEN BASICALLY WENT OUT ON HIS OWN.

HOW LONG? HE WORKED AS A LAWYER IN NEW YORK?

YES. I BELIEVE IT WAS A YEAR.

SO, THEN, HE HAS NOT EVEN BEEN IN FLORIDA SINCE '91. HE COMES IN '92. IS THAT WHAT YOU ARE SUGGESTING TO US?

THAT IS POTENTIALLY THE CASE.

AND HE HAD A PARTNER FOR A WHILE?

FOR A SHORT PERIOD, IT IS MY UNDERSTANDING.

BUT HE NEVER WORKED FOR A LAW FIRM, WHERE HE WAS AN ASSOCIATE IN A LAW FIRM.

ACCORDING TO THE RECORD, HE WAS NOT.

HUNG OUT HIS SHINGLE FROM THE BEGINNING.

THAT IS MY UNDERSTANDING.

HOW DIRECTLY DID THE EXPERTS TIE HIS ADDICTION TO THE STEALING AND HIS OTHER?

FIRST OFF, JUSTICE ANSTEAD, I WOULD NOTE THAT ONE OF THE MAIN WITNESSES THAT THEY WILL POINT TO IN THE REHABILITATION, IS DR. EVAN ZIMMER. THIS IS A WITNESS WHO FIRST MET MR. GROSS, THE RESPONDENT, LESS THAN TWO MONTHS BEFORE THE FINAL HEARING.

YOU ARE, YOU HAVE CONCLUDED YOUR TIME BUT YOU MAY RESPOND TO JUSTICE ANSTEAD'S QUESTION BUT BE MINDFUL OF IT.

THANK YOU. HE FIRST MET THE RESPONDENT LESS THAN TWO MONTHS BEFORE THE FINAL HEARING, AND HE TESTIFIED THAT HE ONLY MET HIM ONCE IN PERSON FOR AN HOUR AND-A-HALF AND THAT HE SPOKE TO HIM ON THE PHONE THREE TO FOUR TIMES, EACH LESS THAN FIVE

MINUTES. TOTAL TIME SPENT WAS LESS THAN TWO HOURS, AND HE SAID HE COULD NOT DEFINITIVELY SAY, WHAT THE RESPONDENT'S MENTAL CONDITION WAS AT THE TIME THAT HE WAS ACTIVELY USING DRUGS AND ALCOHOL AND HE COULD NOT SHOW THAT DEFINITIVELY IT WAS A DIRECT CAUSE OF THE MISCONDUCT, AND HE WAS ALSO UNABLE TO STATE WITH A DEGREE OF MEDICAL CERTAINTY, WHAT THE CHANCES OF RECOVERY WERE.

WAS THERE ANOTHER MENTAL HEALTH EXPERT THAT TESTIFIED?

DR. WOHLMOTH.

HOW LONG HAD THAT DR. TREATED HIM?

SHE MET WITH HIM IN SEPTEMBER 2002 AND THE FINAL HEARING WAS JUNE 2003. SHE MET WITH HIM APPARENTLY ON A WEEKLY BASIS, BUT ONCE AGAIN SHE DIDN'T HAVE ANY CORROBORATIVE EVIDENCE AND SHE ALSO SAID THE CORRELATION BETWEEN ABUSIVE SUBSTANCES COULD CONTRIBUTE TO SOME OF THE PROBLEMS BUT SHE DIDN'T SAY IT WAS A DIRECT CAUSE.

CHIEF JUSTICE: THANK YOU VERY MUCH AND WE APPRECIATE YOUR BEING RESPONSIVE TO OUR QUESTIONS. YOU HAVE GOT A MINUTE.

MAY IT PLEASE THE COURT. IN THE BRIEF OF THE FLORIDA BAR, THEY HAVE BEEN LESS THAN CANDID TO THIS COURT. IN THE ARGUMENT THAT YOU HAVE HEARD, THEY HAVE BEEN LESS THAN CANDID TO THIS COURT. IF YOU READ THE TESTIMONY, DR. ZIMMER AND DR. WOHLMOTH CLEARLY, CLEARLY RELATED THE ADDICTION TO THE EFFECTS THAT TOOK PLACE. THERE IS NO QUESTION ABOUT THAT, IF YOU READ --

WHAT DO THEY ACTUALLY SAY? HOW DO THEY RELATE IT TO THESE EVENTS?

THEY SAY THAT, BUT FOR THE ADDICTION, THESE EVENTS WOULD NOT HAVE TAKEN PLACE. BUT FOR THE ADDICTION, HE WOULD NOT HAVE DONE THIS. AND THAT IS IN THE RECORD CLEARLY, THAT THE BEHAVIOR WAS A DIRECT CAUSATION FROM THE ALCOHOL AND DRUGS.

IS THERE SOME TREATMENT THAT THEY RECOMMENDED THAT YOUR CLIENT HAS NOT VOLUNTARILY GONE INTO?

BECAUSE OF THE FINANCIAL COST OF GOING TO LONG-TERM TREATMENT, HE HAS NOT BEEN ABLE TO DO IT, BUT THE FACT THAT DR. ZIMMER, WHO WAS OUR EXPERT, RECOMMENDED IT, GIVES YOU AN INDICATION HOW SICK HE WAS.

JUSTICE LEWIS.

JUST ONE QUESTION, MR. MARX. SAME SCENARIO. MR. GROSS HAS NOT HAD AN OUNCE OF ALCOHOL AND HAS NEVER TOUCHED COCAINE. IS HE SUSPENDED. TWO MONTHS BEFORE THE FINAL HEARING, HE GOES TO SOMEONE AND SAYS, MAN, I AM OUT OF IT. I HAVE BEEN ON COCAINE AND I HAVE GOT A $10 MILLION HABIT. I HAVE HAD IT FOR TEN YEARS AND THIS IS WHAT HAPPENED. HOW DO WE PROTECT AGAINST THAT?

THE BAR COULD HAVE CALLED AN EXPERT. THEY DID NOT. THE TESTIMONY THAT CAME IN IS UNREBUTTED. THEY DIDN'T CALL AN EXPERT, AND THE REASON THEY DIDN'T CALL AN EXPERT, IS THAT AN EXPERT WOULD HAVE BACKED OUR POSITION.

CHIEF JUSTICE: OKAY OF THE THANK YOU VERY MUCH.

THANK YOU.

CHIEF JUSTICE: THANK BOTH OF YOU. WE RECOGNIZE THE SERIOUS NATURE OF THIS CASE, AND THAT IS WHY WE HELD ORAL ARGUMENT. THANK YOU IT TO BOTH OF YOU.

THANK YOU VERY MUCH.