

How to represent yourself in the Court of Appeals

A once-disbarred lawyer shows how it's done, and wins reinstatement

If you can't look away from a car wreck, you might have the same discomfiting attraction to webcasts of appellate arguments in attorney grievance matters.

Often the attorney appears *pro se*, unfamiliar with the disciplinary rules,

Into this minefield comes Jose Expedito M. Garcia on his petition for reinstatement to the bar.

Ethics lawyers are familiar with Mr. Garcia's case, if not with Mr. Garcia. In 2007 he pleaded guilty to a federal charge of conspiracy to commit immigration fraud.

Essentially, Mr. Garcia signed a letter in the name of an employer stating that a firm immigration client had the employment background necessary to qualify for a certain type of visa. His participation was minimal; he believed the contents of the letter were true when he signed the letter; and he made prompt efforts to rectify the fraud when the facts came to light. He received a light sentence from the federal court, and the State of New York, where Mr. Garcia was also admitted to practice, imposed only a one-year suspension.

In Maryland, attorneys who plead guilty to felonies involving honesty do not fare well. The Court of Appeals voted 4-3 to disbar him.

But that was back in 2009.

Now, Chief Judge Bell calls the case. A youthful-looking Mr. Garcia steps to the podium. He has nothing in his hands: no notes, no binder, no yellow pad, no pen. The podium before him is empty, as is the counsel table beside him. He is wearing headphones, and he adjusts them awkwardly before he begins to speak in a strong accent, but clear English.

My name is Jose Expedito M. Garcia, and I am standing before your honors today to represent

myself in connection with my application for readmission to the Maryland bar, pursuant to the show cause order issued by the honorable court in October of 2012.

I would like to thank this honorable court for giving me the opportunity to present my case in person. It is with great trepidation that I am appearing before your honors today, knowing full well that by representing myself in these proceedings, that it is equivalent to offering myself as a witness in these proceedings. It is my sincere belief, however, that given all the negative things that I have done affecting the integrity of the legal profession, that this honorable court and the members of the bar are at least entitled to hear what I have to say in person.

I would like to begin this presentation by again offering my sincere apology to this honorable court, and to the members of the bar for my past transgressions. It is my fervent hope that upon the conclusion of these proceedings that this honorable court will look at this humble applicant not as an erring attorney, but as an attorney who erred; whose professional missteps of the past will not be repeated, and who can still be a productive member of the legal profession in the State of Maryland.

After that pitch-perfect opening, Mr. Garcia moves to his legal argument. He quotes the four reinstatement factors from memory, then proceeds through a cogent analysis of the

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Commentary



appellate procedure, oral argument, and sometimes litigation itself. On the other side is bar counsel, who focus on the disciplinary rules and procedures and who regularly appear before the Court of Appeals. The judges themselves are particularly well versed in attorney grievance matters, where the Court of Appeals has original jurisdiction.

The result is not always pretty. Exasperated judges ask for a case citation that would support a sanction less than disbarment. Too many *pro se* attorneys, pleading for their jobs and often their livelihoods, have not thought to review the wealth of precedent in this area. By contrast, bar counsel not only know the case reports, they often know underlying details because they tried the cases themselves.

factors. He speaks calmly, in full sentences and paragraphs, citing facts, cases, and rules. He alternates between the first and third person — problematic in many *pro se* matters but which here seems to reinforce his capability as an attorney. He continually admits the seriousness of the conduct, even conceding that it warranted disbarment in Maryland, while persuasively explaining many mitigating factors, including that the sentencing judge expressed a hope that Mr. Garcia would *not* be disbarred. He describes the many steps he has taken to rehabilitate himself. He cites and discusses a strong precedent for readmission. He speaks for about 15 minutes, and sits down.

No judge has asked a question.

A very experienced deputy bar counsel takes the podium and begins by noting that this is Mr. Garcia's third petition for reinstatement. He is immediately interrupted: why does that matter?

In five minutes of back and forth, bar counsel rather gracefully declines to push the point too far. The argument strays into a technical issue about whether Mr. Garcia, after he was rein-

stated to practice in New York, was permitted to engage in a type of federal practice in Maryland. Again, bar counsel eventually concedes that it might be permissible in some circumstances. But it emerges that Mr. Garcia shut down his Maryland practice after he realized that bar counsel was concerned about it.

In the end, bar counsel's basic position, which would seem reasonable from a cold record, is that four years after disbarment for a federal felony conviction is too soon for reinstatement.

Mr. Garcia is back at the podium. He notes briefly that he filed two earlier petitions not out of disrespect or lack of remorse, but because he had been readmitted in New York and understood that Maryland precedent permitted reapplication at any time.

He offers another apology, and then closes:

I would like to share a very personal note that today is the birthday of my two young children, your honors. I have two young children, a boy and a girl. They were born as twins on March 7 of 2007, and this was a few months before I entered

my guilty plea in federal court in Virginia, and I had been their primary caregiver since they were nine months old until the time that they went to school in 2012. And as a father, my only wish for today is to give them a very meaningful birthday present, by looking into their eyes and telling them that today is a very special day: that regardless of the final outcome of these proceedings, that their father had done his best to ensure a brighter future for both of them. For this reason your honor, I respectfully and humbly ask the court to grant my application for admission. ...

The argument concludes at 10:44 a.m. on March 7. The court issues a unanimous order the next morning.

Welcome back to the Maryland bar, Jose Expedito M. Garcia. And if I may say to your children: March 7 is a very special day.

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