IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ROBERT E. KNOWLES,

Respondent.

_____/

CONFIDENTIAL

CASE NO. 66,822
TFB #12A83H80

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THE FLORIDA BAR'S ANSWER BRIEF

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STATEMENT OF THE CASE

This disciplinary proceeding is before this Court upon respondent's Petition for Review of the Report of the Referee recommending that respondent, Robert E. Knowles, be disbarred for the following violations of The Florida Bar Code of Professional Responsibility: Disciplinary Rule 1-102(A)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-102(A)(6) (conduct that adversely reflects on fitness to practice law); DR 9-102(A) (failure to deposit client's funds into an identifiable bank or savings and loan association); DR 9-102(B)(3) (failure to maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to his client regarding them); DR 9-102(B)(4) (failure to promptly pay or deliver to the clients, as requested by the client, funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive); Integration Rule, article XI, Rule 11.02(3)(a) (committing acts contrary to honesty, justice or good morals); Integration Rule, article XI, Rule 11.02(4) (failure to apply money or other property entrusted to the attorney for the specific purpose entrusted); Integration Rule, article XI, Rule 11.02(4)(b) (failure to maintain and preserve records of all banks and savings and loan association accounts or ther records pertaining to the funds or property of a client); and Bylaws Section 11.02 (failure to apply proper trust accounting procedures).

The petitioner in this Petition for Review is Robert E. Knowles and the respondent is The Florida Bar. In the Answer Brief, each party will be referred to as they appeared before the referee. Record references in this Answer Brief are to portions of a two volume trial transcript with exhibits (TR), to Respondent's Brief (R), and to the Referee's Report (RR).

STATEMENT OF THE FACTS

The following facts, taken from the record and referee's report, are distinguished from and in addition to, respondent's statements.

Respondent admitted that, at one point, he was aware that he had stolen up to $40,000.00, which he thought he could always pay back with a bank loan. (TR II 53). In addition to an alcohol problem, respondent admitted that he was a frequent gambler and incurred increased losses in the years prior to discovery of his thefts. (TR II 51). Respondent further stated that he built up a great number of bank loans to pay his gambling debts. (TR II 67). Respondent explained that some of the stolen funds were probably applied to reduce his indebtedness at the banks. (TR II 68).

The clients' funds were returned due to a personal loan taken out by respondent's law partner, Robert Blalock, in the amount of $200,000.00 which was returned to the trust account in return for the firm's purchase of certain of respondent's assets. (TR I 62).

SUMMARY OF ARGUMENT

Respondent petitions the Court for review of the referee's recommendation disbarring him from the practice of law, for the theft of $197,900.00 of his clients' funds. Respondent asks this Court to consider that, at the time he stole the funds, his judgment was impaired due to excessive use of alcohol.

Complainant acknowledges that alcoholism is a disease. Complainant further acknowledges that in recent past, this Court has considered alcoholism as a mitigation or defense to charges brought by the Bar for various offenses. However, respondent's misdeed is theft, the theft of a large amount of funds. Although the referee found that at the time of the thefts, respondent suffered from impaired judgment, he recommended that respondent be disbarred from the practice of law.

The referee and the Bar unequivocally support the position that an attorney's impaired judgment cannot become a license to steal. There are numerous reasons why attorneys steal from their clients. Although the record indicates that respondent may have had other reasons, he presents this Court with only one: alcoholism.

To this the Bar responds that, while alcoholism may mitigate certain misconduct, it cannot and should not mitigate the discipline for theft of clients' funds. The Bar recognizes the increasing number of members of our profession with alcohol problems. In response, the Bar recently established an Intervention Program to assist attorneys with alcohol problems and provide help with their rehabilitation. It is with this

program that the Bar takes responsibility for its alcohol impaired attorneys.

To attempt to eradicate the problem of alcoholism through the disciplinary system by mitigating sanctions, when one considers the increasing number of attorneys charged with theft, is neither effective for the alcoholic attorney, as it does not confront him with taking the responsibility for his actions, nor is it beneficial to the integrity of the disciplinary system and the presently precarious public image of the legal profession.

Respondent Knowles stole his clients' funds and should be disbarred. There are no reasons sufficient to mitigate that.

ARGUMENT I

AN ATTORNEY SHOULD BE
DISBARRED FOR THE THEFT OF $197,900.00
OF CLIENTS' FUNDS, REGARDLESS OF A
DEFENSE OF ALCOHOLISM.

The clear issue presently before this Court is whether the referee's recommendation of disbarment should be mitigated due to respondent's alcoholism at the time of his misconduct. More specifically, it is whether an attorney who steals large amounts of his clients' funds can be allowed by this Court to retain his license to practice law, whether actively or suspended, because the attorney drank to such excess that it impaired his judgment. Complainant responds that, in the interest of the profession and the public, there can be no mitigation for respondent's offense.

This Court has often recognized that the mishandling of client's funds is one of the most serious offenses a lawyer can commit. The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1980); The Florida Bar v. Larkin, 447 So.2d 1340 (Fla. 1984); The Florida Bar v. Harris, 400 So.2d 1220 (Fla. 1981). The seriousness of respondent's misconduct must be examined before any plea for mitigation can be considered, much less applied. Respondent admits he appropriated a total of $197,900.00 in trust account funds to his own use. Despite this, a review of the record clearly shows respondent's conduct falls far from the professional standards expected of a practicing attorney and warrants the strongest sanction available, disbarment. Simply, there can be no mitigation for his theft of $197,900.00 in clients' funds.

In the past, this Court has refused to consider mitigating circumstances when determining discipline for very serious acts of attorney misconduct. The Florida Bar v. Weaver, 356 So.2d 797 (Fla. 1978). Weaver was charged with various acts of misconduct in his handling of clients' legal affairs. He filed an unconditional guilty plea as to all charges against him, except one, which was eventually dismissed at the Bar's request. The referee considered each act of misconduct separately when recommending discipline. One of the acts of misconduct was wrongful conversion of escrow or trust funds and felonious larceny. Weaver made complete restitution to his clients; however, the referee recommended disbarment as the appropriate discipline.

The Court noted that the Bar did not seek disbarment and only asked for Weaver's suspension from the practice of law, due to several mitigating circumstances, including his young age and the fact that his several acts of misconduct arose after his father's death which was also during a period of extreme marital difficulty. Weaver pled guilty to all the acts of misconduct, although Bar counsel indicated to the referee that there might have been a basis to defend some or all of the charges on technical or other grounds. The court determined that despite the Bar's plea for mitigation, the referee obviously considered Weaver's major act of misconduct, the conversion, too severe to warrant suspension. The referee's recommendation of discipline was followed and Weaver was disbarred. The court noted that Weaver's acts prejudiced several clients in their legal affairs,

despite the fact that restitution had been made. Although Weaver had personal problems which may have caused his professional situation, the court could not excuse the serious acts he committed as a member of the legal profession. Id. at 799.

Respondent's conduct in the present case is virtually identical to the misconduct for which the referee recommended disbarment in Weaver. The referee in the present case found respondent's misconduct too severe for suspension, even though he found that alcoholism was substantially the cause of that misconduct. Respondent would like this court to find that his alcoholism constitutes a mitigating factor in determining the discipline for misconduct of this magnitude. Though respondent's facts may be somewhat different from Weaver's; the theory is the same. Respondent had a personal problems, unrelated to the practice of law. Respondent admits he committed probably the most serious offense that a lawyer can commit, and further admits that he should be disbarred unless there are mitigating factors. (R. 6). Complainant agrees that he should be disbarred and states that following the principles set forth in Weaver, respondent's problem cannot be considered as a mitigating factor sufficient to reverse the referee's recommendation.

Complainant further points out that even in those cases where this Court has considered alcoholism and subsequent rehabilitation as a mitigating factor in disciplinary proceedings, it has first examined the seriousness of the misconduct. The Florida Bar v. Headley, 475 So.2d 1213 (Fla. 1985). In Headley, as respondent observes, the court "held

that under the circumstances of this case, Headley should be offered an opportunity of successful rehabilitation..." (R. 12). However, respondent fails to point out the circumstances of the Headley case. Headley failed to pay his Bar dues as a direct result of his alcoholism. There was no theft of clients funds involved. The court specifically pointed out:

> First and foremost among the mitigating circumstances is the fact there have been no instances of bad conduct by respondent as a practicing attorney. He has not been cited for contempt of court, nor has he adversely affected the rights or neglected the interest of a client. Id at 1214.

These circumstances are clearly distinguishable from the present case.

This Court has also examined the totality of the circumstances contributing to an attorney's misconduct when the excessive consumption of alcohol is involved. It is in this respect that The Florida Bar v. Dietrich, 469 So.2d 1377 (Fla. 1985), cited by respondent, is distinguishable from the present case.

Dietrich had serious marital problems and at or about the same time, he became addicted to alcohol. He consumed so much that he became incompetent to practice law. As a result, he neglected his law practice, which diminished his income. This intensified both his marital discord and his drinking problems. As the referee stated, "The matter came to a head when respondent found himself without any law practice, practically destitute, with no way to make restitution for his defalcations." Id. at 1377. In short, Dietrich's alcoholism was glaring. It destroyed

his law practice and personal life.

Unlike Dietrich, although respondent was an alcoholic, he appeared regularly at work each morning and did not appear intoxicated, nor did he appear to suffer from hangovers. (TR I 50). He knew enough about his practice to know from which clients he could steal with the least chance of being discovered, and did so on numerous occasions. The clients from whom he stole were elderly, lonely individuals who trusted respondent and for whom he held powers of attorney. (TR II 52). At some point prior to the discovery of the thefts, respondent changed the lock on his inner office door to which only he and his longtime secretary now had keys. (TR I 26)

Again, unlike Dietrich, respondent's income from his practice did not diminish discernably as a result of his alcoholism. Respondent was a frequent gambler. (TR II 50, 51). Respondent previously acquired several loans from a great number of banks that extended him unlimited credit. (TR II 67). He acquired the bank loans to satisfy his gambling debts. (TR II 67). At one point during respondent's drinking, it became evident to him that he owed more money to the banks than he received in income from his law practice. (TR II 67). Respondent states that at that time is when he probably stole the funds. (TR II 67).

At some time thereafter, respondent became aware that The Florida Bar was auditing his trust account (TR II 54). When he knew he would be discovered, respondent left for Mexico. (TR II 54). When his law partners learned of his thefts from the firm's

trust account, they called respondent back from his trip. (TR I 59, TR II 54). Up to that time, respondent was aware that he had stolen up to $40,000.00 from his clients. (TR II 53). When his partners advised him that he had, in fact, stolen $197,900.00, he stated that "I was even dumbfounded myself". (TR II 53). Respondent then checked himself into Bowling Green, a rehabilitation facility. (TR II 62). In October, 1983, upon advice of respondent's counsel in these proceedings, he sought the professional services of a psychiatrist due to the pending Bar disciplinary matter. (Complainant's Exhibit 1, p. 11).

Respondent's counsel, who represented Mr. Dietrich in the Bar proceeding he cites in his Brief, now asks this Court to stretch the Dietrich facts to meet the Knowles' theft, using the Dietrich buzzwords "impaired judgment", so that the Court will apply the Dietrich mitigation and reverse the referee's recommendation. The Bar asserts that there is attorney misconduct for which there should be no mitigation. Respondent's theft of approximately $200,000.00 of his clients' funds is such conduct. The discipline for such conduct cannot and should not be mitigated.

It can be agreed that the public does not trust an attorney who drinks to excess. Certainly, the public does not trust an attorney who steals. Public awareness of an attorney who steals, approximately $200,000.00 of clients' funds, who is treated more kindly by the Bar because he drank to excess while he committed the thefts will certainly errode the public confidence in the Bar's own ability to police its own members.

This Court has considered the mishandling of trust funds as one of the most serious violations an attorney can commit and stated, "Alcoholism explains the violations, it does not justify them". Larkin at 447 So2d 1340, 1341. This Court has also recognized that a practicing attorney who is an alcoholic can be a substantial danger to the public and the entire judicial system. The Florida Bar v. Larkin, 420 So2d 1080 (Fla. 1982). Respondent's conduct in the instant case demonstrates the propriety of the Court's concerns in Larkin.

It cannot be disputed that a drinking alcoholic attorney with a license to practice law is a substantial danger to his clients. Further, it can be agreed that an attorney who knowingly practices law with alcohol-clouded judgment is guilty of misconduct in and of itself. When his clouded judgment becomes "impaired judgment" and leads to serious acts of misconduct in the practice of law, it somehow seems anomalous at that point to consider his use of alcohol a mitigation against the very offense it created.

As an illustration, the Bar asks the Court to consider the example of the drunk driver. His judgment is clouded, so he drives on the wrong side of the road, hits another car head on and seriously injures its occupants. Imagine the results when the drunk driver explains to the judge that he's very sorry; however, he paid all the hospital bills and bought the other party a new car. He now asks the court to be lenient, because he couldn't evaluate his duty to society or comprehend the effects his conduct would have. Imagine the jury's response.

It can be said that mitigation is no more than a "legal excuse". For respondent's conduct, the Bar can allow no excuse. To mitigate respondent's disbarment for such an inordinate theft, would errode the foundation of our disciplinary system and provide a similar defense for all attorneys, now and in the future, who happen to have drinking problems and who also happen to find a personal need for their clients' funds. Future respondents in similar disciplinary proceedings need only demonstate "impaired judgment" and cite The Florida Bar v. Knowles to avoid disbarment for theft of any amount of clients' funds.

Respondent argues that he suffered from bad judgment. The Bar responds that every attorney, at the moment he steals his clients' funds, suffers from bad judgment. Alcoholism is merely another reason. Above all else, the members of our profession must be called upon to take the responsibility for their conduct - good or bad. Not only as an example to all other professions, but to all clients and the general public who look to attorneys for guidance and example. Therefore, respondent must be made publicly accountable for his conduct, for which disbarment is the only sanction. He must be called upon to take the full responsibility for his conduct. Instead, he asks this Court to accept an excuse.

The Bar asks this Court to uphold respondent's disbarment and in so doing, send the message to all members both of our profession and the general public, that an attorney who steals his clients funds will lose his license to be entrusted with those funds. There are no excuses.

ARGUMENT II

SUSPENSION FOR THE THEFT
OF $197,900.00 IN CLIENTS' FUNDS
IS NOT CONSISTENT WITH THE PRINCIPLES
OF DISCIPLINARY SANCTIONS.

Disciplinary sanctions are founded on important principles established by this Court, such as deterrence to other members of the Bar and the creation and the protection of a favorable image of the profession. This Court has stated that the profession must impose visible and effective disciplinary measures when serious violations occur, or these purposes will not be fulfilled. The Florida Bar v. Larkin, 447 So.2d 1340 (Fla. 1984). Equally important principles are the protection of the public and the punishment and rehabilitation of an attorney who commits ethical violations. Id.

Respondent argues that a suspension until the completion of the probation for his criminal offenses would, in and of itself, deter any other lawyer from engaging in similar misconduct. (R 13). The Bar responds that any sanction short of disbarment is a token discipline for the theft of large amounts of clients' funds. The application of alcoholism as mitigation to reduce respondent's discipline from disbarment to suspension would hardly serve as a deterrent to other members of the profession. This is especially true when one considers that respondent's defense is that he did not comprehend the effects of his own misconduct. Complainant points out that, using respondent's argument, an attorney who cannot comprehend the effects of his own misconduct would certainly not be deterred by

the effects of similar misconduct others.

The facts in the instant case provide us with the best example of why a suspension will not deter similar misconduct. Respondent became addicted to the excessive consumption of alcohol. Because of this, he became progressively less competent to practice law and to evaluate his duties in relation to his clients and to society, to such an extent that he did not comprehend the almost certain effects which his admitted conduct would have on both his clients and himself. Respondent realized that he owed more money than he received as income from his practice. (TR II 67). He had purchased coins and had absorbed heavy gambling losses. (TR II 15, 66). He also incurred substantial losses on the commodities market. (TR II 26). He realized it was easy to steal his client's money. (TR II 53). Respondent was chairman of a grievance committee for four years. (T II 57). Respondent stated that one of his first duties was to recommend disbarment for a lawyer who had done exactly the same thing he had done. (TR II 57). Respondent also stated that while he was stealing the money, he knew that it was wrong. (TR II 67). He contended that "it was just something that was beyond my judgment to avoid". (TR II 67). Despite respondent's personal knowledge of the grievance system and its disciplinary sanctions, respondent was not deterred.

Additionally, attorneys will not be deterred from serious misconduct if lack of intent, personal hardship, and restitution are allowed to mitigate a sanction for a theft of clients' funds, as was pointed out by the referee in The Florida Bar v. Breed,

378 So.2d 783 (Fla. 1980).

> The referee is aware that other referees have found that a 'lack of intent to deprive the client of his money' and 'personal hardship' justified relatively minor punishment. Such excuses stand out like an invitation to the lawyer who is in financial difficulty for one reason or another. All too often he is willing to risk a slap on the wrist and even a little ignominy, hoping he won't get caught, but knowing that if he is he can plead restitution, but duly contrite, and escape the ultimate punishment. The profession and public suffer as a consequence. The willfull misappropriation of client's funds should be the Bar's equivalent of a capital offense. There should be no excuses. Id. at 784.

The court in Breed agreed with the referee that the misuse of client's funds is one of the most serious offenses a lawyer can commit. It then gave notice to the legal profession that it will not be reluctant to disbar an attorney for this type of offense, even though no client has been injured. Id. at 785.

It is logical to assume that most attorneys expect to be disbarred if they steal clients' funds. Respondent's suggestion that a suspension is a sufficient deterrent for similar misconduct is not realistic.

Another important policy consideration concerning this case is the protection of the public which has been considered by this Court as paramount to the regulation of the legal profession. Larkin at 447 So2d 1341. In the case at hand, respondent's clients were injured. Although they did not suffer any ultimate financial loss, respondent used their money for his personal extravagances and betrayed their trust.

Few offenses could have such an adverse public impact.

Our public must be assured that an attorney's personal problems cannot be used as a license to exploit.

The Court has no assurance that respondent will not steal again. While respondent professes to be rehabilitated from alcoholism, his psychiatrist stated that alcoholics are notorious for recidivism and that he could not predict respondent's behaviour in the future. (Complainant's Ex. 1, p.22, 30). Additionally, respondent shows no positive rehabilitation of his gambling problems. Therefore, the Court has no assurances that respondent can competently handle clients funds now or in the future. Accordingly, respondent's disbarment is the only sanction to ensure the protection of the public.

A third policy consideration is the protection of the legal profession's precarious public image. To allow respondent's continued membership in the Bar, whether practicing or as a suspended attorney, is inconsistent with the creation and protection of the Bar's public image. Larkin, at 447 So2d 1341. Respondent's conduct demeans the entire profession, as it gives great cause for public criticism. The Bar constantly faces the issue of public trust in our profession. The public must be assured that they can confidently rely on our members' ability and integrity. Respondent has demonstrated that he is not worthy of that trust. He has severely tarnished the image of the Bench and the Bar.

Respondent used his membership in The Florida Bar to steal approximately $200,000.00 from trusting clients. Respondent was placed on probation for his crimes. He should also be

disciplined, separately and distinctly from any criminal sanctions in order to preserve the legal's profession integrity. The public must see that this profession will not tolerate such egregious misconduct by one of its members.

When this Court in The Florida Bar v. Harris, 400 So.2d 1220 (Fla. 1981), considered that Harris had converted a substantial amount of his client's funds to his own use, it reversed the referee's recommendation of suspension and ordered his disbarment. The court held that his continuing and irresponsible conduct was wholly inconsistent with the high professional standards of the legal profession. Like Harris, respondent is guilty of continuous and irresponsibility conduct .

Anything less than disbarment in the present case would be inconsistent with the maintenance of the high standards of our profession and would be counter-productive to the disciplinary sanctions established by this Court.

ARGUMENT III

OTHER JURISDICTIONS SUPPORT DISBARMENT FOR SERIOUS MISCONDUCT, DESPITE A DEFENSE OF ALCOHOLISM

For approximately one hundred years, Courts all over the country have dealt with the problem of alcoholic attorneys. Many of these courts have determined that when serious misconduct is involved, it is virtually impossible to establish sufficient evidence of mitigation to warrant a penalty less than disbarment.

As early as 1896, the Pennsylvania Court was asked to determine if insanity was a mitigating factor in disciplinary proceedings. In re Kennedy, 178 Pa. 232, 35A. 995 (1896), granted, insanity is somewhat different from alcoholism, but the question the court asked and answered was essentially the same as in the present case: "Was the respondent responsible for his acts?" Id. at 996.

Kennedy was charged with several acts of misconduct, including misappropriation of clients funds. He did not deny any of the material allegations. The case was submitted to the Supreme Court for the sole purpose of moving the conscience of the court toward a suspension instead of disbarment, since respondent was allegedly insane at the time of the acts.

The Court stated that it might feel inclined to follow Kennedy's suggestion of a suspension if it was satisfied that his mind was so unsound that he didn't know the difference between right and wrong. The Court was not convinced that Kennedy did not know the differenced between right and wrong. It concluded that Kennedy was guilty of all the charges, and the defense made

in his behalf was insufficient. Kennedy was disbarred to protect the Court, the Bar, and the public from the gross misbehaviour he had exhibited as a practicing attorney.

Respondent in the present case admits he knew that he was doing wrong at the time he was stealing his clients' money. The question that was asked by the Court in Kennedy be answered in the affirmative in the present case. Respondent admits awareness of some of his thefts. Such conduct warrants disbarment.

In 1903, the Colorado Court was asked to determine whether alcoholism could serve as a mitigating factor in a case where serious misconduct is involved. People ex rel Colorado Bar Association 31 Colo. 43, 71 p. 1116 (1903). Respondent was charged with appropriating $34.35 to his own use. He alleged that he retained the money by reason of his negligence and carelessness, as a result of alcoholism. Respondent stated that when he was under the influence of alcohol, he had no will of his own.

The Court refused to consider this as a mitigating circumstance, because during the time respondent was alleged to have been an habitual drunkard, he served as a district attorney, a county attorney, and was engaged in the general practice of his profession. These circumstances are very similar to the present case. Respondent remained actively engaged in the practice of law, and was, in fact, a highly respected lawyer and a leader inthe community. Webster was disbarred.

The Court in South Dakota faced this issue in 1916. In re Webb, 37 S.D. 509, 159 N.W. 107 (1916). Webb was charged with

dishonest and unprofessional conduct. Webb admitted the charges, but added a plea in mitigation to the effect that the acts arose out of serious reverses and misfortunes in his business and financial affairs. He became addicted to alcohol, and his affairs were neglected and became entangled and confused. Webb then reformed and did not drink for more than a year prior to the Court hearing his case. He also promised to make speedy restitution.

The Court found it entirely unnecessary to discuss the facts of the case and regarded the plea of reformation as totally immaterial. The acts of the accused amply warranted disbarment, and the Court entered such order and judgment.

The same excuse has been attempted serveral times in Illinois, to no avail. People ex rel Illinois State Bar Associate v. Tracey, 314 111. 500, 145 N.E. 665 (1924); In re Smith, 63, 111 2d, 250, 347 N.E.2d 133 (1976). Tracey was also charged with misappropriation of clients' funds. The commissioner found that Tracey's failure to return money to his clients was the result of spending the money while drinking rather than by reason of personal dishonesty. Id. at 666. The Court refused to recognize habitual drunkeness as a sufficient excuse or cause for an attorney to escape condemnation and punishment. It further found that respondent's conduct involved flagrant dishonesty, which could not be excused on account of drunkeness, or for any reason. Id. at 666.

In Smith, respondent was charged with conversion of a clients' funds. Smith at 133. He explained that at the time of

his misconduct, he was having severe domestic problems. He was having financial problems with his divorce and he started drinking heavily upon his daughter's suicide. Respondent stopped drinking and admitted he now understood that it was unwise to use a clients' funds for personal expenses.

The Court recognized that respondent was experiencing financial and emotional problems, but these circumstances, though unfortunate, afforded no excuse for his actions. The Court found the proper sanction was disbarment. It did so to safeguard the public, maintain the integrity of the legal profession, and protect the administration of justice from reproach. Id. at 135.

The Minnesota Court made essentially the same findings in 1932 and 1974. In re Manahan, 186 Minn. 98, 242 N.W. 548 (1932). Manahan had a variety of problems. Because of financial problems, a nervousness developed which brought on painful affliction in the form of dermatitis, which often brought on secondary infection resulting in phelebitis. At this time he used alcohol heavily, suffered severe emotional upsets, and considered suicide. However, Manahan's biggest problem was that he appropriated his clients' money to his own use.

This unfortunate situation appealed to the sympathy of the Court, especially since prominent members of the Bar came to respondent's aid and appeared before the Court to plead his cause. However, the Court determined that for the honor of the profession and the protection of the public, it had no other course but the disbar an attorney who knowingly misappropriates money not belonging to him. Id. at 549.

The Court In re Bialick, 298 Minn. 376, 215 N.W.2d 613 (1974) was asked to determine if mental and physicial illness and drug addiction are mitigating circumstances which would warrant only a suspension instead of disbarment. Bialick was charged with a number of offenses, including misappropriation of funds. He admitted he had a personality disorder and he was addicted to narcotics, and claimed that these attributed to his irresponsibility in the practice of law.

The Court found that the seriousness and magnitude of the offenses warranted disbarment. The Court recognized that its primary duty is to protect the public and Bialick's violation of a lawyer's duties to his clients and the public compels an order of disbarment. The Court would not permit respondent's unrelated misfortune to deter it from performing its duty to the public. Id. at 615.

The Washington Court has made similar findings. In re Durham 41 Wash. 2d 609, 251 p.2d 169 (1952); In re Johnson, 74 Wash. 2d 21, 442 p.2d 948 (1968). Durham committeed acts involving moral turpitude and violated the ethics of the profession. He assisted in the opening and operation of a house of prostitution. At the time, he was suffering from epilepsy, chronic alcoholism with liver damage and psychoneurotic inadequacy. He entered a sanitarium and was released two months later when a psychiatrist determined it was unlikely that he would have a reoccurrence of his former difficulties. He ceased using alcohol and barbituates. The trial committee recommended that he be suspended for two years and until he submited evidence

that he is again competent to practice law.

The Court determined that respondent's acts warranted disbarment. He discredited not only himself but the entire profession. The Court found that his continued membership in the Bar would be detrimental to the standing of the Bar and the administration of justice. The Court refused to certify to the public that Durham was then worthy of trust and confidence or that he would be in the future. Durham, at 171.

In Johnson, respondent was charged with the misappropriation of a clients' moneys and the mismanagement of a clients' affairs. Respondent admitted the charges and submitted an affidavit and a medical report from a psychiatrist showing that he had been subject to alcoholism, heart trouble, nervou tension and marital troubles. Prior to these problems, respondent had been a well-respected citizen and had been involved in no prior disciplinary proceedings.

The Court recognized that respondent suffered from ill health and alcoholism, but found there was no alternative to disbarment. Respondent had willfully misappropriated to his own us his clients' money, which came into his hands and under his control as an attorney and a fiduciary. This was held to be a serious and aggravated breach of the Canons of Professional Ethics, warranting disbarment.

The Arizona Court has also refused to recognize mitigating factors. In re Lanahan, 95 Ariz. 268, 389 P.2d 263 (1964). Lanahan was charged with two counts or serious neglect. The referee recommended disbarment, due to respondent's lack of

recognition of the responsibilities attendant upon the practice of law and the abrogation by him of the duties and responsibilities which he owed his client. Respondent filed an affidavit explaining the personal factors involved in the situation. He claimed alcoholism prevented a young attorney from properly performing his duties.

The Court was compelled to hold that the acts and ommissions by respondent could not be excused or condoned on the grounds of mere ignorance or negligence. The acts conclusively showed that he does not possess the standard of ethics required of those who are granted the privilege of practicing law in Arizona. It was the Court's opinion that the protection of society required the disbarment of respondent. Id. at 266.

The Indiana Court has consistently adhered to the same principles. Matter of Vincent, 268 Ind. 101, 374 N.E. 2d 40 (1978); Matter of Hayes, ___Ind___, 467 N.E.2d 20 (1984). Vincent was charged with misuse of clients' funds, neglect, failing to carry out a contract of employment and misrepresentation. He did not deny the allegations, but asserted that the acts were the product of his diminished physical and mental well being. He claimed poor health, excessive use of alcohol and side effects of prescribed medication as the reasons for his misconduct.

The Court could not find sufficient evidence to conclude that these circumstances were the cause of the misconduct. At the same time, it pointed out that it finds little mention in any argument that an attorney should somehow be excused of misconduct

by reason of the disease of alcoholism. The Court stated that it must safeguard the public from unfit attorneys, whatever the cause of the unfitness. Id. at 44.

The Court implemented this reasoning in Hayes. Hayes was charged with various acts of misconduct, including commingling of his clients' funds. Hayes was a diagnosed alcoholic and sought treatment for his disease. The hearing officer concluded that his moral and professional judgment were adversely affected by his dependence on alcohol. The Court found no reason to suggest that this was not an accurate assessment. Hayes at 20.

The Court also found that the disease of alcoholism is not a valid basis of excuse. It recognized that it is unfortunate that any person suffer the personal tragedies associated with alcohol abuse, but determined that these cannot vitiate the effects of professional misconduct. Respondent's misconduct was very serious and indicated a total disregard for the standards of the profession. Even though he made restitution, he demeaned the profession and demonstrated that he is unfit to continue as an attorney in Indiana. The Court recognized it must protect the public from unfit lawyers, and disbarred respondent. Id. at 22.

The same conclusion has been reached in Oregon. In re McCormick, 281 Or. 693, 572 p.2d 371 (1978). McCormick converted to his own use funds belonging to a client. He said this use of his client's funds was due to his lack of income, which he related to the excessive use of alcohol and marital problems. He also pointed out that because he eventually repaid all of the money, no one was hurt.

The trial board recommended that he be suspended for one year, because he had fully cooperated in the proceeding. It was noted that his problems were temporary, and caused by alcohol and marital discord and that he has the potential to be a capable member of the Bar and that no client suffered any financial loss.

However, the Court disbarred him, as it found that his explanation and excuse were insufficent as the basis for the imposition of any lesser penalty than is usual in such cases. Id. at 373.

The Court in Hawaii has recognized that there may be cases where an attorney's rehabilitation based on his timely efforts to control his alcoholism should be deemed a mitigating factor. Office of Disciplinary Counsel v. Silva 63 Hawaii 585, 633 p.2d 538 (1981). However, the Court also stated:

> In any case where misconduct is severe and extensive and includes misappropriation of clients' funds it would be difficult if not impossible to establish sufficiently strong evidence of mitigation to warrant a penalty lesser than disbarment. Id. at 540.

In summary, it is clear that the referee's recommendation of respondent's disbarment in the instant case is well supported by case law in many jurisdictions in the United States.

CONCLUSION

In the law, we are familiar with rules so riddled away with exceptions, that the rule itself becomes almost meaningless. The prevailing rule is that an attorney who steals clients' funds should be disbarred. Respondent stole his clients' funds in large amounts and now asks this Court to consider him an exception, because he drank to excess while he stole them. If this referee is reversed, other respondents will appear before this Court with the same request, arguing the identical exception. Eventually, this Court will be faced with requests for other kinds of exceptions and - in the nature of things - the backbone of disciplinary sanctions will slowly and methodically errode like a sandcastle at the edge of the sea. There is no mitigation for respondent's offense.

Additionally, at some point during the review of this case, the issue of respondent's social and civic activities is certain to be considered. Respondent states that prior to August, 1983, when his misconduct was discovered, he was a highly respected community leader. (R p.3). In response, the Bar points out that it has been written that to whom much is given, much is required. Respondent's high profile in his community, up to and during the time the theft's occurred, only aggravate the impact of his conduct.

Respondent subtlety points out to this Court that he has paid his dues to society. Unfortunately, the public now believes that he paid them substantially with money stolen from his

clients. The public's knowledge of respondent's conduct has a resounding and devastating impact on the integrity of the entire Bar. Disbarment can be the only sanction.

WHEREFORE, The Florida Bar respectfully requests that this Honorable Court uphold the referee's recommendation and disbar respondent Robert E. Knowles from the practice of law.

clients. The public's knowledge of respondent's conduct has a resounding and devastating impact on the integrity of the entire Bar. Disbarment can be the only sanction.

WHEREFORE, The Florida Bar respectfully requests that this Honorable Court uphold the referee's recommendation and disbar respondent Robert E. Knowles from the practice of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of The Florida Bar's Answer Brief has been furnished by regular U. S. Mail to RICHARD T. EARLE, JR., Counsel for Respondent, Post Office Box 416, St. Petersburg, Florida, 33731, this 13th day of June, 1986.

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