IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR

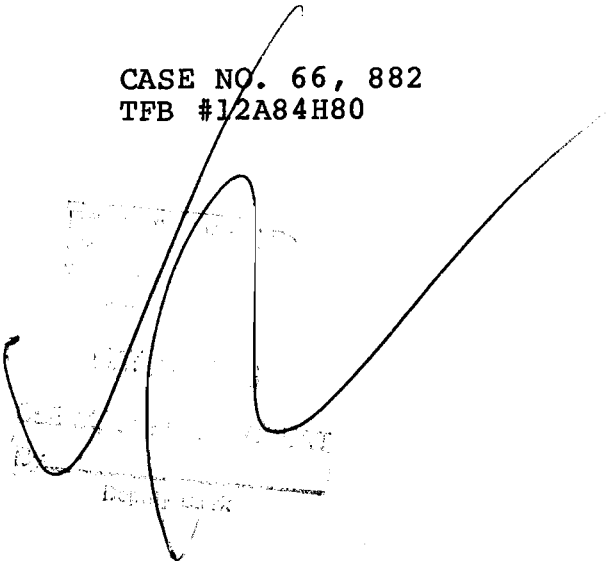
Complainant

vs.

ROBERT E. KNOWLES,

Respondent

CASE NO. 66, 882
TFB #12A84H80



BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On or about September 2, 1983, The Florida Bar filed its Petition for Temporary suspension of the Respondent alleging, in effect, that between May 1982, and September 8, 1982, the Respondent converted to his own use $197,000.00 of his clients monies. Respondent did not resist said Petition and on September 14, 1983, this Court in Case No. 64,200 entered its Order pursuant to said Petition suspending Respondent from the practice of law. Respondent did not then and does not now contend that he should not have been so suspended.

On April 4, 1985, Complainant filed its Complaint, in effect charging that Respondent had converted to his own use a total of $197,900.00 in Trust Account funds belonging to his clients.

On July 22, 1985, Respondent filed his Answer to the Complaint admitting all of the allegations alleged. Said Answer also set out Respondent's "Affimative Defense On Matters In Mitigation." In substance, said affirmative defense alleged that the Respondent had been, for sometime prior to the time of the conversion of said monies, an alcoholic, as a result of which he became progressively less competent to practice law and that, at the same time, his ability to evaluate his duties and relations to his clients and to society progressively dwindled to such an extent that he did not comprehend the almost certain effects his admitted conduct would have either

on his clients or himself and as a result of this, Respondent converted the monies alleged. It further alleged that immediately after his defalcations became known to his law firm, he stopped drinking altogether, made restitution in full, and followed a course of rehabilitation which he continued.

The Complaint and the Answer and Affirmative Defense came on to be heard before the Referee. The Respondent offered evidence to support his affirmative defense. The Referee made Findings of Fact which supported substantially Respondent's affirmative defense but recommended that Respondent be disbarred for a minimum of three (3) years.

This Petition for Review seeks review only of the discipline recommended by the Referee.

STATEMENT OF THE FACTS

The Findings of Fact in the Referee's Report set out all of the salient facts in this case. Said Findings of Fact are based upon the uncontroverted evidence offered before the Referee and Respondent takes issue with none of them.

Respondent was admitted to The Florida Bar in 1953, and practiced in Manatee and Sarasota Counties. He had not been subject to any disciplinary proceedings prior to the instant matter. Prior to August of 1983 (when his misconduct became public knowledge), Respondent was a highly respected lawyer in Manatee and Sarasota Counties and a leader in the civic affairs, arts and politics of those communities.

Sometime prior to August 29, 1979, the Respondent became addicted to the excessive use of alcohol, which excessive use continued from then until August 12, 1983. Because of Respondent's excessive consumption of alcohol, he became progressively less competent to practice law and to evaluate his duties 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.

Sometime subsequent to August 29, 1979, and prior to August 12, 1983, Respondent appropriated to his own use a total of $197,900.00 from his clients' Trust Account funds. In August 1983, said misappropriations were brought to the attention of The Florida Bar which conducted an audit

reflecting the same. Respondent assisted his law firm and the auditors in identifying accounts whose funds Respondent had converted. On August 17, 1983, Respondent, and other members of his firm, signed an agreement reflecting that Respondent improperly managed accounts (including the unauthorized removal of funds therefrom for his personal use), which accounts were in his exclusive care, custody and control and the property of clients of the Professional Association. Respondent deposited in the Trust Account of the Professional Association the total amount of $228,956.58 to be held by the law firm for the purpose of reimbursing all firms and clients, including the law firm,whose funds had been misappropriated. On August 19, 1983, Respondent and a representative of the law firm went to the office of The Florida Bar in Tampa where Respondent admitted misappropriating $197,900.00 in clients' funds and on August 20, 1983, there was a public announcement that Respondent had withdrawn from the law firm.

Immediately after making restitution and admitting the misconduct and withdrawing from the law firm, Respondent went to an alcoholic rehabilitation facility where he resided until treatment was terminated and he was discharged. Respondent joined Alcoholics Anonymous and has attended regularly the meetings of said Association. In addition thereto, Respondent secured the aid of a psychiatrist in an effort to find the cause of and the appropriate treatment for his addiction to alcohol.

Since undertaking alcoholic rehabilitation in August 1983, Respondent has consumed no alcoholic beverages whatsoever. He realizes he is an alcoholic and the effect that alcoholic beverages will have upon him so that he does not believe that he will consume any alcoholic beverages in the future.

The Respondent bears no ill-will to the organized Bar, law enforcement officials or the Courts and has fully cooperated with The Florida Bar and law enforcement officials and the Courts in the matters here involved.

On September 14, 1983, upon Petition by The Florida Bar, Respondent was suspended from the practice of law by Order of the Supreme Court of Florida, pursuant to Integration Rule 11.10(7). Respondent was later charged by the State Attorney of the Twelfth Judicial Circuit with Eight Counts of Grand Theft for the misappropriations which are the subject matter of this disciplinary proceeding. Respondent pled No Contest to all Eight Counts and the Court withheld adjudication of guilt and sentenced Respondent to two years probation, 300 hours community service and a $14,000.00 fine.

POINT INVOLVED

WHERE:

1. RESPONDENT CONVERTED TO HIS OWN USE $197,900.00 OF HIS CLIENTS' MONIES:

2. THE RESPONDENT HAS BEEN AND WAS, AT THE TIME OF THE MISCONDUCT, ADDICTED TO THE EXCESSIVE USE OF ALCOHOL:

3. THE EXCESSIVE USE OF ALCOHOL WAS THE CAUSE OF HIS MISCONDUCT;

4. HE HAS MADE COMPLETE RESTITUTION OF ALL MONIES MISAPPROPRIATED BY HIM AND HAS COOPERATED FULLY WITH THE BAR, LAW ENFORCEMENT OFFICIALS AND THE COURTS IN ASCERTAINING THE FULL EXTENT OF HIS MISCONDUCT;

5. HE HAS, INSOFAR AS POSSIBLE, DEMONSTRATED REHABILITATION AND THAT HE WILL CONTINUE TO REHABILITATE HIMSELF;

IS NOT DISBARMENT FOR A MINIMUM OF THREE YEARS AN EXCESSIVELY HARSH SANCTION?

ARGUMENT

This case is somewhat unique. Admittedly, the Respondent committed probably the most serious offense that a lawyer can commit. He misappropriated to his own use $197,900.00 of his clients' monies. For this offense, unless there are mitigating factors, unquestionably, Respondent should be disbarred for a very substantial period of time and until he proves rehabilitation.

What makes this case unique is the specific Findings of Fact of the Referee with which no one takes issue and which are based upon uncontroverted testimony in the Record. In substance, the Referee found:

1. Respondent had practiced law since 1953, in Manatee and Sarasota Counties. He was, until his misconduct was discovered in August 1983, a highly respected lawyer, a leader in civic affairs, arts and politics in his community. Prior to the misconduct herein involved, he had no disciplinary record whatsoever.

2. Sometime prior to August 1979, he became addicted to the excessive use of alcohol which continued until August 12, 1983, as a result of which he became less competent to practice law and to evaluate his duty 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. The misappropriation of his clients' monies, all of which occurred subsequent to August 29, 1979, was the result of Respondent's alcoholism.

3. On or about August 12, 1983, the Respondent's misappropriation of his clients' monies came to the attention of his law firm and was brought to the attention of The Florida Bar which conducted an audit of the accounts.

4. Respondent assisted his law firm and The Florida Bar auditors in identifying the accounts from which funds had been converted and on August 17, 1983, Respondent acknowledged, by an agreement with his law firm, that he had misappropriated the monies.

5. Respondent immediately deposited in his law firm's Trust Account the total amount of $228,956.58 to be held by the

law firm for the purpose of reimbursing all clients and the law firm whose funds had been misappropriated.

6. On August 19, 1983, Respondent admitted to The Florida Bar that he had misappropriated $197,900.00 in clients' funds and on August 20, 1983, Respondent joined in a public announcement that Respondent had withdrawn from the law firm.

7. Immediately after making restitution, admitting his misconduct and withdrawing from the law firm, Respondent went to an alcohlic rehabilitation facility where he resided until his treatment was terminated and he was discharged. He then joined Alcoholics Anonymous where he has continued to regularly attend meetings and, in addition thereto, sought psychiatric care to find the cause of and appropriate treatment for his addiction.

8. Since August 1983, Respondent has consumed no alcoholic beverages whatsoever. He now realizes that he is an alcoholic and realizes the effect alcoholic beverages will have upon him. He does not believe that he will consume any alcoholic beverages in the future.

9. On September 14, 1983, on Petition of The Florida Bar, Respondent, without objection, was suspended from the practice of law by Order of the Supreme Court and has remained suspended ever since.

10. Respondent was charged in the Circuit Court of the Twelfth Judicial Circuit with eight Counts of Grand Theft for the misappropriations which are the subject matter of this

disciplinary proceeding. He pled No Contest to said charges and the Court withheld adjudication of guilt and sentenced Respondent to two years probation, 300 hours of community service and a $14,000.00 fine.

11. Respondent bears no ill-will to The Florida Bar, law enforcement officials or the judicial system and has fully cooperated with all of said agencies in the matters here involved.

Thus, this case presents to this Court an opportunity to squarely determine the effect which alcoholism and rehabilitation therefrom should have upon disciplinary proceedings for very serious offenses caused by alcoholism. There is no question about Respondent's guilt, nor is there any question about the role that alcohol played in his misconduct. Likewise, there is no question concerning his efforts toward rehabilitation.

This Court has uniformly held that the purpose of lawyer discipline is not punishment. Discipline is for the purpose of protecting the Bench, the Bar and the public from lawyers who do not adhere to the standards of conduct prescribed by this Court and for the further purpose of deterring other lawyers from engaging in similar misconduct. The Florida Bar v. Murrell, 74 So. 2d 221 (Supreme Court, 1954); The Florida Bar v. Fishkind, 107 So. 2d 131 (Supreme Court, 1958); The Florida Bar v. Thompson, 271 So. 2d 758 (Supreme Court, 1972); The

Florida Bar v. MacKenzie, 319 So. 2d 9 (Supreme Court, 1975).

Further, the discipline administered should be such as to encourage reformation. The Florida Bar v. Larkin, 420 So. 2d 1080; The Florida Bar v. MacKenzie (supra). In The Florida Bar v. MacKenzie, this Court stated:

> "As stated in Ruskin, supra, the consideration that should go into an order of discipline is that the discipline should be fair to both the public and to the attorney with an object of correcting the wayward tendency in the accused lawyer while offering to him a fair and reasonable opportunity for rehabilitation ...' ."
> (Emphasis Supplied)

In relatively recent years, medical authorities, social workers, sociologists and this Court have come to the conclusion that alcoholism is, in fact, a disease. Thus, in The Florida Bar v. Larkin, 420 So. 2d 1080, this Court stated:

> "Business and professional groups, including The Florida Bar, have only recently openly acknowledged and addressed the problem of the alcoholic businessman and professional. This problem must be directly confronted; a practicing lawyer who is an alcoholic can be a substantial danger to the public and the judicial system as a whole. Too often, attorneys will recognize that a collegue suffers from alcohol abuse but will ignore the problem because they do not want to hurt the individual or his or her family. This attitude can have disasterous results, both for the public and for the individual attorney. If alcohol is dealt with properly, not only will an attorney's client and the public be protected, but the attorney may be able to be restored as a fully contributing member of the legal profession. This Court has responsibility to assure that the public is fully protected from attorney misconduct. In this case, where alcohol is the underlying cause of the professional misconduct and the indiviudual attorney is willing to cooperate in seeking alcohol rehabilitation, we should take these circumnstances into account in determining the appropriate discipline."
> (Emphasis Supplied)

In Larkin (supra), the Referee's recommendation of three years suspension and until the Respondent could prove rehabilitation, was reduced to 91 days suspension and until the Respondent proved rehabilitation.

In The Florida Bar v. Dietrich, 469 So. 2d 1377, Dietrich had misappropriated a very substantial amount of his clients' monies. Just as in the instant case, prior to Dietrich's misconduct, he was active in Bar activities and was respected by his peers and his honesty and integrity were unquestioned. He had no disciplinary record. However, shortly prior to the misconduct, he became addicted to the excessive use of alcohol and consumed so much that he became incompetent to engage in the practice of law and incapable of rationally evaluating his own conduct, which was the cause of said misconduct. Dietrich joined Alcoholics Anonymous, regularly attended meetings and altogether ceased the drinking of alcoholic beverages. He cooperated with The Florida Bar and with the Probate Division of the Circuit Court and the law enforcement authorities in regard thereto. He was charged with various felonies to which he pled Guilty, made a full disclosure, as a result of which he was found Guilty and was placed on probation. All of the defalcations either had been reimbursed by him or by his surety and he made arrangements with his surety to reimburse them. Under these circumstances, the Referee recommended that Dietrich be found Guilty of the misconduct and that he be suspended from The Florida Bar for a period of two years and

until he concluded his probation arising out of the criminal offenses and demonstrated his rehabilitation. This Court approved the Referee's Report and the discipline recommended, obviously, considering his alcoholism, his cooperation and his attempt to rehabilitate himself as mitigating factors.

In The Florida Bar v. Headley, 475 So 2d 1213, this Court was again confronted with the question of whether alcoholism and rehabilitation therefrom should be considered as mitigating factors in disciplinary proceedings. The Court quoted, with approval, The Florida Bar v. Larkin (supra) and reiterated that when alcoholism is the cause of the misconduct and where the Respondent has shown that he is willing to cooperate and is cooperating in seeking rehabilitation, the Court should take this into consideration as a mitigating circumstance.

This holding is no more than a reiteration of the position the Court has uniformly taken relative to the purposes of discipline as above set out. However, in that case, the Court adopted a positive program toward encouraging rehabilitation. It held that under the circumstances of this case, Headley should be offered an opportunity of successful rehabilitation through the Special Committee of The Florida Bar on Alcohol Abuse with provisions for his provisional reinstatement to practice law under the direct supervision and monitoring by the Special Committee of The Florida Bar with the further provision that the Special Committee could take appropriate action to bring about Headley's suspension upon his unsatisfactory

progress toward rehabilitation. The holding in this case constitutes a Court sanctioned program which, on the one hand, will adequately protect members of the Bench, the Bar and the public from any future misconduct, will deter other lawyers from engaging in similar misconduct and, at the same time, is well calculated to enable the attorney to rehabilitate himself from alcoholism.

Application of the principles enumerated in Headley (supra) to this case reflects:

1. Respondent has been suspended from the practice of law since September 14, 1983, and will remain suspended until at least his probation for the criminal offenses has been successfully completed which will not be until after January 7, 1987, a period of at least three and one-half years. It would seem that this suspension, in and of itself, would deter any lawyer from engaging in similar misconduct.

2. Respondent has not imbibed any alcoholic beverages since August of 1983, but recognizes that alcoholism is a disease which is not cureable. Remissions from symptoms are possible where the alcoholic desires rehabilitation and has the will power to accomplish it. Two and three-quarters years without a drink demonstrates the desire for rehabilitation and demonstrates his current ability. However, continued probation as was provided in Headley would insure that if Respondent fails in his rehabilitation, it will be quickly brought to the attention of this Court and appropriate action will be taken.

3. The discipline, such as in Headley (supra), will encourage Respondent to continue his rehabilitation thereby enabling him to return to the practice of law and to remain in the practice of law so long as he remains away from alcohol.

Respondent recognizes that there are segments of The Florida Bar who do not agree with the Courts' holdings in The Florida Bar v. Larkin, The Florida Bar v. Dietrich and The Florida Bar v. Headley (supra) and take strong issue with the policies set out in these cases. The instant case is one where the facts are clear-cut and undisputed. The misconduct is of a very serious nature. It affords this Court an opportunity to apply the principles enunciated in the foregoing cases in a manner which will be clear and well understood. At the same time, it affords this Court an opportunity to lay aside the enlightened principles set out in the above cited cases and to hold that alcoholism leading to misconduct and rehabilitation therefrom are not mitigating factors. It is submitted that the enlightened attitude expressed in the above cited cases is absolutely sound and is based upon scientific studies and experience.

Respondent submits that the recommendation of discipline recommended by the Referee should be reversed and this Court should enter a Judgment having the following effects:

1. Respondent be suspended from The Florida Bar until such time as he has successfully completed his probation as a result of the criminal offenses;

2. After Respondent has successfully completed his probation as a result of the criminal offenses, he should be placed on probation under the supervision and guidance of the Special Committee of The Florida Bar on Alcohol Abuse for not less than six (6) months;

3. Upon a favorable written report from the Special Committee recommending reinstatement made to the Supreme Court, Respondent should be provisionally reinstated to practice law under the direct supervision and monitoring of the Special Committee;

4. Thereafter, upon any report of the Special Committee made to the Supreme Court that Respondent's progress or rehabilitation has become unsatisfactory and that there exists, in their opinion, a potential for harm to the public, Respondent may be suspended from the practice of law by the Supreme Court and Respondent would be suspended for a period of three (3) months and one (1) day and thereafter, Respondent shall show proof of rehabilitation prior to said suspension being lifted;

5. Respondent's practice of law should be conditioned upon his active participation in an alcohol abuse program during the entire period of his probation and he shall not consume any alcoholic beverages.

CONCLUSION

The recommendation of the Referee completely ignored the principles enunciated by this Court in Larkin, Dietrich and Headley (supra) and recommended Respondent's disbarment for a minimum of three years (it is uncertain when the disbarment would begin but, presumably, it would begin upon entry of this Court's Order which cannot be much prior to September 1986. In addition, Respondent will have to apply for reinstatement, which application will take at least nine (9) months to process. Thus, Respondent will have been precluded from practicing law for something in excess of six (6) years. In addition thereto, he will have to take and pass his Bar examinations which will take at least another year. For all practical purposes, if the Referee's recommendation is followed, Respondent will be permanently disbarred.

If alcoholism is a disease and if it was the cause of Respondent's misconduct and if he is rehabilitating himself, all of which the Referee found, he will be permanently precluded from practicing law, a result which is contrary to this Court's prior holdings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the following:

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by U.S. Mail, this 27th day of May, 1986.

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