IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant

vs.

ROBERT E. KNOWLES,

Respondent

CONFIDENTIAL

Case No. 66,822
TFB #12A83H80

REPLY BRIEF OF RESPONDENT

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STATEMENT OF THE FACTS

In the Statement of the Facts set out in Complainant's Answer Brief, it is stated:

> 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."

When carefully read, this statement is factually accurate but, as written, it is possible to conclude that Robert Blalock made restitution for the money misappropriated by Respondent.

Robert Blalock purchased from Respondent all of the Respondent's interest in the law firm, for the sum of $200,000.00, which $200,000.00 was deposited by the Respondent in the law firm Trust Account in order to effectuate restitution.

SUMMARY OF ARGUMENT

Complainant argues in its Answer Brief that alcoholism, the cause of attorney misconduct, standing alone, should not be considered as a mitigating factor in determining the discipline to be administered. Respondent does not take issue with this proposition and this Court has never held that alcoholism, standing alone, should be considered as a mitigating factor in determining the discipline.

It is the Respondent's position, and this Court has so held, that where alcoholism is the cause of the misconduct and where it has been demonstrated that the Respondent is rehabilitating himself therefrom, these two factors, taken together, should be considered in determining the discipline. This Court is not unique in adopting this enlightened view. The Courts in numerous States have adopted the same view.

When it is understood that attorney discipline is not for the purpose of punishment, but for the protection of the Bench, the Bar and the public and to deter other lawyers from similar misconduct, the philosophy of this Court relative to alcoholism and rehabilitation therefrom is consistent.

ARGUMENT I AND ARGUMENT II, as stated by the Complainant:

> "AN ATTORNEY SHOULD BE DISBARRED FOR THE THEFT OF $197,900.00 OF CLIENTS FUNDS, REGARDLESS OF A DEFENSE OF ALCOHOLISM."
>
> "SUSPENSION FOR THE THEFT OF $197,900.00 IN CLIENTS FUNDS IS NOT CONSISTENT WITH THE PRINCIPLES OF DISCIPLINARY SANCTIONS."

In stating Complainant's Arguments, as above set out, the Complainant completely missed the entire thrust of Respondent's Brief. Respondent does not take the position that alcoholism, standing alone, is a defense or even a mitigating factor in disciplinary matters where the misconduct is caused by the alcoholism. Respondent recognizes that this Court has never so held and should never so hold.

It is Respondent's position that where alcoholism is the cause of the misconduct charged, and where the individual attorney is willing to cooperate in seeking alcohol rehabilitation, and where he has so cooperated and has ceased using alcohol completely, the Court should take both of these factors into consideration in determining the appropriate disciplinary measures. Thus, the First Point Involved, as stated by the Respondent, included the assumption that Respondent "has, insofar as possible, demonstrated rehabilitation and that he will continue to rehabilitate himself." Rehabilitation from alcoholism was the defense --not alcoholism.

Throughout Respondent's main Brief, he carefully combined the two factors that alcoholism was the cause of the misconduct **and** that the Respondent has taken all possible steps to rehabilitate himself.

In The Florida Bar v. Larkin, 420 So. 2d 1080, this Court very carefully did not find that alcoholism, the cause of the misconduct, constituted a mitigating factor. This Court stated in that case:

> If alcohol is dealt with properly, not only will attorneys' clients 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 individual attorney is willing to cooperate in seeking alcohol rehabilitation, we should take these circumstances into account in determining the appropriate discipline. Emphasis Supplied.

Again, in The Florida Bar v. Headley, 475 So. 2d 1213, this Court, in effect, held that alcoholism alone was not a mitigating factor but that it was necessary also to show that Headley was rehabilitated and that alcoholism, as the cause, together with rehabilitation, should be considered in determining the appropriate discipline.

The concept that the Court should consider alcoholism, the cause of misconduct, **and** rehabilitation therefrom, in determining the discipline to be administered is not novel. It has always been the policy of this Court to, whenever possible, encourage and hold-out hope to a disciplined attorney upon his

successful rehabilitation. It has never been the policy of this Court that discipline is for the purpose of punishment.

In The Florida Bar v. Blalock, 325 So. 2d 401, Blalock, as a result of alcoholism, misappropriated substantial sums of his clients monies, he was charged with Grand Larceny and pled Nolo Contendre thereto and adjudication of guilt was withheld. After finding that Blalock had misappropriated his clients funds, the Referee then found:

> "The record clearly demonstrates that the Respondent's professional misconduct is directly connected with his disease of alcoholism which, in turn, has led to financial, marital and professional problems. Prior to his dependency upon alcohol, Respondent's personal and professional conduct were ethical, competent and responsible. If and when the Respondent brings his dependency upon alcohol under his complete control, he should be seriously considered for reinstatement to the practice of law in Florida."

The Referee then recommended:

> "The Respondent be suspended from the practice of law in Florida until such time as he has clearly demonstrated that he has his disease of alcoholism under total control."

Blalock appealed from the Referee's recommendation "based upon his demonstrated effort to control alcoholism and on his attempted rehabilitation through supervised employment in a law office under the procedures this Court approved in The Florida Bar v. Thompson, 310 So. 2d 300." This Court, on review, held that:

> "Blalock be indefinitely suspended from the practice of law and shall be eligible for reinstatement only after 1. He has made full restitution of clients funds; 2. He has paid all costs of this proceeding, and 3. He has

demonstrated to the satisfaction of this Court that he has been rehabilitated, both as to his alcoholism and as to his appreciation and understanding of the Code of Professional Responsibility."

The only difference between Blalock and the instant case is simply that the Respondent here has been suspended since September 1983, and will remain suspended until the Court enters its Order in this case. During said three year suspension, the Respondent has demonstrated rehabilitation in that he has ceased drinking alcohol altogether. The discipline advocated on Pages 14 and 15 of Respondent's Brief would continue said suspension until he has successfully completed his criminal probation in January 1987, and until the Special Committee of The Florida Bar On Alcohol Abuse recommends his reinstatement and, when reinstated, Respondent would be on probation for a period of time while being monitored by said Special Committee.

The Complainant argues that the discipline sought by the Respondent would be "a slap on the wrist" and not only would not deter other lawyers from engaging in similar misconduct but might actually invite them to do so. Under the discipline sought by the Respondent, he will have been suspended from September 1983, and will remain suspended until subsequent to January 1987, a suspension of a minimum of three and one-half years. Being deprived of one's livelihood for a period of three and one-half years is not a "slap on the wrist" -- it is a major catastrophe. Such discipline would deter any lawyer from similar misconduct.

ARGUMENT III, as stated by Complainant:

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

There is an annotation in 26 ALR 4th 995, on the subject of "Attorney Discipline-Mental Disturbance" which discusses the effect given in various jurisdictions in the United States to alcoholism, the cause of attorney misconduct and rehabilitation therefrom. I do not believe that any of the cases cited hold that alcoholism, standing alone, is or should be a mitigating factor in disciplinary proceedings where the alcoholism was the cause of the misconduct. However, there are numerous cases from many jurisdictions, including Florida, cited in said annotation where the Court held, as has Florida, that where alcoholism is the cause of the misconduct, rehabilitation therefrom is a mitigating factor. This is exactly the same position as that of Respondent here. Without rehabilitation, there should be no mitigation, but where there is rehabilitation, the Court should consider that and if, under the circumstances it is appropriate, mitigate the discipline. To cite the individual cases in this brief would unduly lengthen it and unnecessarily burden the Court.

CONCLUSION

This Court has, in several cases, recognized that alcoholism is a serious disease and a lawyer subject to it can be a menace. It has further recognized that, although

alcoholism may not be cureable, it is possible by abstinence from alcohol to avoid its effect. Thus, in several cases, this Court has held, in effect, that where attorney misconduct is caused by alcoholism and the attorney has rehabilitated himself by abstaining from alcohol, such rehabilitation should be given consideration in determining the appropriate disciplinary measures and the Court has conceived of a method of allowing the alcoholic lawyer to engage in the practice of law and adequately protect the public. In so doing, the Court has followed its long standing policy that discipline of lawyers is not for punishment but for the purpose of protecting the Bench, the Bar and the public and to deter other lawyers from similar, like misconduct.

The Respondent is asking this Court in this case to follow the principles it has heretofore followed in like cases.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply Brief of Respondent has been furnished to MS. DIANE VICTOR KUENZEL, Bar Counsel, The Florida Bar, Suite C-49, Tampa Airport, Marriott Hotel, Tampa, FL 33607, by U.S. Mail, this 19th day of June, 1986.

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