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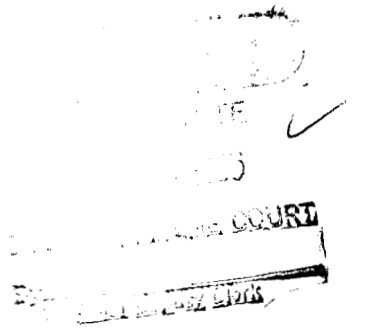

IN THE SUPREME COURT
OF FLORIDA

IN THE MATTER OF:	:	
	:	ORIGINAL PROCEEDINGS TO
	:	AMEND ARTICLE XI OF THE
A PROPOSED AMENDMENT TO	:	INTEGRATION RULE
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BRIEF OF PETITIONERS

PRELIMINARY STATEMENT

This Brief is being filed under the applicable provisions of the Integration Rule and is on behalf of an original Petition to Amend Article XI of the Integration Rule of the Florida Bar, filed contemporaneoulsy. It is supported by the signatures of twenty-five (25) active members of The Florida Bar.

STATEMENT OF FACTS

Alcoholism is recognized as a disease which is, by definition, treatable, by The American Medical Asosciation, The American Hospital Association, The World Health Organization, The American Bar Association, The Florida Bar and numerous other organizations and professional groups.[1/]

There are approximately 59,000 active members of The Florida Bar. A conservative estimate is that ten percent (10%) of thos lawyers currently abuse ethel alcohol. This obviously translates into the very conservative estimate of 5,900 lawyers in Florida, who are afflicted with problems related to alcohol.

Florida has recognized this problem and, indeed, The Florida Bar has programs in place designed to help the lawyer who is troubled with alcohol. The Florida Lawyer Recovery Network daily deals, confidentially, with lawyers who invoke its service. More recently, The Florida Bar developed and funded an intervention program to assist a very narrow statum of lawyers for whom intervention has become a necessity.

1/ A Conspiracy of Silence, Judson H. Orrick, The Florida Bar Journal, January 1983.

At the bottom stratum, there are lawyers whose involvement with alcohol has only begun to have a slightly visible affect on their lives; at the opposite end are those lawyers whose problems have become so visible that external action is necessary by their peers in order to preserve their professional status. In between those two levels are those lawyers, which may comprise as few as sixty percent (60%) or as many as ninety percent (90%) of the 5,900 number of lawyers which conservative estimaters feel is the number of Florida lawyers involved, which this proposal would affect. These are the lawyers who recognize a need for counseling, who recognize a need to address the problem, who want to do something about the problem, but are fearful of the consequences. Lawyers traditionally work hard and play hard. Moreover, the use of alcohol has been a somewhat traditional role in the lives of lawyers, both in a formal and an informal context. Many lawyers, however, are intensely private persons who resent even the most insignificant intrusion by strangers into their personal lives. They wish for their private lives to remain private.

We are told that according to 1980 statistics, more than one-half of the Country's State Bar organizations and over twenty percent (20%) of local Bar organizations have alcohol assistance programs in existence. (See Footnote 1)

ARGUMENT ON BEHALF OF THE PETITION

It is submitted that most lawyers not only have a significant fear of an intrusion into their personal lives, but additionally have an even more morbid fear of having their own actions, statements, deeds and conduct being used against them. It is this dread, or stated more accurately, this perceived dread, which the proposed Rule amendment seeks to address or redress.

It may well be that existing state and federal regulations already foreclose the threat of a lawyer's seeking alcohol treatment services being used against her or him. This Brief will make no effort to address this question because it is entirely academic. The question is not whether or not the fact of a troubled lawyer's seeking alcohol treatment services may be used against the lawyer, but whether the lawyer perceives this possibility as being a real or a genuine threat. It is submitted that although this writer has no clinical studies to support the thesis, that lawyers avoid securing alcohol treatment services of any kind because of a deeply perceived fear that their colleagues may learn of this fact, that the knowledge might become public and that this information will adversely impact their lives. The experience of this writer, as one who assists in the Florida Lawyer Recovery Network, as well as the individual experience of every other lawyer who has worked on this

Program, supports this thesis. Lawyers are simply scared of letting their troubles become known; and no amount of assurance, individually extended by either other lawyers or by services providers, can allay this fear.

We have previously seen, p. 1,2 supra, that approximately 5,900 lawyers (and judges) are abusing alcohol; to achieve a model with which to work, let us eliminate the ten percent (10%) at the top stratum of alcohol abuse, and the thirty percent (30%) at the bottom level . . . those whose abuse is marginal, under control, or undetected. This leaves a substantial number, i.e., sixty percent (60%) of 5,900 or approximately 3,500 individuals. These are 3,500 persons who need care, treatment, counseling or possibly hospitalization. What may or will happen to these persons today, tomorrow, next month or next year. In the next few paragraphs, we will attempt to categorize what the future holds for these victims of disease.

First. A very small number, possibly no more than two percent (2%) (70 lawyers) will have that high degree of introspection to make it possible for such individual to understand himself (or herself), the disease process, and the absolute need to practice abstention from alcohol, absolutely.[2/]

2/ My personal belief is that this number is too high. I know only a few individuals who have been able to stop drinking, "cold-turkey", without any outside help.

Second. A significant number, perhaps ten percent (10%) or 350 lawyers, will seek help through Alcoholics Anonymous. Of this number, a very high percent will achieve a solution . . . i.e., will be able to abstain from alcohol.

Third. This is the group that the confidentiality rule will help. This is the group that must have the help of an alcohol recovery service ("ARS") provider in order to achieve recovery. If the members of this group are substantially denied this service, they are surely destined to become enmeshed in the disease process. The estimates of those who have been close to the recovery network of lawyers feel that this group would constitute at least fifty percent (50%) and as high as seventy percent (70%) of the 3,500 who are in the affected range, supra. Numerically, this would constitute therefore, 1,750 to 2,450 lawyers and judges; 1,760-2,450 persons who are presently being adversely impacted because of confusion and fear over their possible course of action.

It is therefore submitted that the need for a plain statement, couched in the type of language that a lawyer can and will understand, is necessary to deal with this problem. Those whose training and experience in the field of alcoholism is far superior to that of this writer, both lawyer and non-lawyer alike, tell me that this fear or dread of "it being used againt them" is the most significant impediment existing in Florida with respect to getting lawyers who need to do so to

become involved in alcohol treatment services.

And this fear is not irrational. The lawyer who is knowledgeable about administrative practices can have a well deserved apprehension as to the attitude of the administrator of the alcohol treatment services program when that administrator is served with a subpoena duces tecum. He should not have this concern. The lawyer who has a bona fide a sincere desire to survive this problem, and to do it in a legitimate and appropriate way, should not even have to address this problem, whether real or imaginary. This amendment to The Bar Integration Rule directly, forcefully and completely addresses this fear. It will be clear not only to the troubled lawyer, but to those involved with the Bar Grievance Procedures alike. As stated in the proposed Rule, sub-paragraph c, the purpose of this Rule ". . . is to encourage attorneys to voluntarily seek advice, counsel and treatment . . . without fear that such advice, counsel and treatment, or the fact of its being sought or offered, will or might cause embarrassment in any future disciplinary matter."

This is not only clear, but it is also fair.

Nor will the Bar suffer any in any way in discharging its responsibilities to the courts, to the profession and to the public. This Rule change will in no way have any effect whatsoever on the discharge of the responsibilities of those

involved in the day to day grievance procedures with respect to The Florida Bar. Surely this will have no impact whatsoever on the charging, conviction and discipline of members of our profession who permit violations of its Cannons of Ethics.

This Court has accepted the concept that alcoholism is a disease. The Florida Bar v. Blalock, 325 So.2d, 101 (Fla. 1976). Everything possible should be done to motivate treatment and to support those lawyers who seek treatment.

After describing some of the programs available to Florida lawyers and lawyers in other states who are afflicted with alcohol Bruce Alexander wrote: "all programs recognize that the success of any program rests upon its ability to maintain air tight confidentiality. Trust that identities and drug dependencies will not be made known is essential to penetrate the denial aspect of the disease and enhance the possibility of treatment and rehabilitation . . ."3/

The policy statement of The Florida Bar on lawyer alcohol problems is included in the Appendix to this Brief, page 1. In that statement the Bar reaffirms its commitment to a policy of assuring the availability and confidentiality of knowledgeable assistance for attorneys with drinking problems who want to help themselves recover. And it is furtehr the stated

3/ The Disease of Addiction from the Pillary to Medicare, Bruce Alexander, The Florida Bar Journal, January 1983.

policy of The Bar that "attorneys with this illness will seek help before their problems reach the grievance stage . . .". It is submitted that the adoption of the proposed Rule will meet a specific, defineable need and will perform a specific, definable prupose. Implimentation of this Rule amendment will go a long way towards avoiding the needs for impaired attorney proceedings in the intervention of The Bar, into the life of a lawyer on an involuntary basis.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished JOHN F. HARKNESS, JR., Executive Director, The Florida Bar, The Florida Bar Center, Tallahassee, Florida, 32301-8226, by regular United States mail, postage pre-paid, this 26 day of August, 1985.

HOWARD L. GARRETT