IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

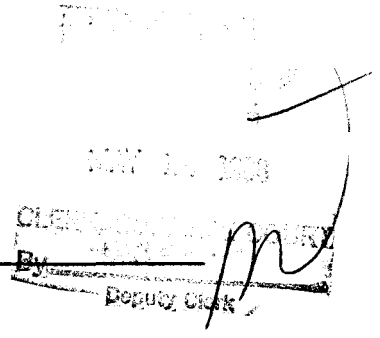
Complainant,

vs.

RONALD S. GOLUB,

Respondent.

Supreme Court Case
No. **71,055**



On Petition for Review

Reply Brief and Answer Brief on Cross Petition for Review

KEVIN TYNAN
Co-Bar Counsel
The Florida Bar
Suite **211**, Rivergate Plaza
444 Brickell Avenue
Miami, Florida **33131**

RANDI KLAYMAN LAZARUS
Bar Counsel
The Florida Bar
Suite **211**, Rivergate Plaza
444 Brickell Avenue
Miami, Florida **33131**

JOHN F. HARKNESS, JR.,
Executive Director
The Florida Bar
Tallahassee, Florida **32399-2300**
(904) 222-5286

JOHN T. BERRY
Staff Counsel
The Florida Bar
Tallahassee, Florida **32399-2300**
(904) **222-5286**

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INTRODUCTION

The Florida Bar, Complainant, will be referred to as "The Bar" or "The Florida Bar". Ronald S. Golub, Respondent, will be refereed to as "Mr. Golub" or "the Respondent". For the purpose of this brief the Respondent, Ronald S. Golub's, Petition €or Review will be treated as a Cross-Petition for Review.

SUMMARY OF ARGUMENT

Disbarment is the only appropriate sanction for the theft of almost twenty four thousand dollars from the Estate of Cecil Harlig by the Respondent, Ronald S. Golub.

It is the Respondent's contention that he should be placed on supervised probation for his unethical acts and the Referee recommended a three year suspension for these acts. It is the Bar's position that both of these recommended sanctions are to lenient in light of the seriousness of the Respondent's unethical acts and the aggravating factors, found in this case. Admittedly, there are some mitigating factors present in the case sub judice but these mitigating factors are substantially outweighed by the serious nature of this breach of the Code of Professional Responsibility and the aggravating factors present in this case.

In conclusion, it is clear that the Respondent, Ronald S. Golub, should be disbarred.

ARGUMENT

Reply Brief

DIBARMENT IS THE APPROPRIATE SANCTION IN THIS INSTANCE

The Respondent in his Answer Brief contends that a Disbarment is not warranted in the case sub judice and in fact the Respondent states that a supervised probation is the only penalty that should be imposed. There is ample support in the record and in case law that the Respondent should be disbarred for the theft of client funds. The Florida Bar v. Dreyer, 443 So.2d 1025, 1026-1027 (Fla. 1986); The Florida Bar v. Knowles, 500 So.2d 140, 141 (Fla. 1986). There is no support in the records or in case law to indicate that probation alone is warranted for the theft of client funds.

The Respondent in support of his argument contends that disbarment is not warranted where mitigation is present and that the Referee in this instance found eight mitigating factors. The Bar took issue with some of these mitigating factors in it's initial brief and therefore will not reargue this point. However, it is important to note that even if there is mitigating factors these factors are substantially outweighed by the serious nature of the Respondent's acts and the aggravating factors present in the disciplinary matter.

The Respondent next points to several cases where this Honorable Court has imposed a less severe form of discipline for theft of client funds despite the warning that this Court would "not be reluctant to disbar an attorney €or this type of

offense, even though no client was injured." The Florida Bar v. Breed, 378 So.2d 783, 785 (Fla. 1979); The Florida Bar v. Tunsil, 503 So.2d 1230, 1231 (Fla. 1986).

The first of these cases is The Florida Bar v. Greenfield, 517 So.2d 16 (Fla. 1987). The attorney in Greenfield misappropriated approximately twenty thousand dollars ($20,000.00). Id. at 16. There was testimony to the effect that Greenfield took an unauthorized loan from the Estate in question and had been paying this loan prior to the Bar Complaint. Id. at 16-17. This Court imposed a one year suspension. Id. at 18.

The Respondent argues that Greenfield is similar to the case at hand thus indicating that a disbarment is not warranted. This is just not the case. In Greenfield there was a strong indication that there was no outright theft of client funds and he at least had a colorable claim to some of the funds. Id. at 18. In the case sub judice the Respondent had admitted the theft of estate funds. It is also important to note that the attorney in Greenfield had completely returned the funds in question while the Respondent has paid very little restitution.

The only other opinion noted by the Respondent that needs to be discussed is The Florida Bar v. Seidel, 510 So.2d 871 (Fla. 1987). In Seidel an attorney received a public reprimand along with probation for failing to remit funds to his clients agent, failing to appear at his own trial on a charge of driving while intoxicated and his arrest for the theft of two cans of beer and for having an open container of alcohol in his automobile. Id.

at 872. There is no allegation of the theft of client funds or of a conversion of client funds for the attorney's personal use Id. Therefore, the Respondent's reliance on Seidel is misplaced.

A) AGGRAVATION

The Respondent next turns to the aggravating factors discussed in the Bar's initial brief. The Respondent contents that there was no dishonest or selfish motive in his theft of client funds. Rule 9.22(b) of the Florida Standards for Imposing Lawyer Sanctions. Clearly the stealing of someone else's money indicates a dishonest if not selfish motive. The Respondent attempts to show that his alcohol dependency changes this dishonest act into something that was not dishonest. However, the Respondent's alcohol problem does not change the nature of the act although it may provide an excuse for the act in certain circumstances.

The Respondent next analyzes that there was no pattern of misconduct. Rule 9.22(c) of the Florida Standards for Imposing Lawyer Sanctions. It is the Bar's contention that Golub's repeated acts of stealing funds from the Estate of Cecil Harlig indicates a pattern of misconduct. The Respondent argues against this by stating that he had no prior disciplinary record.[1] The Respondent does not refute that his repeated acts of theft can be considered as a pattern of misconduct.

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[1]However it can be argued that the Respondent's suspension for the nonpayment of dues is a prior disciplinary record.

Lastly, the Respondent attempts to refute the Bar's argument on the lack of restitution being an aggravating factor. Rule 9.22(j) of the Florida Standards for Imposing Lawyer Sanctions. The Respondent does not refute the fact that he has made little if any attempt to return the funds that he took from the estate but he does not mention that the Referee declined to use this as an aggravating factor as the Respondent has no present ability to pay. This finding is not consistent with Rule 9.22(j).

B) MITIGATION

In his answer brief the Respondent discusses alcoholism as a mitigating factor and The Florida Bar v. Knowles, 500 So.2d 140 (Fla. 1986).

The Knowles case is not unlike the case at hand. Knowles took client funds over a period of four years. Id. at 141. Golub stole client funds over a two year period. Knowles was convicted of a felony. Id. Golub's actions can be considered felonious. Report of Referee page 5. Both attorneys had an alcohol problem. Id. Knowles did make restitution while Golub did not. Id. at 142. This Honorable Court found that the seriousness of the offense warranted disbarment. Id. at 141.

The Respondent attempts to distinguish Knowles by the following points.

1) Golub's income was substantially reduced by his alcoholism and Knowles was not.

2) Golub did not personally know the people that he stole from and Knowles did.

3) Golub's victims were not elderly while Knowles victims were.

It is the Bar's contention that these three factors should have no bearing whatsoever in the mitigation of the theft of client funds. This is especially true since the later two factors take into account the type of victim and whether it is easier to steal from the elderly as opposed to a person in the hospital on dialysis does not change the fact that funds were stolen.

As the Knowles opinion is dispositive of the Respondent's theft of client funds while an alcoholic, the Respondent, Ronald S. Golub, should be disbarred.

Answer Brief

DISBARMENT RATHER THAN A SUPERVISED PROBATION IS THE APPROPRIATE SANCTION IN THIS INSTANCE

In the interest of brevity and of judicial economy The Florida Bar readopts and realleges it's Initial Brief and Reply Brief as it's Answer Brief on the Respondent's Cross Petition for Review. Additionally, the Bar would like to note that the Respondent's proposed discipline is by no means appropriate and far too lenient.

A supervised probation for the theft of client funds fails to meet the criteria for lawyer discipline. The Florida Bar v. Lord, 433 So.2d 983, 986 (Fla. 1983). First of all the Respondent's proposed discipline on a policy level does not protect the public from unethical conduct. Second the proposed discipline does not adequately punish an attorney for the theft of client funds to the extent that the discipline is severe enough to act as a deterrent. In fact a supervised probation would never act as a deterrent and would indicate to the public at large that this Honorable Court is hesitant to adequately punish an attorney for the theft of client funds.

CONCLUSION

Based upon the foregoing reasons and citations of authority, The Florida Bar respectfully submits that the Referee erroneously imposed a three year suspension, and would urge this court to disbar the Respondent, Ronald S. Golub.

Respectfully submitted,

KEVIN TYNAN
Co-Bar Counsel
The Florida Bar
Suite 211, Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131

RANDI KLAYMAN LAZARUS
Bar Counsel
The Florida Bar
Suite 211, Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
Tallahassee, Florida 32399-2390
(904) 222-5286

JOHN T. BERRY
Staff Counsel
The Florida Bar
Tallahassee, Florida 32399-2390
(904) 222-5286

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the Reply Brief and Answer Brief on Cross Petition €or Review of Complainant was mailed to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida **32399-1927** and that a true and correct copy was mailed to the Respondent, Ronald S. Golub, at **16353** N.W. 157th Avenue, Miami, Florida **33014**, on this 17 day of May, **1988**.

KEVIN TYNAN
Co-Bar Counsel