SUPREME COURT OF FLORIDA

No. 68,451

Case No. 75,749
The Florida Bar File No.
90-51,218(17A FRE)

BRIEF OF RESPONDENT/PETITIONER/APPELLANT
(Seeking Review of Referee's Report)

in support of

Petition for Review

Respectfully submitted,

J. CHARLES SHORES, JR.
in Pro per

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TABLE OF CONTENTS

I. JURISDICTION

The Respondent/Petitioner/Appellant, hereafter called the "Petitioner", seeks review of the certain Report denying Reinstatement to membership in The Florida Bar, without prejudice, dated December 27, 1990, pursuant to the applicable Rules of The Florida Bar, permitting review by the Supreme Court of Florida. This court has jurisdiction.

II. STATEMENT OF THE CASE AND FACTS:

Petitioner filed a conditional guilty plea for Consent Judgment for violation of Disciplinary Rules (misconduct constituting a misdaemeanor, i.e., two DUI convictions in 1985), was found guilty in accordance with his plea, and was placed on probation for a period of two years on February 17, 1986, with the condition that he totally refraim from drinking or using alcoholic beverages (see Exhibit 1 to Petition for Reinstatement). Petitioner was unable to adhere to the abstinence mandate agreed to in the Consent decree, as well as a subsequent Order of this Court dated December 30, 1986, resulting in his suspension from practice in September of 1987, until he "demonstrated rehabilitation" from alcohol abuse. Petitioner was an active alcoholic from 1984 until November 1988 when he voluntarily entered a rehabilitation treatment hospital in Tampa, Florida, and has been a successfully recovering sober alcoholic since his discharge on December 21, 1988, and continues to observe total abstinence from alcohol, and has, according to the proof and the Referee's conclusions, "established his recovery from alcohol" (see Referee's Report, p.4, in this regard). The Referee further found that "(P)rior to his

involvement with alcohol, the Petitioner had a good professional reputation". (see Referee's Report, p.4, in this regard). The sole opposition by The Florida Bar is that, Petitioner's demonstrated rehabilitation notwithstanding, he has failed to carry his burden to demonstrate his fitness to resume the practice of law and presently fit to assume the responsibilities of an officer of the court.

There is no question whatsoever that Petitioner's problems giving rise to his suspension were "related to problems evolving from Respondent's alcoholism". (see Referee's Report, p. 5, in this regard). There is also no question but that Petitioner has been in successful recovery from that disorder since November of 1988, and in full and complete compliance with his Rehabilitation Contract with Florida Lawyers Assistance, Inc., the agency sanctioned by The Florida Bar for support to lawyers and judges in recovery from earlier alcohol abuse. (see Referee's Report, p. 3). Finally, there is no question of petitioner's professional competency and personal and professional reputation prior to his involvement with alcohol. (see Referee's Report, p.4).

Accordingly, the posture of the case at this juncture, after lengthly investigation and inquiry by The Florida Bar, with Petitioner's complete cooperation, is that while there is no issue as to Petitioner's demonstrated recovery for over two years, and no issue as to his past or present professional competency, that there is doubt as to his present fitness, based largely on pre-suspension matters that had nothing whatsoever to do with his suspension, which was solely until recovery from alcohol abuse. That sole concern resides over (1) an outstanding and unresolved IRS civil

lien matter originating in 1984, and (2) a period of child support payment delinquency in 1987 and 1988, during Petitioner's final alcohol dilemma, which the Bar finds objectionable, although which matter was never pursued for contempt by an ex-wife, who had no complaint then, nor now.

Petitioner proposed that the Referee retain ruling for a reasonable period of time for resolution of the IRS matter, a matter that came to rise only weeks before the final hearing to Bar counsel and the Petitioner as well. Contrary to agreements reached on the record at the final hearing, the Referee hastily entered the Proposed Report submitted by Bar counsel on December 27, 1990, denying reinstatement, contrary to stated agreements on record to allow Petitioner in this action to investigate and resolve his alleged IRS matter, the true nature of which was totally unknown to Petitioner, Bar counsel, and the Referee until the hearing December 20, 1990 and remained unclear upon adjournment of the hearing.

Petitioner's request for additional time before ruling in this present pending action was wrongfully, unjustly, and erroneously denied, and hence this appeal for review denying reinstatement on a probationary basis, follows.

It will be further argued that the alleged I.R.S. lien matter should be of small concern to The Florida Bar, relative to Petitioner's present fitness, since it consist of "interest and penalties" assessed against his Professional Association after it dissolved, and are by law uncollectable and unenforceable, in view of Petitioner's personal bankruptcy filing in February of 1985, which filing generally suspends the accrual of "interest and penalties" on the date the petition was filed (February 1985).

----- THE LAW AND ARGUMENT -----

CASE LAW ARGUED, TENDERED, AND RELIED UPON BY THE FLORIDA BAR IS INAPPLICABLE TO THIS PETITIONER'S CAUSE.

The law offered by the Bar warrants distinction, and is totally irrelevant factually to this petitioner's case.

Beginning with The Florida Bar Re; Peter M. Lopez, 545 So.2d 835 (Fla. 1989), hereafter referred to as Lopez. The present fitness issue with Lopez centered on a "pattern and lifestyle" of conduct that the court found "extremely damning", casting overall doubt of ever achieving rehabilitation. That Petitioner for reinstatement not only failed to file corporate and personal tax returns, but was discovered guilty of misdoings of an ethical nature, dating back to his initial application to practice, and thereafter, (1) conviction of 22 felonies in federal district court, (2) extortion, (3) hiring gunmen to threaten accountants, (4) writing 199 bad checks, (5) attempting to transfer the blame to others, (6) remarked by the court that he should have been disbarred rather than granted reinstatement from a prior suspension instance in the recent past. (see pp.835-837).

Accordingly, that court rightfully concluded that a petition for reinstatement there was "absurd". But to relate those circumstances to your present Petitioner is equally "absurd". In Lopez, a failure to file tax returns pales in insignificance to his other "high crimes and misdaemeanors" which obviously disturbed the court into the vigorous denial of reinstatement in that "extremely damning" situation, raising serious doubt of his "fundamental honesty".

To the contrary, your Petitioner's failure to file in years when he had no income, or years when his income was less than the $5100 gross required by law for a filing, cannot be considered "extremely damning", nor can it be argued that there was any "failure to disclose" in the Petition for Reinstatement. (see Record Dec. 20, 90 hrg., and see Petition, p.4,where figures for years during suspension were properly provided for as called for namely: 1987 - $360; 1988 - $2245; 1989 - $7729.17, for which filing was made).

Accordingly, your petitioner is not a Lopez. Obviously in the Lopez case, the court was concerned with a "pattern of overall dishonesty", and failure to file tax returns was the least of his problems. Here, the record reflects nothing but excellent reputation, professionally and personally of this Petitioner both by long history before his alcohol abuse, and most assuredly after his recovery and rehabilitation. (see testimony of Record from witnesses Knight, Beamer, Kilby, and Hagen).

Petitioner knows of no case nor instance where an attorney has been suspended or otherwise disciplined for failure to file a tax return, except in a matter of tax evasion, which is no where suggested in Petitioner's cause.

Accordingly, the Lopez case bears no weight nor pursuasion to Petitioner's facts herein and is irrelavant but for the general principle of law that in "extremely damning" cases, a court may consider pre-suspension conduct. Again, Petitioner's record reveils nothing of the sort, but only exemplimentary conduct but for his temporary disorder of alcohol abuse, and from which the record amply and affirmatively demonstrates, is now no problem.

Regarding the Dubsinski matter, where the Bar complained that Petitioner missed a court hearing in 1986, causing a non-prejudicial dismissal and subsequent costs accessment against a client, Petitioner submits he has since made $1004. restitution to the client. Petitioner adds that the client's cause was pursued by "other counsel" who lost the case before a jury, and that no real lose of any damage was sustained to this former client on account of any conduct by Petitioner, who made restitution for his earlier misgiving in missing a court hearing, and their seeking other and lesser counsel who lost their case where none of validity existed.

This Petitioner has demonstrated an adequate period of sobriety, recovery, and rehabilitation since November of 1988, for over two years under suspension from practice. At worst, this infraction of duty should warrant much less of a suspension penalty than has been visited upon this Petitioner, and to have it aroused and argued by the Bar, after his positive successful recovery and rehabilitation, was error in its harshness of punishment.

By comparison, see cases involving neglect of a client's matter leading to suspension, including The Florida Bar v. Thompson, 500 So.2d 1335 (Fla. 1987) involving a magnitude of damning misconduct including:

> ". . . . guilty of violating Disciplinary Rule 1-102(A)(3) (engaging in illegal conduct involving moral turpitude); . . . . . and Article XI, Rule 11.02(3) of the Intergration Rule of The Florida Bar (engaging in conduct contrary to honesty, justice, or good morals)." p. 1335.

Therein, this Court meted out as a measure of punishment a sparce sentence of 91 days suspension, upon positive proof of rehabilitation. It is submitted that your Petitioner herein:

(1) incurred no where near that magnitude of guilt.

(2) never engaged in conduct "involving moral turpitude", or engaged in conduct "contrary to honesty, justice. or good morals".

(3) that this petitioner, to the contrary, has shown nothing but commendable recovery and rehabilitation from an alcohol abuse disorder, now over two years in remission.

See testimony of Record, witnesses Knight, Beamer, Kilby, and Hagan, together with conclusions of Fla. Bar's own investigator.

Surely the period of suspension suffered by this Petitioner to date should satisfy any reasonable disciplinary sanction for his misbehavior during the stage of alcohol abuse. This is fully supported in the Record by his strong sense of repentance, and furthermore, by findings of nothing whatsoever but a genuine intention of proper conduct in the future. His unfortunate past, now overcome, should little disturb this Court at this late date, given the evidence of Record of his characteristically honest and competent performance over many years in the past.

Accordingly, Petitioner deserves reinstatement pursuant to his request, which includes the willingness to continue with his monitoring by Florida Lawyers Assistance, Inc., and any other reporting that the Bar might prescribe.

Most persuasive of a just resolution herein is The Florida Bar v Stewart, 396 So.2d 170 (Fla. 1981) where Stewart was allowed reinstatement after a similiar alcohol abuse bout, overcame it, and despite outstanding income tax liabilities for three years, was ordered to"immediately pursue the issue of his liability for income taxes", and report to the Bar, etc.. p. 171. Reinstatement ORDERED.

THE REFEREE ERRED IN CONSIDERING PETITIONER'S GRADUATE SCHOOL APPLICATION AS EVIDENCE OF "LYING" FOR PECUNIARY GAIN AS ARGUED BY BAR COUNSEL.

The case of The Florida Bar re Michael Joseph Jahn, 559 So.2d 1089 (Fla. 1990) is similiarly so distant to the facts of Petitioner's case that it is irrelevant in law and fact. Therein, Jahn lied to a bank in an employment application to get a job as a trust officer, apparently over his suspended status, which the court found to be "fraudulent", since his lying was:

> ". . . primarily for pecunary gain, cast so much doubt as to his character and fitness to practice law . . . "(p. 1090).

Herein, your Petitioner "applied" to Graduate School at the University of South Florida in Tampa while waiting out his "sentence of suspension". After rigorous testing and examinations, and lengthy personal interview process, Petitioner got admitted in the fall of 1989, and has been a graduate student up through the present. That success was not doled out because he was a lawyer, suspended or otherwise. While not for a profession,he has excelled.

The "application document form", unlike Jahn's employment application for "pecuniary gain" and his fraudulent failure to disclose prior criminal convictions before going to work for a bank as a "trust" officer, called for routine "historical" information regarding who Petitioner was, where he lived, where he had gone to undergraduate school, what degrees and "certificates" he had received in the past. Petitioner responded historically, as the application form called for, and listed that he had been admitted to practice law in numerous courts including Florida state courts, federal district and appellate courts, the United States Court of

Military Appeals and the United States Supreme Court, in his past, which was all in answer to a form graduate school application, AND IN NO WAY "primarily for pecuniary gain" as was the fraud suggested in the Jahn case in a bank employment application.

Furthermore, it is absurd to argue that the Graduate School of Architecture of the University of South Florida, either students or faculty, would be at all "influenced" by any presumed "status" of a LAWYER in class. To the contrary, Petitioner had to fight an up-hill struggle against "technical" people until finally being accepted as just another graduate student, once his grades came in on par with them, and better than most, his first two semesters. See Record of Dec. 20,'90 hrg.,pp.8-12, and p. 42 where inter alia:

> Q: "The American Bar Association seminar was a land use seminar that you went to this summer?"
>
> A: "It was a week-long thing that I got a scholarship to go to. That was the only way I could go."
>
> Q: "Did you get any credit through the school, did you get any academic credit towards your degree?"
>
> A: "No, you got CLE credits, which were about 24 or 25 hours, but ..."
>
> Q: "Okay."
>
> A: "No, like I say, the school is absolutely unimpressed with the fact that I'm a lawyer, and that's why I haven't misrepresented anything out there about that." (emphasis added) See Record of Dec. 20, '90 p. 42.

This colloquy aptly shows Petitioner's stance in attending graduate school, from application date to the present, and there was never any fraudulent representation whatsoever for "gain" as burdening himself with the accolade of "lawyer", regardless of his suspension. His CLE credits were achieved wholly apart from school.

Despite this truth, Bar counsel vigoriously asserted that Petitioner lied in search of pecuniary gain, as did Jahn. The case and the argument should be dismissed summarially. This Petitioner never lied to an employer for pecuniary gain, as in Jahn, and Bar counsel's submision and persuasion before the Referee was error. The Florida Bar investigator disclosed nothing whatsoever in the way of lying for gain in Petitioner's background, and indeed no one had any suggestion of "any reason" why Petitioner should not be reinstated. (see Record of investigators's responses at Dec. 20,'90 at pp. 52-53), including the response to Referee's question:

> Referee: "Did you talk to anybody, did you interview anybody who thought that he was not rehabilitated and should not be readmitted to the Bar?"
>
> The Witness: "No, no, I didn't. No." (p. 52, supra)

This amounts to the antithesis of any suspicion of present unfitness. Furthermore, this Bar investigator found nothing but that Petitioner was a highly respected attorney previous to his alcohol abuse, which is now conceded as recovered and rehabilitated by the Bar. (see Referee's Report, p. 4).

The cases of In Re Timson, 301 So.2d 448 (Fla. 1974) and In Re Dawson,131 So.2d 472.(Fla. 1961) are non-responsive and inapplicable to Petitioner's case. In Timson, offered by the respondent, the petitioner was denied reinstatement for lack of "professional ability", after numerous Bar witnesses testified to his overall ability as "poor", "not good", and "below par", etc.. To the contrary, there has been no suggestion in this Petitioner's case except extraordinary legal skills and academic knowledge. (see testimony of attorney witnesses Knight and Beamer at hrg. Oct. 19, '90). No where is there a suggestion on the record except that this

Petitioner is a competent attorney fully capable of resuming practice. (see testimony of Bar investigator at hrg. Dec. 20,'90, pp. 52,53).

In The Florida Bar In Re Inglis, 471 So.2d 38 (Fla. 1985), the character-and-fitness requirement, as well as the professional competency requirement, was most properly addressed as follows:

> "In Timson and Dawson reference was made to "reputation" for professional ability as one of the criteria for reinstatement. When the period of suspension is only a few months to a few years in duration, continued professional ability can be shown by competent testimony showing a reputation for professional ability."
>
> - at p. 41.

Further, in Inglis, the court held that even a "shooting incident", and subsequent conviction, should not preclude a finding of good character after a period of good conduct. It is submitted that your petitioner here, who has never been convicted of any offense involving any moral turpitude, and who has demonstrated exemplimentary recovery and rehabilitation from his alcohol abuse, deserves reinstatement, on the probationary terms he proposes, i.e., to continue with his ongoing monitoring with Florida Lawyers' Assistance, Inc., as sanctioned by The Florida Bar, for at least the remainder of his contract with that monitoring and reporting agency, until March of 1992.

It should be further noted that The Executice Director of Florida Lawyers Assistance, Inc. (witness Hagen), together with General Counsel of that organization (witness Kilby), have endorsed and recommended on the record, enthusiastically and without reservation, Petitioner's reinstatement. (see Record of hrg. Oct. 19, '90).

More importantly, THESE TWO WITNESSES WERE THE "COMPLAINING WITNESSES" LEADING TO THIS PETITIONER'S SUSPENSION IN 1987. For these knowledgeable experts to testify NOW so favorably in Petitioner's behalf should carry the utmost influence of Petitioner's present fitness to resume practice at this time, while remaining under their monitoring and reporting system.(see Record of hrg. Oct 19,90).

Your Petitioner herein has never hawked about about his wares in the streets as a "lawyer" for influence or gain during his suspension, but for the sole isolated exception of writing a letter to a county court judge in a small claims matter that his brother had filed without a lawyer, asking for a continuance off a motion docket because the brother was not able to attend, and couldn't reach agreement with his opposition personally. Although the record shows no prejudice to the brother's adversary in having the motion matter continued and reset, (see deposition of witness Edwards, submitted by Bar counsel), Bar counsel claims this isolated family matter to be a grievious infraction warranting denial of reinstatement, despite and contrary to the overwhelming testimony of Petitioner's witnesses as to his good character (see record testimony of witnesses Knight, Beamer, Kilby, and Hagen, hrg Ocr. 19, '90). Furthermore, despite the conclusions of the Bar's own investigator that he found no one who thought Petitioner should not be reinstated (see Record hrg. Dec. 20,'90, p. 52).

However, Petitioner has shown ample remorse for this sole appearance as an active practicing attorney for his brother in small claims court during his suspension and begs this court's forgiveness for writing a letter to a judge.

Other enlightened jurisdictions have dealt with cases similiar to your Petitioner here. In In the Matter of James J. Woods, 542 N.Y.S.2d 797 (1989), the Supreme Court of New York, in addressing a petition of a successfully recovering alcoholic, ordered termination of suspension after nine months of demonstrated rehabilitation and state Bar lawyer alcoholism committee supervision following in-patient treatment and follow-up care identical to what this Petitioner has successfully undergone. There the court noted, again identical to Petitioner's case here,

> " . . . his misconduct was not substantial and was, in fact, caused by his alcoholism."
>
> " . . . he had successfully completed an in-patient alcoholism rehabilitation program and was still involved in the 15 week aftercare program . . ."
>
> " . . . and active involvement in Alcoholics Anonymous . .
>
> " . . . had successfuly completed his rehabilitation program, that he had maintained sobriety, and that he was physically and mentally fit to resume the practice of law."
>
> p. 798.

The Court concluded:

> "We also observe that most of the misconduct which resulted in respondent's suspension occurred several years ago and did not involve moral turpitude or misappropriation of funds. Finally, we note that respondent has already served nine months of his one-year suspension . . ."
>
> p. 798.

Therein, the suspension was terminated and reinstatement ordered. Petitioner's case here should warrant a similiar conclusion, given the undully period of over two years he has suffered under suspension, especially given the overwhelming supportive, positive and affirmative testimony in his behalf. (see Record testimony of witnesses Knight, Beamer, Kilby, and Hagan, hrg. Oct. 19, '90).

The Supreme Court of Minnesota, in In the Matter of DISCIPLINE OF Robert J. LEALI, 320 N.W. 413 (Minn. 1982), in dealing with an attorney discipline case over an apparent alcohol recovery instant, where like Petitioner here, suffered "as a result of financial and domestic problems which adversely affected his performance". p. 414 That Court prescribed a proper litany of requirements for such an attorney's reinstatement, being a showing of:

> "(1) that he has remained abstinent during the year prior to his petition; (2) that he continues in an appropriate program to a prevent relapse of his chemical dependency problem; (3) that he meets all of the continuing legal education and registration requirements prescribed by the Court; (4) that he has repaid any debts he owed former clients or otherwise made arrangements satisfactory to such clients; (5) that since his suspension he has been guilty of no personal misconduct or impropriety which would reflect adversely on his professional performance if reinstated." p. 414.

Your Petitioner herein has complied precisely with these demands.

In Re Conduct of Paauwe, 298 Or 215, 691 P2d 97 (1984), an attorney who was suspended for 63 days would be placed thereafter on three-year probation requiring that he refrain entirely from using alcohol, continue in an alcohol rehabilitation program, and permit bar association to monitor such compliance; attorney would be subject to summary suspension for violating these conditions. Your Petitioner herein has complied precisely with these demands.

In Re Application for Discipline of Kroening, 397 N.W. 335 (Minn 1986), an attorney who was on probation and failed, inter alia, to abstain from alcohol, as was the case of the Petitioner herein, the Court mandated only six months monitored suspension.

These cases aptly illustrate the manner other courts have addressed an alcoholic attorney whose problem is now resolved.

In Re Schunk, 550 NYS 2d 708 (1987), a New York court dealt with an attorney whose misconduct was admittedly the result of alcoholism, and after rehabilitation, petitioned for reinstatement. There, after noting that where the misconduct was insubstantial (neglecting two client matters), did not involve moral turpitude, or misappropriation of funds, and further noted his completion of professional care and his actice participation in Alcoholics Anonymous, the court held an 18 month supervised suspendion appropriate. Much is your Petitioner here's scenario - insubstantial misconduct, no misappropriation of funds, no moral turpitude; together with exemplary personal and professional demeanor and conduct both before and after his temporary alcohol abuse, and all obviously alcohol related incidents when his judgment was rightfully in question, all isolated instances in an otherwise exemplary record.

Similiarly, another court has recently dealt with a case close to you Petitioner's, in Re Application for Discipline of Kroening, 397 N.W. 2d 335 (Minn. 1986). There an attorney violated his probation by failing to abstain from alcohol, resultion in suspension. After demonstrated subsequent rehabilitation, the court found a six months supervised suspension to be in order. These facts parallel Petitioner's plight precisely, except for his much longer demonstrated period of demonstrated abstinance and otherwise overall fitness.

Where an attorney had been suspended from the practice of law because of his neglect of legal matters entrusted to him, which neglect was found to have been caused principallyby his excessive

use of intoxicating beverages, the court in Re Johnson, 608 P2d 1011 (Kan. 1979), ordered that the attorney be reinstated to practice where the evidence showed that he had been cured of his drinking problem and had totally abstained from the use of intixicating beverages for "several months"! That court mandated that should he relapse back into drinking, he would be further disciplined without further order of the court. Your Petitioner herein has proposed similiar treatment, rather than the prolonging of his suspension, now over three years, and after over two years of Bar supervised monitoring of his rehabilitation.

In Re Corbett, 450 NYS 2d 802 (NY 1982), where an attorney was charged with neglect and failure to render services for which he was retained, misappropriation of funds, and similiar infractions, the court found an 18 month supervision of his practice appropriate and "more severe sanctions not warranted", since it was determined that the attorney suffered from the disease of alcoholism which was "the fountainhead of his misconduct" which would not otherwise have occurred; that he had become active in A.A. and was successfully recovering, no misappropriation of funds or moral turpitude charges against him, etc. He wasn't even visited with suspension, but rather supervised monitoring of his practice by the bar association's committee on alcoholism. Your Petitioner here has been well monitored while under suspension, and the monitors have spoken nothing but well in his behalf. Indeed, no one of record or otherwise has suggested anything but Petitioner is "presently fit". These enlightened courts recognize all too well what everyone knows which is that alcohol may make liars of the truthful, knaves of the honest, ruffians of the gentle,and traitors of the faithful.

AN ALLEGED CIVIL TAX LIABILITY OF THIS ATTORNEY SHOULD NOT OPERATE AS EVIDENCE OF OVERALL UNFITNESS AND DENY HIM REINSTATEMENT.

(1) The figures argued by The Bar are a gross exaggeration beyond the truth of any civil "lien" owed by Petitioner, in that they are almost all representative of "civil penalties and interest against a bankrupt", and unenforceable and uncollectable since his filing for bankruptcy in February of 1985. It is a well settled principle of American bankruptcy law that in cases of ordinary bankruptcy, the accumulation of interest and penalties is suspended as of the date the petition for bankruptcy is filed (Feb. '85). Sexton v. Dreyfus, 219 U.S. 339, 55 L ed 244, 31 S Ct 526. That rule, grounded in historical considerations of equity and administrative convenience, was specifically made applicable to the accumulation of interest and penalties for taxes in New York v Saper, 336 US 328, 93 L ed 710, 69 S Ct 554.

(2) The Petitioner had no notice or knowledge of any alleged lien prior to his hearing, until being supplied a letter from Bar counsel which was in no way informative of any "lien", but only supplied hearsay information alleging that Petitioner "owed" certain sums. Whereupon, Petitioner, through his own efforts, obtained a document from the IRS showing an accessment of $2482.73 on December 31, '84, against his dissolved P.A. in 1985.

(3) Furthermore, the statute of limitations has expired on any tax liability of this Petitioner (I.R.C. Sec. 6322), given the fact that not only was no notice of a claim ever presented, no suit

nor collection effort was ever made within the statutory period. This court should refuse to penalize Petitioner for inaction when none is now required, especially where the evidence of rehabilitation, mitigating factors, and present fitness abounds in his behalf.

(4) Petitioner should have been allowed time in this cause, once a lien matter was suggested (Dec. '90 hrg.), to request and secure a certificate of release pursuant to I.R.C. regulations, Sec. 6325(a)(f), which mandates issuance of a release, which would serve as extinguishment of the lien matter.

(5) If it is determined that there is a tax liability, the IRS normally allows an extension of time, upon a showing of good cause or undue hardship to the tax payer, of up to ten years. (see I.R.C. Sec. 6161(a)(2) and Sec. 6161(b)(1).

(6) Finally, it should be noted that at no time has the IRS so much as sought a civil summons against this Petitioner, much less instituted any criminal process, and that is because,it is submitted, no collectible or recovery possibilities lie, to where Petitioner should have been granted discharge prior to his hearing for reinstatement on Dec. 20,'90, upon request, if he had known about it, which he did not until that time.

(7) Assuming for the moment Petitioner might be liable for a tax deficiency of some amount, it is submitted that that should not impair his reinstatement to resume his trained profession, since the federal government's tax collection schemes are best and well known to that agency, including those regarding uncollectibility

against a bankrupt, inquiries into financial condition, offers of compromise, and even the possibility of a collateral agreement that the Petitioner might make with them permitting payment over a period of time under I.R.C. Sec. 301.7122-1(d)(3), from future income after reinstatement to practice. Indeed, this Petitioner is without assets altogether, which the IRS has obviously concluded, and cannot respond in any fashion until he is able to resume practice. To deny him reinstatement because of his "failure to make more money while suspended, is basically denying him "reinstatement forever".

Accordingly, it was error for the Referee to entertain Bar counsel's agrument and consider a civil lien matter in his Report.

This court found the same precedent recently:

> "Obviously, petitioner did not have the funds to meet several of his obligations. To deny reinstatement for the reasons given by the referee, i. e., failure to make more money while suspended, is basically denying him reinstatement forever. See In Re Ragano, 403 So.2d 401 (Fla.1981)". ---- The Florida Bar Re Whitlock, 511 So.2d 524 (Fla.87). (emphasis added).

In this Petitioner's case, no creditors nor the public are being disturbed by this alleged tax deficiency that is soluable by and between the taxpayer and the IRS and is being attended to presently. It should therefore not impede his reinstatement. In this case, no IRS enforcement mechanisms whatsoever were ever instituted against this Petitioner, even after this petition was filed, because there must be "willfull" failure to pay, which was never suggested herein. The IRS possesses full authority to compromise any liability arising under the Code, whether legally or factually sound. I.R.C. Sec. 7122(a). Moreover, such discussions

with a taxpayer should not bar reinstatement.

(8) In Petitioner's case, the IRS has no reason to believe that delay will jeopardize the collection of any deficiency, should it lie. Likewise, The Florida Bar should not raise objection to this Petitioner's reinstatement to earn a living at this time, given the overwhelming uncontradicted proof of rehabilitation from an alcohol abuse problem in years past, together with the showing of admirable performance for many years before the alcohol episode. (See Record of hrg. Dec. 20,'90, pp. 47,48; see Referee's Report, p. 4).

(9) The duration of a federal tax lien is limited. Generally, it continues until the tax or a judgment arising out of such liability is paid or becomes unenforceable due to lapse of time. The period of limitations for collection of a tax liability after accessment is six years. I.R.C. Sec. 6502(a).

(10) Petitioner was never served with notice of accessment of any lien and therefore it is invalid and unenforceable.

> "b. Taxpayer Rights. A taxpayer is entitled to certain very limited rights and remedies with respect to federal tax liens. First, the IRS must serve the person it believes to be liable with a notice of the accessment and a demand for payment before a federal tax lien can arise."
> -- "A Survey of Federal Tax Collection Procedure: Rights and Remedies of Taxpayers and the Internal Revenue Service", 3 Alaska L. Rev. 269, pp. 274,275.

In this Petitioner's cause, there has been no such showing and the Referee erred in entertaining the documents tendered by the Bar, over objection.

Secondly, there is no basis or foundation for the figures alleged, for interest and penalties against a bankrupt, which was improper.

PETITIONER SHOULD NOT BE DENIED HIS RIGHT TO REINSTATEMENT FOR EXERCISING HIS RIGHT UNDER THE LAW TO CONTEST THE AMOUNT OF AN ALLEGED TAX LIABILITY.

Case law in other jurisdictions, in cases most similiar to Petitioner's, should be very persuasive and helpful herein.

The Supreme Court of Illinois, in In Re Robert J. McDonnell, 413 N.E. 2d 375 (1980), dealt with the identical issue presented herein. There the court addressed the core issue of one seeking reinstatement with a lingering civil federal tax question, after treatment and recovery from alcohol abuse, after positive testimony in his favor from attorneys who would have no hesitancy in hiring him, and an overall conclusion of fundamental honesty and integrety, which is precisely the posture of your Petitioner herein. More in point, the court noted his current addressing of the tax matter in recognition of any ultimate debt, as is your Petitioner here. That court ordered petitioner reinstated (p.378) after reviewing substantial authority. Also that case came up on appeal as this Petitioner's, because the Bar "expressed doubt" that he was rehabilitated, and the court said:

> "Rehabilitation, the most important consideration in the reinstatement proceedings, is a matter of one's 'return' to a beneficial, constructive, and trustworthy role." (p. 377)

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Regarding the tax question, the court said specifically:

> "In the present case, the petitioner stated that the final resolution of his tax liability would be forthcoming in the near future. . . . . He should not be denied reinstatement for the exercise of his right under the law to contest the amount of tax liability or the liens placed on his property as a result thereof." (p. 378)

Such case is identical to this Petitioner here. The alleged tax lien should not serve to preclude his reinstatement.

. In Roberts v. U. S., 463 Fed Sup 560 (U.S.D.C. '77), the court acknowledged, regarding a civil tax lien assertion by the IRS, that under Sec.6205(a) of the I.R.C. that:

> ". . . that the tax liens are unenforceable because the six year statute of limitations has expired, the Court holds that the liens in question are no longer a valid burden on the property, and the Court hereby orders the liens discharged." p. 561.

Much the same is the stance of your Petitioner here in seeking release of his alleged tax liability, presently and ongoing, and as such, should not serve to preclude reinstatement, over a civil matter that was, and is, promptly under attention. Petitioner should be reinstated in the fashion similiar to the petitioner in McDonnell, supra, who in the eyes of the Court hade demonstrated rehabilitation, reformed his lifestyle, and was quite capable of resolving alleged civil tax liabilities. Petitioner here should enjoy the same right to resume practice under the continued monitoring of The Florida Bar, and the Florida Lawyers' Assistance, Inc., the lawyers and judges support and recovery group sanctioned by the Bar for precisely that purpose.

Under such monitoring and reporting, it would become readily and swiftly apparrent whether or not petitioner had further attended to any civil tax matter or not, to where this Court could act without further order to suspend Petitioner forthwith. This Petitioner has been in full and complete compliance with his contract agreement with Florida Lawyers Assistance, Inc. since he was discharged from the alcohol treatment center Dec. 21, 1988.

Accordingly, an "alleged" civil tax lien, never asserted and unproven, should not prohibit reinstatement with probation.

In Re Application of Satterlee, 296 N.W.2d 362 (Minn. 1973), a court addressed specifically a perdicament close, if not identical, to Petitioner's herein. There an attorney was suspended indefinitely "due to misconduct which resulted from the fact that he was unable to control his drinking problem". That court specifically referenced "delinquencies in payment of his state and federal taxes ", and found it no bar to reinstatement upon a showing that he had "his drinking problem under control". That court further noted that the administrative director who commenced the disciplinary proceeding had stated that the individual in question was a competent lawyer when he was not drinking. There, reinstatement was found to be appropriate despite civil tax matters in the past that went unattended to due to a Petitioner's drinking problem. Obviously that court felt that a good lawyer, competent when sober, was capable of resolving those civil issues AFTER reinstatement.

This case further parallels your Petitioner's here in that in his case as well, the original complaining witnesses (Kilby and Hagan) testified so enthusiastically in his favor at the hearing. (see Record hrg. Oct. 19,'90). Accordingly, this Petitioner should be reinstated despite alleged "delinquincies" in payment of taxes. All the evidence points to the conclusion that Petitioner's alcoholism is and will continue to be arrested, and further, he eagerly pursues his present recovery and monitoring program with local lawyers as monitors to The Florida Bar, to where neither the profession nor the public will be at peril. Surely, a civil tax dispute over questionable dollar figures should not warrant denial.

Reinstatement of a suspended attorney was ordered by the Court in Re Livesey, 615 P2d 1294 (1980), on the basis of a showing by the petitioning attorney that he had sought treatment and no longer suffered from the alcoholism which had been the primary cause of the misconduct for which he was suspended. The petitioner had been suspended for failing to process several cases and then misrepresenting that he had, to a client and Bar authorities, that they had been attended to satisfactorily. Following his suspension, he had sought professional treatment, and the evidence showed that he had made a remarkable recovery, having abstained from drinking for more than 2 years and showed no signs of returning to his former habits and that alcohol was no longer a problem for him. He was supported from both professional and non-professional persons, all attesting to the petitioner's dramatic physical and mental improvement and to the fact that he had overcome the weaknesses that had produced his earlier difficulties.

This case likens exactly to your Petitioner herein, where over 2 years of demonstrated sobriety under Bar monitoring should serve as ample evidence satisfying any burden of present fitness. At Petitioner's hearing Oct. 19,'90, his live witnesses swore to his remarkable, extradinary and miraculous recovery (see Record of hrg. Oct. 19,'90). Accordingly he deserves immediate reinstatement.

Another Supreme Court followed this same reasoning where an attorney was shown to have been rehabilitated and to no longer suffer from an addiction to alcohol. That Court explained at length, after noting the attorney's sincere, frank and truthful acknowledgement of his problem, and dealing with it accordingly, and in recommending his reinstatement:

"Explaining that the major consideration in reinstatement proceedings is whether the petitioner has affirmatively shown that he has overcome those weaknesses which produced his earlier conduct." Re Johnson, 597 P2d 113 (1979).

In this Johnson case above, the Court pointed out that the Washington State Bar Association's Task Force on Alcoholism had spearheaded a drive to help local bar associations establish their own fitness committees to aid members in dealing with alcohol related problems. The Court further noted that while alcohol abuse cannot generally be considered an excuse for misconduct, alcohol-related problems MAY BE REGARDED AS MITIGATING CIRCUMSTANCES in deciding on an appropriate disciplinary action. It is submitted that Petitioner's case, given its facts and proof, deserves mitigation consideration.

Your Petitioner here has shown to have lived a life of sobriety and industry during the period of over 2 years post suspension, and deserves reinstatement. His misgivings in the past were clearly alcohol related, his rehabilitation clearly shown, and his burden of showing present fitness is well proven.

Florida courts have followed in allowing reinstatement upon similiar showings of overcoming alcohol abuse, as the Petitioner herein has shown. In The Florida Bar v. Blalock, 325 So.2d 401 (Fla.1976), where the record demonstrated that an attorney's conduct was directly connected with his disease of alcoholism which had also led to financial, marital, and professional problems, but where the Court found that prior to his dependency on alcohol, his personal and professional conduct was ethical, competent, and responsible, that upon a showing of abstinence as a condition, he should be reinstated. Ergo, should Petitioner here.

The Florida Bar v. Larkin, 420 So2d 1080 (Fla. 1982), closely followed Blalock, supra, and carefully calls to attention the overriding considerations that most nearly support this Petitioner's reinstatement request. There the court noted clearly from the facts in a reinstatement request that:

> (1) the attorney's professional misconduct stemmed totally from his drinking problem;
> (2) in cases where alcoholism was the underlying cause of the improper behavior and the attorney is willing to co-operate in seeking alcoholism rehabilitation;
> (3) where it appeared that an attorney was restored as a fully contributing member of the legal profession;
> (4) he could merely prove that he had been rehabilitated from his alcoholism;

Then he was eligible for reinstatement. Larkin was afforded a mire 91 days rehabilitation period, whereas given the same test, your Petitioner has undergone over two years of Bar scrutiny, only to have the Florida Bar fail to produce anything but opinion in his favor as to present fitness.

This Petitioner's misconduct "stemmed totally" from his drinking problem. Given his proven track record under very mindful scrutiny of Bar monitors, his regular adherence to all mandates prescribed by them for over two years, his continuous and ongoing participation with Alocoholics Anonymous, his never missing a meeting of thw Lawyers Recovery Group, his sincere attention to responsibilities during his sobriety of over two years, it is submitted he is entitled to immediate reinstatement on probationary terms. This most substantial period of rehabilitation and recovery should satisfy this Court as being demonstrative of any argument of Bar counsel to the contrary, or Referee's finding recommending a Denying of Reinstatement over lesser matters.

THE ADMISSION INTO EVIDENCE OF THE CERTAIN PAPERS ALLEGED AS "LIENS",OVER OBJECTION, WAS ERROR

Referee entertained papers tendered by Bar counsel, knowingly without foundation, when proffered to the court. From the record, it is patently clear that neither Bar counsel nor the Referee, much less the Petitioner, knew the meaning of these hastily produced undisclosed papers, and hence Petitioner's sound objection. When questioned by the Referee, Bar counsel admitted:

Bar counsel to Referee:

"And if I might, your Honor, I tried to get Mrs. Smith down here. I attempted to depose her."
. . . . . .(hrg. Dec. 20, '90, p. 4)

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Referee to Bar counsel:

"We still don't know what is happening with this tax business. I don't think I'm in any better position now than I was the last time we had a hearing and I put it off to get some more information, and you haven't given me anymore information."

Ms. Amidon : "I'll make a deal with you, Your Honor. If you will issue a subpoena for the director of the IRS .. . ." (hrg. Dec. 20, '90, pp.65-66).

Obviously the objectionable alleged figures were without legal foundation, and their admission into evidence, over objection, was error. Clearly none of the parties knew what they were all about, and needed more time, as Petitioner requested, and at the time, from any fair reading of the transcript, it was the intent of the Referee to allow more time, IN THIS ACTION, for if not resolution of any IRS dispute, at least some foundation for one.

The instant ruling one week later, in signing Bar counsel's proposed report order over a Christmas weekend, clearly shows that your Petitioner left that hearing with the conclusive presumption of guilt of a tax "crime" charge, when, at the time, he did all he could to prove his innocence, by showing that he (1) was not in jail, nor ever had been for any tax related offense; (2) has never been so much as levied against civilly, never summoneds, even told.

BAR COUNSEL INTRODUCED INTO EVIDENCE A DOCUMENT WHICH SHOWS A FULL AND COMPLETE "RELEASE" OF ANY TAX LIABILITY.

On March 2, 1991 Petitioner received from Bar Counsel copies of documents marked as "exhibits" and introduced as evidence in opposition to Petitioner's reinstatement petition, on December 20, 1990. Significantly therein is one Bar Exh.#1, a federal tax lien filing against Petitioner concerning a "civil penalty" in the tax period ending 9-30-84, with a "date of accessment" of lien of "12-31-84", and a "last day for refilling" (column (e)),being "01-30-90". The six year statute of limitations has run.

The document further states in bold face print:

> "IMPORTANT RELEASE INFORMATION - With respect to each accessment listed below, unless notice of lien is refiled by the date given in column (e),(01-30-90)this notice shall, on the day following such date, operate as a certificate of release as defined in IRS 6325(a)". (emphasis added).

Accordingly, by this document's showing alone, the six year statute of limitations on a civil penalty lien expired on January 30, 1990, having NOT been refiled by 01-30-90, and the entire matter argued by Bar counsel about tax liability, and considered by the Referee in denying him reinstatement, was error. Obviously, the IRS never pursed this bankrupt petitioner since his filing in February of 1985, because any liability was declared uncollectible and any legal proceeding and judgment resulting would be unenforceable at this late date, by law. The IRS further understood that any accessment for "penalty and interest" are uncollectible against a bankrupt, and the figures in a lien filed in July of 1988 are obviously "Civ Pen". (see column (a) of Bar's document above, marked Bar's Exh. #4, of Record, hrg. Dec. 20,'90).

At the conclusion of the earlier hearing, when the Bar asked for a continuance, the following went on record:

> The Court: Suppose this IRS thing turns out to be nothing?
>
> Ms. Amidon: What do you mean by nothing? I don't consider a $44,000 tax lien nothing.
>
> The Court: It may not be and it may not be criminal. As you said, it may be criminal. I don't know. Just as likely it may not be. Supposing it turns out not to be criminal and it's not even valid through some bankruptcy law or something or whatever? I never did understand that.

SUCH A CONCLUSION is now patently clear. There never was, nor is, anything criminal, nor does any valid civil tax lien exist against this Petitioner, as the Referee suspected, but was without authority at the time to so conclude. The authority now on file in this cause clearly indicates that the Referee ruled in error in denying Petitioner reinstatement over this alleged tax matter. Such a conclusion should neither disturb the Bar today, nor warrant further suspension of this Petitioner, nor incurr anguish over any nonexistant "criminal" matter that was suggested to the Referee by Bar counsel out of ignorance of the facts, and to the prejudice of Petitioner. Similiar ignorance lead to introducing Exh #4, which on its face, and BY ITS LANGUAGE, operates as a certificate of release of any tax liability for the alleged civil tax lien. IRC 6325(a).

The civil IRS lien dispute, should it lie at all, over the (1) statute of limitations defense; (2) the wrongful "accessment of penalty and interest" against a bankrupt defense, and finally, (3) over the very language of the certificate of release referenced above, should not bar this Petitioner's present reinstatement under the probationary terms he submitted.

Bar counsel argured most vigorously Petitioner committed a "crime".

Bar counsel:

"I didn't bring the case law with me today but Your Honor is very much aware that is a crime. "
pp. 10,11,hrg. Oct. 19,'90.

- -

"It could be a criminal investigation, it may not be. It was through no fault of Mr. Shores or ours that information came to light when it did."
p. 11, hrg. Oct. 19,'90.

- -

Referee:

" I'm not going to make recommendation to the Supreme Court to reinstate you if you are going to be indicted by the Federal Government. . . . ."
-p. 11, hrg Oct. 19,'90.

Petitioner's burden at this juncture, some 6 years later, should be to show no more than he can - that no CRIMINAL proceedings have ever been instituted against him, nor so much as a civil summons, over tax matters fixed so heavily in the mind of Bar counsel, in opposing his reinstatement, after his rehabilitation has been so well demonstrated on the record. The entire discourse over some criminal inquiry was out of order, and to the prejudice of the Petitioner, and were ill-reflected in the record by the Referee's conclusions, relying on Bar counsel's suggestions, which were error. Nothing "criminal" has been shown whatsoever.

Petitioner's case should be most further supported by the Record of his case-in-chief, from the most knowledgeable and therefore favorable witnesses. who testified at the hearing of October 19, 1990. The Bar produced not one witness in opposition. The Record of that testimony warrants carefull view, attention and reward, specifically as it relates to Petitioner's burden to show

overall present fitness to resume practice, over and beyond his showing of rehabilitation, now conceded to by the Bar. That most favorable testimony from most knowledgeable witnesses, all of which went unchallenged before the Referee, went as follows:

Witness HAGAN (hrg. Oct. 19,'90, after qualification as Director of Florida Lawyers Assistance, Inc.) stated upon inguiry:

> "From March '89 through today he has performed all the requirements of the contract. He has been going to our attorney support group meetings we have in Tampa. I have personally seen him there probably four or five times over the last year, year and a half, myself, as I got to attend those meetings. I have been getting the monitor reports from his monitor on time. All of them have been favorable. The reports coming to me from attorneys that support that group meeting are also favorable." (see Record, p. 19)

- -

> "Insofar as FLA is concerned his rehabilitation progressed to the point we think he can practice law". (Rec.. p. 19)

- -

> "It is a question of is it appropriate at this time, has he in my mind produced a record for us to allow me to feel comfortable with telling you and the judge that I feel he can do a responsible job insofar as practicing law is concerned without the use of alcohol or drugs. I think he showed us that. The fact that I want to watch him until 1992 is a security measure, safety net, if you will. I would not tell you that he is appropriate to practice law unless his rehabilitation had reached a point that I would feel comfortable hiring the man myself". (Record p. 23)

- -

> "From the standpoint of alcohol and drugs, it shows on the record the man made a remarkable recovery." (Record p. 24)

- -

The witness KILBY, Staff Counsel, Florida Lawyers Assistance, Inc., testified most favorably in Petitioner's hope, in saying:

> "Q: In your opinion do you feel that if I stayed under the three-year contract that I have got with FLA, Inc., that I am capable of practicing law?"
>
> "A: Absolutely." (emphasis added), (Record p. 2)

This expert's opinion should be afforded special accord since he saw Petitioner faulter in years past over troubled waters, and

personally witnessed a different man resurrected, and found admiration not only in his recovery, but his attitude.

Staff Counsel Kilby further offered:

Q: "You knew me before this, did you not?"

A: "By reputation."

Q: "What was that reputation as an attorney in the community?"

A: "That you were a very good lawyer." (see Record p.29)

The witness Knight, an accomplished trial practioner, and most closely associated with this Petitioner for the interim of his difficulties, rallied in support of his reinstatement, based upon his reputation, character, competency, and fitness alone. When asked by Bar counsel specifically about "his present ability as far as practicing law today" (R p. 34), Knight offered:

> "I think from the standpoint of being readmitted to the practice of law, from purely a technical aspect - representing clients, trying cases -- it's my opinion, Judge, he would be an excellent trial lawyer and that he would do an excellent job in representing his clients." (see Record p.34)

Knight further added that he would not hesitate to recommend this Petitioner for hire to others, absolutely, as well as offering him an office for practice along with himself in Fort Lauderdale. (see Record pp. 34,35,36,37)

Finally, witness Knight concluded a most significant comment on Petitioner's present fitness: when asked of Petitioner's "character and moral standing in the community", he responded:

> " . . . I think you have the highest moral character and I think you are still very well respected, at least in the Broward County community, as a trial lawyer." (see Record p. 37)

The witness BEAMER'S testimony reinforces Petitioner's case on any issue of character-competency-fitness more than any other. It resounds with esteem both professionally and personally of this Petitioner, and deserves this Court's close attention, over the Bar's objection to reinstatement. Through out his open and honest responses, the record there addresses the core character of this Petitioner in the fashion that this Court should be concered with. Repeatedly, after establishing his foundation of well-knowing Petitioner's reputation in the community, he testified of his capability (see Record p.40), his odyssey through financial and marital plight, and most importantly, the heroic and remarkable recovery, and his preserved good judgment to function in the future when he said:

> " The experience that I had with Chuck is that he was an exceptionally competent and capable attorney. There was a period when he had a problem. And I'm making the assumption based upon everything I have seen through my direct and indirect contacts through the letters that I have received, talked to his mother once I think, that whatever problems Chuck has had I believe he has licked those problems and I think today he could go back into practice and I think he could adequately and well represent a client."
> (see Record p. 46,hrg. Oct. 19,'90)

ACCORDINGLY, this Petitioner has more than carried his burden of showing present fitness to practice law, over and beyond his recovery and rehabilitation which were stipulated to, agreed with, and conceded by the Bar.

THEREFORE, the relief prayed for, immediate reinstatement on the probationary terms proposed, should be GRANTED. This full review of Petitioner's cause clearly shows that the recommendation of the Referee denying reinstatement was uninformed error.

THE REFEREE ERRED IN ENTRY OF HIS REPORT DATED DECEMBER 27, 1990, IN THAT IT PREDATED STIPULATED TIME GRANTED TO PETITIONER FOR RESOLUTION OF A TAX MATTER.

On December 20, 1990, at the close of Petitioner's cause, the Court had reservations over the alleged IRS tax obligation raised by the Bar, which neither Bar counsel nor the Petitioner could answer, whereupon the Referee granted Petitioner until the end of the year, or a few weeks to more fully explore it and come up with a resolution. Bar counsel concurred, advising that it would be well after the first of the New Year before they would even submit a proposed order. Then, the hearing adjourned. (see hrg.12/20/90).

Contrary to this agreement, Bar counsel hastily prepared a Report recommending denial of reinstatement which the Referee hastily signed 7 days later. This period included a 4 day Christmas weekend, to where Petitioner had practically no time whatsoever to investigate the matter with the IRS.

Shortly thereafter however, Petitioner was able to discover facts on the matter (argued elsewhere herein) that no doubt would have produced an entirely different result in his cause at the Referee hearing level, i. e.' that Petitioner has no tax liability whatsoever.

Accordingly, Petitioner is requesting IN THE ALTERNATIVE TO A GRANT OF REINSTATEMENT, that his case be returned to the Referee in this same cause where it can be promptly resolved without the time and expense of re-filing under the Rules at a later date; that he be allowed a period of 90 days certain within which to satisfy the Referee with appropriate release documentation as necessary.

THE REFEREE ERRED IN FAILING TO CONSIDER, AS EVIDENCE, PETITIONER'S TEMPORARY PERSONAL AND FINANCIAL HARDSHIPS, DIRECTLY CONNECTED TO HIS PAST ALCOHOL ABUSE, OVER WHICH HE HAS CONCLUSIVELY RECOVERED AND REHABILITATED.

Your Petitioner was temporarily impaired, but is not presently paralized. To some degree, he was culpable, and Petitioner has no complaint with his suspension in 1987, well knowing that this Bar and the public deserves assurance that even hard-drinking attorneys must play fair.

While uniformity in attorney discipline is desirable, every case must be considered on its own merits. In Re Driscoll, 423 N.E.2d 873 (Ill. 1981). There, the Court found an attorney who had become impaired with alcohol abuse which led to uncharacteristic behavior and misconduct, resulting in an indefinite suspension until he demonstrated rehabilitation. After 2 1/2 years, during which he recovered, the Court said, in finding him "presently fit":

> "The legal profession and the courts have begun to acknowledge the problem presented by alcoholic, or, as they are sometimes referred to, "impaired" attorneys. We must find ways to help them and induce them to rehabilitate themselves. That problem, however, is no longer presented in this case, because respondent has already largely rehabilitated himself. And because respondent, on his own initiative, has overcome his active alcoholism and restored himself as a stable, more or less normal condition, there is no need to keep him from practicing law during a period of temporary disability due to alcoholism. If he were now unfit to practice law, he would presumably remain so indefinitely, and the proper response to protect the public from further injury would be to disbar him or suspend him until further order." (emphasis added)
>
> "We are convinced, however, that he is not unfit." - at p. 874.

It is submitted Petitioner's circumstances herein support a similiar charitable interpretation, his judgment and will no longer undermined with alcoholism.

THE REFEREE FAILED TO CONSIDER PETITIONER'S ALCOHOLISM AS A "MITIGATING FACTOR" IN IMPOSING UNDUE DISCIPLINARY SANCTION.

While some courts in early cases have articulated or recognized the view that mental or emotional disturbance related to temporary alcohol abuse does not constitute a circumstance mitigating against the extent of the disciplinary sanctions to be imposed upon attorney misconduct, the great weight of authority is that such a disturbance is a "mitigating factor" at attorney disciplinary proceedings. See, for example, Re Couser, 569 P2d 285 (Cal. 1979). In these majority jurisdictions, the courts have addressed the host of specific evidentiary factors and the relevant criteria, all of which has been addresses elsewhere in this brief, but most specifically, Petitioner calls attention to the bottom line showing in the present case that there is a clear showing that there is a far greater chance of this attorney continuing with his reforming and the misconduct not recurring; that his abuse has been professionally treated; that he has been closely monitored by the Bar for over two years, his progressive improvement carefully recorded and related through sworn testimony on the record, and that his emotional ailments and active alcoholism are no longer problems. Therefore, he warrants the more lenient disposition of probation, together with follow-up monitoring which he continues to actively and enthusiastically pursue.

The Florida Supreme Court has specifically recognized the legal necessity of the disciplinary process taking into special account the "mitigating circumstances of alcoholism", where a rehabilitated attorney's 91 day suspension was withdrawn and he was placed on 6 to 12 months supervised probation. The Florida Bar v. Headley, 475 So.2d 1213 (Fla. 1985). Petitioner should enjoy same.

Courts have observed that often times, long term suspension is not condusive to sobriety after even the soundest period of proven rehabilitation. The court observed in In Re Driscoll, supra:

> "In this case, we are impressed by Driscoll's sincere, strenuous, and, so far, successful effort to overcome his alcoholism. An exemplary life before and after the incident charged may properly be considered in mitigation. . . . We also recognize that the financial hardship, social embarrassment and perhaps despair that a long suspension would create would not be condusive to sobriety; respondent might actually be fitter after a short suspension than a long one." at p. 875.

That court further noted, after prescribing a mere six month monitored suspension, that:

> "Similiar approaches have been adopted in California . . (cases cited) . . . Minnesota (cases cited) . . . Massachusetts (cases cited) . . . South Dakota (cases cited) . . . Oregon (cases cited) . . . . at p.875.

The court concluded with the charitable gesture of modern disciplinary insight that this court should adopt:

> "We would like to see respondent restored to an active practice and a position of esteem in his profession. We must also protect the integrity and reputation ot that profession, and protect the public. Pending further experience with alcoholic attorneys, we are trying our best to manage both." at p.875.

While lawyer discipline is important, it should not be, by reputation, that the Florida Bar, in dealing with its own, works better with divorce than it does with marriage. The record herein shows wholehearted endorsement in Petitioner's favor from lawyers and non-lawyers alike. He has been dragged well enough before the gallows of the Bar, his punishment and discipline well enough administered, and his demonstrated rehabilitation well enough shown. Petitioner should no longer be orphaned from the profession he loves most and can competently do best, but returned to the roll,

THE FINDING OF PRE-SUSPENSION CHILD SUPPORT ARREARAGES (TEMPORARILY) AS GROUNDS FOR REINSTATEMENT DENIAL IS IN ERROR.

It is patently clear from the record and thru lady Bar counsel, that she does not think a lawyer should ever get behind in his child support, albeit that his ex-wife fully understood Petitioner's illness, suffering and financial disabilities, all times, (1986,87) and never sought to bring him before any court for short term arrearage in prior pre-suspension years. (see Report, p.4) For reasons best known to her personally, Bar counsel seeks to usurpt his ex-wife's shoes for arrearages in years gone past, as evidence of present unfitness to practice law, and seeks prejudice upon this Petitioner over a matter of no concern to his ex-wife, with whom he enjoys an amicable relationship since he got sober in November 1988, and to whom he has paid child support on a timely and regular basis since his discharge from the alcohol rehabilitation hospital over two years ago. From the record, it is clear the ex-wife is NOT interested in years past, but rather Petitioner's FUTURE in supporting his daughter of the marriage, and has nothing but best of wishes in Petitioner getting reinstated to practice as quickly as possible, in order that Petitioner might make a decent wage and further support his daughter.(See Transcript hrg. Dec 20, 90, p. 19). In short, while Petitioner's ex-wife, in whose benefit the lady Bar counsel seeks to complain over, has registered no complaint, Bar counsel seeks to make an issue over something years ago, pre-suspension, as relevant to present fitness, and it is submitted that such suggestions and arguments

on the record of temporarey arrearages in this situation (years back, never pursued, and of no concern to the ex-wife, then or now, as evidence of present unfitness to practice), are totally without merit. For Bar counsel to try and usurpt an ex-wife's posture in matters years gone past, that are of no concern now or then to the ex-wife, is improper, and MORE comtemptuous to this court than Petitioner's temporary arrearage, which was consented to and acquiesced to by his ex-wife in NOT pursuing him for comtempt of court. The ex-wife sought no legal remedy then or now. To have Bar counsel now assert to the Referee that such a matter back then, though never pursued by the ex-wife, should bar his reinstatement now, wherein his ex-wife didn't care then or now, but that Bar counsel cares NOW, beggs rational consideration.(see transcript of hrg. Dec 20, 1990, p. 19).

These references and innuendos in the record by Bar counsel should stand corrected in this regard, in that Petitioner has NEVER been called accountable by legal remedy to any complaint from his ex-wife for child support arrearages, and presently enjoys an amiciable relationship with her and his daughter on a close and intimate basis, and that no friction in this regard is expected, despite Bar counsel's annoyance to the relationship, for reasons best known to her, which again have nothing to do with the present relationship by and between Petitioner and his ex-wife, and accordingly, should bear no merit on the issue of petitioner's present fitness to resume practice, which is the issue at hand.

This Court should find it shocking that Fla. Bar counsel asserted to the Referee:

"I don't care whether she's concerned about it or not, Mr. Shores. The Bar is concerned about it." (See transcript hrg Dec. 20,'90, p.19)

Obviously, this is Bar counsel's personal stance as a woman, despite no showing of any similiar position held by Petitioner's ex-wife, again for reasons best known personally to Bar counsel, which have nothing to do with Petitioner's present fitness for reinstatement. It is no more than a "fishing expedition" looking for some reason to oppose Petitioner over an "ill" relationship with his ex-wife where none exist, trying to waive his divorce agreement around before the Referee and act as policeman over an imaginary issue never raised by an ex-wife, with whom he has always gotten along with amicably, in the troubled past, and most assuredly in the present, and hopefully in the future. So when Bar counsel says she "doesn't care" whether the former Mrs. Shores cares or not, I submit its none of her business. The former Mrs. Shores cares indeed about the ultimate issue herein - Petitioner's resuming practice. Petitioner and his ex-wife are perfectly capable of getting along and cooperating over child support and other financial matters without Bar counsel's unsolicited help (See Record of hrg Dec. 20,'90, where Bar counsel argued at length for four pages over years gone by arrearage of $300 that the ex-wife never cared about back then, nor does she now. Never a contempt matter filed or even considered by the ex-wife, contrary to lady Bar counsel's suggestion to the Referee over four pages of the record).

It is ludicrous and shocking, indeed contemptuous, for Fla. Bar counsel to suggest to the Referee, in opposition to his

reinstatement, that Petitioner "failed to list in his Reinstatement Petition", as a "financial obligation", temporary arreage" from years past. This is after Petitioner has been current with child support for the last two years since he successfully overcame alcohol abuse and rehabilitated himself, and after, well knowing of his progress, his ex-wife has been in total agreement and acquiescence with the short fall in those years gone past, and forgiving of same, having never pursued any remedy she might have had at the time, and who presently is more than anything else, pleased with Petitioner's recovery and hopeful toward his earliest reinstatement.(See transcript of hrg. Dec 20,'90, pp. 17,18,19,20). Under the facts, the evidence, and the rules of good common sense applicable to this now friendly divorce situation, it is submitted that Fla. Bar counsel's endeavor to stir up an issue that did not and does not exist, and hawk it about before the Referee at such length, can only be the last refuge grasping for some opposition in the face of positive, affirmative proof of present fitness to return to practice. In short, it warrants naught.

Accordingly, Bar counsel's assertions are without merit in this entire area of objection to Petitioner's reinstatement. Furthermore, it smacks of contempt, under the circumstances well known to Fla. Bar counsel from the investigation, and further, such objections are without merit, then, and most certainly now, on the issue of present fitness to return to practice. It should not be the domain of The Florida Bar lady to try so desperately to find discord where none exist between this Petitioner for reinstatement, and his ex-wife, and harp

incessantly over a temporary infraction of their 6 year old divorce decree, under which they have lived with in peace, harmony, tranquility and abiding affection despite Petitioner's years overcoming his struggle with alcohol abuse, which victory the Bar concedes and unhesitatingly agrees to.(See transcript of hrg Dec. 20, 90, pp. 44,47,48,52).

Bar counsel's file will reflect that the ex-wife's deposition was cancelled after she refused to testify adversely against the Petitioner over this years old matter, after their urging. The Florida Bar should not be allowed unilaterally to resist Petitioner's reinstatement by asserting foregone rights of an ex-wife in a forgiven matter which she never pursued, and which argument today rests solely in the mind of lady Bar counsel and not a complaining ex-wife. The exorting of such before the Referee by Bar counsel was prejudicial error.

Finally, the Referee asked it best from the Fla. Bar Investigator who thoroughly investigated the Petitioner:

> "Referee: Did you talk to anybody, did you interview anyone who thought that he was not rehabilitated and should not be reinstated to the Bar?"
>
> "Witness: No, no, I didn't, No."
>
> "Ms. Amidon: You mean as to his alcoholism?"
>
> "Referee: Anything?"
>
> "Witness: No, I didn't raise the question with them as to . . . "
>
> "Mr. Shores: Ethically, I think is what he means ".
>
> "Referee: Did anyone give you the impression, without using those words? "
>
> "Witness: No, no."
>
> (see Record Dec. 20, '90, pp. 52,53). (emphasis added)

X

ACCEPTANCE INTO EVIDENCE OF PETITIONER'S YEARS OLD UNCONTESTED DIVORCE DECREE, TOGETHER WITH INFLAMATORY ARGUMENT OF BAR COUNSEL REGARDING THE DIVORCE, AS RELEVANT TO "PRESENT UNFITNESS", WAS PREJUDICIAL ERROR.

Lady Bar counsel railed on at length that Petitioner "got divorced" because of his drinking problem at the time (circa 1984-1985), and dwelled on at length over whether the causation lending to the divorce was Petitioner's alcohol abuse following irreconcilable differences, or whether, in her words, "it was the other way around" (see Record Dec. 20,'90, p. 24).

The whole of this ancient argument is irrelevant to the issue of Petitioner's request for reinstatement and any issue of Present Fitness to resume practice, which is the only issue, the Bar having conceded rehabilitation, which is what Petitioner was suspended for and until. Petitioner was not suspended for having his ex-wife divorce him, and the fact that he enjoys an amicable relationship with his ex-wife, presently pays his child support (for over two years) and otherwise attends to divorce decree responsibilities. THIS IS PARTICULARLY AN UNJUST ALLEGATION, being offered in the face of the affirmative proof of witnesses Knight, Beamer, Kilby and Hagen, presented on Petitioner's behalf, together with the Fla. Bar's own investigator's conclusions on the record that no one at all had anything at all to say about Petitioner but that they felt he was "fit" to resume practice when they were interviewed in 1990. Not only did the Bar investigator conclude from all persons interviewed that Petitioner had rehabilitated himself from alcohol abuse, he further said of all witnesses interviewed:

". . . they also felt he should be reinstated, . .
(see Record Dec. 20,'90 hrg., p. 47)

It should be noted that this investigator approached lawyers and non-lawyers as well, and included a member of the Board of Governors of The Florida Bar, all of whom concluded without reservation that Petitioner should be reinstated.

(see Record Dec. 20, '90 hrg., supra).

Accordingly, the admission into evidence of Petitioner's divorce decree, never disturbed by contempt decree nor ever so much as challenged by his ex-wife with whom Petitioner enjoys a friendly relationship, was irrelevant to any issue of present fitness, and was prejudicial error, given the manner it was presented by Bar counsel. No unfitness has been proven, and the Record affirmatively supports a finding of present fitness, warranting reinstatement.

Having suffered a friendly divorce, unwanted but uncontested, does not warrant suspension, whether Petitioner had a drinking problem at the time or not. It is submitted that attorneys who never drank at all have been divorced, yet not been suspended from their livelihood for it. It follows therefore, it should NOT be a bar to reinstatement after overwhelming proof, and Bar counsel's consession of rehabilitation over the past two years plus.

The entire assertions of Bar counsel suggesting that Petitioner was guilty of contempt were specious, inflamatory, and for no purpose than to prejudice Petitioner before the court. This was patently shown by the lack of any contempt order, nor any evidence whatsoever that such ever existed in the mind of the proper party to complain (the ex-wife), but a notion solely existing in the mind of lady Bar counsel, and tendered so vigoriously before the Referee as evidence of present unfitness.

Accordingly, the argument and document are prejudicial error.

THE REFEREE ERRED IN THE ACCESSMENT OF COSTS AGAINST THE PETITIONER.

The Referee herein erred in entertaining items submitted by Bar counsel's of excessive cost. Bar counsel's proposed costs included "investigative costs", allegedly incurred by investigators Coutre and Egan, erroneously included in a proposed total of $4634.16. That statement specifically claims "investigative cost" in amounts of $933.37 (Egan), $380.83 (Coutre), and $1558. (Egan). Those investigative costs, for a total of $2872.20 was improperly accessed, and should be deducted from any award accessed to this Petitioner. See The Florida Bar In re Lewis M. Williams, 538 So.2d 836 (Fla. 1989), where this Court held in a disciplinary matter:

> " . . . that rule 3-7.9(d) of the Rules Regulating The Florida Bar does not authorize the collection of investigative costs, . . ." p.837

To assert "investigative costs and expenses" at all, much less in such inflated sums, and come up with no more than a five year old uncontested divorce decree, a graduate school application form, a "letter" from the IRS, a four year old eviction judgment for $61, seems nothing but grossly punitive. Rule 3-7.5(k)(1) clearly prohibits a Referee's authority to tax as costs the time and expenses of the investigator. The Florida Bar v. Allen, 537 So.2d 105(Fla. 1989).

The entire agenda of the Bar's investigation, producing only the abovesaid trivia, was, it is submitted, generated only after the Bar found nothing but galvanizing and compelling evidence supporting Petitioner's REHABILITATION from his alcohol abuse, for which he was singularly suspended. Petitioner cannot be accessed for the Bar's pursuit of collateral junkets irrelavant to the issue upon which Petitioner was found NOT GUILTY - Rehabilitation.

SUMMARY OF ARGUMENT

The issues remaining herein are:

(1) Whether the Petitioner herein has demonstrated on the record his rehabilitation from alcohol abuse, which was the singular cause for his suspension in September of 1987

(2) Whether the Petitioner has carried his burden of showing thereafter, his present fitness to resume the practice of law otherwise, given his recovery and rehabilitation.

The Referee's Report concedes, and Bar counsel agrees, that this Petitioner has made good recovery from the alcohol abuse bout and further concedes that he is performing admirably in his ongoing rehabilitation program under careful monitoring by the Bar. This reduces the real issue to whether there are matters in Petitioner's cause, either pre-suspension or post suspension, that might cast some doubt on his present fitness to resume practice. This summary will address them accordingly, pre-suspension and post suspension.

The earliest suggestion of pre-suspension misconduct is the temporary arrearage of child support in long years past, never pursued by an understanding ex-wife, with whom Petitioner amicably abides with since a friendly divorce, currently pays support since his recovery over two years ago, and which ex-wife is extremely pleased with his rehabilitation, and very supportive of his reinstatement effort herein. The Referee erred in considering Bar counsel's agrument of such a matter as evidence of present unfitness.

The Referee further erred in entertaining Bar counsel's assertions that Petitioner's "failure to list in his petition" these forgiven shortages from years past as evidence of present unfitness, especially since Petitioner has never been called to account by any court or so much as ever pursued for the matter by the ex-wife.

The next earlier suggestion of pre-suspension misconduct had to do with civil tax matters in years long past which, while Petitioner has never been pursued civilly or criminally by the IRS, Bar counsel argued his conduct in those years as derogatory, despite the fact that his meager earnings, or NO EARNINGS during some years warranted no legal requirement for a tax return filing.

Finally, the unsatisfaction of a civil tax lien, unsupported and improperly argued, was erroneously offered, and considered as evidence by the Referee on the issue of present fitness. First, the statute of limitations ran on the lien matter to where it is unenforceable and uncollectible and therefore not a liability this Petitioner any longer is responsible for, whether suspended or not, and secondly, it consist largely of civil penalties and interest which are not accessible against this Petitioner since his filing for bankruptcy in February of 1985, as the brief shows. Thirdly, the law mandates that a Petitioner exercising his lawful right to contest a civil tax matter should not bar his reinstatement.

The Bar's allegation of Petitioner, during suspension, listing in his application to a graduate school of architecture, to take certain Land Use Law related courses, that he had been admitted to practice law in the past, did not amount to misrepresentation for any pecunary gain as the Bar asserts. It was solely a historical declaration and overview of Petitioner's past as the form called for in the school's consideration of him for admission. His admission was neither helped nor hindered by the shackle of having practiced law in the past, nor was he afforded any special sympathy for being

an attorney, awarded special privilege, and forsuredly for no pecuniary gain. Petitioner's admission, attendance, and excelling at a graduate school during his suspension should not in any way be anything BUT evidence supportive of present fitness to practice. Nor should his accumulation of over 25 CLE credits during his suspension do other than support his present fitness to practice.

The Bar further argues misconduct that during suspension, Petitioner submitted a letter to a judge on behalf of a member of his family requesting a continuance off a motion docket in a small claims matter of no consequence or prejudice to any party. The Petitioner has expressed his regrets and remorse for this sole isolated instance of making what is alleged as an apparent appearance as an attorney while suspended, and has shown that no where else has there been any similiar transgression whatsoever during his period of suspension, and but for undue consideration in a family matter, it would not have happened, and assuredly never on behalf of any "real" client. Petitioner has never solicited for business, represented himself out for hire, or practiced law while under suspension otherwise.

Accordingly, given the abundance of the testimony supportive of his good character and successful rehabilitation, this sole transgression should be forgiven, after his years of suspension and demonstrated recovery, entitling him presently fit to practice law.

The ultimate issue herein is whether a good lawyer of many years should be reinstated to practice after overcoming an alcohol abuse disorder over two years ago - one who's pre-suspension problems were all obviously alcohol related, and who's conduct post recovery and rehabilitation has been exemplimentary.

C O N C L U S I O N

The net effect here is that thr Referee's Report recommending denial of reinstatement is punishment transcending proper lawyer discipline. First, the failure to file income tax returns in years past when no liability was due, nor filing required, in no way deprived the government of revenue by Petitioner not claiming some token refund from his meager earnings over years, when he was disabled with alcoholism. The standard of willfulness, assumed by the Referee, should not be construed to include reasonable cause or justificable excuse. There was no showing of evil motive, bad purpose, or specific intent to defraud, which might evoke some reflection on Petitioner's overall character and morals.

Secondly, the alleged federal tax lien matter, when closely considered, was improperly received as a bar to reinstatement. Despite its denomination as a "penalty", any liability that might eventually be imposed under the Internal Revenue Code is essentially civil in nature and should not be raised in the face of a petition for reinstatement as an objection over present fitness. A petitioner's right to disagree with the IRS should not impede his right to reinstatement after well demonstrated rehabilitation, which the Record amply displays.

Third, finding that Petitioner listed his prior status as an attorney on an application to Graduate school in a discipline totally foreign to law practice, should not be raised against his reinstatement where he simply recorded his past on the application, and never sought to use the adage or title of practicing attorney for any financial gain or solicitation whatsoever.

C I T A T I O N S

(1) The Florida Bar v. Allen, 537 So.2d 105 (Fla. 1989).

(2) The Florida Bar v. Blalock, 325 So.2d 401 (Fla. 1976).

(3) Re Corbett, 450 NYS 2d 802 (NY 1982).

(4) Re Couser, 569 P.2d 285 (Cal. 1979).

(5) In Re Dawson, 131 So.2d 472 (Fla. 1961).

(6) In Re Driscoll, 423 N.E.2d 873 (Ill. 1981).

(7) The Florida Bar v. Headley, 475 So.2d 1213 (Fla. 1985).

(8) The Florida Bar v. Inglis, 471 So.2d 38 (Fla. 1985).

(9) The Florida Bar v. Jahn, 559 So.2d 1089 (Fla. 1990).

(10) Re Johnson, 597 P.2d 113 (1979).

(11) Re Johnson, 608 P.2d 1011 (Kan. 1979).

(12) Re Aplication for Discipline of Kroening, 397 N.W. 335 (Minn. 1986).

(13) The Florida Bar v. Larkin, 420 So.2d 1080 (1982).

(14) In the matter of DISCIPLINE OF Leali, 320 N.W. 413 (Minn. 1982).

(15) Re Livesey, 615 P.2d 1294 (1980).

(16) The Florida Bar v. Lopez, 545 So.2d 835 (1989).

(17 In Re Robert J. McDonnell, 413 So.2d 375 (1980).

(18) Re Conduct of Paavwe, 691 P.2d 97 (Or. 1984).

(19) In Re Ragano, 403 So.2d 401 (Fla. 1981).

(20) Roberts v. U.S., 463 F.Supp 560 (U.S.D.C. 1977).

(21) Re Application of Satterlee, 296 N.W. 362 (Minn. 1973).

(22) New York v. Saper, 336 US 328, 93 L.ed 710, 69 S.Ct 554.

(23) Sexton v. Dreyfus, 219 US 339, 55 L.ed 244, 31 S.Ct 526.

(24) Re Schunk, 550 NYS 2d 708 (1987).

(25) The Florida Bar v. Stewart, 369 So.2d 170 (Fla. 1981).

(26) In Re Timson, 301 So.2d 448 (Fla. 1974).

(27) The Florida Bar v. Thompson, 500 So.2d 1335 (Fla. 1987).

(28) The Florida Bar v. Whitlock, 511 So.2d 524 (Fla. 1987).

(29) The Florida Bar v. Williams, 538 So.2d 836 (Fla. 1989).

(30) In the Matter of James J. Woods, 542 NYS 797 (1989).

(31) "A Survey of Federal Tax Collection Procedure: Rights and Remedies of Taxpayers and the Internal Revenue Service", 3 Alaska L. Rev. 269 (1986).

(32) Internal Revenue Code, Sec. 6322; sec. 6325(a)(f); sec. 6161(a)(2); sec. 6161(b)(1); sec. 301.7122-1(d)(3); sec. 7122(a); sec. 6502(a).

(33) 39 ALR 4th, "Alocholic Attorney - Reinstatement", and cases cited and reviewed therein.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Original and seven (7) copies of the Petition for Review and revised Brief of Respondent/Petitioner/Appellant was mailed by Federal Express Overnight Delivery to CLERK, SUPREME COURT OF FLORIDA, Supreme Court Bldg., Tallahassee, Fl., 32399-1927 on April 4, 1991, and copies mailed by U.S. Mail to John Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Talla, Fl., 32399-2300, and to Linda J. Amidon, Bar Counsel, The Florida Bar, 5900 N. Andrews Av., Cypress Financial Center, #835, Fort Lauderdale, Fl., 33309.

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