IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant/Appellant,

vs.

GAIL ANNE ROBERTS,

Respondent/Appellee.
_____/

Supreme Court Case
No. 79,555

The Florida Bar File
No. 92-51,146(17D)

INITIAL BRIEF OF THE FLORIDA BAR

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PRELIMINARY STATEMENT

In order to ensure a clear record, the following terms of reference will be used throughout this brief: The Florida Bar, the appellant and cross-appellee herein, will be referred to as "the bar". Gail Anne Roberts, the appellee and cross-appellant herein, will be referred to by her full name, or as "Respondent", or "Roberts". References to the final hearing transcript will be made utilizing the symbol "T.", followed by the transcript page number. As all final hearing exhibits were introduced into evidence by The Florida Bar (Respondent introduced no exhibits at final hearing), such exhibits will be referred to as follows: "Exhibit___ ."

STATEMENT OF THE CASE AND THE FACTS

I. STATEMENT OF THE CASE

On February 13, 1986, The Florida Board of Bar Examiners petitioned the Supreme Court of Florida for certain amendments to the Rules of the Supreme Court of Florida Relating to Admissions to the Bar. One such amendment pertained to Article III of the rules and sought to provide for conditional admission of bar applicants, under "special circumstances." According to the petition, "[t]he Board envision[ed] that particular applicants with a history of alcohol or substance abuse or a history of serious psychological problems would be candidates for a recommendation of conditional admission." [Petition Of Florida Board of Bar Examiners, Exhibit 2.] By order dated May 13, 1986, the Court requested that the Board of Bar Examiners and The Florida Bar submit a mutually agreeable proposal regarding the conditional admission of bar applicants. Pursuant to this request, The Florida Board of Bar Examiners, together with The Florida Bar, submitted a Joint Proposal For Conditional Admission Of Bar Applicants on October 1, 1986. This proposal suggested an amendment which would permit the board "to enter into a Consent Order with applicants in exceptional cases involving drug, alcohol or psychological problems." Pursuant to the joint proposal, consent orders were to be used "only after the Board of Bar Examiners has conducted its background investigation and has determined that the filing of Specifications is warranted based on adverse information arising from the applicant's psychological disorder or prior abuse of drugs or alcohol." [Joint Proposal For Conditional Admission Of Bar Applicants, Exhibit 3.] The

Supreme Court considered the joint proposal and approved the rule amendments on December 4, 1986. The amendment providing for conditional admission became effective immediately, and contained the following language: "If the applicant shall fail to abide by the terms and conditions of admission, then The Florida Bar is authorized to institute such proceedings consistent with the Rules Regulating The Florida Bar as to revocation of the license issued to the applicant pursuant to the consent Order." [Reported opinion of The Supreme Court of Florida in Case No. 68-307, Exhibit 4.][1]

Subsequent to graduation from law school in May 1984, Respondent Gail Anne Roberts filed applications for admission to The Florida Bar and a Florida bar exam. During the course of the usual background investigation conducted by the Board of Bar Examiners, information which reflected adversely upon Respondent's fitness (pursuant to the provisions of Article III, Section 2 of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar) came to the board's attention. An extensive investigation ensued, and it was determined that Respondent had a history of financial irresponsibility involving the issuance of worthless checks and the delinquent repayment of credit card accounts and student loans, as well as an arrest for possession of controlled substances. The investigative process became protracted because Respondent failed to provide the Board with timely replies to its requests for additional information. An investigative hearing was

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[1]The Court's decision approving the rule amendments was reported in In re Petition of Florida Board Of Bar Examiners For Amendment Of the Rules Of the Supreme Court Of Florida Relating To Admission To the Bar, 498 So.2d 914 (Fla. 1986).

conducted on August 28, 1986, during which Respondent made certain admissions about her recent use of controlled substances. At the conclusion of the hearing, the board voted to recommend Respondent's admission -- "subject to certain terms and conditions." Although the conditional admission amendment to the Rules of the Supreme Court of Florida Relating to Admissions to the Bar had not yet been approved, the Court had previously granted conditional admission to at least three (3) other persons, pursuant to Board of Bar Examiners recommendation. [Florida Board Of Bar Examiners Report And Recommendation To The Court, Exhibit 7.] A consent agreement was forwarded to Respondent's attorney to ascertain whether Respondent would be willing to agree to conditional admission, in lieu of the filing of Specifications. Respondent executed the consent agreement on October 2, 1986, agreeing to abide by all the terms and conditions set forth in the agreement, which was subject to approval by the Court. [Consent Agreement, Exhibit 6.] On October 28, 1986, the board filed its Report and Recommendation To The Court, recommending that Respondent be admitted to The Florida Bar, subject to the specific conditions which were expressly articulated in the consent agreement. The recommendation contained express notice that Respondent's failure to "observe the conditions of the probation or a finding of a probable cause as to conduct...committed during the period of probation...may terminate the probation and subject [Respondent] to revocation of this conditional admission." [Florida Board Of Bar Examiners Report And Recommendation To The Court, Exhibit 7. The board's express language to the Court is found on page 3 of this exhibit.] The Supreme Court of Florida approved the board's recommendation and authorized Respondent's conditional admission to the

bar in an order dated December 31, 1986.[2] The Court's order also contained express language putting Respondent on notice that her failure to observe the conditions of her three (3) year probation or a finding of a probable cause as to conduct committed during the period of probation could result in the revocation of her conditional admission. [Order of The Supreme Court of Florida, Exhibit 8.] Pursuant to the foregoing, Respondent was conditionally admitted to The Florida Bar on January 7, 1987. [T. page 150.]

Within a month of her conditional admission, Respondent failed to submit her required monthly urinalysis reports on a timely basis. The bar was forced to remind Respondent of this obligation, and sent her letters to this effect on February 13, 1987; March 25, 1987; October 26, 1987; February 29, 1988; March 22, 1988; May 17, 1988; October 18, 1988; and December 14, 1988. [Exhibits 9 (composite) and 10.] As of December 31, 1988, Respondent had submitted only seven (7) of the required twenty-four (24) monthly urinalysis reports. [Petition For Order To Show Cause, Exhibit 10, paragraphs 5-6.] On October 18, 1988, the Florida Bar's assistant director of lawyer regulation notified Respondent that her repeated failure to comply with the terms of her conditional admission would result in bar action to enforce the Court's order. Respondent was also asked to meet with the executive director of Florida Lawyers Assistance, Inc., within ten (10) days.[3] Respondent never called Florida Lawyers Assistance, Inc. [T. pages 49-54.]

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[2]Supreme Court of Florida Case No. 69,549.

In November 1988, Respondent wrote to the bar, offering to extend the term of her probation to compensate for the months during which she failed to undergo the Court mandated urinalysis. The bar agreed to a fifteen (15) month probation extension, informing Respondent by letter dated February 7, 1989. Respondent did not respond. The bar sent Respondent a second letter on February 27, 1989, informing her that it would regard her silence as to the bar's offer of an extended term of probation to be an acceptance of same. Respondent did not respond.[4] The bar received urinalysis reports from Respondent for the months of January, February, March and April 1989. No May 1989 report was received. On August 26, 1989, the bar received results of two tests performed in July 1989. No report was received for August 1989. Respondent's September report was received on October 16, 1989. Her October report was received on November 3, 1989. [Petition for order to show cause, Exhibit 10, paragraphs 7-15.] On October 27, 1989, the bar informed Respondent that it would file a petition for order to show cause on the occasion of her next missed or late urinalysis report. Respondent failed to submit a report November 1989, and submitted her December report late -- on December 15, 1989. [Exhibit 10, paragraphs 16-18.]

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[3]According to the final hearing testimony of Richard Smoak, The Florida Bar established Florida Lawyers Assistance, Inc., as a not for profit corporation designed to assist attorneys with alcohol and drug abuse problems, and to assist the bar in the monitoring of probation in cases in which substance abuse was involved. Mr. Smoak also testified that "most conditional admittees and all disciplinary probationers are required to enter into a rehabilitation contract with F.L.A, Inc...." [Final Hearing transcript page 49.]

[4]At final hearing, Respondent testified that she agreed to extend her probation for three additional years, through December 1992. [Final Hearing transcript page 159.]

The Florida Bar filed its first petition for order to show cause in January 1990. [Petition for order to show cause, Exhibit 10.] On March 28, 1990, the bar entered into a stipulation to extend Respondent's conditional admission for an additional three (3) years -- until December 31, 1992. [Exhibit 11.] The Florida Bar took a voluntary dismissal of its petition on the same day, and the Supreme Court of Florida ordered that the petition be dismissed on April 5, 1990[5]. [Exhibits 12 and 13, respectively.] Although the bar did not take issue with Respondent's repeated demonstration of financial irresponsibility in its petition for an order to show cause, it is significant to note that Roberts issued a worthless check to the Metro-Dade Police Department on December 22, 1987, and that she was briefly suspended from The Florida Bar in 1988-1989 for dues delinquency. [Exhibits 15-16.]

Less than two months after the Supreme Court of Florida dismissed the bar's petition for order to show cause, Respondent was arrested in Naples, Florida for the attempted purchase of cocaine. [Exhibit 14 (composite).] Although she filed a motion to dismiss the charge on October 26, 1990,[6] Respondent admitted at final hearing that she did attempt to purchase the cocaine. [T. page 164, lines 6-8 and page 182, lines 14-16.] On November 6, 1991, the Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida accepted Roberts' no contest plea to the charge of attempted purchase of a controlled substance (cocaine) in criminal case number 90-874-CFA.

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[5]Supreme Court of Florida Case No. 75,331

[6]See Exhibit 14(d).

Adjudication was withheld, and Roberts was sentenced to three (3) years of supervised criminal probation and 120 hours of community service. She was also ordered to pay her public defender's fees, and to submit to monthly and random urinalysis. [T. pages 151-152.]

On March 24, 1992, The Florida Bar filed its second petition for order to show cause, including a notice of determination of guilt, seeking an order which would find Respondent in contempt of court, revoke her conditional admission to The Florida Bar, and disbar her from the practice of law. On April 3, 1992, Respondent submitted a response wherein she acknowledged violating her bar probation but argued that the revocation of her admission to The Florida Bar, or disbarment, would be grossly disproportionate to her misconduct and would constitute a denial of due process of law. [Respondent's response to petition for order to show cause.] On the same day, Respondent also submitted a petition to terminate or modify suspension and asked the Court to appoint a referee to determine the appropriate discipline to be imposed against her. On April 6, 1992, the Supreme Court of Florida entered an order automatically suspending the Respondent based on her felony conviction by the Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida. On April 20, 1992, Respondent submitted a supplemental response to petition for order to show cause, and the bar submitted a reply on May 20, 1992. The Honorable Barry M. Cohen was duly appointed as referee in all pending matters by order of the Supreme Court of Florida on May 21, 1993.

Pursuant to timely notice, a final hearing was conducted on July 20, 1992, in West Palm Beach, Florida. Richard B. Liss appeared on behalf of The Florida Bar and John A. Weiss appeared on behalf of

Respondent. The Florida Bar offered seventeen (17) exhibits into evidence, all of which were received.[7] The bar also presented the testimony of Richard Smoak, a past and current member of the Florida Board of Bar Examiners, and that of Don Hyman, who was the assistant director of lawyer regulation for The Florida Bar as well as the bar's staff liaison with Florida Lawyers Assistance, Inc. Respondent offered no exhibits into evidence, but presented the testimony of Sylvia Hernandez (her criminal probation officer), friends Michael J. Olin and Santiago Pellegrini, and former paralegal student Kathy M. Serra. The Respondent also testified in her own behalf. Pursuant to the referee's direction at the conclusion of the final hearing, both parties submitted proposed reports of referee. On January 25, 1993, the referee submitted his report, finding Respondent guilty of: (1) attempting to purchase a controlled substance, a felony; and (2) violating her conditional admission by pleading no contest to the crime of attempted purchase of a controlled substance. The referee made no finding as to whether Respondent was (or had been) in contempt of Court, but found her guilty of the felony charge, and guilty of violating her conditional admission by pleading no contest to the felony charge. Based on the foregoing, the referee recommended that Respondent be suspended from The Florida Bar for thirty-six (36) months nunc pro tunc April 6, 1992. He further recommended that, after proving rehabilitation in reinstatement proceedings, Respondent should be placed on continued

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[7]See Complainant's Final Hearing Exhibit List, submitted to the Court on August 18, 1992.

probation, without regular urinalysis but subject to random testing, for three (3) years.

The Florida Bar filed its petition for review on February 26, 1993, seeking disbarment. The Respondent filed a cross-petition for review on or about March 1, 1993, seeking a suspension for eighteen (18) months, nunc pro tunc April 6, 1992, together with the recommended probation subsequent to reinstatement. On March 24, 1993, The Florida Bar filed a motion for enlargement of time in which to file its initial brief; the Court granted the motion on March 25, 1993.

II. STATEMENT OF THE FACTS

Gail Anne Roberts was born on September 25, 1954, in Key West, Florida. She graduated from Key West High School in 1972 and attended Florida Keys Community College from September through December 1974. From June 1975 through August 1976, she was enrolled at Western Carolina University. In September of 1976, she transferred to Florida State University, attending through June 1979. Roberts received a Bachelor of Arts degree from Florida State University in June 1978. In August of 1981, she entered South Texas College of Law. She received a Juris Doctor degree on May 9, 1984, and applied for admission to The Florida Bar and a Florida Bar exam on May 30, 1984. Roberts successfully completed parts A and B of the February 1985 General Bar Exam, and submitted a passing score from the August 1984 MPRE. However, the usual background investigation conducted by the Board of Bar Examiners revealed information which reflected adversely on Roberts' character and fitness to practice law. An extensive investigation ensued and the board determined that Gail Anne Roberts had been arrested for possession of a controlled substance and had a history of financial irresponsibility (demonstrated by delinquent credit card and student loan payments, and the issuance of worthless checks). During the investigative process, the board periodically requested additional information from Roberts. Due to her delays in responding to the board's request, the process took considerably longer than necessary. [Board of Bar Examiners' Report and Recommendation to the Court, Exhibit 7.]

On August 28, 1986, the board conducted an investigatory hearing, during which Roberts admitted recent use of controlled substances. [Board of Bar Examiners' Report and Recommendation to the Court, Exhibit 7.] At final hearing in this cause, under cross-examination, Roberts admitted that she had purchased and used both marijuana and cocaine prior to law school, during law school and even after law school, while she was awaiting admission to the bar. [T. pages 200-207.] As a result of the August 1986 investigative hearing, however, the Board of Bar Examiners determined to recommend that Roberts be admitted to the bar, in lieu of filing Specifications, if she would agree to a probationary admission, subject to certain terms and conditions. [Board of Bar Examiners' Report and Recommendation to the Court, Exhibit 7.] Had the board not extended its invitation of conditional admission to Roberts, or had she declined to accept it, the board would have been obligated, pursuant to the rules, to file Specifications in anticipation of a formal hearing on the subject of Roberts' character and fitness. In such a hearing, Roberts would have had the burden of proving her rehabilitation from past misconduct. [Testimony of Richard Smoak, T. page 26.] According to the final hearing testimony of Richard Smoak, a former Board of Bar Examiners member, the board began considering the option of conditional admission, in 1985-1986, because applicants were:

> "being treated in an all or nothing decision. They were recommended for admission or they were recommended to be denied admission, and often it was a very close call. There was concern that people with problems, with the potential for problems in the future, were being admitted because it was a close call, and there was also a concern that people who had had problems, but may do all right, were still being recommended to be denied because of their past problems. It was considered, then, that a conditional or probationary admission might be the solution in which people who

> previously may have been denied admission were admitted on condition pursuant to consent agreement with that person. They would then be in a support structure for monitoring... We felt that would accomplish fairness in one not having to recommend admission on people who might well develop problems and thus harm the public...

[Testimony of Richard Smoak, T. page 26.]

Roberts accepted the offer of conditional admission, signed a consent agreement, and was conditionally admitted to The Florida Bar on January 7, 1987. [Supreme Court Order of December 31, 1986, Exhibit 8 and T. page 150.]

The problems began immediately. By the second month of her conditional admission (February 1987), the bar had to send Roberts a letter to remind her of her duty to submit monthly urinalysis reports. Similar letters were required in March and October of 1987 and February, March, May, October and December of 1988. [Petition for order to show cause, Exhibit 10.] In December 1987, Roberts wrote a worthless check to the Sheriff of Dade County for service of process. She failed to redeem the check and, on January 20, 1988, was notified in writing of Dade County's intent to turn the matter over to the State Attorney for criminal prosecution. A copy of this warning letter was sent to the Dade County Bar Association. [Exhibit 15.] This repeated pattern of financial irresponsibility was also demonstrated by Roberts' suspension from the bar, during the term of her probationary admission, for dues delinquency during the 1988-1989 fiscal year. [Exhibit 16.] Further, despite her suspension for dues delinquency, Roberts admitted at final hearing that she continued to practice law during the term of her suspension, although she signed her dues

delinquency petition for reinstatement, under oath, claiming not to have practiced law during this period of time. [T. pages 223-226 and Exhibits 16 and 17.] Additionally, Roberts continued to neglect the timely submission of her Court mandated monthly urinalysis reports. While some reports were late, others were never submitted at all. By December 31, 1988, Roberts had only submitted seven (7) of the required twenty-four (24) urinalysis reports. [Petition for order to show cause, Exhibit 10.] In February 1989, the bar gave Roberts another chance to comply with the terms and conditions of her probationary admission, agreeing to extend her probation for an additional fifteen (15) months to allow her to make up for the months during which she provided no proof of abstinence from drug abuse. The bar put its offer in writing, in a letter to Roberts dated February 7, 1989. Receiving no answer, the bar wrote again. Roberts never bothered to respond, but sent urinalysis reports for January, February, March and April 1989. Despite this opportunity for a fresh start via extended probation, Roberts failed to submit urinalysis reports for the months of May and June 1989. In July, she had two tests done, both of which she submitted to the bar in August 1989; the bar gave Roberts a third chance, accepting the two reports, crediting one to June and one to July 1989. Notwithstanding the bar's emphatically cooperative attitude, Roberts failed to submit a urinalysis report for August 1989. Further, her September report was received in mid-October, and her October report was received in early November. [Petition for order to show cause, Exhibit 10.] Still, the bar provided Roberts with another warning. On October 27, 1989, a representative from the bar telephoned her and advised her that a continued pattern

of late-filed or missed urinalysis reports would result in the filing of a petition for order to show cause. Despite this fourth chance to amend her conduct, Roberts failed to submit a urinalysis report for November 1989, and submitted her December 1989 report late. [Exhibit 10.] At final hearing, Roberts admitted that she "was terrible" about getting her urinalysis tests done and her reports submitted to the bar in 1987-1988. [T. page 162, line 7.] With regard to 1989, she said she was in "substantial" compliance with her consent agreement and the resulting order of the Supreme Court of Florida, although "there were some misses." [T. page 163, lines 16-21.]

As a result of the many late-filed or completely missed urinalysis reports (despite the many opportunities the bar had extended to Roberts as an incentive for her to redeem herself and salvage her probationary admission), the bar filed its petition for order to show cause in January 1990. The prayer for relief clearly included the bar's request that Roberts' conditional admission be revoked. [Petition For Order To Show Cause, Exhibit 10.] After significant negotiation, the bar determined to offer Roberts a fifth chance to govern herself in accordance with the requirements of her consent agreement and earn full and unconditional admission to The Florida Bar. It was agreed that Gail Anne Roberts would remain on probation for an additional three (3) years, bound by the original terms and conditions. In reliance on this agreement and hopeful that Roberts would abide by it, the bar entered into a stipulation with her and took a voluntary dismissal of its petition. The Court ordered the dismissal of the bar's petition on April 5, 1990.

A little more than four (4) weeks later, shortly after midnight on May 12, 1990, Gail Anne Roberts was arrested in Naples, Florida for attempting to purchase cocaine. [Composite Exhibit 14.] According to Roberts' testimony at final hearing, she was living on Marco Island at the time of the arrest, with friends. [T. page 164.] She was unemployed, and allowed her friends to support her, paying them nothing for rent or food. [T. page 232.] She had moved to the Naples area (from Miami)[8] in order to "hopefully establish a relationship" with a man whom she identified only as "my boyfriend, Mark." [T. page 165, lines 4-5.] Roberts testified that her relationship with this individual ended at the time of her arrest, and she has "never spoken with him again, since then." [T. page 233, lines 6-12.] On the night of her arrest, Roberts was driving a 1989 black Honda Accord which was equipped with a cellular telephone and displayed a Dade County tag. [Exhibit 14(a); Walton deposition, page 12, lines 20-21; and Exhibit 14(c).]

According to her testimony at final hearing, Roberts began the evening of May 11, 1990, by fighting with Mark, at his home in Naples. Upset, she left Mark's home, and drove back to her friends' home on Marco Island, about a half-hour's drive away. Between 7:00 and 9:00 p.m. that evening, she went out with her friends to observe "happy hour" at a local bar, returning to their home at approximately 9:00 p.m. [T. page 166.] Immediately after returning to her friends' home, Roberts testified that she headed back to Naples, to see Mark. [T. page 167.] While traveling on Goodlette Road with her car window

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[8]See Final hearing transcript pages 216-217, 232-233.

down, Roberts encountered a man in a truck who engaged her in conversation. The man's name was Ron Steigerwald, and he was a confidential informant for the Collier County Sheriff's Office Narcotics Unit. [T. page 167.] When they reached a stoplight, Roberts and Steigerwald introduced themselves. Roberts told Steigerwald about her fight with Mark, and told him she was going out for drinks. [T. page 171.] Steigerwald contends that Roberts invited him along. [Steigerwald deposition, page 45, Exhibit 14(b).] Pulling off the road, the two continued their conversation. Steigerwald testified that Roberts told him that she was an attorney from Miami, and spoke about "partying". Steigerwald asked her what kind of "partying" she did -- Roberts mentioned cocaine, said she wanted to "get wasted", and asked Steigerwald whether he could get cocaine for her. Steigerwald agreed to try to "hook her up on the coke that she wanted," but said he wanted to go home first to shower and change. According to Steigerwald, Roberts "wanted to go right then and there. She wanted to purchase some coke right then and there, and she wanted to have a drink right then and there." Steigerwald insisted on going home first, and the two agreed to meet at approximately 11:00 p.m. that night, at a Naples bar called The Witch's Brew. Steigerwald left Roberts at that point, went home and telephoned Investigator Dean Walton, of the Collier County Sheriff's Office Narcotics Unit, to set up the drug transaction. [Steigerwald deposition, pages 45-50, Exhibit 14(b) and Walton deposition, pages 9-11, Exhibit 14 (c).][9] Roberts testified that

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[9]Roberts' version of the chronology of this same period occurs in the final hearing transcript, beginning at page 172.

after she left Steigerwald, she drove by Mark's home to see if he was there. He was not -- and she grew more "aggravated." Thereafter, she drove to The Witch's Brew, and ordered a drink. Once inside, Roberts noted that the place "was more like a restaurant than a bar and there were older people there and I felt a little uncomfortable." While she waited for Steigerwald, she was approached by a man whom she remembers only as "John"; he invited her to another nearby bar for drinks. Roberts accepted, and drove John to the bar, where they remained for a half-hour to forty-five minutes. When they left the second bar, John invited Roberts to continue drinking with him, and she accepted, provided that she was unable to locate Mark. So, with John still in her car, she drove by Mark's home to determine whether his car was parked outside. It was. Roberts drove back to The Witch's Brew to drop John off.

Shortly after Roberts entered The Witch's Brew parking lot, Officer Walton arrived, with Steigerwald.[10] Roberts testified that she saw Steigerwald in the parking lot, and he appeared "very anxious to see me." [T. pages 174-177.] In the time since she and Steigerwald had parted company, Officer Dean Walton (Steigerwald's supervisor) had arranged for an investigator to pick up placebo cocaine to sell to Gail Roberts. [Walton deposition, page 13.] Officer Walton testified that when he first saw Roberts, she was accompanied by a white male, with whom she was engaged in conversation. [Walton deposition, page 14.] As John exited her car, Steigerwald approached it. The motor was

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[10]The two were traveling in the same vehicle, driven by Officer Walton. [Walton deposition, page 13.]

running. He crouched down to speak with her through the drivers' side window. Roberts asked Steigerwald if he had been able to obtain the cocaine, and what the arrangement for pick-up was to be. Steigerwald asked Roberts to park her car, and speak directly to his friend, who was with him. Roberts never said that she was in a rush to get back to Mark's house, never refused to park her car and never said that she'd changed her mind. Pursuant to instructions from his supervisor, Steigerwald let Officer Walton handle the transaction from that point forward; he waited in the vehicle. [Steigerwald deposition, pages 57-58.] According to Office Walton, once Steigerwald told him that Roberts was still interested in making the purchase, he walked over to her vehicle, greeted her and said "I understand you are looking for some coke." Roberts told him that she had $40 to spend; Officer Walton told her that she could purchase "a half a gram" for that sum, but that he would have to go and get it.[11] Leaving The Witch's Brew parking lot, Office Walton met with Lieutenant Canady and Investigators Hartley and Thompson, who were acting as back-up and surveillance, and from whom he picked up the placebo cocaine. When he returned to The Witch's Brew parking lot, he found Roberts still there, waiting in the same parking spot. When Officer Walton approached her car window, she instructed him to get in the car, in the front passenger seat. Once inside the vehicle, Office Walton testified that he asked Roberts for the $40; she pointed to two (2) twenty dollar ($20) bills which had been arranged on the dashboard of

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[11]Officer Walton testified that he told Roberts that he lived "a short distance away" and would have to go get the cocaine "because the placebo cocaine had not arrived yet."

the car. Officer Walton retrieved the money and handed Roberts a clear plastic bag which contained the placebo cocaine. Once Roberts accepted the bag, Walton gave the pre-arranged signal for the arrest team to move in. As the team approached Robert's car door, she dropped the plastic bag between the two bucket seats of her car. Officer Walton immediately reached between the seats and retrieved it. Thereafter, Gail Anne Roberts was placed under arrest. [Walton deposition, pages 14-15.] Before she was transported to the Collier County jail, however, Roberts asked to speak with Officer Walton again. When he agreed to speak with her, Roberts told him that she had attempted to buy cocaine because she had had a fight with her boyfriend and wanted to get "messed up." She also mentioned that she once had a cocaine problem, but had not used any since about three (3) years ago. She further told Officer Walton that she was on probation for ten (10) years for an arrest which resulted when her ex-husband was caught transporting a pound of marijuana. Finally, she told the officer that she was required to submit to urinalysis, that she was an attorney from Miami and that was concerned about disbarment as a result of her arrest. She suggested to Officer Walton that her arrest was "little shit" and that she could make a phone call to Miami to get "the big guys."[12] Thereafter, Roberts was taken to the Collier County jail, where she was booked for attempting to purchase cocaine. [Sheriff's Office of Collier County Offense/Incident Report, Exhibit 14(a).]

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[12]Roberts disputes Officer Walton's testimony. See final hearing transcript pages 185-186.

On October 26, 1990, Roberts filed a Motion To Dismiss the criminal charges against her in the Circuit Court of the Twentieth Judicial Circuit, in and for Collier County, Florida. [Exhibit 14(d).] Her defense attorney deposed Officer Walton and Ron Steigerwald on October 25, 1990 and October 30, 1990, respectively. [Exhibits 14(c) and 14(d).] The state filed a traverse on November 2, 1990. [Exhibit 14(e).] As a result of the foregoing, plea negotiations ensued and Roberts entered a no contest plea to the original criminal charge, on November 4, 1991. The plea was accepted and criminal adjudication was withheld. Roberts was placed on supervised criminal probation, for a period of three (3) years. She was required to report to her probation officer monthly, at which time she was also tested for cocaine and marijuana use, via urinalysis. [Exhibit 14(f) and T. pages 64-65.] Roberts' first such test was administered on the first day of her probation: November 4, 1991. On that date, Roberts discussed her bar probation with her criminal probation officer, Sylvia Hernandez, and asked Hernandez to send copies of her monthly criminal probation urinalysis reports to The Florida Bar. Hernandez agreed, and on December 5, 1991, Roberts signed a release form and gave Hernandez the bar's address. She told Hernandez that she had discussed the issue with somebody at The Florida Bar, and had been told that the bar would accept this arrangement in lieu of requiring a separate monthly urinalysis report. [T. pages 66-67, 69-70.] In fact, Roberts did not make such arrangements with anyone at The Florida Bar nor did anyone at the bar approve such arrangements. [T. pages 48-49, 212, 214.] Nevertheless, beginning on December 16, 1991 (the date on which the bar received Roberts' November 1991 urinalysis report) the only

urinalysis reports received by the bar were those submitted by the State of Florida, Department of Corrections, Probation and Parole Services. [T. pages 47-48.] Pursuant to Roberts' consent agreement, she was to be "subject to a reasonable number of **unscheduled** (emphasis provided) urinalysis tests during the term of [her] probation." [Exhibit 6.] Pursuant to the court order conditionally admitting her to the bar, Roberts was to have her "urinalysis tests... administered by a qualified physical or medical laboratory licensed by the State of Florida." [Exhibit 8.] Based on the testimony of Sylvia Hernandez, it is clear that the testing method used by the Department of Corrections, Probation and Parole Services was inferior to the testing method required by Roberts' consent agreement and the Supreme Court's order permitting her conditional admission to The Florida Bar.[13] The Florida Bar did not send Roberts a written expression of objection to her State of Florida Department of Corrections, Probation and Parole Services urinalysis reports.

Gail Anne Roberts was suspended from The Florida Bar on April 6, 1992, pursuant to the bar's notice of determination of guilt for the

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[13]Sylvia Hernandez testified that the urinalysis procedure utilized by her office involved a slide/chemical indicator technique. A specimen of collected urine was placed on a slide, and Florida Department of Corrections, Probation and Parole employees would add drops of three different chemicals to the slide, mix them, and wait for a minute or less to read the results. [T. page 66.] Hernandez admitted that neither she nor her colleagues have any expertise in drug testing, and didn't know whether blood testing is more accurate than urinalysis. [T. page 75.] Further, she admitted that Roberts always knew precisely when her urinalysis would be administered [T. pages 73-75], that cocaine only remains in the body for 72 hours [T. page 72, lines 22-23], and that Roberts could have used cocaine between her monthly tests, and been undetected [T. page 75, line 3].

offense of attempting to purchase cocaine. Although Roberts testified that such suspension was "pursuant to consent,"[14] the Court order which suspends her makes it clear that hers was an automatic suspension, pursuant to 3-7.2(e) of the Rules Regulating The Florida Bar.

After her arrest, but before she entered her no contest plea, Roberts accepted an attorney position with HRS in Cape Coral, Florida. Her duties included the prosecution of child abuse cases. Although Roberts was questioned, during her pre-employment interview, about criminal convictions, she chose to narrowly construe the questions posed to her and elected not to tell HRS about her arrest. When her background check and fingerprint card identified her as the criminal defendant in a pending drug case in Naples, she resigned her position. [T. pages 234-236.] After she left HRS, Roberts returned to her parents' home in Key West for a time, then moved to Fort Lauderdale, where she accepted the position of director of the paralegal department at Keiser College. At the time of final hearing, Roberts was still employed in that position. Although she held herself out as a member of The Florida Bar when she accepted the paralegal director position, Respondent never told her employers at Keiser College that she was arrested on a drug charge, that she entered a no contest plea to that charge, and that she has been suspended from The Florida Bar. [T. pages 151, 236-241.]

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[14]See final hearing transcript, page 151, lines 2-3.

SUMMARY OF THE ARGUMENT

Gail Anne Roberts was not fit to be unconditionally admitted to The Florida Bar when she first applied in May of 1984. In her application for admission, she engaged the Board of Bar Examiners for more than two years in a protracted background investigation which was frequently stalled and delayed by Robert's own failure to submit timely responses to the board's requests for additional information. When the board discovered that Roberts had been arrested on drug charges and had a history of financial irresponsibility, it scheduled and conducted an investigative hearing in August 1986. During this hearing, Roberts admitted that she had a history of drug abuse. At the final hearing conducted in this cause, however, Roberts admitted that she had used marijuana and cocaine prior to law school, during law school, and even after law school. Indeed, Gail Roberts continued to use cocaine while her bar application when pending -- even as she awaited the board's determination as to her character and fitness. Nevertheless, because she had no criminal convictions and because she characterized herself as reformed and rehabilitated, the board determined that Gail Roberts might be a good candidate for conditional admission. The board was currently in the process of refining its position regarding this innovative concept, in anticipation of joining the Florida Bar in filing a joint proposal for an amendment to the Rules of the Supreme Court of Florida Relating to Admissions to the Bar, seeking the creation of a conditional admission status for bar applicants with problems in the past, but who showed promise for the future.

A consent agreement was drafted and executed, the board filed its report and recommendation, and the Court conditionally admitted Gail Anne Roberts to The Florida Bar, subject to specific terms and conditions, including a three-year term of probation. This conditional admission was granted to Roberts with the clear and duly noticed understanding that failure to comply with the mandated conditions could result in the revocation of her admission and disbarment. Within two months, Roberts violated her probation by failing to make timely submissions of her required monthly urinalysis reports. Over the next two (2) years, she frequently submitted her test results late, or didn't bother to submit them at all. The Florida Bar reminded her, pleaded with her, and extended her probation for fifteen months to give her another chance at compliance. In 1987, she wrote a worthless check to the Dade County Sheriff's office for service of process, and she was suspended from the bar in 1988-89 for dues delinquency. While she was suspended, she practiced law and later lied about it on her petition for reinstatement. Gail Anne Roberts had not changed -- she was not reformed and she was not rehabilitated. But now she was admitted to practice law.

The Florida Bar took great pains to help Roberts get back on track. As a last-ditch effort, after being forced to file a petition for order to show cause, the bar entered into a stipulation agreeing to extend Roberts' probation for a second time -- this time for an additional three (3) years. The bar took a voluntary dismissal of its petition; the Court ordered it dismissed on April 5, 1990. A little more than four weeks later, Roberts was arrested trying to buy cocaine.

Gail Anne Roberts was not fit to practice law at the time she applied for admission to The Florida Bar. She was financially irresponsible and she was a drug abuser. Over the term of her five and a half year probation, she has demonstrated a lack of candor and a haughty disrespect for the law and for the bar. She asks for the privilege of admission to the bar, to serve as an officer of the Court. Yet, she has refused to obey the Rules Regulating the Florida Bar as well as the law. Further, she has wasted the limited time and the sincere efforts of the board and the bar as they labored, in tandem and independently, to offer her every opportunity for consideration, reformation and rehabilitation.

This case is of particular importance because it is one of first impression -- not only in Florida, but also in the four (4) other states which currently have conditional and/or probationary bar status.[15] This Court's determination will also provide guidance and insight for states which are or will consider amending their rules to create conditional status in the future. Indeed, as Erica Moeser, Esq., the Director of the Wisconsin Board of Bar Examiners and the Co-Chair of the American Bar Association Admission Committee's Section on Legal Ethics and Admissions has said, "other states have been batting the concept of conditional admission around. The chief drawback is the lack of security and certainty as to what the sanctions are likely to be if the conditionally admitted attorney falls into recidivism."

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[15]The bar's research, at the time this brief was filed, indicated that four (4) other states currently have conditional and/or probationary bar admission: Arizona, New Jersey, Oregon and Texas.

In conditionally admitting Gail Anne Roberts, The Supreme Court of Florida, The Board of Bar Examiners and The Florida Bar took a bold step into a brave new world -- and a blind leap of faith. Roberts has proven herself unworthy. In the face of nearly constant probation violations over a five and a half year period (any one of which would have supported a finding of contempt), The Florida Bar reminded, warned, threatened and settled with Gail Roberts, over and over again, in hopes of helping her to help herself. The bar gave her five and a half years to prove herself fit; Gail Roberts spent every minute of it proving her complete lack of fitness.

In his report, the referee said that a three (3) year suspension would be an appropriate sanction. This is no more than a fully admitted attorney would receive for a felony conviction. Gail Roberts' sanction must be more encompassing, as she is only conditionally admitted. Conditional admission must be interpreted to mean what it is -- admission contingent upon the fulfillment of conditions. When the conditions are not fulfilled, the admission must be revoked. Blurring the lines defeats the purpose. The focus must be sharp, and the sanction must be clear. Gail Anne Roberts' conditional admission should be revoked, and she should be disbarred from the practice of law.

ARGUMENT

I. THE REFEREE ERRED BY FAILING TO VIEW ROBERTS' MISCONDUCT IN THE LIGHT APPROPRIATE TO HER STATUS AS A CONDITIONALLY ADMITTED MEMBER OF THE FLORIDA BAR.

The fundamental tenet of The Florida Bar's argument in this case is that it involves a consistent pattern of misconduct committed by a **conditionally admitted** member of the bar. If Gail Roberts were a fully admitted attorney, the cases cited by the referee as "analogous drug offenses," with discipline ranging from a public reprimand to a one-year suspension, would be relevant and persuasive. This is not a drug case. Because Gail Roberts was precluded from full admission due to her failure to prove good character and fitness at the outset, this case bears some of the characteristics (and imposes the Respondent's burden of proof) of an admissions case.[16] However, it is not an admissions case. Because Gail Anne Roberts was only conditionally admitted to the bar, never having cleared the hurdle of good character and fitness, none of her subsequent misconduct can stand alone nor can it be punished independently. Rather, it is all cloaked in the encompassing shroud of her probation. All subsequent misconduct and all resulting sanctions must be measured against the yardstick of the terms and conditions of her conditional admission. By this standard, an offense committed by a fully admitted attorney which is normally punishable by a suspension, may well require the disbarment of a conditionally

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[16] See Florida Board of Bar Examiners Re R.D.I., 581 So. 2d 27 (Fla. 1991), where the Court reiterated that "it is the applicant's burden to satisfy the Board of his or her moral standing (citation omitted)."

admitted member, especially if the misconduct is of the same kind that barred full admission to begin with. The referee in this case failed to see that distinction. This is clearly demonstrated by the only two (2) findings of guilt set forth in his report: (1) that Roberts was guilty of attempting to purchase a controlled substance, and (2) that she was guilty of violating her conditional admission. These were not the issues before the referee; indeed these matters were not even in controversy. Rule 3-7.2(b) of the Rules of Regulating The Florida Bar makes it clear that Roberts' no contest plea constituted "conclusive proof of guilt of the criminal offense(s) charged for the purpose of these rules." Further, Roberts admitted repeatedly, in her pleadings and in her testimony, that she had violated the terms of her probation. Missing the focus of this case completely, the referee treated Roberts' conditional admission status as an aggravating circumstance instead of the central trial issue. In paragraph 36, dealing with "Recommended Discipline," Judge Cohen says: "But for Respondent's conditional status, I would have recommended a suspension in the range of 91 days to 6 months."

The Board of Bar Examiners' purpose in attempting to create conditional admission status is a noble one. By implementing this policy as a sort of revocable trust, the board hoped it would be able to avoid the wholesale denial of Bar admission to all applicants who had experienced, in the past, psychological, alcohol or substance abuse problems. In its petition to the Court, the Board of Bar Examiners expressed its rationale in requesting this new admission status:

> The Florida Board of Bar Examiners is seeing an increasing number of applicants with psychiatric,

> drug and alcohol-related problems. Based on expert testimony heard by the board, it is clear that significant drug and alcohol-related problems are not isolated self-limiting episodes but rather a constant struggle throughout an individual's life to abstain from these substances. The fact that alcoholism is a progressive disease which if left unchecked will physically disable the patient at some point makes evaluation of the problems and follow-up extremely important. Drug addiction has similar effects.

In Re: Petition of Florida Board of Bar Examiners for Amendment of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar, See Exhibit 2.

Gail Roberts was among the first group of bar applicants in Florida to be granted conditional admission. Her qualifying problem was drug abuse. As the board pointed out in its petition to the Court, this is the sort of problem that usually becomes more of a life-long struggle than a self-limiting episode. The referee failed to see this. Instead, he discounted the facts and circumstances of Gail Roberts' conditional admission, in part because he determined that she should be rewarded for her candor in revealing her drug abuse history to the Board of Bar Examiners. Thereafter, he found her pre-application drug arrest to be irrelevant, overlooked the late missing urinalysis tests during her probation, and completely ignored the practical implications of the wholly inadequate testing methods employed by the Florida Department of Corrections, Probation and Parole Services. Further, the referee found Roberts to be in "substantial" compliance with her Court-mandated monthly urinalysis since 1989 ("The only material violation of her probation is her attempt to purchase cocaine."), and decided that her final hearing character witnesses were persuasive (even though they testified that they did not even know the circumstances of the case until shortly before the date of trial). Additionally, the referee

found that the circumstances which led to Roberts' arrest on the cocaine charge were "exceptional" and were caused by "emotional turmoil, impaired judgment due to excessive alcohol consumption and an overzealous ...confidential informant." Yet, the referee made no correlated finding that Roberts was publicly intoxicated or that she was driving under the influence of alcohol. This is particularly noteworthy when one considers that Roberts is five feet, four inches tall, weighs 110 pounds, and testified that she had approximately ten (10) drinks on the night of May 11, 1990. [Exhibit 14(a), T. page 185, line 5.] Finally, Judge Cohen found that Roberts had experienced interim rehabilitation, since May 1990, because she was working, because she had consistently tested drug-free according to the Department of Corrections, Probation and Parole Services' crude and precisely scheduled field tests, and because she was currently pregnant. Under any standard, these are not indicators of a drug abuser's rehabilitation. They certainly do not constitute proof of a conditionally admitted lawyer's rehabilitation. True rehabilitation is of the sort demonstrated by the applicant in Florida Board of Bar Examiners Re: Richard Elliot Kwasnik, 508 So. 2d 338 (Fla. 1987), where the applicant took his burden of proving fitness and character seriously, and selflessly volunteered his services at a Legal Aid Society office.

By treating Gail Roberts as a fully admitted member of The Florida Bar, the referee vitiated the purpose of conditional admission, misconstrued Roberts' misconduct, and misapplied the standards of discipline. By recommending a three year suspension for her misconduct, the referee imposed upon her the exact same sanction as a fully admitted member of the bar would receive for single felony

conviction. See Rule 3-7.2, Rules Regulating The Florida Bar. Gail Anne Roberts was not fully admitted. She still had the burden of proving that she was fit to practice law. Because she was unable to meet this burden at the time of her application to the bar, it did not simply disappear of its own accord. It awaited her renewed efforts during the term of her first three (3) year probation, then during the term of her fifteen month extension, and finally, during the term of her second three-year probation.

If meeting her burden of proof was problematic for Gail Roberts prior to May 12, 1990, her arrest on a drug charges during the pre-dawn hours of that fateful day made it impossible. Accordingly, the Supreme Court of Florida should preserve the viability and purpose of conditional admission to The Florida Bar by revoking Gail Anne Roberts' conditional admission, and disbarring her from the practice of law in this state.

II. THE REFEREE ERRED BY FAILING TO MAKE SPECIFIC FINDINGS OF FACT REGARDING RESPONDENT'S CONSISTENT AND CARELESS DISREGARD FOR THE TERMS OF HER PROBATION THROUGHOUT THE TERM OF HER CONDITIONAL ADMISSION: FROM JANUARY 7, 1987 THROUGH THE DATE OF FINAL HEARING ON JULY 20, 1992.

The referee erred in his determination that The Board of Bar Examiners' findings relative to Gail Roberts' pre-application history were irrelevant to this cause because they had not "been tested in an evidentiary hearing." Because of this fundamental error, all of the findings of fact that flow from it are flawed. By finding that "no negative inferences may be drawn as a result of that arrest," the referee discounts the board's judgment in denying Gail Roberts full admission, dismisses the issue of her unresolved burden of proof regarding character and fitness, and diminishes the very purpose of conditional admission. Because all of his reasoning flowed from that flawed premise, the referee was able to find that Gail Roberts "was not diligent" in obtaining monthly urinalysis reports and forwarding them to the Bar [Finding of Fact 11], instead of finding that she consistently, willfully and contemptuously refused to follow the clear and unequivocal order of the Supreme Court of Florida. By subscribing to this flawed reasoning, the referee was able to find that Roberts "had a reasonable, good faith belief that her drug testing being conducted by her probation officer was acceptable to The Florida Bar" [Finding of Fact 16], instead of finding that Roberts, as an attorney, either knew or should have known that the Department of Corrections, Probation and Parole Services' urinalysis testing procedure and test scheduling practice was woefully inadequate to meet the rigid standards expressly

and purposely set for her, as a monitoring device during the term of her probation, by the Supreme Court of Florida. It is this same misguided reasoning which permitted the referee to find that "Respondent has been in substantial compliance with her monthly testing since October 1989" [Finding of Fact 24], and that "Respondent has never had a positive test for drugs at any point in time during her conditional admission" [Finding of Fact 25]. What the referee has missed, by refusing to see that Gail Roberts has never proven her character and fitness, is that the burden of proof in these matters is on her, and not the bar. Accordingly, "substantial compliance" was not nearly enough during the term of her probation, when she had a clear obligation to meet <u>every</u> requirement, completely and consistently. Likewise, there can be no accurate finding that Roberts has been drug free for the entire term of her conditional admission when there have been large and small blocks of time during which she simply refused to submit a test result, or when she submitted the result of a test which she had the power to schedule to her convenience, and which was, therefore, inadequate to meet the express standards set by the Court.

More damning than her non-compliance with the terms of her conditional admission, over five and a half years, is the haughty attitude of disdainful disregard with which Gail Roberts accomplished this. Until the final hearing in this case, there were no apologies, no expressions of regret and remorse, no wringing of the hands and promises of fresh starts and new tomorrows. The bar would warn her, threaten her, and ultimately give her another chance to redeem herself. Gail Roberts, unfazed and unaffected, would fail to submit her urinalysis report the very next month. The referee construes this

leniency on the part of The Florida Bar in strict legal terms, as a sort of waiver of the bar's right to enforce the Court order granting Roberts' conditional admission. There is no right to waive, as it is the bar's duty to enforce the order, and Roberts' obligation as a Florida attorney to comply with it. Further, the bar is cognizant of and was guided by the Court's goal of reformation and rehabilitation in cases involving drug abuse and/or drug addiction, as discussed in The Florida Bar v. Wells, 602 So. 2d 1236 (Fla. 1992).

Because this is a case of first impression, there are no cases directly on point. Further, there is no abundance of bar probation violation cases; usually attorneys (even those who are fully and unconditionally admitted) heed warnings from the Court when they receive them. However, some guidance is provided by cases which have similar principles at issue, even if the fact patterns are dissimilar. In The Florida Bar v. Greene, 589 So. 2d 281 (Fla. 1991), The Florida Bar filed a petition for rule to show cause alleging that Green had engaged in the practice of law while he was suspended. The referee recommended that Greene be found in contempt of court, that he be assessed a fine, and that his suspension be extended for an additional two (2) years. Upon review, the Court disbarred him:

> We agree with the Bar that further suspension of Greene would be fruitless. Greene has a long history of disciplinary violations (citations omitted). He has completely disregarded lesser forms of discipline imposed by this Court. He has failed to abide by conditions of probation...

Greene, at 282.

The Court is faced with the same dilemma in the instant case. Gail Roberts has been conditionally admitted, warned, threatened, had her probation extended, -- and she is now suspended. Simply allowing

this suspension to stand would have the same non-effect as another suspension in Greene. If the Court chooses to diminish this suspension in any way, it would, in effect, be rewarding Roberts for her persistent disobedience to the bar as well as to the Court. Another case which addressed the issue of violation of a Court order is The Florida Bar v. Bauman, 558 So. 2d. 994 (Fla 1990). Like Greene, Bauman defied the Court's order suspending him, and engaged in several acts constituting the practice of law. In disbarring him, the Court said:

> Respondent argues that "[d]isbarment is an extreme penalty and should only be imposed in those rare cases where rehabilitation is highly improbable." The Florida Bar v. Davis, 361 So. 2d 159, 161 (Fla. 1978). We can think of no person less likely to be rehabilitated than someone like respondent, who willfully, deliberately, and continuously, refuses to abide by an order of this Court. We agree with the Bar that disbarment is appropriate.

Bauman, at 994.

Although the facts are different, as is the misconduct under review, Roberts' response and attitude to her Court order exactly mirrors the willful, deliberate and continuous refusal the Court found so distasteful in respondent Bauman.

In another case, The Florida Bar v. Liroff, 582 So. 2d 1178 (Fla. 1991), drug abuse and/or addiction was an issue. In that case, a fully admitted attorney who was also a licensed dentist received a private reprimand for indulging his addiction to a synthetical opiate cough syrup. He was placed on probation and ordered to undergo drug treatment. A little more than two (2) years later, the Court disciplined him again for failure to fulfill the conditions of his substance abuse program. Two (2) years later, Liroff was before the Court a third

time, again charged with failure to remain in compliance with the terms of his probation. In considering Liroff's misconduct, the Court had the following to say about attorneys and drug abuse and/or addiction:

> ...the standard in cases of this type is not merely that the attorney presently suffers no addiction. Serious impairment -- perhaps resulting in serious harm to a client -- can occur in a single episode, without the attorney ever actually becoming addicted again... More to the point, an attorney previously addicted to impairing substances is under a continuing obligation to comply with the terms of probation imposed by this Court, including good faith compliance with treatment programs administered by FLA. Even a single episode of substance abuse is a violation of this obligation, whether or not renewed "addiction" results. Impaired attorneys are a serious problem that this Court takes very seriously.

Liroff, at 1179-1180.

While there is no evidence that Roberts was ever addicted to drugs, the Court's posture on drug abuse and impaired attorneys is relevant to the instant case.

Gail Roberts' consistent and careless disregard for the terms of her probation, compounded by her subsequent drug arrest, her lack of candor with the Bar (regarding her practice while suspended), her lack of candor with her employers (regarding her arrest and current status with the bar), and her lack of candor with her final hearing character witnesses (about the nature of the proceeding and her criminal conduct) speaks volumes about her character and fitness. As this Court has said repeatedly, the practice of law is a privilege, not a right. The Florida Bar v. Jahn, 559 So. 2d 1089 (Fla. 1990); The Florida Bar v. Della-Donna, 583 So. 2d 307 (Fla. 1989). The Court reviewed the

price which this privilege extracts from members of the bar in The Florida Bar v. DeBock, 512 So. 2d 164 (Fla 1987):

> Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential afterwards. Whenever the condition is broken the privilege is lost.

Debock, at 166.

While Roberts' failure to abide by the terms and conditions of her conditional admission was damaging enough, her no contest plea pierced her claim of good character and fitness like a lance, as did her lack of candor. These additional acts of misconduct are all relevant to the Court's consideration of Roberts' fitness to practice law. The Florida Bar v. Lancaster, 448 So. 2d 1019 (Fla. 1984). These additional acts, viewed as a whole, also constitute cumulative misconduct of a nature similar to the misconduct which barred Roberts' unconditional admission to begin with. Accordingly, this misconduct warrants an even more severe discipline than dissimilar cumulative misconduct would. The Florida Bar v. Bern, 425 So. 2d 425 (Fla. 1982); The Florida Bar v. Williams, 604 So. 2d 447 (Fla. 1992).

The referee erred at the outset by dismissing the Board of Bar Examiners' questions and concerns about Gail Roberts' fitness and character because they were untried and untested. Of course, the only reason that these questions and concerns were untried and untested is because the board elected to give Gail Roberts an unearned chance -- offering her conditional admission to the bar instead of filing Specifications against her. Once the referee committed his initial error, all of his subsequent findings of fact, as well as his conclusions of law,

were necessarily wrong. One must begin in this case at the beginning: with Gail Roberts' conditional admission, her consent agreement, and the Court order authorizing her admission. All subsequent misconduct must be viewed in the context of what happened before.

Gail Roberts had countless chances to reform and rehabilitate herself over five and a half years. She was able to open and close law practices, forge friendships and romances, move around the state, accept and resign employment, defend against a felony charge, and decide to have a child. Clearly, she is a bright and capable woman. The Court must conclude then, that Gail Anne Roberts did not comply with the terms and conditions of her conditional admission, from January 7, 1987 to July 20, 1992, because she chose not to. Either she did not regard it as important, or she did not care about bar admission enough to earn it. Whatever the reason, it is reason enough to revoke her conditional admission, more than six (6) years after she was conditionally admitted, and disbar her from the practice of law.

III. THE REFEREE ERRED IN WEIGHING THE AGGRAVATING AND MITIGATING CIRCUMSTANCES PRESENTED.

In determining aggravating and mitigating circumstances in this case, the referee elected to depart from Florida's Standards for Imposing Lawyer Sanctions, as approved by The Florida Bar's Board of Governors in November 1988. Instead, he made his own determinations regarding aggravation and mitigation, drawing from his findings of fact in this case.

While the bar does not take issue with the two aggravating factors the referee cited, the bar finds additional aggravation where the referee did not. Specifically, the bar finds additional aggravation in the following: Roberts' failure to comply with the terms of her conditional admission, despite numerous opportunities extended by the bar; Roberts' willful, deliberate, and continuous lack of cooperation with the bar throughout the pendency of her conditional admission; Roberts' admission that, on the night of May 11, 1990, she not only attempted to purchase cocaine, but was also publicly intoxicated and drove an automobile while under the influence of substantial quantities of alcohol; Roberts' issuance of a worthless check for the service of process in a legal matter in which she represented a client; Roberts' suspension for dues delinquency during 1988-89; Roberts' lie to The Florida Bar about her continued practice during the term of her suspension; Roberts' lack of candor to her final hearing character witnesses; and Roberts' lack of complete candor to HRS and Keiser College about her arrest and current status with the bar.

The bar does take issue with the mitigating factors the referee cited, and vigorously disputes each one of them. Initially, the referee asserts that Roberts' conduct had no impact on her clientele. This is patently wrong, as Roberts' admonishment for minor misconduct in 1991 arose out of a client's complaint to The Florida Bar. The referee's claim that all of Roberts' drug tests were negative is also misleading; while it is true that no tests came back positive for drug use, it is also true that Roberts simply failed to submit many of her required urinalysis reports. It is also true that Roberts was able to control the dates and times when she presented herself for the administration of her Department of Corrections, Probation and Parole Services urinalysis tests. Further, the tests administered by the Department were crude, inferior field tests. Adding to the tests' intrinsic lack of reliability, they were also administered by poorly trained non-professionals. Under cross-examination at final hearing, Roberts' parole officer admitted that Roberts could easily have masked continued drug use while under the supervison of the Department of Corrections, Probation and Parole Services.

The bar also challenges the referee's claim of mitigation arising out of what he found to be Roberts' regular compliance with the bar's drug-testing procedure since October 1989. As was previously stated, Roberts' October 1989 urinalysis report was not received until November 3, 1989. She failed to submit a November 1989 report at all, and her December 1989 report was also late.

Perhaps the most shocking of the referee's mitigating circumstances is his claim that the events of the night of Roberts' arrest were exceptional. Nothing could be further from the truth.

Given the facts of Roberts' drug abuse from her college days forward, through law school, after law school, even while she awaited bar admission, the events of that evening were typical. Rather than viewing this whole scenario as giving rise to mitigation, the referee should have found Roberts' arrest and conviction to be an aggravating factor.

Similarly, the bar found nothing mitigating in the quality of the testimony presented by Roberts' character witnesses, none of whom were fully versed on the scope and nature of her misconduct, even on the day of her final hearing. Further, the bar found nothing redeeming in Roberts' candor to the Board of Bar Examiners in August 1986. Telling the truth was her duty. It should be noted, however, that Roberts failed to tell the board the whole truth, choosing to omit the facts relevant to her most recent cocaine use while she was involved in the bar application process.

Finally, interim rehabilitation is not appropriately considered in an attorney disciplinary proceeding. The Florida Bar v. Routh, 414 So. 2d 1023 (Fla. 1982). Even if it were, however, the ability to avoid testing positive for drug use (utilizing an inferior field test which the subject herself scheduled, to her convenience), a job, and a pregnancy do not constitute interim rehabilitation pursuant to the established standards of The Florida Bar.

IV. REVOCATION OF CONDITIONAL ADMISSION OR DISBARMENT IS THE APPROPRIATE SANCTION FOR A CONDITIONALLY ADMITTED MEMBER OF THE BAR WHO HAS CONSISTENTLY AND WILLFULLY FAILED, OVER A FIVE AND A HALF YEAR PERIOD, TO COMPLY WITH THE TERMS AND CONDITIONS OF HER CONDITIONAL ADMISSION.

This case is before the Court for a determination as to the appropriate discipline to be imposed. Using the standard of The Florida Bar v. Pahules, 233 So. 2d 130 (Fla. 1970), as cited by the referee in his report, the judgment rendered must be fair to society, fair to the respondent, and severe enough to deter others who might be prone or tempted to become involved in like violations.

In the case of Gail Anne Roberts, disbarment must be the sanction, as every other method and sanction has been tried -- to no avail. Gail Roberts was conditionally admitted, and she violated the terms of her admission. She was then placed on an extended probation, and she violated its terms and conditions as well. She has now suffered an automatic felony suspension, but she argues that it is too harsh and violates her due process. Instead, she asks this Court to reward her for the five and a half years she spent disobeying the consent order by which she was conditionally admitted to the bar, and decrease the term of her suspension, in keeping with discipline imposed up on fully-admitted attorneys with no history of cumulative misconduct. Gail Anne Roberts is asking for the moon and the stars because she has no sense of responsibility, and because she has nothing to lose. The Florida Board of Bar Examiners, The Florida Bar and the innovative concept of conditional admission have too much to lose. Gail Anne Roberts must be disbarred.

This Court has previously considered the question of what discipline is appropriate for an attorney who simply refuses to be educated by the disciplinary efforts of the Court and the bar. In The Florida Bar v. Santiago, 521 So. 2d 1111 (Fla. 1988), an attorney ignored a subpoena, refused to respond to the Court or the bar, and disregarded an order of suspension. The Court disbarred him, saying "We... reject the proposition that disciplinary proceedings and orders of this Court can be ignored... ." In The Florida Bar v. Wilson, 425 So. 2d 2 (Fla 1983), an attorney had been engaged in illegal conduct involving drug trafficking. In weighing the appropriateness of suspension as opposed to disbarment, the Court stated:

> ...suspension and disbarment may very well have a similar effect toward the correction of a convicted attorney's anti-social behavior, but disbarment insures that respondent could only be admitted again upon full compliance with the rules and regulations governing admission to the Bar.

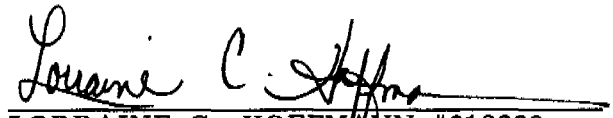
Wilson, at 3.

Gail Anne Roberts was been given every opportunity to reform and rehabilitate herself while she still had the privilege of practicing law; she has either failed to do so, or she refuses to do so. Now, the Court must protect the public, preserve the integrity of conditional bar admission, and deter others who would willfully ignore the mandate of the Supreme Court of Florida. Gail Anne Roberts' conditional admission to The Florida Bar should be revoked, and she should be disbarred. Thereafter, should she elect to seek admission to The Florida Bar in the future, she would only gain admission upon full compliance with the rules and regulations governing admission to the bar, and upon proof of character and fitness.

CONCLUSION

In this case, Gail Anne Roberts has engaged in conduct which is self-serving, illegal and disrespectful of the legal profession and its institutions. She has taken wicked advantage of a noble policy which was implemented by the Board of Bar Examiners and The Florida Bar, with the consent and authority of the Supreme Court of Florida, to allow the fair consideration of bar applicants who had experienced specific problems in the past, but had taken significant steps to reform and rehabilitate themselves for the future. Gail Anne Roberts was neither reformed nor rehabilitated. She tested the parameters of the conditional admission policy, as well as the patience of the bar, for more than five years. While she was a member of the bar, she proved herself to be unfit to practice law, and unworthy of the privilege of full admission. She must not be rewarded for her misconduct with unconditional admission and a brief suspension. Rather, her conditional admission should be revoked, in accordance with her consent agreement, and she should be disbarred from the practice of law in Florida.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief of The Florida Bar has been sent by regular U.S. mail and by certified mail, return receipt requested, to John A. Weiss, Esq., attorney for Respondent, 101 North Gadsen Street, Tallahassee, Florida 32301, on this 26th day of April, 1993.

LORRAINE C. HOFFMANN