IN THE SUPREME COURT OF FLORIDA

Supreme Court Case
No. 90,022

IN RE: PETITION FOR REINSTATEMENT OF GAIL ANNE ROBERTS

_____/

Amd.

PETITIONER'S ANSWER BRIEF

MICHAEL R. BARNES
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Statement of Compliance with Administrative Order dated July 13. 1998,

Petitioner's counsel certifies that he has prepared the following brief in Times Roman font in accordance **with** the requirements of the above Order.

Petitioner's counsel further certifies that he has prepared the following example of the font and type provided in Times Roman font in accordance with the requirements of the above Order's Appendix A (See demonstration schematic beloww following signature block)

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Petitioner's Test Font Page

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Another example

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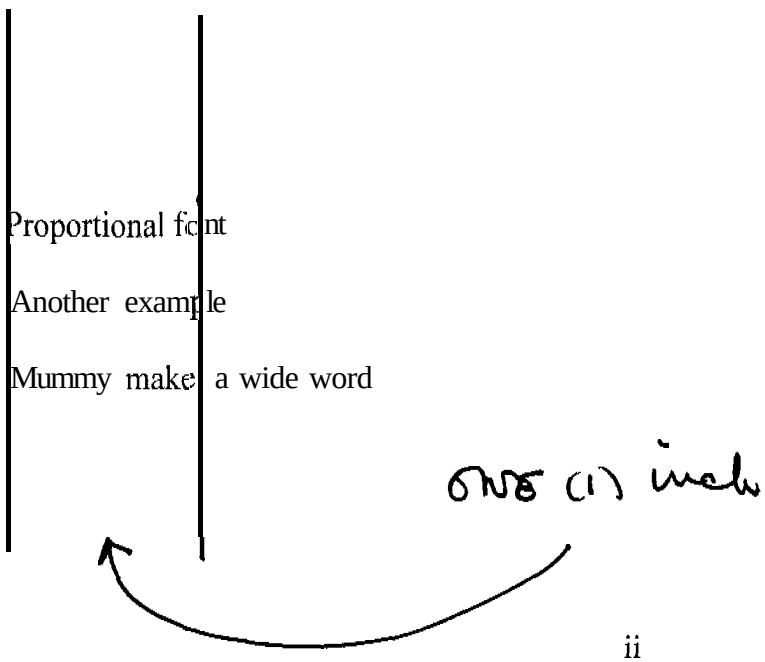

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STATEMENT OF THE CASE AND OF THE FACTS

Petitioner Gail Anne Roberts respectfully suggests that a more balanced presentation of the facts in this case is presented as follows. Petitioner was conditionally admitted to the Florida Bar in December 1986. Petitioner's conditional admission was a result of the fact that she made voluntary and truthful admissions before a panel of the Board of Bar Examiners regarding her past infrequent and sporadic contact with drugs during her college years (T.p. 51-53) and was additionally based on a January 1981 Iowa arrest which was quickly abandoned for no evidence by the County Prosecutor. (T. p. 50) Accordingly, no negative inferences may be drawn from this arrest as she is presumed innocent.

As a condition of her admission to the Florida Bar, Petitioner agreed to submit to monthly and random drug screens (urinalysis testing). During the three (3) years of conditional admission, Petitioner missed several tests. However, the Petitioner testified during the Reinstatement hearing that she always kept in contact with the Florida Bar and agreed with the Florida Bar that she would make up and submit the missed tests. This testimony was supported by letters from the Florida Bar during that time concerning the tests and said testimony was unrefuted. (T. p. 66-69.) In early 1990, and eleven (11) days *after* the termination of her conditional admission period, the Florida Bar filed a petition for order to show cause as to why she should not be held in contempt for the late or missed tests. Notwithstanding the fact that the Florida Bar filed subsequent to the termination of the Respondent's probation, the Florida Bar and the Petitioner entered into an agreement wherein the conditional admission was extended an additional three (3) years. At the Reinstatement hearing, the Referee found that during the entire time of the conditional admission, including the additional three

(3) years, the Petitioner never tested positive as to any drug screen. (T. P. 173.) In addition, during the entire time from 1987 through 1993, Petitioner was subject to random urinalysis drug screens. The Florida Bar only requested a random test one (1) time, the test had to be performed within 12 hours, with which the Petitioner complied. The random test was negative.(T. p. 64.)

In May of 1990, the Petitioner was arrested in Naples, Florida for attempt to purchase a one-half (½) gram of cocaine. The Petitioner testified under oath in the Reinstatement hearing, that she was pressured into said purchase by an undercover confidential informant and convicted drug trafficker who had additional pending charges regarding drug trafficking against him and who was setting up drug busts at a local restaurant in an effort to alleviate his own impending sentence. (T. p. 71-73.) At the Petitioner's Suspension hearing in 1992, before the Honorable Barry M. Cohen, the Referee noted that there was factual evidence which tended to support an entrapment defense. Petitioner pled No Contest to the charge based solely on the fact that she had exhausted all funds for her criminal defense, although Petitioner desired to pursue the matter based on entrapment. (T. p.73.)

At Petitioner's suspension hearing in July of 1991, Judge Barry M. Cohen, Referee, recommended a three (3) year suspension. This Court approved that recommendation in The Florida Bar v. Roberts, 626 So.2d 658 (Fla. 1993.) Petitioner's three (3) year suspension period ended in April 1995. Over the next two (2) years, Petitioner paid all of the fines, bar dues and costs which were assessed against her. In addition, Petitioner attended and completed all of the required Continuing legal education hours, including a 23 hour Bridge-the-Gap seminar and all Ethics hours required. On March 3, 1997, Petitioner filed her Petition for Reinstatement with the Florida Bar.

The Referee at the Reinstatement hearing, Judge Thomas S. Wilson, who was appointed by this Supreme Court, found after exhaustive evidence, that there was: "I want to make---drugs are

very, very critical. And I want to make certain the record is clear here that I don't----the Bar has no evidence, zip, zero, nada, none, of any present or even within the last six or seven years of drug abuse or drug usage. The Judge specifically found that any issue regarding drugs and drug testing was non-existent. (T. p. 175) The Florida Bar agreed without argument. (T. p. 174)

Another issue addressed by the Florida Bar in regard to this appeal is returned checks against Petitioner's personal checking account. At the Reinstatement hearing the Referee found that there was unrcbutted testimony that restitution had been made as to all checks. (T. p. 182) In addition, the Referee found that a substantial monetary penalty had been paid by the Petitioner to the bank for the NSF checks. Despite the Florida Bar's opportunity to do so, the Referee found that no evidence was presented regarding any unpaid or outstanding checks. (T. p. 183 .)

Witnesses for the Petitioner included Sean McDonald, the Petitioner's former boyfriend and the father of their child; a local attorney, Edward Horan, who has known the Petitioner since 1985 on both a professional and personal level, and who worked with her at the State Attorney's office in Key West, Florida; Sharon Ramirez, a Judicial Assistant and life-long friend of the Petitioner and who knows of the Petitioner's reputation in the local community and who has also worked with her through her legal assistant position at Undersigned counsel office; Randy Moore, a Certified Public Accountant who reviewed and evaluated Petitioner's bank statements; and the Sworn Witness Affidavits of Richard Rumrell, a Jacksonville attorney who knows Petitioner on both a personal and professional level and who worked with Petitioner closely on major Federal and Civil cases in Key West over the past two (2) years; and Professor Emeritus (FSU) William VanDercreek, who also is personally familiar with Petitioner and who for two (2) years worked with her as part of his Of-Counsel relationship with undersigned counsel in Key West, Florida.

The record of Petitioner's reinstatement hearing is made a part of this record. The Recommendation of the Referee clearly sets out the facts as determined by the Referee which support Petitioner's reinstatement.

SUMMARY OF ARGUMENT

Petitioner agrees and accepts both her burden of proof and her obligation to prove good moral character and all of the requirements that the Florida Supreme Court places on a Petitioner for Reinstatement to the Florida Bar. Petitioner disagrees with the Florida Bar's evaluation of the decision of the Honorable Judge Thomas S. Wilson, Jr., Referee in the Reinstatement hearing. In a reinstatement proceeding, the party seeking review (The Florida Bar) has the burden to show that the report is erroneous, unlawful, or unjustified. West's *F.S.A.* Bar *Rule 3-7.10(j).* It is submitted that the Florida Bar has failed to carry this burden.

The Judge at the trial level addressed the issue of the returned checks, considered all of the testimony, including that of the Florida Bar's own Certified Public Account and only witness, the Petitioner's Certified Public Accountant and the Petitioner's own testimony, and found that there was unrefuted testimony that the checks had all been reimbursed, that measures have been put into place by the Petitioner to ensure that no other checks are returned, including a strict budget, a consolidation and paying off of numerous prior debts, an increased income, a new savings account and an overdraft protection on her account, and Petitioner has a modest lifestyle.

Petitioner is acutely aware of the importance of keeping her account in order and she has shown in her actions and in her testimony, sincere repentance for any prior failings and has given personal assurances to the Florida Bar and to the Court to continue on a path of financial responsibility. Petitioner willingly agreed to have her account monitored by the Florida Bar for a

period of one (1) year from her Reinstatement and in fact to any other reasonable condition placed on her regarding her finances. Petitioner submits that she is open to any suggestion as to what additional assurances can be made to satisfy the Bar's concerns regarding the protection of any future client whom she may represent. (T. p.93.)

As mitigating circumstances, Petitioner admits that while she wrote the dishonored checks, she had no intent to defraud either the bank or the payee. Respondent testified that at the time that she wrote the dishonored checks, she intended to make sufficient deposits to cover her withdrawals, and that she was somewhat remiss in keeping strict enough account balance and reconciliation records, deposits were made and the checks were paid. In addition, none of the checks were involved in any attorney-client relationship but were all personal checks written for necessities and living expenses.

The Kcferee at the Reinstatement hearing, Judge Thomas S. Wilson, who was appointed by this Supreme Court, found after exhaustive evidence, that there was: "'I want to make---drugs are very, very critical. And I want to make certain the record is clear here that I don't----the Bar has no evidence, zip, zero, nada, none, of any present or even within the last six or seven years of drug abuse or drug usage. That's a fair statement correct?" (T. p.175.) It is hard to imagine how one could be more articulate in attempting to get the point across that a certain matter is not an issue. The Judge specifically found that any issue regarding drugs and drug testing was non-existent. (T. p. 175) The Florida Bar agreed without argument. (T. p. 174)

All of the witnesses were aware of the circumstances which resulted in the Petitioner's suspension. The witnesses knew the Petitioner for a significant number of years, on a personal and social levcl. The three attorneys who testified had all worked closely with the Petitioner when she

was an attorney (Horan) and since her suspension (Rumrell and VanDercreek.) All of the witnesses were familiar with her reputation in the community. All of the witnesses testimony included information regarding the Petitioner's character and professional abilities in the past ten (10) year time period.

It is undisputed Florida law, as set down by this Supreme Court, that the evidence and facts of any matter tried before a Referee come to the Supreme Court clothed with a presumption of correctness. It is submitted that the Referee heard all of the evidence and the testimony, that he evaluated same in light of the Petitioner's history with the Florida Bar, that he used the criteria as set forth in the cases by this Supreme Court, and that based on all of his findings, he determined that the Petitioner should be readmitted to the practice of law.

The Keferee found and Petitioner submits that she has met the burden of proof of intention to act in an exemplary fashion, and her desire to strictly comply with any disciplinary orders as set forth by this Court. (T. p. 92-94.)

In regard to the issue addressed in the Florida Bar's Initial Brief as to the conditional admission, it is respectfully submitted to this Court that the Petitioner has answered to these allegations, has had them previously decided by two Referees and this Honorable Court, and has completed a combined period of eight (8) years of probationary status with the Florida Bar which she submits has been a more than reasonable penalty for any non-compliance or violation which may be attributed to her past actions.

The Florida Bar refers to the Petitioner's income tax returns which show a lesser taxable income are unfounded. The Florida Bar's attempt to suggest that the Petitioner's tax returns and her checking account balance differences mean that she has unreported income in unfounded and has

no basis in fact. Such allegations are refuted by the Certified Public Accountant as misleading at best.

ARGUMENT

Petitioner submits that the elements as set forth in The Florida Bar v. Dawson, 13 1 So.2d 472, which set out the requirements necessary for Petitioner to prove that she is entitled to resume the privilege of practicing law without restrictions have been satisfied. Petitioner has met that burden through the evidence presented at the trial level to the Referee by the testimony of Petitioner and all of the credible witnesses listed who testified in her behalf. In fact, the Referee used the criteria as set forth in Dawson. and found that all of the conditions so required by the Supreme court had been met. (T. p. 180.)

Although Petitioner admits that there were NSF checks returned against her personal checking account during the past several years, she has done everything possible to redirect her life financially and to prove restitution of all amounts to the Florida Bar and to this Court. (T. p.92.) Petitioner has testified under oath that all of the checks either cleared the bank the second time that they were presented or were personally picked up from the creditor and paid for by the Petitioner.

In addition, in an abundance of caution, and in order to satisfy the Florida Bar with additional proof of restitution, Petitioner took out legal notices in both the Key West Citizen (Monroe County) and the Sun Sentinel (Broward County), newspapers of wide circulation and which are the only two counties the Petitioner has lived in since 1991 through the present time. Said legal notices requested that any creditor, merchant, individual or company who had any

returned check against the Petitioner should immediately present it to her for payment. No response was heard from any person or company.(T.p 79-80.) In it's Initial Brief, the Florida Bar gives thc Petitioner's advertisement in the legal notice section of the Monroe County and Broward County newspapers a negative connotation. This is abundantly unfair as it attempts to undermine and cast doubt on Petitioner's testimony that all of the checks had been paid and it attempted further to cast a suspicious light on Petitioner's honest, resolute attempts to close all doors regarding the Florida Bars doubts as to the NSF check issue and the restitution paid. In fact, the Referee at the Reinstatement hearing said that: "'To put in advertisements in the Fort Lauderdale and the local Key West newspaper, the efforts she [Petitioner] has made I consider to be very worthwhile." (T. p. 183.)

The Florida Bar alleges that Petitioner's account reflects returned checks numbering 192. The fact is that this number does not reflect the number of checks which were presented. Besides errors made in the calculations of the numbers (T. p. 55), the Florida Bar counted checks twice and gave little credit to the fact that approximately 70-80 of the checks cleared the bank when they were redeposited within one (1) to three (3) days of their return, which lends credibility to Petitioner's testimony that she never intended to write an NSF check, to not make any check good, but the returns were based solely on her inability to get the deposit to the bank in time coupled with her lack of sufficient income to meet necessary expenses. The Referee noted that all of the checks were for necessary items and living expenses such as groceries, utilities, rent, medical bills, household goods, children's expenses, etc. and not for lavish items. Petitioner testified that she made good on every check ever returned.(T. p.77-78.)

Petitioner offered additional assurances to the Florida Bar in the form of testimony that she had contacted, in writing, all of the state and or nation-wide check approval companies which keep records of any outstanding NSF checks to merchants or creditors and no company advised her of any problem. (She also provided information to them such as her driver's license number, address, telephone number and bank name for a complete and thorough check). Petitioner was never notified of any adverse information found by any one of the check approval companies. (T. p.79-80.)

The Petitioner has had a small number of returned checks against her account in the past year, as the Florida Bar has pointed out, however, and if this Court will note, the last bank statements as provided to the Referee and to the Florida Bar's CPA reflected that there was one (1) check returned in January of 1998 and zero ("0") after that. Petitioner has taken great strides to remedy her financial situation as she testified to in court. (T. p.77,78,83.)

The Florida Bar has chosen selective portions of the following cases to support it's argument. A more complete presentation of those same cases demonstrates that, in fact, they support Petitioner's reinstatement.

The Florida Bar cites The Florida Bar v. Lopez, 545 So.2d 835 (Fla. 1989). The Court should note that this case is distinguishable from the Petitioner's case in that the attorney's writing of worthless checks was only incidental to his past criminal conduct and other additional aggravating circumstances which affected the Court's decision. Mr. Lopez had been suspended for one (1) year in 1981 for tampering with witnesses, in 1983 he was convicted in Federal Court a twenty-two (22) count felony indictment regarding the representation of aliens and false and fictitious statements as to material facts in their applications to the United States INS for which

he was again suspended for a three (3) year period. In addition, Mr. Lopez failed to file income tax returns for a five (5) year period of time, failed to disclose a previous arrest for extortion in 1980 (hiring a gunman to threaten a witness), and had 199 overdrafts on his account.

In Petition of Wolfe, 257 So.2d 547 (Fla. 1972), Mr. Wolfe had been disbarred after a felony conviction, was suspended twice, which all included cases of misappropriation of client funds and the court found that his witnesses had no knowledge of Petitioner's prior misconduct or the seriousness of the misconduct, or had not been associated with him on any item of legal business.

In the case of The Florida Bar In Re Rav Hill, 298 So.2d 16 1 (Fla. 1974), the Respondent issued insufficient funds checks on his attorney operating account, was an alcoholic who had not sought treatment for more than twenty (20) years, and had been reprimanded in the past by the Florida Bar for worthless checks, withholding of client's money, diversion of funds placed for investment and other matters.

The Florida Bar cites The Florida Bar v. Davis, 361 So.2d 159 (Fla. 1978), wherein Mr. Davis, as a practicing attorney, not only was convicted of issuing worthless checks on his operating account, but also, failed to satisfy a judgment on a promissory note given to an employee, used a trust account for personal expenditures, and obtained an unsecured loan from a client and failed to repay such loan.

In The Florida Barre: Grusmark, 662 So.2d 1235 (Fla. 1995), this Court found that although the Petitioner/Attorney had a disorderly financial situation, was in debt over $300,000.00 (he later filed for bankruptcy), owed the Florida Bar $1,1410.00, had previous disciplinary actions which were directly connected to his financial difficulties, and had failed to

make complete restitution to the Client Security Fund until after the reinstatement hearing, he was entitled to be reinstated to the practice of law. This case also reemphasizes the Florida Bar rule that the burden is on party seeking review of the Referee's recommendation that the report is erroneous, unlawful, or unjustified. *West's F.S.A. Bar Rule 3-7. 10(j).*

In the Florida Bar v. Janssen, 643 So.2d 1065 (Fla. 1970), Mr. Janssen had been suspended for trust account violations and shortages and improprieties related to receiving loans from clients from clients. In addition, Petitioner made misrepresentations and omissions regarding his arrest record, his involvement in the university varsity athletics, his need to be released from jail and financial situation and his failure to meet his child support allegations.

The Florida Bar cites The Florida Bar v. Parsons, 238 So. 2d 644 (Fla. 1970), the Petitioner had been charged by Complaint with failure to represent a client with diligence and failure to appear and defend said client with the result in an adverse judgment against said client, and the issuance worthless checks

In the case of The Florida Bar v. Hernandez-Yanks, 690 So. 2d 1270, the Petitioner was suspended for one (1) year from the Florida Bar following discipline relating to real estate matters in her private practice. Following completion of her suspension, the attorney filed for reinstatement and the referee recommended that the petition be granted, despite the attorney's poor handling of her personal checking account. The Court further stated: " While the Bar opposes Hernandcz-Yanks reinstatement, we note that each of the grounds cited by the Bar for denial was before the referee when he formulated his report. Because the referee's findings are supported by competent substantial evidence and because the recommendation of reinstatement

has a basis in existing case law, we will not second-guess the referee on this matter. See Florida Bar re Kue, 663 So.2d 1320 (Fla. 1995.)

No case was presented by the Florida Bar which was based on the issuance of NSF checks on a Petitioner's personal checking account and wherein all of the checks were made good and the Florida Bar offered no testimony or evidence to the contrary.

Petitioner asks that this Court acknowledge the steps which she has taken, especially in the past year, to safeguard the handling of her finances to assure the Bar and this Court that she will behavc in a responsibly financial manner and to insure that she does not falter from this conduct, and to prove to this court rehabilitation by improvement of her personal finances.

The Petitioner has opened up a checking account at her local hometown bank with whom she has currently has an excellent banking relationship and a personal bank officer. She also secured an agreement with the bank to shield her account from overdrafts and returned checks. This step was initiated in an over-abundance of caution and not as a protection so that she could write NSF checks. Petitioner opened up a savings account with the same bank. Petitioner has established a small CD with Citibank. Petitioner testified that she prepared and works from a strict monthly budget--projecting her budget two months in advance. Petitioner secured a consolidation loan in February of this year and paid off a substantial number of debts and open accounts. Petitioner requested her Credit report and is aware of her credit history, how to protect it, and is intent on so doing. (T. p.80-83.) It is worth mentioning that although Petitioner could have, she never filed for Bankruptcy as a escape from her financial difficulties, but faced them instead by paying her just debts, even though it meant that every month it would be difficult to make ends meet. Petitioner testified that she now has a roommate who is sharing expenses with

her. Petitioner has stable employment with room for salary increases and advancements in the near future. Petitioner also works part-time on the weekends and the child support amounts she receives to assist her with her minor son are received monthly and on time.(T. p.80-83.) Petitioner requests that all of the steps be given more weight in consideration of the fact that they have occurred in the last year in an attempt to assure the Florida Bar and this Court of her honorable intentions. The personal assurances of the Petitioner, supported by corroborating evidence, along with the testimonial evidence presented to the Referee at the trial level, her sincere sense of repentance, and her obvious desire to conduct herself in an exemplary fashion are all elements as set forth in Dawson, and which this Petitioner submits, have been met,

In regard to the drug issue, the Referee found that there was compliance with the previous suspension order, and in fact that Petitioner had "bent over backwards. Six years of drug testing and not a single positive." The Referee found that the Petitioner had met this burden. (T. p. 1 SO-181.)

In fact, the Referee admonished the Florida Bar for coming to Court alleging that there was drug issue with "no evidence" in regard to drug usage. (T.p. 175.) The Court asked the Florida Bar counsel: "That's a fair statement, correct?" to which Bar Counsel replied: "Yes, Your Honor." The Court: ""So let's throw the drug thing away." (T. p. 175.) Bar Counsel: "Yes, sir."

Petitioner submits that she has complied in the strictest sense with the requirement that she prove to the Florida Bar that she has had no involvement with drugs in any manner whatsoever. Petitioner not only *never had a positive drug test in all of the required eight (8) years of drug testing*, but she continued taking voluntary drug tests and submitted them to the Florida Bar on a monthly basis for the next two (2) years--from 1995 to 1997. In addition, Dr.

Frederick Covan, an experienced and licensed Psychologist with 20 plus years of dealing with drug counseling, including a Chief Residency as a Psychologist at Belview Hospital in New York, testified in the Petitioner's behalf, and stated that she does not have and probably never had a drug problem or drug dependency or drug addiction and that drug counseling was not needed in Petitioner's case.

The Referee considered the underlying offense which resulted in the Petitioner's suspension, states that Petitioner returned to meet the CI, but on the contrary the Petitioner specifically stated in her sworn testimony that she returned to drop off her friend who was in the car with her, and intended to tell the CT that she was going to meet her boyfriend and that she was not interested in having a drink with the CI at the restaurant. (T. p.72.)

Law abiding citizens pressured into committing a crime is called entrapment, the defense that I did not have the money to pursue.

In regard to the Florida Bar's comments regarding the amounts which were deposited into Petitioner's personal checking account, specifically the years 1993-1996, the Bar is not relying on anything more than unfounded speculation and misleading statements. The Bar has obviously ignored the Certified Public Accountant Randy Moore's testimony that amounts deposited into a person's checking account "... don't have anything to do with under-reported income." , and that: "...just to make a statement that your deposits are higher than your income is extremely kind of over-simplifying anybody's situation." For example, checks that are re-deposited come back as an addition to the account. Then of course, with the deposits, there are other sources of income, especially if you live with someone and they are contributing to your rent or contributing to your utilities. Gifts from the family, all sorts of things. So when someone is looking for unreported

income, like an internal revenue agent or someone that's doing that, they do a comprehensive net worth test. So it's really kind of a misrepresentation to say, "Oh, well, your deposits were higher than your income, so you must not be paying enough tax." You have to go beyond that." (T. P.56)

In fact, the Florida Bar's own witness, Mr. Carlos Ruga, a Certified Public Accountant, stated that he had no indication that there was any kind of improper filing of an income tax return. (T.p. 158.)

The Florida Bar has broached an additional issue and questioned the Petitioner's choice of a reputable, experience clinical Psychologist, Dr. Frederick Covan, who has had over 20 years of combined experienced dealing with drug users and drug addicts, when she was evaluated as required by the Florida Bar. The Bar, additionally, questions the Petitioner's so-called failure to obtain an approved doctor from Florida Lawyer's Assistance. The Petitioner contacted FLA, Inc., spoke with Judy Rushlow, and received a letter from her suggesting that if Petitioner needed to she could contact the FLA, Inc. and stated in that letter: "...we can refer you to an FLA approved professional in Dade County. Just let us know if you would like this information." This letter was read into the record during the Reinstatement hearing and the Referee found that it *in* MO *way required* Petitioner to chose a doctor from the FLA list. During the discovery or investigative time period prior to the hearing date, the Florida Bar was notified by Petitioner's counsel that Dr. Frederick Covan was the doctor chosen by the Petitioner for her evaluation. In addition, his resume and a copy of his report was submitted to the Florida Bar well in advance of his deposition and the Reinstatement hearing. Dr. Covan was chosen by the Petitioner and the Petitioner's counsel, because he was local, reputable and experienced in drug counseling. The

Referee agreed with **the** Petitioner, based on the evidence, that Dr. Covan was a reasonable choice given the fact that Miami was 150 miles away and that FLA, Inc. did not seem to require otherwise. (T. p. 172)

In addition, Petitioner had traveled to Ft. Lauderdale in March of 1997, missed a day's work, met with the Director of FLA, Inc. and Judy Rushlow, spoken with them for at least an hour which included a history and background evaluation, and all of this was done at the behest of the Florida Bar. Petitioner has more than shown her desire to comply with any Florida Bar request made of her each and every time she has been so requested. To suggest otherwise is an unfair assessment of Petitioner good intentions and desire to cooperate with the Bar.

It stretches the imagination to understand how the Florida Bar can conclude based on all of the favorable witness testimony placed before the trial court, that the Petitioner has not shown, in every area of her life, good moral character, personal integrity and general fitness for a position of trust and character. Witness Sean McDonald, Petitioner's former boyfriend and the father of her child, testified in regard to her general character that: "The first thing that comes to mind is she is an excellent mother of my son." (T.p.43.) The witness further stated: "She is honest." (T. p.46.) In his recommendation and final comments, the Referee made references about the witness wherein he stated: "'And very frankly, when the father of Brent came in, those were pretty glowing remarks. And under the circumstances, to me that is evidence of good character. And I think that it comes to **that** unimpeachable character that's talked about by Justice Thornall."

Witness Ed Horan, a local attorney, testified that: "... Ms. Roberts enjoys a very favorable impression as to her character in this community." As to her moral standing-- "Once again, I think it's very favorable at this point in time."

Witnesses by Affidavit, Attorney Richard Rumrell and Attorney William (Bill) VanDercreek testified in glowing remarks about the Petitioner, her moral character and her professional ability.

Witness Sharyn Ramirez, Judicial Assistant, testified that she had known the Petitioner since she was a small child, had not heard anything unfavorable or adverse about her in the community and testified that Petitioner is of good character.

The Referee took special note of The Florida Bar re: William E. Whitlock. III, 5 11 So.2d 524 (Fla. 1987), which opinion was written by the Honorable Justice Atkins, (Ret.). In a case similar to Petitioner's, the Florida Bar sought to deny readmission primarily because of financial irresponsibility. The Court stated as follows:

> Upon meeting the conditions set forth herein, Petitioner deserves reinstatement and an opportunity to earn a living in the field in which he is trained. 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.

The Referee made the comment in the instant case at the Reinstatement hearing: "I think we have to be careful not to deny someone reinstatement merely because they have lost income, during a period of suspension."

CONCLUSION

The Referee at Petitioner's Reinstatement hearing had the ability to assess the Petitioner's credibility and to observe her personal demeanor and candor and his observations and assessments

should be given great deference by this Court. The Referee is in the position to gauge the rehabilitation of the Petitioner and to determine if she will be a future threat to the welfare of the public. The Referee found in favor of the Petitioner in all of these aspects.

The Petitioner respectfully requests that this Court find that the Petitioner should be now given the opportunity to prove that she is a person worthy of practicing law and of enjoying the privileges of practicing in the profession she worked so diligently to become a member of.

Petitioner does not appeal or object to the imposition of the costs imposed upon her for the Reinstatement hearing, however, since the costs now total over Five thousand dollars ($5,000.00), and Petitioner believes that she may be charged additionally for costs associated with this appeal, she respectfully asks this Court to give her a reasonable amount of time to repay said costs if she is re-admitted to the practice of law. Should this Court deny the Florida Bar's appeal and in light of the fact that the Bar has not prevailed on it's entire case, the costs in this case should be apportioned to the Florida Bar.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was sent by Federal Express Priority overnight to the Supreme Court of Florida, Clerk of the Court, Sid J. White, The Supreme Court Building, Tallahassee, Florida 32399-1927; and by U.S. Mail and facsimile to Cynthia Lindbloom, The Florida Bar, Miami Office, Suite M-100, Rivergate Plaza, 444 Brickell Avenue, Miami, FL 33 13 1, and to John Boggs, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 31998. this 16th day of July 1998.

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July 26, 1998

Clerk of Court
Florida Supreme Court
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Tallahassee, Florida 32399-1927

Re: The Florida Bar Re: Gail Anne Roberts. Case No. 90,022

Please find the original and seven (7) copies of Petitioner's Answer Brief in the above action.

The Answer brief was previously submitted on July 16, 1998 and returned this date with the statement certifying size and style of type (See page ii of Answer Brief) as required by Chief Justice Harding's Administrative Order dated July 13, 1998.

Sincerely,

Michael R. Barnes
Attorney-at-Law