IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

Supreme Court Case No.

71,055

RONALD S. GOLUB,

Respondent.

_______________________________/

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PETITION FOR REVIEW OF REPORT OF REFEREE

Respondent's Initial Brief

Ronald S. Golub, Respondent
In Proper Person
16353 N.W. 157th Avenue
Miami ,FL 33014
Tel.: (305) 620-1026

TABLE OF CONTENTS

Statement of the Case .................................................. 1

Statement of the Facts .................................................. 3

Summary of Argument .................................................. 7

Argument

I.

WHERE ALCOHOLISM IS THE SOLE UNDERLYING CAUSE OF PROFESSIONAL MISCONDUCT OF AN ATTORNEY WITH AN UNBLEMISHED 28 YEAR PRIOR RECORD AND OTHER MITIGATING FACTORS INCLUDING A SELF-IMPOSED SUSPENSION ARE PRESENT, A THREE YEAR SUSPENSION IS UNDULY SEVERE .......................................... 9

II.

THE THREE PRONGED GOAL OF ATTORNEY DISCIPLINE, PROTECTION OF THE PUBLIC, PUNISHMENT AND DETERENCE OF THOSE WHO WOULD BE INCLINED TO SIMILIAR MISCONDUCT AND ENCOURAGEMENT TOWARDS REHABILITATION OF THE WILLING AND COOPERATIVE ATTORNEY WILL BE MET IN THIS CASE BY THE IMPOSITION OF SUPERVISED PROBATION .............................. 14

Conclusion .................................................. 17

Certificate of Mailing .................................................. 18

## TABLE OF CITATIONS

### Cases

Florida Bar v. Greenfield, 517 So. 2d 16 (Fla. 1987).......... 5, 10, 11, 13

Florida Bar v. Knowles, 500 So. 2d 140 (Fla. 1986)................ 8, 11, 13

Florida Bar v. Larkin, 420 So. 2d 1080, (Fla. 1982)........................ 9

Florida Bar v. Pahules, 233 So. 2d 130 (Fla. 1970)............9, 14, 15, 16

Florida Bar v. Tunsil, 513 So. 2d 120 (Fla. 1986)............. 8, 11, 12, 13

### Rules and Regulations

Code of Professional Responsibility, Disciplinary Rule 9-102 (b)(4).......1

Florida Standards for imposing Lawyer Sanctions...........................5

Integration Rule of the Florida Bar, Article XI, Rule 11.02 (4)...........1

Rules Regulating the Florida Bar, Chapter 3, Rule 3-7.6..................1

### Note

The reference "(rr.-3)" refers to the Report of Referee bearing date the 29th day of February, 1988 filed herein. The reference "(tr.-41)" refers to the transcript of testimony ofthe hearing held by the referee on December 4, 1987, and the reference "(ex.-2)" refers to exhibits introduced into evidence at the hearing held on December 4, 1987.

STATEMENT OF THE CASE

This is a timely filed petition for review brought by respondent Ronald S. Golub directed to the report of referee bearing date the 29th day of February, 1988 filed in this Florida Bar disciplinary proceeding. The specified portion of the report of which review is sought, specified pursuant to Rule 3-7.6 of Chapter 3 of the Rules Regulating the Florida Bar, is the recommendation of discipline (rr-6):

> .....that res ondent be suspended from the practice of aw for a period of three years and riot be re nstated unless respondent subnits proof of alcoholic rehabilitation.

More specifically, respondent argues that the penalty is unduly severe and is erroneous and unjustified in view of the record, the referee's findings of fact. the case law and does not assist in reaching the goal of restoring a willing and cooperating attorney as a contributing member of the legal profession.

The complainant Florida Bar filed its complaint based upon certa n stipulated facts set forth in respondent's Waiver of a Finding of Prob ble Cause and Stipulation as to Facts dated July 9, 1987, where he admitted:

> .....that his actions.. ...constitute violations of Disciplinary Rule 9-102 (b)(4) of the Code of Professional Responsibility and Article XI, Rule 11.02 (4) of the Integration Rule of the Florida Bar.

In response to the complaint, respondent filed an answer and affirmative defenses which set forth the fact of respondent's alcoholism as being the underlying cause of respondent's misconduct. Also set forth were other matters in mitigation.

The Court appointed the Honorable David P. Kirwin as referee to conduct an evidentiary hearing upon the issue of appropriate discipline

and thereafter to submit his findings of fact and his recommendations as to discipline. Accordingly an evidentiary hearing was held at the office of the Florida Bar in Miami on December 4, 1987 whereat the referee heard testimony and accepted exhibits into evidence. The report of referee bearing date the 29th dayof February, 1988 and specifically his recommendation therein as to discipline is the subject of this petition for review.

## STATEMENT OF THE FACTS

The respondent stipulated as to the facts concerning his professional misconduct in his Waiver of Probable Cause and Stipulation as to Facts dated July 9, 1987. These facts are as follows:

> a.) That the respondent was the attorney and personal representative of the Estate of Cecil Harlig.
>
> b.) That during the period of 1984 through 1986, the respondent removed approximately $ 23,608.34 from the Estate of Cacil Harlig.
>
> c.) That the respondent did not have the permission of the heirs, debtors (sic) or the Probate Court to remove said funds.
>
> d.) That the removed funds have not been replaced to date.

Respondent Ronald S. Golub is a 56 (now 57) year old attorney (tr.-108) who graduated from the Wharton School of the University of Pennsylvania in 1952 with the degree of Bachelor of Science in Economics and from Harvard Law School in 1955 with the degree of Bachelor of Laws which was later replaced with a Juris Doctor degree (tr.-97).

The referee found the following facts at the evidentiary hearing (rr.-2):

> Respondent is an attorney admitted to practice in New York in 1956 and Florida in 1961. He had no prior disciplinary incidents in either jurisdiction until the present complaint.
>
> On August 19, 1986, respondent voluntarily contacted F.L.A.,Inc. for assistance. He had a history of heavy use of alcohol dating back many years and his alcoholism had brought him to the point of contemplating suicide. F.L.A., Inc. arranged for the respondent to be taken to a facility for detoxification and then to an in-patient treatment center. At the time he contacted F.L.A., Inc., the bar had received a complaint from an heir of the estate to the effect that she had been unable to contact the respondent with respect to his handling of the estate, however no formal proceedings had been instituted other than a letter from the bar to the respondent which may or may not have been ac-

tually read by the respondent. The imminence of he bar proceeding was one of the factors which caused respondent to seek help. His mental, physical and financial problems were the other factors, including problems with his ex-wife and children. The bar contacted the respondent at the treatment center to which he had committed himself and he volunteered the details of the removal of the funds freely and openly to bar counsel. He had not paid his bar dues for 1986 and was suspended accordingly as of October 1, 1986. The bar recognized his 'voluntary suspension' from practice in a communication demanding payment for the years 1986 and 1987 of the dues in arrears which (rr-3) communication is in evidence. In september 1987, on advice of counsel, respondent remitted the arrearages and in his petition for reinstatement set forth the reason for not paying his dues was that at the time he was not capable of practicing law. Respondent has been suspended for a period in excess of one year, from October 1, 1986 until October 6, 1987. He is not now actively engaged in the practice of law[1].

The respondent removed the funds from the estate over a period of about a year in small amounts.

Following release from the treatment center, respondent became active in Alcoholics Anonymous under the supervision of F.L.A., Inc. and has pursued with enthusiasm a program of alcoholic rehabilitation.[2]

Ronald Golub has not engaged in the practice of law since August 19, 1986. His present employer was informed by him of these proceedings. That enployer,a research and development corporation,is convinced of his honesty and integrity and he is entrusted with company funds. Respondent has made only minimal restitution, largely due to his distressed financial circumstances[3]. Respondent is remorseful. He has suffered substantially as a result of his alcoholism by losing his career, his family and his status in the community.

The referee finds that the sole underlying cause of respondent's professional misconduct was his alcoholism.

---

/1. Since the hearing, respondent has accepted small fees twice in connection with the practice of law, however he has not held himself out to the public as an attorney and has no telephone listing nor office address as such.

2. Respondent has continued to abstain from alcoholic beverages and has continued his A.A. participation.

3. Respondent has continued to make restitution on a regular basis in the small amounts he is able to afford.

The referee concluded (rr.-6):

> ....that respondent has demonstrated eight of the mitigating factors as set forth in the Florida Standards for Imposing Lawyer Sanctions, namely: absence of a prior disciplinary record, personal or emotional problems, free and full cobperation with the proceedings, previous good character, the impairment of extreme alcoholism, interim rehabilitation, remorse and the fact that he was suspended through his own act for more than one year.....

With respect to the damage caused by respondent's misconduct, the referee found that (rr.-3) a substantial sum of money ($23, 608.34) had ben removed over a period of two years, that the six beneficiaries were mainly elderly, that one had died prior to the hearing and that there were two charitable bequests and one creditor, a nursing home.

The respondent however, never really knew any of the beneficiaries. He had met one of then a couple of times while the decedent was still alive (tr.-106).

There was no evidence introduced to indicate that the respondent had utilized falsehoods or other artifices to cover up his misconduct. There was no evidence of any misrepresentations made to the heirs, the creditor or to the probate court. There was nothing that could be construed as to compound the seriousness of the taking of the money itself.

With respect to the money, the respondent was "going to put it back " (tr.-105).

The referee found that the respondent has demonstrated interim rehabilitation as a mitigating factor however, Dr. Jules Trop, M.D., based upon his expertise in his specialty of addictionology and his personal observations of the respondent over a period of more than one year testified that the respondent does not represent a danger to society in any way nor is he a potential danger to any client at the present

time (tr.-41).

Charles Hagan, Jr., Executive Director of Florida Lawyers Assistance, Inc., testified that based upon his personal observations and his review of the F.L.A.-appointed monitor's reports, insofar as his sobriety is concerned with respect to Mr. Golub being qualified to practice law at this time, the bar runs no greater risk than it does by admitting any new member (tr.-68).

The respondent's F.L.A.-appointed monitor, Gael Georgeson, Esq., testified that the respondent's recovery was excellent, he had willingness and had been open and honest. This came as a response to the referee's question as to how Mr. Georgeson would characterize Mr. Golub's rate of recovery as opposed to the average recovery (tr.-85).

Mr. Golub's employer, the chairman of a research and development corporation testified that the respondent volunteered the details of his defalcation at a meeting of the board and notwithstanding he is entrusted with company funds (tr.-91).

The bar urged the referee to consider respondent's failure to make full restitution as an aggravating factor taking the position that restitution was not initiated until the time that the evidentiary hearing was set by the referee (tr.9), however the referee found otherwise. He found that full restitution was not made because of respondent's clear inability to do so (rr.-6). He concluded that it would be manifestly unjust to consider the failure to make full restitution an aggravating factor.

At the close of the testimony, the referee heard legal argument and asked counsel to submit proposed reports of referee and to submit case law in support of their respective positions, the bar seeking disbarment and the respondent seeking leniency.

## SUMMARY OF ARGUMENT

The bar seeks disbarment and the referee recommends a three year suspension. This is notwithstanding the finding that the sole underlying cause of respondent's isolated act of misconduct was his alcoholism, and the testimony as to his alcoholic rehabilitation is that the bar runs no greater risk at this time with respect to Mr. Golub practicing law than it runs by admitting any new member.

Respondent comitted the most serious offense known to the legal profession, misappropriation of client's funds, however this was the first and only disciplinary complaint in 28 blemich-free years of professional practice.

The evidence did not show a pattern of misconduct evincing a moral defect underlying his ethical structure, rather it showed an isolated immoral act committed at a time of complete structural breakdown resulting from alcoholism compounded by family problems of the most extreme nature.

The goal of attorney discipline is three-pronged, to protect the public, to serve as a deterrent to others who might be inclined to follow the same course of misconduct and to encourage the reformation and rehabilitation of the errant attorney so that he might again, if he so merits, rejoin the legal profession as a contributing member.

This goal will not be met either with disbarment nor with a lengthy suspension. The respondent, upon his voluntary entrance into treatment suspended himself from the practice of law realizing that he was then incapable of practice and continued his self-suspension for a period of more than one year.

The evidence is uncontroverted that the public would not be endangered by Mr. Golub's return to active practice. He has his alcoholism

under control and he intends to continue in a program of recovery in Alcoholics Anonymous.

The final objective in meeting the goal of attorney discipline to be examined is the imposition of the appropriate discipline to punish and to serve as a deterrent to others. The question is whether or not leniency in the case of this 57 year old attorn y will be perceived as a mere s ap on the hand, thus sending out the s gnal that misappropriation of client's funds is viewed as other than the most hienous conduct.

Respondent takes the posit on that superv sed probation both as to his sobriety and his practice the latter to serve the dua function of ensuring full and complete restitution as quickly as possible as well as to observe his conduct, will completely and fully meet the goals of attorney discipline in this case.

This attorney has been punished by the loss of his practice, his family and his finances and he faces the struggle of beginning his practice over at the age of 57 with the stigma and shame of this proceeding hanging over his head. He must also live with what is perceived as the stigma of alcoholism for the rest of his life. In this case, the imposition of supervised probation cannot possible be construed as an excuse for similiar misconduct on the part of others similiarly inclined.

The analogies drawn by the referee to. the factual circumstances found in Florida Bar v. Knowles, 500 So.2d. 140 (Fla. 1986) and in Florida Bar v. Tunsil, 513 So.2d 120 (Fla. 1986) are both inappropriate as will be argued in detail. Here, the sole underlying cause of the misconduct was alcoholism which effect was extreme and encompassed all aspects of his life, yet the misconduct was confined to a single series of acts concerning one client which took place after 28 years of blemish free conduct.

Supervised probation is the appropriate d scipline in this case.

## ARGUMENT

I.

WHERE ALCOHOLISM IS THE SOLE UNDERLYING CAUSE OF PROFESSIONAL MISCONDUCT OF AN ATTORNEY WITH AN UNBLEMISHED 28 YEAR PRIOR RECORD AND OTHER MITIGATING FACTORS INCLUDING A SELF-IMPOSED SUSPENSION FOR MORE THAN ONE YEAR ARE PRESENT, A THREE YEAR SUSPENSION IS UNDULY SEVERE.

The three-fold goals of attorney discipline have been long established.

> First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same tine not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. Florida Bar v. Pahules. 239 So. 2d 130 (Fla. 1970), at 132.

More recently, the special problem of the alcoholic attorney has been recognized as a mitigating circumstance, rather than 'chat of condemnation:

> Business and professional groups, including The Florida Bar, have only recently openly acknowledged and addressed the problem of the alcoholic businessman and professional ....In those cases where alcoholism in the underlying cause of professional misconduct and the individual attorney is willing to cooperate in seeking alcoholic rehabilitation, we should take these circumstances into account in determining the appropriate discipline. Florida Bar v. Larkin, 420 So. 2d 1080 (Fla. 1982), at 1081.

Notwithstanding the finding of the referee that the sole underlying cause of the respondent's professional misconduct was his alcoholism (rr.-3)and the overwhelming evidence concerning not only his willingness but his determination to rehabilitate himself, the bar seeks to disbar and the referee recommends a three year suspension, which in the case

of thi 57 year old attorney could be the effect ve end of hi practice.

The reason for the severity of the discipl ne sought by the bar and reconmended by the referee is the gravity of the offense itself, the gravest deed of misconduct that can be committed by an attorney, the misappropriation of client's funds There were no aggravating circumstances whatsoever, no prior disciplinary proceedings, no multiplicity of offenses, nu indifference in making restitution and no evidence of false statements or other deceptive practices either in connection with the misconduct itself or in connection with the disciplinary process.

It is respondent's position that the referee afforded too little weight to the mitigating circumstances shown by the evidence. This same argument was advanced by respondent in the recent decision in Florida ~~Ear~~ v. Greenfield, 517 So. 2d. 16 (Fla. 1987). This decision had not been rendered as of the date of the hearing in this case but was brought to the referee's attention in a memorandum of law which undoubtedly was overlooked.

The factual circumstances are strikingly similar to the case at bar. An attorney with long virtually unblenished record of professional conduct was acting as personal representative for an estate. While the administration pf the estate was pending, the respondent withdrew $28,000 from the estate's assets. The amount was characterized as a loan from the estate to the respondent, however there was no promissory note executed. Of greater import to the Court however, was the fact that, as in the case at bar, there was no consent given by the beneficiaries nor was there approval given by the probate court. The respondent, as here, intended at all times to pay the money back but had not repaid it in full at the time the Florida Bar began its investigation. No repayment had been made at the tine the Florida Bar was informed of his misconduct by this repon-

dent because of his circumstances.

The mitigating circumstances argued in Greenfield surround intimidating tactics amounting to duress used by the I.R.S. Also argued were serious illness and a long record of legal practice without serious disciplinary incident.

The referee's recommendation of a one year suspension was approved by the Court with the dissent calling for a two year suspension.

The case at bar presents a much greater showing of mitigation, a self-imposed suspension of more than one year, alcoholism in the most severe degree, no prior disciplinary incidents, personal or emotional problems, free and full cooperation with the proceedings, previous good character, interim rehabil tation and remorse (rr.-6).

The offense was the same, appropriation of $28,000 from an estate by a personal representat ve versus $23,000 from an estate by a personal representative, and *the* d scipline imposed should be consistent. The presence of much greater factors in mitigation should, for the reasons discussed below, result in a much less severe penalty than a three year suspension, supervised probation.

The referee concluded that the case at bar fell between the extremes as illustrated by Florida Bar v. Knowles, 500 So. 2d 140 (Fla. 1986) on the one hand, and the case of Florida Bar v. Tunsil, 513 So. 2d 120 (Fla. 1986) (rr.4-6). Both cases involve the plea in mitigation of respondents' alcoholism, but it is submitted, the resenblence stops there.

Knowles involved a four-year pattern of misappropriation of $197,000 from the trust fund accounts of a number of different clients, Mr. Knowles' income did not diminish since he continued to work regularly and he apparently had a face=to-face relationship with his victims since he held powers of attorney.

In Tunsil, the respondent was charged with misappropriating $10,500 which he held in trust for a guardianship and, on a second charge, with issuing a check to a witness that was dishonored for insufficient funds. He was also found guilty of failing to comply with trust account procedures and, he had a prior private reprimand in a disciplinary proceeding.

Of greater import however, is that the opinion is silent as to interim rehabilitation, since the opinion itself orders alcohol abuse evaluation and treatment as a condition of probation following a one year suspension.

In the instant case, the respondent voluntarily called F.L.A. Inc. for help, he followed its recommendations to the letter, submitting himself to a nine-day detoxification proedure (tr.-128), a three-month inpatient treatment center confinement (tr.-133), a one-year F.L.A. monitoring program (tr.-79, 80) and became active in Alcoholics Anonymous under the supervision of F.L.A. Inc. and

> ...has pursued with enthusiasm a program of alcoholic rehabilitation. (rr.-3).

His willingness and determination to return as a fuuly contibuting member of the legal profession was reflected by the testimony of Dr. Jules Trop, M.D., a specialist in addictionology. Dr. Trop testified from his own observations of Mr. Golub, with whom he had had contact with over a period of more than one year on a weekly basis.

When Dr. Trop met Mr. Golub, in August of 1986, the respondent was in the end stage of alcoholism (tr.-32). At the present time however, he is in recovery and in his medical. opinion, the respondent is not a danger to society in any way, nor is he a potential danger to clients (tr.-41).

Reference has also been had to the expert opinion of Charles Hagan, Jr.

Executive Director of Florida Lawyers Assistance, Inc. (tr.-68) that sobriety-wise, insofar as Mr. Golub is fit to prqctice law today, he

> ....represents a....risk to the bar, that is probably not any greater than the bar runs by admitting any new individual to the bar at this time.

Reference has been had to the testimony of Gael Georgeson, Esq., the respondent's F.L.A.-appointed monitor and to the testimony of Mr. Grosbard, the chairman of his employer in the Statement of the Facts, supra, page 6.

All of these witnesses testified 'to the respondent's williiigness, cooperation, sincerity arid honesty in dealing with his problems and to his determination to bring himself back from the point he found himself at. He did not await the result of this Court's order to seek assistance as did the respondent in Tunsil.

The offense was of the same gravity as in Tunsil, although the dollar amount, $10,500 was lesser than the dollar amount involved here. The plea in mitigation was of much lesser weight however, but the penalty was only a one year suspension followed by probation.

It is submitted that when the gravity of the misconduct here is weighed against the mitigating circumstances, and the facts are' compared with the facts in Knowles, Tunsil and Greenfield, it becomes clear that a three year suspension of this respondent is inappropriate as being unjust in its severity.

II.

THE THREE PRONGED GOAL OF ATTORNEY DISCIPLINE, PROTECTION OF THE PUBLIC, PUNISHMENT AND DETERENCE OF THOSE WHO WOULD BE INCLINED TO SIMILIAR MISCONDUCT AND ENCOURAGEMENT TOWARDS REHABILITATION OF THE WILLING AND COOPERATIVE ATTORNEY WILL BE MET IN THIS CASE BY SUPERVISED PROBATION.

The goals of attorney discipline have been set forth in Florida Bar v. Pahules, supra.:

> First, the judgment must be fair to society both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty.

It is submitted that in view of the lesser penalties npcsed in cases of at least equal gravity with respect to misconduct, and of lesser merit in terms of mitigation, i.e. Tunsil, supra, and Green ield, supra, the recommended discipline of three years suspension is inconsistent, uneven and unjust.

The espondent is 57 years old, with 28 yearsof experience in complex areas of the law such as complex real estate, corporate litigation, securities federal jury trials, proxy fights, class acrtions, etc. (tr.-114) and it wou d seem that a three year suspension would make it almost impossible for him to return to the legal profession due to his age.

The testimony of Dr. Ju es Trop., M.D., a specialist in addictionology was that in his medical opinion the respondent was not a danger to society in any way, nor wa he a potential danger to any clients (tr.-41) has previously been noted.

Similiarly, the opinion of Charles Hagan, Jr., Executive Director of F.L.A. Inc. has been noted. He was of the opinion that the

bar would be running the same risk that the bar runs with any new admittee, insofar as his sobriety is concerned.

There is no danger to society according to the expert testimony adduced at the evidentiary hearing, and a three year suspension would not only be unjust but would be a practical bar to rehabilitation of his practice.

The second goal of attorney discipline as set forth in Pahules is as follows:

> Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation.

The misconduct must not be preceived as being unpunished, however the respondent has not engaged in the practice of law since August 19, 1986..(and)..has been suspended for a period in excess of one year, from October 1,1986 until October 6, 1987 (rr. -3)[4].

He committed himself to an in-patient alcoholic treatment center for a per od of three months after spending nine days in a detoxification facil y (tr.-133). He has suffered substantially as a result of his alcoho ism by losing his career, his family and his status in the community (rr.-3). His finances are such that he is unable to make full restitution as of date (rr.-6).

His determinati on and willingness to reform and rehabilitate himself have been extensively chronicaled supra.

The question is whether or not an additional suspension will serve any useful purpose. Is it likely that the respondent will again commit professional misconduct in light of his experience and will additional

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/ 4. See footnote I, supra.

suspension serve in any manner as an encouragement to his rehabilitation ?

It is submitted that the answer is in the negative to both questions.

The final element of the three-pronged Pahules doctrine is:

> Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations.

Respondent argues that using Mr. Golub's case as a deterrent to others is unnecessary in light of the factual circumstances. Should this Court grant supervised probat on, the risk of others taking the experience of this respondent as a signa to go and do likewise, is virtua ly non-existent.

In order for others to plead for probation as the appropriate discipline for misappropriation of client's funds, they must be end-stage alcoholics, have lost all of their financial resources, have lost their practices, have lost their families and will have to have undergone the rigors of in-depth intoxification, treatment and monitoring over their conduct. They would also have to have been suspended from the practice o law for more than one year.

It is submitted that this is an unusual case that calls for unusua disciplinary measures n order to meet the stated goals of attorney discipline.

Respondent urges this Court to order supervised probation.

## CONCLUSION

The goals of attorney discipline have been set forth in the quotation from Pahules, supra, page 9, and it is submitted that at first blush, in light of the gravity of the offense supervised probation would be perceived as a mere "slap on the wrist".

We have misconduct of the gravest nature, extreme alcoholism as the sole underlying cause, six other mitigating factors, voluntary suspension of practice, voluntary commitment for treatment of the alcoholism and voluntary submission to a program of rehabilitation administered and supervised by F.L.A., Inc. When all of these factors are added together, the result is a matter of first impression.

The respondent has suffered greatly as a result of his alcoholism. The bar suffers as in does in any case of attorney misconduct and the heirs of the estate have suffered. The heirs will be made whole however, and as a side result, the bar may well turn out to have been benefited in the long run.

The value of the Florida Lawyers Assistance program has dramatically proven itself to be worthy of the high expectations its early proponents had for its success. In this case it rescued an alcoholic attorney in the end stages of his disease that:

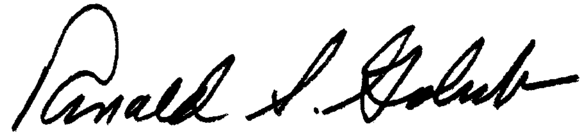
> ....left untreated, it can go to jail, insanity and death (tr.-35).

It oversaw a plan of rehabilitation for an attorney which has resulted in bringing him from the extreme depths of degradation to the point of his being ready to begin to regain some measure of self-worth and usefulness to society.

The three pronged goals of Pahules can be met by permitting the res-

pondent to practice law under conditions *of* probation, supervised both as to his conduct and his sobriety.

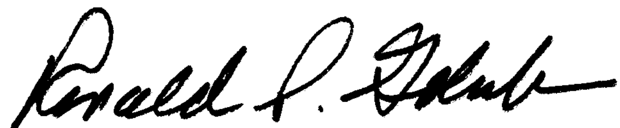
Respoctfully submitted,



Ronald S. Golub, Respondent
In Proper Person
16353 N.W. 57th Avenue
Miami, FL 33014
Tel.: (305) 620-1026

## CERTIFICATE OF SERVICE

This is to certify that the original and seven copies of respondent Ronald S. Golub's initial brief were mailed to the Honorable SID J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, and one true copy to Ken Tynan, Bar Counsel, The Florida Bar, Suite 211, Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131, this 28th day of April, 1988.



Ronald S. Golub, Respondent