

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

CASE NO. 65,984

v.

(07A83C38 - Butts Estate)

(07A84C15 - TFB)

JAMES N. DAVIS,

(07A84C18 - Tena Kebede)

(07A84C57 - J. H. Muuse)

Respondent.

(07A84C69 - Dr. Caldwell)

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REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned
duly appointed as referee to conduct disciplinary proceedings
herein according to Article XI of the Integration Rule of The
Florida Bar, a hearing was held on February 26, 1985. The
pleadings, notices, motions, orders, transcripts and exhibits,
all of which are forwarded to the Supreme Court of Florida with
this report, constitute the record in this case.

FILED
SID J. WHITE
MAR 28 1985
CLERK, SUPREME COURT
Deputy Clerk

The following attorneys appeared as counsel for the parties:

For The Florida Bar: David G. McGunegle

For the Respondent: In pro se. (Respondent made no
appearance at final hearing).

II. Findings of Fact as to Each Item of Misconduct of Which the
Respondent is Charged: After considering all of the pleadings
and evidence before me, pertinent portions of which are commented
on below, I find as to all matters that respondent is, and at all
times hereinafter mentioned was, a member of The Florida Bar
subject to the jurisdiction and Disciplinary Rules of the Supreme

Court of Florida. At all times material, he resided in and practiced law in Volusia County, Florida, although he now lives in Nevada. I further find he had knowledge of these proceedings, of the Bar's complaint and this hearing well in advance of the hearing. He made no appearance at the final hearing.

As to Count I

(07A83C38 - Butts Estate)

I find specifically that:

1. Respondent represented the estate of Harold T. Butts in Volusia County Circuit Court Case 79-71402. Mr. John F. Bolt represented three opposing beneficiaries. In February, 1983, a settlement agreement was entered into between the personal representative of the estate and the three beneficiaries.

2. On February 15, 1983, respondent delivered his trust account check to Mr. Bolt in the amount of \$30,179.59 as part of the settlement and requested he hold it for approximately two weeks. When Mr. Bolt presented the check for payment shortly after receiving it, the check bounced due to insufficient funds. When informed by Mr. Bolt, the respondent first indicated the check he had received from the personal representative had bounced creating a deficit in his trust account. Mr. Bolt later discovered the check from the personal representative had been cashed without delay when deposited on February 14, 1983. When

he confronted the respondent, the latter admitted the problem but claimed the problem was caused by changing bank accounts.

3. Respondent satisfied the check in early March, 1983, through a loan from Dr. Jacques Caldwell. In fact, respondent had used the trust funds from the Butts estate to cover other pressing trust obligations of almost thirty thousand dollars which he had previously and improperly spent for his own personal obligations in January, 1983. The records show he deposited \$29,885.05 on January 6, 1983 to account 98644, and paid out that amount on February 22, 1983. Immediately prior to the Butts deposit, the account balance was less than \$1,700.00 due to a series of checks without any corresponding deposits. See Exhibits E and B to Bar Exhibit Eight.

As to Count II

(07A84C15 - The Florida Bar)

I find specifically that:

4. Respondent maintained two trust accounts with the Atlantic Bank in Daytona Beach, Florida. A review of respondent's trust account records for the years 1982 and 1983 reveal that they were incomplete, improperly maintained and did not include the minimally required quarterly reconciliations. Many deposit slips and checks did not reflect the identity of the client. In those years, several trust account checks were returned due to insufficient funds. Finally, the only

reconciliations respondent provided were for an account for the months of January through April, 1983.

5. The records also indicate at least thirteen checks were improperly issued by the respondent to pay child support and alimony to his exwife. These payments of approximately \$700.00 each caused severe shortages in respondent's trust account requiring him to obtain personal loans or use other unrelated trust funds in order to satisfy his pressing trust obligations.

As to Count III

(07A84C18 - Tena Kebede)

I find specifically that:

6. Respondent represented Mr. Tena Kebede, a native of Ethiopia, in several and mainly real estate matters. Mr. Kebede speaks little English. Due to his representation respondent was aware that Mr. Kebede would receive some \$50,000.00 as part of a real estate transaction at the end of April or beginning of May, 1983.

7. On or about May 4, 1983, Mr. Kebede had a meeting at respondent's law office to discuss a real estate matter. At the end of this meeting, respondent asked Mr. Kebede if he could borrow \$40,000.00 for a real estate deal which would make him several times that amount within the next month. Prior to entering into the loan agreement, respondent did not advise Mr. Kebede that their interests could differ, to seek independent

counsel on the loan before agreeing to it, that an attorney was under a fiduciary obligation when entering into a business transaction with a client or the various security and collateral he might desire incorporated into the loan terms.

8. Mr. Kebede agreed to loan respondent \$40,000.00 and refused respondent's offer of 25% interest, preferring the lower bank rate. Thereafter, Mr. Kebede then paid the respondent \$40,000.00 who gave him back a check dated June 4, 1983, in the amount of \$40,533.33. On the check was the notation "repayment of loan." When Mr. Kebede subsequently presented the check for payment, it was not honored due to insufficient funds.

9. Mr. Kebede unsuccessfully attempted to contact the respondent on numerous occasions to discuss the repayment of the loan. He finally hired another attorney to prosecute his claim for that repayment. Suit was filed against respondent and a default judgment entered. None of the loan has been repaid.

As to Count IV

(07A84C57 - J. H. Muuse)

I find specifically that:

10. In 1982, respondent was retained by J. H. Muuse in connection with a bailment case with respect to a boat. He paid the respondent \$2,700.00 as requested for total fees and costs. Suit was subsequently filed in circuit court in Volusia County.

11. It appears that respondent initially filed suit against the wrong parties. He also failed to plead damages for loss of use. The Marina filed a claim in county court against Mr. Muuse for storage fees and received a judgment against Mr. Muuse due to respondent's failure to appear or file any pleadings in his client's behalf. When Mr. Muuse referred that claim to him as part of the overall case, respondent advised him he would take care of it.

12. Mr. Muuse made several trips from the Tampa area to Daytona Beach to speak with the respondent. However, he was successful only once. Respondent never contacted his client by telephone and only a few pieces of correspondence passed between them. The last record action taken by the respondent on behalf of Mr. Muuse in the circuit court case was in September, 1983. Thereafter, the respondent moved to Nevada without notifying his client or filing a motion to withdraw or otherwise protect the client. Mr. Muuse has retained other counsel. However, as a result of respondent's failure to allege loss of use of the boat, the judge has ruled cannot be part of the disposition of the case.

As to Count V

(07A84C69 - Dr. Jacques Caldwell)

I find specifically that:

13. Respondent was retained by Dr. Jacques Caldwell around 1978 to represent him in the sale and purchase of various assets.

This representation continued through the spring of 1983. In 1982, respondent and Dr. Caldwell entered into a joint venture to purchase a condominium. Their intention was to resell it for a profit and the condominium was sold in January, 1983. Dr. Caldwell's share of the proceeds from the sale was about \$15,560.00, which respondent retained. Respondent represented the doctor and himself in both the purchase and the sale.

14. In 1982, the respondent also represented Dr. Caldwell in the sale of the latter's aircraft depositing the net proceeds of approximately \$7,412.00 into his trust account. He handled a similar aircraft sale for the doctor wherein he purchased a different aircraft from the doctor who agreed to lease it for a certain amount of time each month. \$5,500.00 was to go to the doctor as part of the purchase. The respondent made no down payment and the doctor did not make monthly payments. Some time later, the \$5,500.00 was exchanged in a wash of the transaction. Finally, the respondent collected \$5,411.70 as part of payments due to the doctor by virtue of a certain judgment. These moneys he retained and did not pay over to the doctor. Moreover, it appears that Dr. Caldwell never instructed respondent to do anything in particular with these moneys and no formal accounting was ever supplied.

15. In March, 1983, the respondent told Dr. Caldwell he was having financial problems and asked to borrow some money to cover certain deficiencies. Dr. Caldwell obtained a loan of \$30,000.00 for respondent from a local lending institution. Respondent stated he was expecting a large amount of money in the next sixty

to ninety days and that the loan was to be short term.

Respondent also solicited an additional \$30,000.00 loan directly from Dr. Caldwell. The money was loaned on the conveyance and/or execution of liens on substantially all of respondent's material assets. Those assets included several automobiles, motorcycles, interest in an aircraft and two parcels of real estate.

Respondent retained possession of some of the assets. He assured Dr. Caldwell that their value greatly exceeded the amount owed and he would faithfully honor his obligations to repay the moneys loaned.

16. In securing the loans, respondent failed to advise his client their interests could differ, that he should seek independent counsel before entering into the loans or that an attorney was under a fiduciary responsibility when entering into a business transaction with a client.

17. Respondent later was evasive when he met with Dr. Caldwell to discuss his indebtedness. In the fall of 1983, respondent terminated his law practice and moved to Nevada. He took with him some of the collateral securing the loans made by Dr. Caldwell who retained an airplane, the properties and some vehicles. None of the collateral is sufficient in value to secure respondent's indebtedness. In fact, when Dr. Caldwell recovered the airplane he had earlier sold to respondent he had to pay a local lending institution some \$28,000.00 which respondent had refinanced with them in order to get a clear title.

III. Recommendations as to Whether or Not Respondent Should Be Found Guilty: As to each count of the complaint, I make the following recommendations as to guilt or innocence.

As to Count I

I recommend the respondent be found guilty and specifically he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit: Article XI, Rules 11.02(3)(a) for engaging in conduct contrary to honesty, justice and good morals; and 11.02(4) for misusing trust funds; Disciplinary Rules 1-102(A)(3) for engaging in illegal conduct involving moral turpitude; 1-102(A)(4) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 1-102(A)(6) for engaging in other conduct adversely reflecting on his fitness to practice law; 9-102(B)(3) for failing to maintain complete records of all properties of a client coming into his possession and render appropriate accountings; and 9-102(B)(4) for failing to promptly pay or deliver funds to his client in his possession upon demand.

As to Count II

I recommend the respondent be found guilty and specifically he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit: Article XI, Rules 11.02(3)(a) for conduct contrary to honesty, justice and good morals; 11.02(4)

for improper use of trust funds; 11.02(4)(c) and the corresponding bylaw for improper trust account record keeping. Disciplinary Rules 1-102(A)(4) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 1-102(A)(6) for engaging in other conduct adversely reflecting on his fitness to practice law; 9-102(B)(3) for failing to maintain complete records of all funds of a client coming into his possession.

As to Count III

I recommend the respondent be found guilty and specifically he be found guilty of violating the following Integration Rule of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit: Article XI, Rules 11.02(3)(a) for conduct contrary to honesty, justice or good morals; and Disciplinary Rules 1-102(A)(4) for engaging in conduct involving dishonesty, fraud, deceit and misrepresentation; 1-102(A)(6) for engaging in other conduct adversely reflecting on his fitness to practice law; 5-101(A) for accepting employment when the exercise of his professional judgment on behalf of his client will be affected by his own financial, business, property or personal interests; 5-104(A) for entering into a business transaction with a client without the appropriate safeguards; and 5-105(B) for continuing his representation when there is a likelihood of a conflict of interest.

As to Count IV

I recommend the respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit: Disciplinary Rules 2-110(A) (1) for withdrawing from employment without court approval; 2-110(A) (2) for abandoning his client without taking steps to avoid prejudice to a client; 2-110(A) (3) for failing to refund promptly any unearned fee or unused costs after withdrawal from employment; 6-101(A) (3) for neglecting a legal matter entrusted to him; 7-101(A) (1) for intentionally failing to seek the lawful objectives of his client; 7-101(A) (2) for intentionally failing to carry out his contract of employment with Mr. Muuse; 7-101(A) (3) for intentionally prejudicing and damaging his client through failure to respond in the county court suit; 9-102(B) (4) for failing to promptly pay over unused cost moneys to a client.

I recommend the respondent be found not guilty of violating Disciplinary Rule 9-102(B) (3) for failing to promptly render an accounting to the client since no demand was made. I also recommend the respondent be found not guilty of violating Article XI, Rules 11.02(3) (a) for engaging in conduct contrary to honesty, justice or good morals; and 11.02(4) for not promptly providing the accountings since one was not requested.

As to Count V

I recommend the respondent be found guilty and specifically he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit: Article XI, Rules 11.02(3)(a) for engaging in conduct contrary to honesty, justice and good morals; 11.02(4) for not providing an adequate accounting of funds to a client and using those funds without permission. Disciplinary Rules 1-102(A)(4) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 1-102(A)(6) for engaging in conduct adversely reflecting on his fitness to practice law; 5-101(A) for accepting employment when the exercise of his professional judgment in behalf of his client will be affected by his own financial, business, property and personal interests; 5-104(A) for entering into a business transaction with a client without the appropriate safeguards; 5-105(A) for accepting proffered employment when the exercise of his independent professional judgment on behalf of his client is likely to be adversely affected; 9-102(B)(3) for failing to render appropriate accounts to his client of the funds and properties of the client; and 9-102(B)(4) for failing to promptly deliver funds to the client with respect to the sales.

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the respondent be disbarred from the practice of law for five (5) years pursuant to Article XI, Rule 11.10(5) of The Florida Bar's Integration Rule.

V. Personal History and Past Disciplinary Record: After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 11.06(9)(a)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 43
Date Admitted to Bar: 11/10/67
Prior disciplinary convictions and disciplinary measures imposed therein: Not applicable.
Other personal data: It appears the respondent is divorced and has minor dependents.

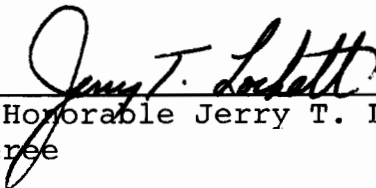
VI. Statement of Costs and Manner in Which Costs Should Be

Taxed: I find the following costs were reasonably incurred by The Florida Bar.

A.	Grievance Committee Level Costs	
1.	Administrative Costs	\$ 150.00
2.	Transcript of grievance committee hrg., 1/20/84	100.51
B.	Referee Level Costs	
1.	Administrative Costs	150.00
2.	Transcript of Referee hrg. held 2/26/85	256.95
3.	Bar counsel's travel expenses	32.74
C.	Miscellaneous Expenses	
1.	Staff Investigator's expenses	55.84
2.	Long Distance telephone charges	<u>22.88</u>
	TOTAL ITEMIZED COSTS:	\$ 768.92

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 25th day of March, 1985.


The Honorable Jerry T. Lockett,
Referee

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