IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

vs.

MICHAEL H. FARVER,

Respondent.

_____/

CONFIDENTIAL
CASE NO. 66,462
TFB No. 06A85H21

THE FLORIDA BAR'S REPLY TO
RESPONDENT'S ANSWER BRIEF

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STATEMENT OF FACTS

Respondent takes issue with paragraph three (3) of the Statement of Facts of the Bar's Opening Brief in that the Referee's Findings of Fact did not clearly indicate if in fact the fees retained by respondent rightfully belonged to the "Clinic".

In reply, paragraph three (3) of the Bar's statement of facts corresponds verbatum to paragraph three (3) of the Referee's Findings of Fact in the Report of Referee.

The Referee's Findings of Fact clearly state, in part, the respondent knowingly obtained funds which rightfully belonged to the law firm which employed respondent. (RR,1) Since neither the Bar nor respondent have sought this court's review of the Referee's Findings of Fact, such argument at this time is foreclosed.

SUMMARY OF ARGUMENT

Respondent embezzled funds from his employer in the amount of $6,671.00 and the referee has recommended respondent be disciplined by a one (1) year suspension, proof of rehabilitation and payment of costs.

The Bar respectfully requests that this court disapprove a one (1) year suspension as an insufficient disciplinary sanction.

Therefore, the Bar respectfully requests that this court supplement the one (1) year suspension recommended by the referee and impose a minimum of a two (2) year suspension, proof of rehabilitation and payment of costs.

ARGUMENT

Respondent seeks a sixty (60) day suspension as the appropriate sanction for his alleged misconduct.

It is the position of The Florida Bar that any sanction less than a two (2) year suspension is insufficient discipline for respondent's misconduct.

Respondent argues that his case is distinguishable from the Bar's supportive case law in that his misconduct was a fee dispute with his employer and not one of willful misappropriation of funds. Respondent's argument of this distinguishing factor is in direct conflict with the Referee's Findings of Fact and recommendation of guilt which are not in dispute. The Florida Bar and the respondent seek review only as to the referee's recommended disciplinary sanction of a one (1) year suspension.

The referee found that respondent knowingly obtained or used funds he received from clients of the clinic which rightfully belonged to his employer and that he converted the funds to his own use with the intent to deprive his employer of the funds. Further, the referee found respondent guilty of violating DR 1-102(A)(3) (engaging in illegal conduct involving moral turpitude); DR 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(6) (engaging in conduct that adversely reflects on his fitness to practice law) and Integration Rule 11.02(3)(A) (engaging in conduct contrary to honesty, justice or good morals). (RR,3)

Clearly, the referee believed that respondent willfully misappropriated his employer's funds and there is no evidence that he felt respondent's misconduct was merely a fee dispute between he and his employer.

Respondent knowingly embezzeled fees from his employer and such conduct warrants a minimum of a two (2) year suspension, proof of rehabilitation and payment of costs.

Respondent is apparently attempting to argue for a reduction from one (1) year to sixty (60) days to offset the Board of Governor's position that the suspension should be increased to a two (2) year suspension.

First, respondent's request to reduce the suspension from one (1) year to sixty (60) days should be denied because that would be too minimal a sanction under the circumstances. Secondly, this Honorable Court already has rejected a sixty (60) day suspension in this matter in its Order of February 27, 1986, remanding the matter to the referee for further proceedings on the merit. Thus, if a sixty (60) day suspension was inappropriate less than one year ago, it is inappropriate today.

Thirdly, according to The Standards For Imposing Lawyer Sanctions, (1986) (hereinafter refererred to as The Florida Standards), which provides a guideline for determining the appropriate sanctions for ethical violations by attorneys, respondents misconduct could warrant disbarment.

The respondent's embezzlement of funds from his employer,

(Respondent was charged with a felony), violates a duty owed to the public that he failed to maintain personal integrity. The Florida Standards, Supra at 7,8.

Standard 5.1, "Failure to Maintain Personal Integrity", applies to cases involving the commission of a criminal act which reflects adversely on a lawyer's honesty, thrustworthiness or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation. Standard 5.11 provides, in part, that disbarment is appropriate when a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misapprporiation, or theft.

Since respondent's misconduct, without mitigating factors would warrant disbarment under Standard 5.11, the facts and circumstances of the instant case clearly indicate a lengthy suspension. Therefore, the Bar is seeking to increase the referee's recommendation of a one (1) year suspension to a sanction of a minimum of a two (2) year suspension. However, a sixty (60) day suspension, as requested by respondent, is clearly an insufficient sanction for respondent's misconduct.

CONCLUSION

The issue before this court is whether a one (1) year suspension is sufficient disicpline for misdconduct of an attorney who embezzles legal fees from his employer.

It is the Bar's position that any sanction less than a two (2) year suspension is an insufficient disciplinary measure for respondent's misconduct.

A one (1) year suspension is not only in consistent with the case law, but in addition, it does not serve to uphold the integrity of our profession and our disciplinary system.

WHEREFORE, The Florida Bar respectively requests this Honorable Court to suspend respondent for two (2) years, proof of rehabilitation prior to reinstatement and payment of costs.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing The Florida Bar's Reply to Respondent's Answer Brief has been furnished by regular U.S. mail to James R. Niesset, attorney for respondent, 5253 Central Avenue, St. Petersburg, Florida, 33707, Michael Farver, 5253 Central Avenue, St. Petersburg, Florida, 33707, and John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida, 32301, on this 20th day of February, 1986.

STEVE RUSHING