IN THE SUPREME COURT OF FLORIDA

(before a Referee)

THE FLORIDA BAR,

Complainant,

v.

GEORGE W. KENT, JR.,

Respondent.

CONFIDENTIAL
Case No. 66,598
Bar No. 04B84N37

REPORT OF REFEREE

The undersigned Referee held a final hearing on June 12, 1985 on the Complaint of The Florida Bar against George W. Kent, Jr., alleging professional misconduct and violation of specifically designated Disciplinary Rules relating to the appropriation of trust funds for personal uses and matters related thereto. At the final hearing respondent entered his written plea of guilty to the charges as stated, and presented evidence and argument intended to mitigate the penalty. Mr. James N. Watson, Jr. appeared for The Florida Bar and Mr. Robert P. Smith, Jr. appeared for the respondent.

The referee finds as follows:

1. Respondent, a member of The Florida Bar, on or about July 2, 1982, while representing the seller of property in Clay County, Florida, received a check for $57,264.00 representing the balance due on closing of the sale. Respondent was responsible for satisfying various outstanding obligations, among which was a mortgage that he did not satisfy. Rather, he placed

these funds in his trust account and then made monthly payments on said mortgage as they became due until his funds were exhausted in November 1983, at which time said mortgage became in default. Apparently because such default brought these matters to light the attorney for the buyers demanded in November 1983 that respondent immediately satisfy such mortgage. The Florida Bar began an investigation following which respondent on or about April 9, 1984 satisfied the outstanding mortgage in the amount of $33,198.02 using funds borrowed from his family.

2. The trust funds referred to in the preceding paragraph were used by respondent for his own personal and other business purposes and were completely exhausted in November, 1983.

3. Respondent failed to maintain records as to his trust account and failed to reconcile his trust account all as required by the Integration Rule.

4. Respondent has pled guilty as charged, and it is recommended that he be found guilty of the violations recited in the Complaint, namely D.R. 1-102(A)(1,4,6); D.R. 6-101(A)(3); D.R. 7-101(A)(1,2,3); and D.R. 9-102(A)(b)(3).

5. Respondent has now made full restitution.

6. Respondent has cooperated with The Bar throughout these proceedings.

7. Respondent admits his guilt and wrong doing and does not seek to diminish the gravity of his wrongs, although he urges leniency in punishment.

8. Respondent has taken some steps to keep proper records and has virtually withdrawn from the active practice of law.

9. Respondent is apparently reasonably well thought of in his community, having served on the city council since his election in 1981, including being selected as Mayor in 1983.

10. This matter is and has remained in confidential status at respondent's request.

11. During the final hearing it was disclosed that separate charges against respondent had been made involving funds of another party (Gibson) and that The Florida Bar had either filed a Complaint or was in the process of doing so. The charges related to the commingling and appropriation of such other funds during the same period of time as that involving the subject of the instant Complaint. Respondent's counsel wanted these additional charges considered and included by the referee with the Report on this Complaint, but emphasized that respondent admitted the charge of "commingling" these other (Gibson) trust funds, but denied charges of misappropriation of such funds. Feeling that the Supreme Court, in determining its ultimate penalty, would prefer to have all known and pending matters involving respondent before it at the same time, the referee agreed to try and accommodate this purpose if it could be properly done with the agreement of all concerned and the proper assignment by the Supreme Court. There is actually

no assignment by the Supreme Court and this referee is of the opinion that no separate jurisdiction is bestowed to consider and dispose of such additional charges, but knowledge of such facts and circumstances is proper to be considered in recommending punishment for the charges as stated in the Complaint. See The Florida Bar v. Stillman 401 So.2d 1306 (Fla. 1981). Based upon the communication to the referee dated July 18, 1985 and the various discussions in the record (Transcript pps. 15-17, 30-35, 46-48, 95-101, 112-113, 122-123, 125-128, 132), I find that respondent has commingled these additional funds (Gibson) with his own and that this matter should be considered in such penalty as here imposed.

12. Respondent was admitted to The Florida Bar in 1977 and has had no other disciplinary charges.

The question to be resolved is the appropriate penalty involved.

Respondent, in his testimony, did not attempt to excuse his violations of professional trust and responsibility, but he did offer the testimony of a clinical psychologist which was intended in some way to suggest that respondent should be excused from his misconduct because of psychological trauma expressed and described in different ways. With all due

deference to such profession, the credibility of such evidence is highly suspect because of its frequent abuse. It has been my experience that a psychologist of some kind can be found somewhere that is willing to explain away and excuse almost any conduct using terms and expressions found in various journals designed to attribute professional competence by their use. If the psychological state of respondent is or was such that it excusably caused him to steal large sums from another and violate his various professional responsibilities, there is little if any assurance that such may not recur for the same excusable reasons. I do not believe respondent, or any other member of The Bar, should be given the impression that The Florida Bar and its members will tolerate the conduct exhibited here under any circumstances, and the message should be made clear by the Supreme Court of Florida that it will act to protect the public from such misconduct and the image of the many thousands of fine lawyers of this state.

The conduct involved here did not occur only once or twice on the spur of the moment or in a single period of extreme pressure or difficulty. The conduct charged continued from July 1982 and on various and repeated occasions thereafter as he made his various withdrawals and also made the monthly mortgage payments for each month until November 1983. Even after the demand by the attorney for the buyer in November 1983, it was not until The Bar's

investigation and absolute confrontation with the reality of disciplinary proceedings that restitution was made in April 1984.

This referee is among those who share the opinion of the Court as expressed in The Florida Bar v. Breed 378 So.2d 783 (Fla. 1979), the dissents in The Florida Bar v. Pinkett 398 So.2d 802 (Fla. 1981), and The Florida Bar v. Morris 415 So.2d 1274 (Fla. 1982) and 452 So.2d 545 (Fla. 1984),and The Florida Bar v. Whitlock 426 So.2d 955 (1982) that an attorney who steals or misappropriates money entrusted to him should be disbarred. Being bound, however, by precedent of the several decisions of the majority of the Florida Supreme Court in the cases cited above, and others, such as The Florida Bar v. Anderson 395 So.2d 551 (Fla. 1981), it is recommended:

A. That respondent be suspended from the practice of law for a period of three (3) years to commence upon the entry of the judgment of the Supreme Court in these proceedings.

B. As conditions of his reinstatement to the practice of law;

(1) Respondent be required to pass the professional ethics portion of The Florida Bar examination.

(2) Respondent demonstrate his understanding of and compliance with office and trust accounting procedures for members of The Florida Bar, and

(3) Respondent be placed on probation for an additional three (3) years during which he submit such reports to The Florida Bar as may be reasonably required and that his office books and records be periodically audited by The Florida Bar.

C. Respondent forthwith pay the costs of these proceedings as follows:

(1). Grievance Committee Level Costs

Administrative Costs	$150.00

(2). Referee Level Costs

a.	Administrative Costs	$150.00
b.	Transcript and court reporter costs	$475.80
c.	Bar counsel travel costs	$132.56
d.	Referee travel paid by the State	$ 28.40
	Total	$936.76

Respectfully submitted this 23rd day of July, 1985.

OSLE R. FAGAN, CIRCUIT JUDGE
Judicial Referee

Copies to:

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