IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

GEORGE W. KENT,

Respondent.

_____/

CONFIDENTIAL
Case No. 66,598

REPLY BRIEF OF RESPONDENT

George W. Kent
1712 Kingsley Ave., #1
Orange Park, FL 32073
(904) 264-7665

Respondent

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PREFACE

The Florida Bar is the Complainant and George W. Kent is the Respondent. The parties will be refered to as Complainant and Respondent.

The following symbols will be used:

T - Transcript of Final Hearing before the Referee.

SUMMARY OF ARGUMENT

Respondent responds to Complainant's Initial Brief by stating that the Referee's recommended discipline is appropriate and is consistant with previous holdings of this Court.

Respondent asks this Court to take into account the many mitigating factors that are present *sub judice*. These include restitution, cooperation, a good standing in the local community, extensive pro bono work for civic organizations, a good faith effort to rehabilitate, voluntary withdrawal from the practice of law, and no previous disciplinary actions.

ARGUMENT

I. THE REFEREE'S DISCIPLINARY RECOMMENDATION WAS NOT ERRONEOUS.

Complainant has requested this Honorable Court to uphold the Referee's recommendation of guilt and recommendation as to disciplinary violations and to enter an order that the Respondent be disbared from the practice of law. Respondent would respectfully submit that the Referee's recommendation as to the appropriate penalty in this matter was supported by the facts before him during the final hearing and consistant with previous decisions of this Court in similar matters.

The Referee recommended:

A. That respondent be suspended from the practice of law for a period of three (3) years to commence upon the entry of 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...(pg. 6 & 7, Report of Referee, July 23, 1985).

In determining the recommended disciplinary action

the Referee had before him evidence which lead him to make some very forthright findings of fact. As to the question of restitution, the Referee found:

> 5. Respondent has now made full restitution, (Pg. 2, Report of Referee, July 23, 1985).

The Referee made this finding of fact after hearing testimony presented by Respondent. No conflicting testimony or evidence was presented by Complainant at the time of the final hearing.

As to the question of cooperation, the Referee found:

> 6. Respondent has cooperated with The Bar throughout these proceedings (Pg. 2, Report of Referee, July 23, 1985).

Again, the Referee made this finding of fact after hearing testimony and evidence presented by Respondent. Again, no conflicting testimony or evidence was presented by Complainant at the time of the final hearing.

Respondent has attempted to cooperate fully with Complainant. The record indicates that Respondent has repeatedly made every effort to expedite these proceedings. Complainant in its Petition for Temporary Suspension dated June 4,1984 acknowledges that Respondent on May 3, 1984 made numerous admissions to Mr. Claude H. Meadow, Jr., Staff Investigator for The Florida Bar relating to the charges now before this Court.

Subsequent to the filing of the Petition for Temporary Suspension Respondent filed a Response to said Petition outlining various self-corrective actions that were being taken by Respondent to protect the public interest and

provide for the start of Respondents rehabilitation. These measures included the retention of the services of a professional C.P.A.,continued treatment by a clinical psychologist and the limitation of his legal practice. A review of the Referee's findings of fact will demonstrate that the Respondent made a good faith effort to comply with those self-imposed corrective measures and has now "virtually withdrawn from the active practice of law". (Pg. 3, Report of Referee, July 23, 1985).

The Referee and Complainant in its Initial Brief did question the expert testimony of Dr. Louis Legum. As noted by the Referee, Respondent at no time sought to excuse his actions in any way. The testimony of Dr. Legum was intended to inform the Referee of Respondent's severe personal problems that he had experienced during the time period that the ethical violations occured and to demonstrate that Respondent was making a real effort toward rehabilitation.

Dr. Legum's testimony indicated that Respondent has been suffering from depression brought on by a divorce, a business failure and a political failure. (T-62,63). Dr. Legum also indicated that Respondent was receiving treatment to help him better cope with future problems and reduce the possibility of any future unethical behaviour. (T63,65,66,67). The severe impact on Respondent by the above referenced personal problems was also verified by testimony from Mr. Edward Rich, a local attorney who has known Respondent both personally

and professionally for some time. (T-92).

The Referee also found that

> 9. Respondent is apparently reasonably well thought of in his community...(Pg. 3, Report of Referee, July 23, 1985).

Complainant on page 20 of its initial brief attempts to minimize the activities of Respondent that led the Referee to making that finding by stating:

> "Aside from Respondents nonlegal political action, there was no showing of any special legal qualification, i.e., pro bono contributions the public community would lose."

This contention is contrary to the undisputed testimony of the Respondent that he served as legal counsel for numerous civic organizations, including the Association for Retarded Citizens of Clay County, Citizens for Advanced Life Support Systems, and the Clay Citizens Coalition, which is an environmental group (T-25,26). Respondent donated his time freely over a period of a number of years and due to these actions the Clay Citizens Coalition sent a letter of appreciation to the Florida Bar News. (T-26). These actions were over and above the political contribution made by Respondent in his community as outlined by Mr. Rich's testimony. The contribution to his community in the political area resulted in the monetary savings of hundreds of thousands of dollars over a period of years according to Mr. Rich (T-84).

Respondent makes reference to these activities not in a boastful manner or in a way to excuse his misconduct but rather suggests that these factors, among

others, were the basis for the determination that cases such as The Florida Bar v. Anderson, 395 So.2d 551 (Fla. 1981) should be used to guide him in his recommendation of disciplinary measures. This Court has repeatedly stated that a variety of mitigating factors should be considered when determining punishment and the Respondent would respectfully submit that the Referee did jut that in making his disciplinary recommendation.

In Anderson, supra, the Respondent stipulated to her guilt, as the Respondent in the case sub judice has done. Anderson cooperated with the Bar during the course of the proceedings, which the Respondent in the case sub judice has done. Anderson made restitution, which the Respondent in the case sub judice has done. Anderson had no prior disciplinary problems, as is true in the case sub judice. Anderson had personal, family and law practice problems, as is true in the case sub judice. Anderson was well-regarded in her community, as is true in the case sub judice. Anderson knew what she was doing was improper and continued such actions for a period of time, which is also true in the case sub judice.

Clearly the Referee was correct in applying Anderson, supra.

Such a recommendation is also consistant with The Florida Bar v. Morris, 415 So.2d 1274 (Fla. 1982) and The Florida Bar v. Pincket, 398 So.2d 802 (Fla. 1981).

Complainant now appears to be arguing that cases such as Anderson, supra, Morris, supra, and Pincket, supra, do not fully apply since the Respondent did not cooperate with the Bar until May, 1984. Such argument was made by the council for Complainant at the time of the final hearing. Despite this, and after having an opportunity to review the record, the Referee made a finding of fact that Respondent had cooperated with The Florida Bar. (Pg. 2, Report of Referee, July 23, 1985). Complainant nor Respondent has asked this Court to review the referee's findings of fact which would be appropriate if said findings were now to be indirectly challenged in order to "lessen the impact" of cases relied on by the Referee in making his recommendations.

Complainant also argues in its initial brief that Respondent's commingling of funds was not limited to one particular case. Respondent has repeatedly admitted that he commingled funds of another real estate closing, refered to as the Gibson closing, since his initial reply to the Bar's Petition for Temporary Suspension (Exhibit 6). Respondent has also repeatedly denied that he ever misappropriated said funds and the only testimony or evidence before the Referee was to that effect (T-16,17). Complainant maintained in discussions with the Referee at the final hearing that misappropriation in fact occured. (T-99,100). Subsequently Complainant has agreed not to file a separate complaint against Respondent for misappropriation of funds but rather agreed to have the

matter considered by the Referee in light of the evidence before him. This evidence led the Referee to find that commingling of funds did occur but no other violation was found. (Pg. 4, Report of Referee, July 23, 1985).

The commingling of funds in both instances took place during the same period of time and were both part of Respondent's admittedly inadequate bookkeeping methods. Respondent's admissions to Mr. Meadows of The Florida Bar all related to the situation that existed in Respondents law office prior to May 1984. Respondent would suggest that the Referee considered these facts when determining his recommended disciplinary actions.

The fact that more than one instance of improper action occured does not mean that the recommended disciplinary action is inconsistant with previous holdings of this Court. In Morris, supra, Mr. Morris was found guilty of two seperate instances of misappropriation of trust funds. It should be noted that Mr. Morris had not made full restitution of the misappropriated funds at the time this Court entered its order imposing a penalty of a two year suspension.

Complainant relies on The Florida Bar v. Mathews, 389 So.2d 1004 (Fla. 1980) and The Florida Bar v. Stillman, 401 So2d 1306 (Fla. 1981) as support for its position that disbarrment is the appropriate discipline in the case sub judice. A review of the facts of those cases indicated that neither are similiar to those before

this Court at this time.

In Matthews, supra, Mr. Mathews was found guilty of misusing trust funds belonging to three seperate clients. Mr. Mathews through the time of his hearing before a referee made excuses for his conversion of funds. These excuses were found to be unfounded by the Referee. The Respondent in the case sub judice has admitted his guilt since May, 1984. Mr. Mathews showed no cooperation with The Florida Bar and the Referee. The Respondent in the case sub judice has cooperated. Mr. Mathews failed to make restitution of all funds misappropriated. The Respondent in the case sub judice has made restitution.

In Stillman, supra, this Court was faced with a factual situation where Mr. Stillman misappropriated funds, made no showing of restitution and failed to cooperate with The Florida Bar. Additionally, Mr. Stillman had previously pled nolo contendre in Dade County to two counts of forgery and one count of grand larcency. Respondent in the case sub judice has acted in an entirely different manner than Mr. Stillman.

Clearly neither the facts of Matthews, supra, nor Stillman, supra, are comparable to the case sub judice.

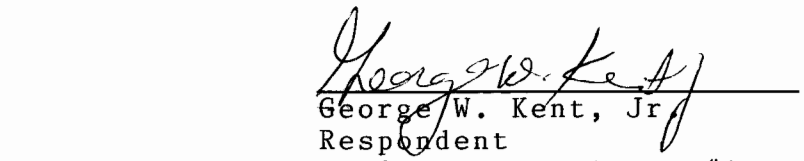
Rather this Courts actions in cases such as Anderson, supra, would be more appropriate to apply when determining the punishment to be applied here.

CONCLUSION

Respondent has not nor does he now seek to be excused from a just punishment for his unethical conduct. He merely requests this Court to allow him the opportunity to prove that he has rehabilitated himself and return to the practice of law. Respondent has attempted to be an asset to his community both as an attorney and as an individual. He acknowledges he made a tremendous error that will effect him for the rest of his life, no matter what is ultimately decided by this Court.

For the foregoing reasons, Respondent respectfully requests this Honorable Court to uphold the recommendations of the Referee in all respects.

Respectfully Submitted



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing have been mailed to the Supreme Court of Florida and that a copy has been mailed to James N. Watson, Jr., Staff Counsel, The Florida Bar, Tallahassee, Florida 32301 this 31st day of October, 1985.

George W. Kent, Jr.