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SEP 23 1987  
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Dandy Clark

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

GREGORY S. HARTMAN,

Respondent.

CASE NO'S: 69,243 & 70,377  
TFB No'S: 12A85H54, 12A85H59,  
12A86H27, 12A86H47

REPLY BRIEF OF RESPONDENT

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STATEMENT OF THE FACTS

TFB NO: 12A85H54 CASE NO: 69,243  
TFB NO: 12A85H59 CASE NO: 69,243  
TFB NO: 12A86H27 CASE NO: 69,243  
TFB NO: 12A86H47 CASE NO: 70,377

Respondent adopts the Statement of Facts as set forth in the Florida Bar's Initial Brief.

STATEMENT OF THE CASE

Repondent adopts the statement of the case in Case Number: 69,243 (TFB NO'S: 12A85H54, 12A85H59 and 12A86H27) and Case Number: 70,377 (TFB NO: 12A86H47) as set forth in the Florida Bar's Initial Brief.

SUMMARY OF ARGUMENT

Respondent's violations, as noted in the Report of Referee, were extensive. However, these violations were without intent but rather were attributable to, emotional instability resulting from marital difficulties and chemical dependency.

The referees recommendation of a one year suspension with a two year period of probation during which respondent must participate in the Florida Lawyers Assistance, Inc. program is a proper and sufficient penalty when respondent has demonstrated his reformation and rehabilitation by cooperating with the Florida Bar's investigation, admitting his problem and his guilt and making partial restitution and taking further steps to make full restitution in all cases.

The Respondent, in this Answering or Reply Brief, asks that the referee's recommendation, as above noted, be approved in all respects.

## ARGUMENT

A one year suspension coupled with a two (2) year supervised probationary period requiring respondent to perform his Rehabilitation Contract with Florida Lawyers Assistance, Inc., is a sufficient sanction for unintentional misappropriation of client trust funds and knowingly engaging in conduct contrary to a disciplinary rule.

It is not disputed that Respondent failed to deposit monies into his trust account and has been unable to account for trust monies. Respondent converted child support money, HLA blood test money and money from a real estate closing. The Referees Report found that any conversion and/or misappropriations of client funds occurred without intent and no evidence has been presented to show that Respondent converted funds for his own use, (TR 17). Respondent has made partial restitution in two cases and is taking steps to make restitution of remaining monies.

The Respondent's admitted misconduct occurred over a one and one half (1 1/2) year period and the referee found they were attributable to emotional instability (T 36) resulting from emotional instability and the concomitant use of drugs and alcohol. (T 36) (RR-33).

The Florida Bar seeks to have the Respondent disbarred. The Bar took a similar position in The Florida Bar vs. Pahules, 233 So. 2d 130 (FLA 1970). In Pahules, the Respondent received \$14,052.37 from a sale of real estate sale and all of which was apparently due to his client under the terms of a Trust Agreement. The Respondent failed to properly account for the funds or deposit them in a trust

account. He comingled the funds with his own and used it for his own interests. Thereafter checks issued to the client on Respondents personal and trust accounts were returned marked "insufficient funds". There were other instances found where Respondent comingled funds and issued trust account checks returned for "insufficient funds".

In disapproving the referee's recommendation of disbarment as too severe, the court at page 132 cited the purposes of discipline: "...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. 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."

With these purposes in mind and considering the Respondents cooperation and his previous unblemished record as an attorney, the Court in Pahules suspended the Respondent from the practice of law for six months and thereafter until he had demonstrated rehabilitation.

In the instant case, the Respondent over a one and one half (1 1/2) year period failed to deposit certain monies into his trust account, failed to maintain records, and engaged in conduct that adversely reflected on his fitness to practice law. The violations were without intent and it has no been determined nor alleged that the Respondent converted any funds to his own use. The Respondent cooperated with the Florida Bar's investigation and audit. He had eight (8) unblemished years practicing law prior to the first violation and has practiced for three (3) years since the last violation.



Restitution has been made on one case and Respondent is making arrangements for restitution in the others.

The Florida Bar relies on the decisions of disbarment in the cases of The Florida Bar vs. Harris 400 So. 2d 1220 (FLA. 1981) and The Florida Bar vs. Bond 460 So 2d 375 (FLA 1984). In each of these cases, the Respondents failed to deposit trust funds, failed to maintain proper records, wrote bad checks, failed to cooperate with the Florida Bar's investigation and converted the trust funds to his own use or personal benefit.

In the instant case, the Respondent fully cooperated after commencement of Bar proceedings and opened his accounts for a full audit. It has not been alleged or shown that the Respondent converted missing funds to his own use or personal benefit.

In the Florida Bar vs. Larkin 420 So 2d 1080 (FLA. 1982), where the referee found that the Respondents violations were the result of his alcoholism. This Court noted in those cases where alcoholism is the underlying cause of professional misconduct and the individual attorney is willing to cooperate in seeking rehabilitation, The Court should take these circumstances into account in determining appropriate discipline.

In the instant case, the referee found that the Respondent's violations were extensive but were without intent and attributable in part due to the use of alcohol and drugs. He has pursued rehabilitation and complied with all terms and conditions set forth in his Rehabilitation Contract with Florida Lawyers Assistance, Inc.

Further, the Respondent was instrumental in organizing an AA type meeting which has now been in existence for over one year.

This Court's statements of the purposes of discipline set forth in The Florida Bar vs. Pahules, supra were supported by John Berry, Staff Counsel for the Florida Bar, when after a recent decision by this Court he commented "it reiterates the important principle that the purpose of lawyer discipline is to protect the public and rehabilitate the lawyer, not to punish." (The Florida Bar News Volume 14, Number 15, August 1, 1987)

In the instant case, it is clear that the Respondent has pursued rehabilitation including close monitoring by a fellow attorney (TR-39). His rehabilitation has shown steady progress and his prognosis is good.

In commenting on the Respondents present ability and suitability to practice law, Charles Hagan, Jr., Executive Director of Florida Lawyers Assistance, Inc., reported to the referee that the Respondent "represents essentially the same type of risk that would be represented by any new attorney coming into the practice of law" (TR-38). The Respondent has practiced for almost three (3) years since the last violation and has had no further complaints against him.

The Florida Bar seeks disbarment of Respondent. This position fails to offer the Respondent the opportunity of further rehabilitation through Florida Lawyers Assistance, Inc., and does not encourage reformation or further rehabilitation of the Respondent. Disbarment would serve no useful purpose in the instant case where Respondent has cooperated, shown rehabilitation, made partial restitution, is currently practicing law, and has demonstrated that he is not

a risk to the general public.

A one (1) year suspension coupled with probation (with stated conditions) is sufficient in the instant case and is severe enough to deter others who might be tempted or prone to become involved in like violations.

WHEREFORE, the Respondent asks that the referees recommendation of a one (1) year suspension coupled with probation be approved in all respects.


CONCLUSION

Respondent's violations herein were extensive. They were committed during an eighteen (18) month period of what was an otherwise unblemished twelve (12) year career as an attorney. The violations were not intentional but attributable to emotional instability resulting from marital difficulties and concomitant use of drugs and alcohol.

Respondent has admitted the violations and his chemical dependency and alcoholism. He has sought to make resitutuion to injured parties and to rehabilitate himself. He has been closely monitored for the past year and does not pose a greater risk to the general public than any other person coming into the legal profession.

WHEREFORE, the Respondent respectfully requests this Honorable Court approve the referees recommendation in all respects.

Respectfully Submitted

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of Respondent has been furnished to Thomas E. DeBerg, Assistant Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport Marriott Hotel, Tampa, Florida 33607 on this 20 day of September, 1987.

  
GREGORY S. HARTMAN