

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
vs.
JOHN E. HANKAL,
Respondent.

CONFIDENTIAL

CASE NO. 69,293
(TFB 07B86C12)

REPORT OF REFEREE

On September 4, 1986, Complaint was filed charging Respondent with violations of:

1. Rule 11.02(3)(a) of Article XI of The Florida Bar's Integration Rule (conduct contrary to honesty, justice or good morals); and
2. Rule 1-102(A)(6) of The Florida Bar's Code of Professional Responsibility (conduct adversely reflecting upon Respondent's fitness to practice law); and
3. Rule 5-104(A) of The Florida Bar's Code of Professional Responsibility (for entering into a business transaction with a client if they have differing interests therein and the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure).

In his Answer, the Respondent admits that at all times material to this Complaint he was a member of The Florida Bar and subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida. He admitted some other allegations of the Complaint; denied others; and affirmatively alleged that at the time of the transaction involved the complaining party, Ms. Beulah Jones, was not a client. He further alleged that he had not represented Ms. Jones for a number of months prior to that transaction and had no reasonable expectation of representing her in any further legal matters.

Pursuant to waiver and agreement by both parties, the case was tried in the Duval County Courthouse, Jacksonville, Florida on December 19, 1986.

FINDINGS OF FACT

1. The Complaint is based upon a single transaction -- a personal loan of \$40,000.00 from Beulah Jones to the Respondent in January, 1983.

2. In January, 1983, Ms. Jones sought out the Respondent and proposed making the \$40,000.00 loan to him. This loan was not solicited by the Respondent, but was voluntarily offered by Ms. Jones. Her stated reasons for offering to loan the money were that she wanted a better rate of interest on the money than she had been receiving from the bank, plus the fact that she resented the bank reporting to the Internal Revenue Service the interest it paid to her each year.

3. On her visit to the office of the Respondent for the purpose of offering to loan money to him, Ms. Jones was not seeking legal advice from Respondent nor did she receive any legal advice from him. Ms. Jones went to Respondent's office solely for the purpose of offering to loan him money because she was "tired of paying income tax" and not about any legal representation.

4. The Respondent agreed to borrow \$40,000.00 from Ms. Jones at 12% interest per year, payable in installments. Also, Respondent's secretary borrowed \$5,000.00 from Ms. Jones at 13% interest.

5. The loan to Respondent was memorialized by an installment promissory note executed by Respondent on January 18, 1983 and a simultaneously executed Security Agreement wherein Respondent pledged, as security for the debt, all his "office equipment, furniture, furnishings, and fixtures" located in his law office "including, but not limited to filing cabinets, typewriters, law library and business equipment." These documents were prepared by the Respondent and there is no contention that the documents were inadequate or deficient in any manner. However, the UCC-1 form was not recorded, even though it was Respondent's duty to do so, and Respondent found it in his file after this grievance proceeding started. Notwithstanding his failure to record the UCC form, the Respondent testified that his personal

property which was pledged as security for the loan has not been subsequently hypothecated and that Ms. Jones, at the time of the hearing, could still enforce the Security Agreement if she so desired.

6. The loan made by Ms. Jones to Respondent's secretary was secured by a promissory note and a mortgage on the secretary's home and Respondent also prepared these documents with no complaint being made that they were improperly prepared. This obligation by the secretary was paid in full to Ms. Jones.

7. Respondent made seven (7) monthly installment payments on his obligation to Ms. Jones and then defaulted. He has made no payments since. He realized that he could have avoided this debt via voluntary bankruptcy proceedings, but opted against this alternative. Ms. Jones retained counsel and sued Respondent on the promissory note, obtaining judgment without opposition from Respondent for the outstanding balance plus accrued interest, but Respondent did contest the amount of the award for attorney's fees. At the time of the hearing, Respondent testified that he is now "getting back on his feet" and hoped to start repaying this indebtedness soon.

8. Ms. Jones testified that she trusted Respondent and felt he would repay the loan because he was a lawyer. Respondent testified that his financial status at the time the loan was made was not good; that he needed to raise money; that a money judgment was either already entered against him, or the claim was in the process of being reduced to judgment; but that he did not advise Ms. Jones of any of these facts, although he knew that a prospective debtor and creditor have differing interests. Respondent never advised Ms. Jones to discuss the matter of the loan with anyone else prior to entering into the transaction and said that he "didn't advise her of anything." He did not feel that Ms. Jones was a well-educated woman, but felt that she was capable of managing her own affairs.

9. Subsequent to the loan, Respondent encountered difficulties with the Internal Revenue Service and his bank account

was garnished to apply toward a tax lien. This resulted in the lapsing of a life insurance policy which Respondent had assigned to Ms. Jones as additional security for the loan because the premiums on the policy had been paid by automatic withdrawals from the garnished bank account.

10. Respondent handled only one legal matter for Ms. Jones. He was retained in 1982 to either collect for her the money due on a promissory note secured by a real estate mortgage, or foreclose the mortgage. He collected the full balance due on the promissory note and remitted the proceeds to Ms. Jones under cover of his letter to her dated September 28, 1982, which letter is part of the record as Complainant's Exhibit 3 in evidence. This transmittal letter terminated his legal services on behalf of Ms. Jones and he did not hear from her again until she made an appointment and came to his office about four (4) months later in January, 1983 at which time she proposed making the loan to him. Respondent testified that he had thought Ms. Jones had moved to South Carolina.

11. At the time of the loan transaction, Ms. Jones was 79 years of age. In her early years she had completed 7 grades of school. She had been married to a former Justice of the Peace in St. Johns County (who died some time ago) and had picked up a little knowledge of the law from him, according to her testimony. Ms. Jones handled most of her own business affairs and was rather secretive concerning her business transactions, discussing those transactions with no person other than her nephew, Curtis T. Wilson, whom she trusts. However, prior to this loan transaction, Mr. Wilson stayed out of his aunt's business transactions pretty much and never discussed any of her business transactions with her until after this particular loan transaction. Mr. Wilson testified that Ms. Jones was "the kind of a lady that preferred to handle her own affairs."

12. Neither Ms. Jones nor her nephew, Mr. Curtis T. Wilson, have ever stated or claimed that the Respondent was guilty of professional misconduct in any way except for his failure to pay his indebtedness to Ms. Jones. As Mr. Wilson put it:

"That's the only evidence that I've seen that would indicate that Mr. Hankal is anything other than an upright person."

13. Respondent was admitted to The Florida Bar in 1970 and in 1973 received an appointment as a County Court Judge of St. Johns County. He served in that capacity until his term expired in January, 1975, at which time he left the Bench, having been defeated for reelection in September, 1974. Since January, 1975, Respondent has been in the private practice of law in St. Augustine, Florida. He is married and has three children, the oldest being 21 years of age.

14. Administrative Judge Michael E. Hanrahan of the Coast Guard appeared as a character witness for Respondent, testifying that Respondent has done a considerable amount of volunteer work helping other lawyers with alcohol and drug problems and that Respondent is part of a "hot line" of 120 lawyers throughout Florida who have recovered from substance abuse and who now help other lawyers with those problems. Judge Hanrahan testified further that he is familiar with the reputation of Respondent with other lawyers in his area and that such reputation is excellent.

RECOMMENDATIONS AS TO FINDINGS OF GUILT

The attorney-client relationship between Respondent and Ms. Jones had terminated several months prior to this loan transaction. Ms. Jones was not seeking legal advice from Respondent in connection with the loan transaction and Respondent did not give any legal advice or perform any legal services except for the preparation of the loan documents in conjunction with the completion of the loan. Thus, Ms. Jones was not a "client" at the time of this transaction, and it is recommended that Respondent be found not guilty of violation of Rule 5-104(A) of The Florida Bar's Code of Professional Responsibility.

However, attorneys should be held to a high standard of conduct in conducting financial transactions with a lay person, even if that layman is not a client. See The Florida Bar v. Jennings, 482 So.2d 1365 (Fla. 1986) and The Florida Bar v. Bennett, 276 So.2d 481 (Fla. 1973). Respondent knew at the time Ms. Jones offered to loan him \$40,000.00 that his finances were

in bad shape; that a money judgment had either already been entered against him, or was imminent; and that he was in trouble with the Internal Revenue Service for underpayment or non-payment of Federal Income Taxes. He also knew, or should have known, that Ms. Jones was placing her reliance upon him to repay the loan primarily because he was an attorney, and she had faith in his ability to pay. Therefore, it is recommended that Respondent be found guilty of violations of Rule 11.02(3)(a), Article XI of The Florida Bar's Integration Rule (conduct contrary to honesty, justice or good morals) and Rule 1-102(A)(6) of The Florida Bar's Code of Professional Responsibility (conduct adversely reflecting upon Respondent's fitness to practice law).

**RECOMMENDATION AS TO DISCIPLINARY MEASURE
TO BE APPLIED**

In view of Respondent's declination to avoid his indebtedness to Ms. Jones via bankruptcy proceedings, coupled with his avowed intention to pay in full the judgment which she holds against him and the fact that he has changed his lifestyle and is now effectively helping other lawyers overcome substance abuse, this Referee feels that strong mitigating factors exist. Also, this Referee bears in mind that the avowed motive of Ms. Jones in withdrawing her money from the bank and offering to make this loan was to evade or avoid payment of income taxes on interest income and that she was, thus, in pari delicti with Respondent, so to speak. Accordingly, it is recommended that the Respondent be given a Private Reprimand.

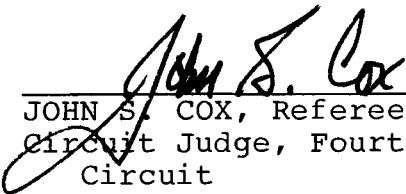
STATEMENT OF PAST DISCIPLINARY MATTERS

No past disciplinary measure has come to the attention of the Referee. However, the undersigned Referee has been appointed as the Referee on another disciplinary proceeding against this same Respondent, the subject matter of which allegedly occurred on April 18, 1986.

STATEMENT OF COSTS

Costs in this proceeding total \$1,351.30. It is recommended that such costs be taxed against the Respondent and that he be required to pay them on or before the date he is required to pay his next annual dues.

Respectfully submitted this 12th day of June, 1987.



JOHN S. COX, Referee
Circuit Judge, Fourth Judicial
Circuit
208 Duval County Courthouse
Jacksonville, Florida 32202

CERTIFICATE OF SERVICE

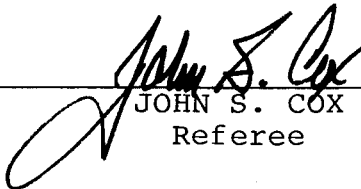
I hereby certify that a copy hereof was mailed to:

Jan K. Wichrowski, Esq.
Bar Counsel
The Florida Bar
605 E. Robinson St. - Suite 610
Orlando, Florida 32801

and to: John T. Berry, Esq.
Staff Counsel
The Florida Bar
Tallahassee, Florida 32301

and to: S. Perry Penland, Esq.
1113 Blackstone Building
Jacksonville, Florida 32202

this June 12th, 1987.



JOHN S. COX
Referee