IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant-Appellant,

v.

KEITH A. SELDIN,

Respondent-Appellee.

_____/

TFB File No. 86-20,097 (15A)

Case No.: 69,956

Deputy Clerk

INITIAL BRIEF OF THE FLORIDA BAR

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STATEMENT OF THE CASE AND OF THE FACTS

In August, 1983, respondent was retained to render legal services in connection with the administration of a decedent's estate. During the course of his representation he:

1. Stole $10,000.00 from the estate.

2. Conspired with his then lady friend (now wife) to defraud real estate brokers out of a commission relating to the sale of an estate asset.

3. Advised the personal representative to commit a misdemeanor by paying a finder's fee directly to a real estate salesperson cutting out a broker or brokers.

4. Requested that the personal representative forward funds to pay a claim to a third party who respondent represented in a separate matter. At the time respondent requested such funds his third party claimant-client had not filed a claim against the estate nor addressed any claim or invoice to any corporation in which the decedent was interested.

5. Notarized two (2) estate deeds outside the presence of the signatory thereto thereby committing misdemeanors.

Except for the theft, the foregoing was admitted by respondent either by responses to the bar's requests for admissions or by stipulation at the final hearing (3., 5.-9., 13., 15., 34., 35.).*

The theft was established through clear and convincing evidence. One of the estate assets consisted of commercial realty located in Palm Beach County. It was the subject of an exclusive listing agreement executed by decedent which survived his death (bar's exhibit 1 in evidence).

*All page references are to trial transcript.

Upon learning of decedent's passing, one Thomas E. Lee, Jr., an attorney admitted to practice in Florida for 36-37 years, who had served as a Circuit Court Judge in Dade County for approximately 12 years and as State Beverage Director for 2 years, determined to purchase the subject commercial property (26-28). He expressed his interest directly to respondent whose office was on the same floor as Mr. Lee's and who Mr. Lee learned was representing the estate (28). A contract of sale was executed and expressly provided:

> COMMISSION TO BROKER: The seller hereby recognizes NONE as the broker in this transaction..... (bar's exhibit 3 in evidence).

Mr. Lee explained the provision relating to broker participation as follows:

> Q. What is your recollection as to that provision?
> A. I think my secretary prepared this contract. I had dealt with Mr. Seldin and there was no broker involved and I didn't want anybody claiming a commission against me either (30, 31).

Notwithstanding the foregoing, respondent paid $10,000.00 to his wife, Betty Boneparth Seldin as a finder's fee for allegedly bringing about the sale to Mr. Lee. Mr. Lee testified that the only role played by Mrs. Seldin regarding the subject transaction was to meet Mr. Lee at the property for purposes of an inspection (32, 33).

In a most remarkable defense, respondent urged that the $10,000.00 so disbursed did not constitute a theft from the estate but rather a fraud on one or two brokers either or both of whom would have had legitimate claims to a real estate commission had respondent's wife been the procuring cause of the sale to Mr. Lee (13). Thus, respondent

readily admitted that to avoid recognizing a commission to the broker holding the exclusive listing agreement executed by decedent (bar's exhibit 1 in evidence) respondent advised the personal representative to pay a finder's fee directly to respondent's wife, a misdemeanor under Section 475.42, Fla. Stat. (see paragraphs g, n, o, p, bar's requests for admissions admitted to by respondent). To enhance the appearance that his wife was the procuring cause of the sale to Mr. Lee, respondent entered into a separate exclusive listing contract with his wife (bar's exhibit 2 in evidence) which, though executed after Mr. Lee had expressed his interest in purchasing the subject property, expressly excluded Mr. Lee from such listing agreement, a fraud on the second listing broker.

In an attempt to establish that respondent was guilty of fraud rather than theft, both respondent and respondent's wife testified at the final hearing each contending that Mrs. Seldin was the procuring cause of the sale to Mr. Lee. Neither could explain, however, why, if Mrs. Seldin was the procuring cause, Mr. Lee had expressly recited in the contract of sale that no broker was entitled to a commission as a result of the transaction (51, 53, 54, 68 and 69). Both conceded that Mr. Lee played no part in and was not privy to respondent's scheme of fraud (48, 51, 68). Respondent's wife admitted that at the time of the alleged scheme to defraud one or both listing brokers out of their portion of the commission she knew her actions to constitute criminality (54).

The referee expressly found:

> The testimony was clear and convincing that Boneparth played no part in procuring the purchaser or in any way involved that would justify a real estate

> commission or finder's fee of $10,000.00. Boneparth's participation was merely to show to the purchaser the aforementioned real estate parcel at the request of respondent who was approached by the purchaser for showing the property (referee's report, page 3).

After the referee reported his findings of guilt of each and every count set forth in the bar's complaint, upon the sanction stage of the proceeding the bar objected to the receipt and consideration of six (6) character letters submitted by the respondent, copies of which had not theretofore been supplied to the bar. The bar objected to receipt and consideration of such letters on the basis of Hathaway v. The Florida Bar, 184 So.2d 426 (Fla. 1966). The referee received such letters over the bar's objection (17, 111-113).

The referee recommended that respondent receive a one (1) year suspension from The Florida Bar, make restitution of the $10,000.00 stolen from the estate and that respondent take and pass the ethics portion of the bar exam. The bar seeks review contending that disbarment is the appropriate discipline.

SUMMARY OF ARGUMENT

The cumulative effect of respondent's thievery and other violations mandate his disbarment. Precedent and Florida's Standards for Imposing Lawyer Sanctions justify such discipline.

The predicate for the referee's recommended discipline is defective and inconsistent. Firstly, it relies to some measure upon "character letters" improperly received and considered over the bar's objection and secondly, it includes what the referee characterized as respondent's "believable sincerity in admitting his wrongdoing," an admission that was never forthcoming. In fact, respondent never admitted to the most serious charge of theft and persisted throughout the proceeding in insisting that there was some basis for taking the money he stole, a fact belied by the evidence and explicitly rejected by the referee.

In 1980 this court gave fair warning to the bar that in cases of misappropriation "henceforth we will not be reluctant to disbar an attorney... even though no client is injured." The bar respectfully suggests that the court has demonstrated a reluctance to enforce its warning and submits that failure to disbar in theft cases so undermines public confidence in the discipline process as to irreparably damage our profession.

ARGUMENT

I. THE CIRCUMSTANCES OF THIS CASE WARRANT THE IMPOSITION OF A DISBARMENT.

It is a sad and remarkable commentary when an attorney defends a bar disciplinary proceeding by urging as a defense to theft charges that he did not steal but rather defrauded and convinced his client to commit a crime in furtherance of the fraud. Such is the case at bar.

Appellee urges that at worst (and at best) he openly conspired with his real estate salesperson wife to defraud at least one and perhaps two brokers of a commission and then convinced his client to join the conspiracy by paying a finder's fee directly to appellee's wife, a misdemeanor (see paragraphs 1 through 16, inclusive, of the bar's complaint, all admitted to by appellee). Thus, to mask his theft, appellee was quite prepared to expose his client to criminal jeopardy. It is respectfully submitted that this conduct, alone, warrants a disbarment. What conduct could be more destructive to society than attorneys hatching criminal conspiracies and counseling their clients to violate criminal statutes.

The harsh reality is that appellee stole $10,000.00 from his client. He took the money under the guise that his wife, a real estate salesperson, had earned a commission upon the sale of estate realty when, in fact, she played no part in procuring the purchaser. At the time of the theft appellee had been practicing law since 1977, first with several firms in New York City, then with a firm in Miami and finally in his own practice and was experiencing no financial duress

(71-73). He offered no excuse for his theft maintaining his innocence even in light of the purchaser's unequivocal testimony and documentary evidence establishing clearly and convincingly that there was no basis for appellee's misappropriation (see testimony of Thomas E. Lee, Jr., Esquire, 26-33 and the contract of sale expressly negating broker participation, bar's exhibit 3 in evidence). There was no evidence of restitution.

It appears axiomatic that disbarment is the appropriate discipline for attorneys who indulge in theft from clients. The Florida Bar v. Davis, 474 So.2d 1165 (Fla. 1985), The Florida Bar v. Bond, 460 So.2d 375 (Fla. 1984), The Florida Bar v. Ross, 417 So.2d 985 (Fla. 1982), The Florida Bar v. Stillman, 401 So.2d 1306 (Fla. 1981), The Florida Bar v. Rhodes, 355 So.2d 774 (Fla. 1978).

While appellee's theft, alone, in the bar's view, warrants disbarment, certainly the cumulative effect of the other violations found by the referee would seem to mandate such result. In addition to the theft, respondent knowingly and intentionally defrauded at least one and perhaps two brokers of commissions to which one or both were entitled by virtue of exclusive listing agreements (bar's exhibits 1 and 2 in evidence), advised his personal representative to commit a misdemeanor by cutting out the brokers through a direct payment to a salesperson and committed misdemeanors by notarizing deeds outside the presence of the signatory thereto. The totality of violations must be weighed in determining proper discipline. The Florida Bar v. Harden, 448 So.2d 1017 (Fla. 1984).

Florida's Standards for Imposing Lawyer Sanctions mandate that appellee be disbarred. Rule 4.11 provides for disbarment "when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury." Rule 5.11 provides that disbarment is appropriate when "a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law." It is respectfully submitted that appellee's theft, his knowingly and intentionally defrauding brokers of their commission entitlements, his advising a client to commit a misdemeanor and his conflict in representing a creditor against his client-estate constitutes such intentional conduct as contemplated by Rule 5.11.

Rule 7.1 provides for disbarment "when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public or the legal system." Certainly appellee's theft constitute a violation of a duty owed as a professional. Equally certain is the fact that such theft was intended to obtain a benefit for appellee and his wife. It is respectfully submitted that it can not be questioned but that such conduct caused serious injury to appellee's client. The bar suggests that any theft by any attorney, under any circumstances, causes serious injury to the public and the legal system. Nothing shakes public confidence more than the betrayal by an attorney of his special position of trust and confidence.

Despite the fact that Rule 4.11 provides for disbarment "regardless of injury or potential injury" this Court has, on occasion, imposed discipline other than disbarment in theft cases where it perceived cooperation on the part of the respondent, determined that restitution had been made or concluded that the funds of which the client was deprived could not be traced to the attorney's pocket. See The Florida Bar v. Pincket, 398 So.2d 802 (Fla. 1981), The Florida Bar v. Perri, 435 So.2d 827 (Fla. 1983) and The Florida Bar v. Wagner, No. 66,037 (Fla. Oct. 16, 1986). No such circumstance exists in the case at bar. Notwithstanding the referee's finding to the contrary, which will be discussed in later argument, the appellee did not cooperate with the bar, maintaining his innocence in regard to the theft charge despite the clear and convincing testimony from Mr. Lee and the documentary evidence hereinabove enumerated. There was no evidence of any restitution. As for personally benefitting from the money he misappropriated, appellee, though denying in his pleadings that the payment he made to his wife was to further his own financial and/or personal interests, conceded upon being questioned at the final hearing that his wife's receipt of the money furthered her financial and personal interests and by virtue of the marriage relationship furthered his own personal and financial interests (37-39).

If the Court determines to examine the record for mitigation despite its pronouncements in The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1980) and Pincket, supra where the Court warned of disbarment consequences despite client injury and despite restitution, then it is respectfully submitted that the Court should examine the aggravating

factors specified in Rule 9.22 of Florida's Standards for Imposing Lawyer Sanctions. In so doing, it is submitted that the Court will find that such factors include a dishonest and selfish motive (9.22(b)); a pattern of misconduct (9.22(c)); multiple offenses (9.22(d)); submission of false evidence by fabricating an entitlement to the monies he stole (9.22(f)); refusal to acknowledge wrongful nature of conduct (9.22(g)); vulnerability of victim who in this case was a personal representative relying upon appellee's representation that a fee was due to his wife (9.22(h)); substantial experience in the practice of law evidenced by respondent's practice with several firms from the time of his admission to the New York Bar in 1977 (9.22(i)) and appellee's indifference to making restitution (9.22(j)).

It is respectfully submitted that the cumulative effect of appellee's violations, the extremely serious nature thereof and the aggravating factors existing in this case mandate appellee's disbarment.

II. THE REFEREE'S DISCIPLINE RECOMMENDATION IS BASED UPON IMPROPER CHARACTER EVIDENCE AND INCONSISTENT FINDINGS.

In arriving at his recommended discipline, the referee received into evidence, over the bar's objection, six (6) character letters. In so doing, it is respectfully submitted, the referee erred.

The bar was not supplied with copies of the letters prior to their submission and was not afforded an opportunity to cross examine the letter writers. In Hathaway v. The Florida Bar, 184 So.2d 426 (Fla. 1966), it was determined that similar letters were inadmissible over the bar's objection. Absent an opportunity to cross examine character witnesses, there is no way that the bar or the court can determine what the witness was told, if anything, about the respondent's misconduct and any effect such misconduct might have upon the witnesses' character assessment.

Illustrative of the foregoing is the testimony of the character witnesses who actually appeared at the trial. One such witness, James C. Hill, Jr. testified that his opinion of appellee would not change regardless of any information he might learn concerning misdemeanors committed by appellee (78). Another, Joyce Bartlett, upon learning of appellee's self-proclaimed fraud and deceit, conceded that such conduct would not speak of a person of high character and good reputation (82). Robert Becht, a third character witness, opined that he would not regard appellee's misconduct as bespeaking of a good character and reputation (87). Scott Kramer, an attorney who was called as a character witness, did not regard it as dishonest for an attorney to defraud realtors out

of a commission (95) and would not regard as criminal conduct the taking of a finder's fee despite the fact the finder played no part in bringing about the sale (96). Mary Hinton, another character witness, did not know how to assess appellee's character when informed of appellee's own version of his misconduct (99).

With the testimony of a majority of appellee's live character witnesses, in the bar's view, tarnished, one must speculate as to the weight afforded to the letters received by the referee and his reference in his report to "the favorable recommendations from civic leaders in his community." (Referee's Report, page 6).

One must also question the referee's second reported basis for his discipline recommendation, viz., "the respondent's believable sincerity in admitting his wrongdoing" (Referee's Report, page 6). In fact, appellee never admitted to the most serious charge for which he was found guilty, viz., the outright theft of $10,000.00 from his client. He denied it in his answer, his responses to the bar's requests for admissions and at the trial. Thus, while on the one hand referring to appellee's "believable sincerity in admitting his wrongdoing" the referee, at the same time, expressly found that:

> (d) Respondent has partly denied Count 2 by disputing the allegation that Boneparth played no part in procuring the purchaser for said estate property... (Referee's Report, page 2).
>
> (e) The testimony was clear and convincing that Boneparth played no part in procuring the purchaser or in any way involved that would justify a real estate commission or a finder's fee of $10,000.00... (Referee's Report, page 3).

> (k) Respondent by way of explanation to Count 5 asserts a factual dispute as to whether Boneparth played a part in procuring the purchaser of the subject real estate. As previously determined in paragraph (e) Boneparth's participation does not justify respondent's actions (Referee's Report, page 4).

The fact remains that appellee stole $10,000.00 from his client and his only admission to wrongdoing was to violations concocted to hide his theft.

The referee directed a line of inquiry to appellee which was telling. It revealed that appellee had practiced law for about 4 1/2 years in New York with different firms (72), came to Florida and practiced several more years before striking out on his own (73) and was not suffering any financial duress at the time of his theft (73). Thus, appellee was neither naive nor financially stressed when he stole.

It is respectfully submitted that far harsher discipline than that recommended would have been considered by the referee absent his mistaken reliance upon an admission of misconduct which does not exist and character letters which should not have been received and considered.

III. DISBARMENT SHOULD BE IMPOSED IN EVERY CASE INVOLVING THEFT BY AN ATTORNEY IN ANY FORM AND FROM ANY SOURCE.

In 1980, this Court issued fair warning to the bar that "henceforth we will not be reluctant to disbar an attorney for this type of offense (misuse of clients' funds) even though no client is injured." The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1980). In so doing, it is respectfully submitted that the Court was merely confirming that which the general public and bar membership had always taken for granted, viz., that an attorney caught stealing was disbarred. Such, it is respectfully submitted, is a universal perception which when proven inaccurate so undermines public confidence and trust as to demean our profession and subject it to ridicule.

Having heralded the demise of minor punishment in theft cases the Court proceeded selectively to ignore its warning and, in the bar's view, demonstrate the very reluctance to disbar it professed to rid itself of in Breed, supra. Thus, in The Florida Bar v. Pincket, 398 So.2d 802 (Fla. 1981), the Court ordered a two (2) year suspension in a clear theft case on the basis of the respondent's cooperation and partial restitution, announcing that notwithstanding its departure, it was not retreating from Breed, supra. Justice Alderman agreed with the bar "that the appropriate sanction for this serious misconduct is disbarment." Having suggested in Breed that disbarment would be imposed "even though no client is injured" and supplemented its notice of disbarment consequences in Pincket, supra, "even where there is restitution", the message seemed clear. Theft would merit disbarment

unless the thief cooperated with the bar. Such message was and continues to disturb the bar and must prove confusing and vexatious to the public. It seems to indicate that an attorney may steal knowing that, if caught, all he need do is "fess up" and escape the bar's capital punishment. In the vast majority of cases involving pleas, the so-called cooperation of the attorney is illusory. Faced with overwhelming evidence in the bar's possession, the respondents determine that resistance is futile and thus they "cooperate fully." This was especially true in Mr. Pincket's case.

Matters worsened with the announcement of the Court's decision in The Florida Bar v. Leggett, 414 So.2d 192 (Fla. 1982). Once again the Court was presented with a clear case of theft. Despite Breed and Pincket, the Court refused to disbar, imposing an 18 month suspension. Mr. Leggett, like Mr. Pincket, had admitted his misconduct and the Court found "some mitigation in the fact that the bulk of the client's funds were deposited and left in a special account." The message gleaned from this pronouncement is even more chilling to the bar than that it perceived from Pincket. It now appeared that so long as the thief left something in the till he would avoid disbarment. In a dissent joined by Justices Sundberg and Ehrlich, Justice Alderman observed:

> Misappropriating a client's funds is one of the most serious offenses a lawyer can commit. I disagree with the majority's finding as a mitigating factor that Leggett did not steal all of the client's funds available to him. Stealing is stealing, and Leggett should be disbarred.

In The Florida Bar v. Perri, 435 So.2d 827 (Fla. 1983) the respondent misappropriated $127,446.46 from funds entrusted to him. In

approving a three (3) year suspension rather than disbarment, the Court appeared to predicate its decision upon the fact that respondent's law firm had made full restitution to respondent's victim and respondent had made arrangements to reimburse his firm. Yet, in Breed, the Court suggested that disbarment was appropriate despite client injury and in Pincket, despite restitution. The Court made no mention of whether or not its decision constituted a retreat from Breed or from Pincket. In his dissent, Justice Alderman opined:

> This Court has consistently held that disbarment is the appropriate discipline for this type of misconduct. In my view, the fact that Perri has made restitution does not mitigate the discipline warranted by his misconduct. Rather, restitution is a factor to consider if he should ever seek readmission to The Florida Bar.

In The Florida Bar v. Wagner, No. 66,037 (Fla. Oct. 16, 1986) the respondent accepted $124,000.00 as trustee, diverted huge amounts therefrom to unauthorized purposes and could in no manner account for $10,000.00. To the bar's utter dismay and confusion the Court, in directing an 18 month suspension, suggested that if an attorney could so hide money entrusted to him as to be totally unaccountable or untraceable he will escape disbarment unless the bar can trace the funds to the attorney's pocket. The bar cannot but suggest that the burden imposed by the Court is misdirected. Should not an attorney to whom client funds are entrusted have the absolute burden to demonstrate and explain where missing and unaccounted for funds were directed? In the absence of such explanation should there not be a presumption that the missing funds were used by the attorney for his own purpose? Why should the bar have the burden (and considerable expense) of developing an

explanation for missing funds entrusted to an attorney? Is disbarment to be avoided by those who so cleverly hide, launder or otherwise secrete misbegotten funds so as to thwart the bar in ascertaining the whereabouts of such funds?

In a trilogy of cases, The Florida Bar v. Stalnaker, 485 So.2d 815 (Fla. 1986), The Florida Bar v. Gillin, 484 So.2d 1218 (Fla. 1986) and The Florida Bar v. Farver, No. 66,462 (Fla. April 23, 1987) the Court was presented with three (3) instances of outright thefts from the respondents' respective law firms. In directing 90 day, six (6) month and one (1) year suspensions, respectively, the Court apparently concluded that theft amongst attorneys does not merit disbarment. By dissent, Justice Ehrlich suggested that:

> It is my opinion that stealing by a lawyer whether from a client, a member of the general public or from his law firm, is utterly reprehensible, and that by such act the lawyer has forfeited his position in society as a member of the bar and an officer of the Court, and disbarment is the proper discipline. Gillen, supra at page 1220.
>
> Suffice it to say that absent extenuating circumstances there should be no place in The Florida Bar for lawyers who steal from whomsoever. Farver, supra.

In the bar's view, the fabric of trust vested in attorneys is so tattered by an act of theft as to outweigh all mitigating considerations. If, as repeatedly stated, the primary goal of our discipline process is the protection of the public, then it is submitted that attorney misconduct must be viewed from the public's vantage point. What offense could possibly have a greater public impact? While neglect, incompetence, conflict and other violations can have equivalent

consequences, the etiology of such violations frequently involves poor judgment or lackadaisical attitude. Theft, on the other hand, always involves mens rea and premeditation. How then can an attorney-thief, or a court consider that thievery must be examined by the same standard as applied to other misconduct. The bar urges that the Court adhere to the notice it served in Breed, supra, and steadfastly disbar those attorneys who have stolen. It respectfully suggests that the expression by the referee in Breed, supra, most eloquently enunciates the bar's position and what the bar believes to be the public's perception as well as the understanding of the bar's membership concerning theft by attorneys. The referee expressed the following:

> If one looks strictly at the conduct of a lawyer's practice, the misuse of clients' funds, whether it be using commingled funds or otherwise, is certainly one of the most serious offenses a lawyer can commit. Few offenses have such an adverse public impact. While many disciplinary infractions involve situations where matters in mitigation should be considered, a violation involving the misuse of clients' funds is not one of them. Recognizing restitution (or "nobody lost anything") as a defense or in mitigation may help minimize client losses, but it should not mitigate the discipline. The referee is aware that other referees have found that a "lack of intent to deprive the client of his money" and "personal hardship" justified relatively minor punishment. Such excuses stand out like an invitation to the lawyer who is in financial difficulty for one reason or another. All too often he is willing to risk a slap on the wrist, and even a little ignominy, hoping he won't get caught, but knowing that if he is he can plead restitution, but duly contrite, and escape the ultimate punishment. The profession and the public suffer as a consequence. The willful misappropriation of client funds should be the Bar's equivalent of a capital offense. There should be no excuses.

In the bar's view appellee should be disbarred based upon his theft violation, alone. Through such action and a reiteration of and unwavering adherence to its Breed and Pincket notices, the public and bar membership, alike, will perceive actions consistent with their perception of appropriate consequences in attorney theft cases. At about the time this Court published its warning in Breed, the Supreme Court of New Jersey issued its portent in attorney theft cases. It has adhered thereto ever since. In the case of In re Wilson, 81 N.J. 451, 409 A.2d 1153 (1979) the Supreme Court of New Jersey determined that disbarment is the appropriate sanction for lawyers who misappropriate client's funds. The bar urges this Court to adopt the Wilson rationale which states:

> Like many rules governing the behavior of lawyers, this one has its roots in the confidence and trust which clients place in their attorneys. Having sought his advice and relying on his expertise, the client entrusts the lawyer with the transaction - including the handling of the client's funds. Whether it be a real estate closing, the establishing of a trust, the purchase of a business, the investment of funds, the receipt of proceeds of litigation, or any one of a multitude of other situations, it is commonplace that the work of lawyers involves possession of their client's funds... Whatever the need may be for the lawyer's handling of client's money, the client permits it because he trusts the lawyer... (T)here are few more egregious acts of professional misconduct of which an attorney can be guilty than the misappropriation of a client's funds held in trust... recognition of the nature and gravity of the offense suggests only one result - disbarment (81 NJ at 454-55, 409 A2d at 1154-55).

CONCLUSION

Appellee's theft from his client, in its own right, merits disbarment. When the cumulative effect of the other violations he committed is considered, involving fraud, misdemeanors, advice to a client to commit a misdemeanor and conflict, disbarment is inescapable.

In The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1980) and in The Florida Bar v. Pincket, 398 So.2d 802 (Fla. 1981) this Court announced its intention to disbar those members of the bar who steal regardless of client injury and irrespective of restitution. In 1986, the Board of Governors of The Florida Bar, representing the full bar membership, adopted Florida's Standards for Imposing Lawyer Sanctions which codified the bar's position regarding attorney-theft, specifying disbarment as appropriate in such cases regardless of injury or potential injury. The message has been delivered, received and accepted. It is respectfully requested that this Court disbar appellee and announce in its order that its warnings in Breed and Pincket together with the Standards will be rigidly adhered to in the future. It is submitted that such position will be embraced by the bar and more importantly will assuage the ever increasing and publicly articulated concern that the bar cannot be entrusted to adequately discipline its membership.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Initial Brief of The Florida Bar was furnished to John Latona and William Isenberg, Esquires, attorneys for respondent-appellee, 2888 East Oakland Park Boulevard, Ft. Lauderdale, FL 33306, by regular mail, on this 11th day of December, 1987.

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