

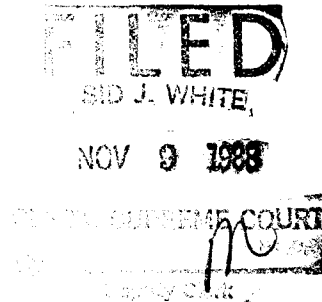
IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,  
Complainant,

CASE NO. 71,830  
TFB NO. 88-10,198 (20A)

v.

JOHN J. SCHILLER,  
Respondent.



COMPLAINANT'S REPLY BRIEF

Thomas E. DeBerg  
Assistant Staff Counsel  
The Florida Bar, Suite C-49  
Tampa Airport, Marriott Hotel  
Tampa, Florida 33607  
(813) 875-9821

TABLE OF CONTENTS

<u>CASES</u>	<u>PAGE</u>
SYMBOLS AND REFERENCES .....	ii
STATEMENT OF THE FACTS AND OF THE CASE .....	1
ARGUMENT .....	2, 3
CONCLUSION .....	4, 5
CERTIFICATE OF SERVICE .....	6

SYMBOLS AND REFERENCES

In this Brief, the appellant, The Florida Bar, will be referred to as "The Florida Bar" or "The Bar". The appellee, JOHN J. SCHILLER, will be referred to as "the respondent". "TR" will denote the transcript of the final hearing. "RC" will denote the Response to Complaint. "RA" will denote Respondent's Answer Brief. "RR" will denote the Report of Referee.

STATEMENT OF THE CASE AND OF THE FACTS

Respondent states in his Answer Brief that the Referee did not find that the respondent had committed a criminal act reflecting on his honesty and fitness as a lawyer. (RA, p.1). However, in the Report of Referee respondent was found guilty of violating DR 1-102(A)(6) and Rule 4-8.4(b). (RR, p.2). Rule 4-8.4(b) states, "a lawyer shall not... commit a criminal act that reflects adversely on the lawyer's... fitness as a lawyer". In addition, respondent was found guilty of violating DR 1-102(A)(3) (engaging in illegal conduct involving moral turpitude).

Respondent states that the deficiency in his trust account decreased prior to the time the Bar requested an audit of the respondent's trust account. (RA, p.1). Respondent fails to note that this decrease came after it became apparent to him that his trust account would be audited.

### ARGUMENT

Respondent indicates that the Bar's position seems to require automatic disbarment in cases of misappropriation. (RA, p.6). The position advanced by the Bar is that the knowing misappropriation of trust funds withheld from settlement checks plus the subsequent failing to distribute those monies to individuals whom have been given letters of protection, warrants disbarment under the facts of this case. In addition to violating a fiduciary relationship with his clients, the attorney established and then violated a fiduciary relationship with numerous physicians who have been given letters of protection. Additionally, he misrepresented on his Bar dues statements for two consecutive years that his trust accounts were in substantial compliance with the Rules Regulating the Florida Bar when in fact he knew they were not. (TR, p.9, L.8-20).

After overstating the Bar's position, respondent goes on to indicate that, followed to its logical conclusion, this position would provide very little incentive for an attorney to attempt restitution... even if he were genuinely remorseful, and he would instead probably continue to enjoy ill-gotten funds or place them out of the reach of his clients. (RA, p.6). Apparently respondent believes that a genuinely remorseful attorney would continue to enjoy ill-gotten funds or place them out of reach of his clients if he were not able to avoid disbarment by returning those monies. Such conduct by a "remorseful" attorney would

suggest that he was not remorseful enough to honor commitments to clients and physicians, and make amends for his disgraceful conduct. Further, respondent fails to realize that an incentive for making restitution is the very real possibility of prosecution by the State Attorney's Office and a future need to use repayment as mitigation in a criminal proceeding.

The respondent goes on to note that in more recent cases, the Court may be perceived to have relaxed standards expressed in Breed and Pincket. It is this very perception suggested by the respondent that is of grave concern to The Florida Bar. The public image of the legal profession is in great need of improvement, and a perception by the public that standards are being relaxed would have a negative impact on respect for and confidence in members of the legal profession, and in the profession's ability to regulate its members.

### CONCLUSION

The issue before this Court is whether or not a two (2) year suspension, plus requiring that the respondent pass the Ethics portion of The Florida Bar exam prior to readmission, that he complete a course on trust accounting, and that he serve a one (1) year term of probation following readmission to the Bar, is a sufficient discipline for an attorney who knowingly misappropriated client trust funds, but replaced the misappropriated money and cooperated with The Florida Bar after detection was imminent.

It is The Florida Bar's position that the penalty recommended by the referee is not sufficient for the respondent's misconduct in this case. The misappropriation was intentional, the monies were taken from physicians who had been given letters of protection by the respondent, and the respondent submitted two certified statements to The Florida Bar indicating that his trust accounts were in compliance with trust accounting regulations even though he knew this was not true.

The only appropriate sanction for the respondent's misconduct is disbarment.

WHEREFORE, The Florida Bar respectfully requests that this Honorable Court disapprove the referee's recommended discipline and in lieu thereof disbar the respondent, JOHN J. SCHILLER, from the practice of law in this State.



THOMAS E. DEBERG  
Assistant Staff Counsel  
The Florida Bar, Suite C-49  
Tampa Airport, Marriott Hotel  
Tampa, Florida 33607  
(813) 875-9821



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing COMPLAINANT'S REPLY BRIEF has been furnished to JOHN J. SCHILLER, Respondent, at his record Bar address of Post Office Box 2835, Ft. Myers, Florida 33902-2835, by Certified Mail, Return Receipt Requested, #P827 885 913; and to JOHN T. BERRY, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, by Regular U.S. Mail; on this 07 day of November, 1988.

  
THOMAS E. DEBERG