

MAY 21 1990

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

CLERK OF THE SUPREME COURT  
By \_\_\_\_\_  
Deputy Clerk

THE FLORIDA BAR,

Complainant,

Case No. 74,219

v.

[TFB Case No. 88-31,041(18A)]

MARVIN S. DAVIS,

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar, initial final hearing and continuations thereof were held on November 22, 1989, January 19, 1990, and February 16, 1990, respectively. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits all of which are herewith forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - David G. McGunegle  
For The Respondent - In pro se

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: After considering all the pleadings and evidence before me, pertinent portions of which are commended on below, I find:

1. In or around early January, 1988, the respondent was recommended as an attorney to Roberto Lopez, an inmate in the Seminole County Jail, by a fellow inmate who was represented by the respondent. (T. pp. 76-77). Mr. Lopez was charged with trafficking in cocaine and also faced a similar charge in Orange County. (See The Florida Bar's Requests For Admission and respondent's Response). On or around January 4, 1988, the respondent met with Mr. Lopez and was directed to pick up a VA check from Mr. Lopez's roommate. (T. p. 85).

Mr. Lopez then took it upon himself to arrange for all his future government checks to go directly to the respondent's office address. (T. p. 46).

2. The respondent agreed to cash his client's government checks and deposit them to his inmate account or make any other distribution Mr. Lopez might direct. (T. p. 47).

3. During this time Mr. Lopez was receiving a monthly Veteran's Administration checks in the approximate amount of \$1,333.00 and a Social Security check in the amount of \$440.00. (T. pp. 10, 39).

4. On January 6, 1988, the respondent again visited Mr. Lopez. At that time, Mr. Lopez provided him with a letter from the Veteran's Administration stating that he suffered from schizophrenia and another document indicating his prescribed medication from the Veteran's Administration. (T. pp. 58, 38).

5. The respondent was concerned that apparently Mr. Lopez was not receiving the appropriate medication while he was incarcerated. (T. pp. 58-60).

6. The respondent received Mr. Lopez's Veteran's Administration checks dated December 1, 1987, in the amount of \$1,333.00; December 31, 1987, in the amount of \$1,333.00; February 1, 1988, in the amount of \$1,333.00; and March 1, 1988, in the amount of \$1,394.00. Each check was endorsed by Mr. Lopez and either the respondent or his wife. (T. pp. 10-11).

7. The respondent had no trust account at any bank. (T. p. 48). He maintained no internal trust account ledger or other records other than receipts for Mr. Lopez. (T. pp. 15, 49). The respondent did not consider Mr. Lopez's checks to be trust funds and did not believe a trust account was needed. (T. p. 48). I find they were trust funds.

8. On February 7, 1988, the respondent prepared receipt #103 for the deposit of \$1,773.00 into Mr. Lopez's inmate account. (T. p. 50). He also provided his client with receipt #102 for \$2,855.00 received by him in legal fees. (B-Ex 3). In total the respondent should have had a total of \$4,573.00 belonging to his client in his possession.

9. Records from the Orange County Jail do not indicate

a deposit for \$1,773.00 made on that date or any other date for Roberto Lopez by the respondent. (T. p. 5).

10. Receipts from the Orange County Jail indicate that two deposits, \$440.00 by check and \$10.00 in cash, were made on February 7, 1988, by the respondent. The \$440.00 apparently represented Mr. Lopez's Social Security check but the source of the \$10.00 deposit could not be determined. (T. pp. 50-51).

11. The respondent was unable to account for the \$1,323.00 difference except to state that he may have made an error in the amount when he wrote receipt #103. (T. p. 52).

12. The respondent failed to keep any adequate trust account records despite the fact he was accepting trust funds represented by Mr. Lopez's government checks and handling them for him. He was unable to account for the missing \$1,323.00 which apparently represents Mr. Lopez's monthly Veteran's Administration payment. The ultimate disposition remains unknown, although it was last entrusted to respondent's care and control.

13. It would appear from calculations that receipt \$103 originally reflected the February Veteran's Administration check plus the Social Security check although it does not identify its components whereas receipt #102 does and lists the February Veteran's Administration check as part of it.

14. Although the respondent was concerned about his client's competency, he was not concerned about handling Mr. Lopez's funds and sought no guidance from the court concerning this. (T. pp. 60-62).

15. Respondent handled trust funds for his client without a trust account or internal trust records and now finds himself unable to adequately account for a substantial portion of the funds through inadequate record keeping.

III. Recommendations as to whether or not the Respondent should be found guilty: As to each count of the complaint I make the following recommendations as to guilt or innocence:

I recommend that the respondent be found guilty and specifically he be found guilty of violating the following Rules of Professional Conduct: 4-1.15(a) for failing to maintain the minimum required trust account records for

handling client funds that were entrusted for a specific purpose; 4-1.15(b) for failing to promptly render a full accounting regarding at least \$1,323.00 entrusted to him or to promptly turn over to his client trust funds to which he was entitled; 4-1.15(d) for failing to comply with The Florida Bar Rules Regulating Trust Accounts; and 5-1.1 of the Rule Regulating Trust Accounts for failing to maintain the minimum required trust account records relating to a transaction where he was clearly handling funds that were entrusted to him by a client for a specific purpose other than fees.

I recommend that the respondent be found not guilty of violating the following Rule of Professional Conduct: 4-1.4(b) for failing to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation.

IV. Recommendation as to Disciplinary measures to be applied: That Respondent be suspended from the practice of law for a period of ninety (90) days, and that he be placed on probation for a period of two (2) years with the condition that he make restitution to the client for the amount of \$1,323.00 and that he pay Court costs in the amount of \$2,580.91, and that he not violate any of the Rules of Discipline or Rules of Professional Conduct.

V. Personal History and Past Disciplinary Record: The following is a brief personal history and prior disciplinary record of the respondent, to wit:

Age: 48  
Date admitted to Bar: October 23, 1975  
Prior Disciplinary convictions and disciplinary measures imposed therein:

The Florida Bar v. Davis, 523 So. 2d 568 (Fla. 1988)- Public reprimand for attending a pre-trial conference while under the influence of alcohol, and probation for a period of two years beginning March 24, 1988.

Other personal data: Respondent is married and has no minor dependents.

VI. Statement of costs and manner in which costs should be taxed:  
I find the following costs were reasonably incurred by The Florida Bar.

A.	Grievance Committee Level Costs	
	1. Transcript costs	\$ 158.40
	2. Bar Counsel/Branch Staff Counsel Travel Costs	---
B.	Referee Level Costs	
	1. Transcript Costs (2 hearings)	752.25
	2. Bar Counsel/Branch Staff Counsel Travel Costs	68.86
C.	Administrative Costs	500.00
D.	Miscellaneous Costs	
	1. Investigator Expense	1,036.00
	2. Investigator Travel	41.30
	3. Witness Fees	24.00
	TOTAL ITEMIZED COSTS	\$2,580.91

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 18th day of May, 1990.

  
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JOHN W. WATSON, III  
Referee

Copies to:  
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