IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

ISAAC H. NUNN,

Respondent.
_____/

CASE NO. 77,254
TFB NO. 89-10, 870(20A)

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 of Discipline, hearings were held on the following dates:

April 17, 1991, July 11, 1991 and August 9, 1991

The following attorneys appeared as counsel for the parties:

For The Florida Bar, Thomas E. DeBerg

For the Respondent, Scott A. Tozian

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 commented upon below, I find:

The Respondent has admitted his guilt as to the allegations in the complaint brought by The Florida Bar. In so doing, the Respondent admits that he was hired by Ms. Toni Crawford to represent her minor son in a personal injury matter. In October 1987 the Respondent settled the case with the insuror and as part of that settlement received two bank drafts in the amount of $1,210.23 and $4,840.92. The checks clearly indicated the money was awarded for medical expenses.

The Respondent did not maintain a trust account at the time.

The Respondent deposited the checks into his general operating account; he advised his client that the money could not be disbursed for 10-15 days because the checks needed to clear.

The proceeds of the checks were not used for the purpose received. Instead, the Respondent used the proceeds to pay both obligations of his practice and personal to himself.

Upon inquiry from his client as to the handling of the matter, the Respondent advised her that he was taking care of things and that she need not worry.

Approximately one year after receipt of the checks, the Respondent was disciplined by The Bar for an unrelated matter which occurred in Ft. Lauderdale. As a result, the Respondent was required to cease handling cases and the Crawford matter was referred to an attorney by the name of Wilbur Chaney.

Mr. Chaney undertook representation of Ms. Crawford and inquired of the Respondent in October 1988 as to the status of the funds received.

Initially the Respondent did not respond to the inquiries by Mr. Chaney. In November 1989, the Respondent furnished a check for $3,000.00 to Mr. Chaney constituting partial repayment of the funds the Respondent had previously converted to his own use.

The balance of the funds converted by the Respondent remain unpaid. At the final hearing on August 9, 1991 representations were made that the balance of the money owed would be paid immediately.

III. RECOMMENDATION 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:

As to count I, I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of rules regulating trust accounts. I specifically find the Respondent to have violated Rule 5-1.1 inasmuch he failed to maintain a trust account on behalf of his client and failed to maintain money coming into his hands on behalf of his client and instead applied it to his own use.

After finding the Respondent guilty and prior to recommending discipline pursuant to Rule 3-7.6(k), I have considered the following personal history and prior disciplinary record of the Respondent to-wit:

Age: 38

Date Admitted to Bar: 1978

Prior Disciplinary Convictions and Disciplinary Measures Imposed Therein:

The Florida Bar v. Nunn, Case No. 71,084 (public reprimand and probation);

The Florida Bar v. Nunn, Case No. 72,209 and 72,960 (18 months suspension).

Other Personal Data: This case presents a difficult decision for the Referee. The hearing before the Referee constituted primarily an attempt by the Respondent to demonstrate mitigating factors to warrant a sanction less than that of disbarment. It is significant that the Respondent has been previously suspended by The Florida Bar. Furthermore, it is significant that Florida's standards for imposing lawyer sanctions advise that disbarment is appropriate when a lawyer has been suspended for the same or similar misconduct, and intentionally engages in further similar acts of misconduct. Section 9.2 of the standards outlines those factors which a Referee should consider an aggravation. Aggravating factors include prior disciplinary offenses, a dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, submission of false evidence, false statements, or other deceptive practices during the disciplinary process, refusal to acknowledge the wrongful nature of conduct, vulnerability of the victim, substantial experience in the practice of law, and indifference to making restitution. The Referee will address each of these aggravating factors.

As noted above, the Respondent has a prior history of disciplinary offense. It is difficult to conclude whether the act

under review in this case was prompted by dishonest or selfish motive for reasons which will be explored in depth later. However, there is no question that the Respondent sacrificed the interest of his client in order to satisfy concerns, or perhaps desperate needs, of his own.

It is apparent that the Respondent has engaged in a pattern of misconduct. The incidents in Ft. Lauderdale indicate a general indifference to the need to maintain trust accounts and to keep inviolate a client's funds. The Ft. Myers incident was the most serious of a series of incidents that began in Ft. Lauderdale. The Bar's examination of the Respondent's trust accounts in Broward County might have precipitated the Respondent's decision not to open one in Lee County. The Respondent maintained that his practice in Lee County did not require the use of a trust account.

On April 17th when this proceeding was to be heard, the Respondent first retained counsel and requested a continuance. His explanation was to the effect that while he had previously given up any hope of fighting for his right to practice law. He had reconsidered upon the advice of friends and now wished to defend himself vigorously. Despite the Referee's decision to grant the continuance the Respondent did not timely respond to discovery requests. The Respondent was then held in contempt by the Referee for failing to respond to a request for admissions and to answer interrogatories.

I find some evidence that the Respondent has submitted false evidence, made false statements, or engaged in other deceptive practices during the disciplinary process. At the April 17th

hearing the Respondent advised that he had made full restitution to the victim and had records to support his claim. In fact, no such records were produced and at the hearing on July 11th the Respondent admitted he had not paid the medical bills.

The Respondent has acknowledged the wrongful nature of his conduct although it has taken him a considerable amount of time to do so. He attributes this to his addiction and the delusional aspects of his addiction. It seems that the strength of his denial of any problem has only recently begun to recede; thus the Respondent is now able to face up the consequences of his acts.

The Respondent himself acknowledged the vulnerability of the victim and became quite emotional at the hearing when he recognized the harm that he had caused Toni Crawford.

The Respondent was an experienced practitioner of the law at the time of these incidents and had served as an attorney in the Attorney General's Office, as corporate counsel, and in the private practice of law.

The Referee is quite concerned about the Respondent's failure to make restitution even by the date of the final hearing.

Balanced against these aggravating factors the Referee has considered the mitigating factors set forth in Section 9.3 of the Florida Standards. The mitigating factors of remorse, interim rehabilitation and personal or emotional problems are relevant.

The Respondent has presented a compelling case for mitigation. Charles Hagan, the Executive Director of the Florida Lawyer's Assistant's Program, testified that the Respondent has made considerable progress in his efforts to deal with his addiction.

Since November 1989 the Respondent has performed well in a program specifically designed for him. He has dropped no dirty urines, attends attorney meetings twice a day, and his participation in the meetings is excellent. Hagan advises the Respondent is recovering from a deep-seated and longstanding problem and that recovery from addiction is a long and difficult process. Respondent's success over the last two years follows repeated failures at earlier treatment programs. Mr. Hagan and the Respondent's personal counselor, Kevin Lewis, who has been with Southwest Florida Addiction Services for four and one-half years believe that Nunn has become much more serious and more responsive in the last two years and that significant progress has been made. Both feel that Nunn is now able to accept the responsibility for his behavior rather than deny. It is perhaps the Respondent's ability to no longer deny his problems that suggests to the Referee that Nunn is serious about his rehabilitation. The testimony of Mrs. Nunn established that the Respondent has adjusted to his new role in the home and that his support and love for his children has been exemplary. Mrs. Nunn has been married to the Respondent for sixteen years and the support that she receives at her job, her sorority and in her church has helped her to help the Respondent.

The Respondent also presented the testimony of Cathy Beehler, the Executive Director of Goodwill Industries of Southwest Florida, who employed the Respondent for a period of six months in late 1990 and early 1991. She observed no problems with the Respondent's work performance and commented that he had an excellent work attitude; he did everything he was asked, on time and of high

quality. She saw no reduction in the Respondent's enterprise or energy despite his knowledge that his position was temporary and that it would end after six months.

Senator Arnett Girardeau testified on behalf of the Respondent. He advised that he first met Mr. Nunn when Mr. Nunn worked as a legislative aide in 1977. Senator Girardeau felt that Mr. Nunn was a young man of unique ability who had developed a strong expertise in the fields of housing and education. The Senator has not had much contact with the Respondent over the last five to seven years. He was willing to assist the Respondent and obtained interviews for him in Tallahassee. Although the Respondent was offered a job in Tallahassee pursuant to his own and the Senator's efforts, he elected to return to Ft. Myers to deal with his problems here.

The Respondent's efforts at rehabilitation, his deep and genuine remorse for the harm he has caused, the testimony of Attorney John Hendry, Judge Isaac Anderson, Charles Hagan, Kevin Lewis, and Senator Girardeau are testaments to his current character and reputation. Most compelling is the fact that the Respondent's troubles seem to be directly linked to his addiction and his resulting fall from grace.

IV. I recommend that the Respondent be disbarred from the practice of law to run concurrent with the suspension imposed December 15, 1988. The recommendation that the disbarment be retroactive stems from the fact that the conduct in issue occurred prior to the December, 1988 suspension. I also recommend that the Respondent have leave to re-apply for admission to the Bar.

I have considered at length the aggravating and mitigating factors. The recommendation is based on my conclusion that the aggravating factors outweigh the very significant mitigating ones. The Respondent's conversion of funds (while relatively small) worked an especial hardship on his low-income client. His failure to make restitution, his lack of co-operation with the Bar's investigation and his misleading statements to the Referee in April, 1991 are inexplicable. The Respondent knowingly and intentionally misappropriated his client's property. The misappropriation caused grievous injury to Ms. Crawford.

Mr. Nunn is capable of rehabilitation; it is to be hoped that he will re-apply for admission to the Bar and enjoy the privilege of practicing law. However, consistent application of the Rules Regulating The Florida Bar and the principles espoused in The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970), The Florida Bar v. McShirley, _____ So.2d _____ (Fla. 1991), and The Florida Bar v. Farbstein, 570 So.2d 933 (Fla. 1990) warrant disbarment.

V. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

I find that the following costs were reasonable incurred by The Florida Bar:

A.	Grievance and Referee Level	
(1)	Administrative Costs:	500.00
(2)	Staff Auditor Expenses	297.19
(3)	Staff Counsel Expenses	406.18
(4)	Court Report Expenses	1,143.85
(5)	Witness Expenses	85.00
(6)	Miscellaneous:	80.00
	ESTIMATED COSTS TO DATE:	$ 2,512.22

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 thirty (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 28TH day of August, 1991.

Peter A. Dubensky
Referee

Copies furnished to:

Thomas E. DeBerg, Assistant Staff Counsel
John T. Berry, Staff Counsel
Scott K. Tozian, Counsel for Respondent