IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

Case No. 77,271
TFB File No's. 88-00077-04C
and 91-00564-04C

MYRON C. PREVATT, JR.,

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rules of Discipline, hearings were held on the following dates:

Final hearing held on June 6, 1991 and Mitigation/Aggravation hearing held on September 26, 1991. The following attorneys appeared as counsel for the parties:

For the Florida Bar Mimi Daigle, Esquire

For the Respondent Richard E. Welty, Esquire

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:

As to Count I

Respondent, MYRON C. PREVATT, JR., has, with the exception of Paragraph 26, admitted as true the factual allegations contained in the complaint filed January 22, 1991 regarding file number 88-00077-04C. Therefore, those general recitations of fact will not be repeated here, but the complaint shall be attached hereto as an addendum. Further, Respondent, MYRON C. PREVATT, JR., has stipulated to the consolidation of file number 91-00564-04C into this Count.

Respondent, MYRON C. PREVATT, JR., admits in his stipulation that in file numbers 88-00077-04C and 91-00564-04C he has violated Rule 11.02(4) (trust funds and fees) of the former Integration Rule of the Florida Bar; Rules 1-102-(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice), 1-102-(A)(6) (a lawyer shall not engage in any conduct that adversely reflects on his fitness to practice law), 9-102(A) (preserving identity of funds and property of client), and 9-102(B)(3) (a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them), of the Code of

Professional Responsibility of The Florida Bar for misconduct occurring prior to January 1, 1987; and Rules 4-1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client), 4-1.4(a) (a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information), 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another), and 4-1.15 (safekeeping property), of the Rules of Professional Conduct of The Florida Bar, and Chapter 5, Rules Regulating Trust Accounts of the Florida Bar, for misconduct occurring after January 1, 1987.

With regard to the five remaining allegations of misconduct not admitted by Respondent, MYRON C. PREVATT, JR., to wit: Violation of Rule 11.02(3) (any act contrary to honesty and justice) of the former Integration Rule of The Florida Bar; Rule 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), of the Code of Professional Responsibility of The Florida Bar for acts occurring prior to January 1, 1987; Rules 3-4.3 (the commission by a lawyer of any act which is unlawful or contrary to honesty and justice), and 3-4.4 (whether the alleged misconduct constitutes a felony or misdemeanor) of the Rules of

Discipline of the Florida Bar; and 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), of the Rules of Professional Conduct of the Florida Bar:

I further find the evidence presented, both testimonial and documentary, clearly and convincingly establishes the following:

a. Singleton Mckay was a client of Respondent, MYRON C. PREVATT, JR.

b. Mr. McKay, at age 81, suffered a stroke on January 16, 1978 and was hospitalized.

c. While in the hospital in a state of questionable competence Mr. McKay executed both a general power of attorney and a joint savings account signature authorization in favor of Respondent.

d. Respondent prepared and brought to the hospital witnesses to execute and notarize the aforesaid documents (Ex. 1, Att. C, D, E) on January 24, 1978.

e. On or about January 25, 1978 Respondent knew that Mr. McKay's family sought the appointment of a guardian. (TR149) Respondent's response by letter indicates that his authority to act on behalf of Mr. McKay is only transitional and that a long term arrangement would at some point need to be effected. (Ex 1, Aff. F)

f. Mr. McKay was placed in nursing home care and Respondent undertook to manage his financial affairs.

g. Over the next several years Respondent removed funds from the possession of Mr. McKay and used them to his own ends in the form of loans to himself (Ex At G, H & I) totaling in excess of $15,000.00.

h. Respondent also used Mr. McKay's money to make loans to Respondent's friends and clients, including a $5,000.00 loan discharged in bankruptcy, a $15,578.37 second mortgage loan lost when the forced sale of the asset raised insufficient funds to cover the mortgage, and lastly a $4,000.00 loan where interest earnings of $3,600.00 were never recovered. (Exhibit 1)

i. Mr. McKay's assets were in excess of $90,000.00 in 1978 and were less than $50,000.00 upon his demise. (Exhibit 1)

j. Respondent memorialized his loans from Mr. McKay's assets via promissory notes, amortization schedules, and a guardianship fee repayment program. Respondent describes the computation of the guardianship fee schedule as arbitrary (Ex. 3, p. 44) and admits no statements of services were prepared to support the fee schedule taxed against Mr. McKay's assets (TR 153).

k. This process of loans, refinancing of existing loans, and payment through an amortization schedule driven by guardianship fee assessments continued for 6 years until Mr. McKay's death in September of 1984.

l. Respondent continued to administer to the affairs of Mr. McKay even after his death upon the authority of the power of attorney executed in 1978. (TR 171)

m. The balance of the loans made by Respondent from the assts of Mr. McKay to himself remained unpaid even after the death of Mr. McKay. In fact, some of the loans remain unpaid until settlement was had in resolution of a civil suit involving the management of Mr. McKay's estate in 1991, a period in excess of 10 years. (Exhibit 3)

n. Even though Respondent had prepared Mr. McKay's Will, it was not probated until four years after his death, nor was an inventory of assets prepared near to the time of his death, nor were potential beneficiaries to the Will contacted (in fact a named beneficiary surviving Mr. McKay died prior to the probate of the Will and was precluded from enjoying the munificence of Me. McKay) (Exhibit 1) and (TR. 18 & 171) (Exhibit 4).

o. Mr. McKay's family contacted Respondent seeking to have the estate probated and an accounting of assets made in November of 1984. (Exhibit 4).

p. Mr. McKay's Will was filed by Respondent on November 30, 1988. (Exhibit 1)

111. 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, MYRON C. PREVATT, JR., be found guilty and specifically that he be found guilty of all violations as stipulated in file numbers 88-00077-04C and 91-00564-04C, to wit the violation of Rule 11.02(4) (trust funds and fees) of the former Integration Rule of the Florida Bar; Rules 1-102-(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice), 1-102-(A)(6) (a lawyer shall not engage in any conduct that adversely reflects on his fitness to practice law), 9-102(A) (preserving identity of funds and property of client), and 9-102(B)(3) (a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them), of the Code of Professional Responsibility of the Florida Bar for misconduct occurring prior to January 1, 1987; and Rules 4-1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client), 4-1.4(a) (a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information), 4-8.4(a) (a lawyer shall not violate or

attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another), and 4-1.15 (safekeeping property), of the Rules of Professional Conduct of the Florida Bar, and Chapter 5, Rules Regulating Trust Accounts of the Florida Bar, for misconduct occurring after January 1, 1987.

And further, I recommend that respondent, MYRON C. PREVATT, JR., be found guilty of the contested allegations of misconduct, to wit: The violation of Rule 11.02(3) (any act contrary to honesty and justice) of the former Integration Rule of the Florida Bar; Rule 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), of the Code of Professional Responsibility of the Florida Bar for acts occurring prior to January 1, 1987; Rules 3-4.3 (the commission by a lawyer of any act which is unlawful or contrary to honesty and justice), and 3-4.4 (whether the alleged misconduct constitutes a felony or misdemeanor) of the Rules of Discipline of the Florida Bar; and 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), of the Rules of Professional Conduct of the Florida Bar.

IV. I recommend that the respondent, MYRON C. PREVATT, JR. be disbarred from the practice of law in Florida for a period of five (5) years.

V. After finding the respondent, MYRON C. PREVATT, JR., guilty and prior to recommending discipline both respondant, respondant's counsel, and complainant through counsel were advised and a further hearing was had to consider matters of mitigation and/or aggravation. This hearing was reported, and counsel were heard as to recommendations. I considered the argument of counsel and the following personal history of respondent:

a. AGE: mid-fifties

b. admitted to Bar in June of 1968

c. practiced with his father until 1974

d. sole practitioner since that date

e. no prior disciplinary conviction or measures imposed.

Also considered were respondent's comments in mitigation. Mitigation centered in two areas. The first involved the long term personal relationship between Mr. McKay and Mr. Prevatt dating from respondent's teenage years. This relationship remained social through a friendship lasting through respondent's adult life. While a professional attorney/client relationship existed since 1974 between Mr. McKay and respondent, Mr. Prevatt posits that his behavior regarding the management of Mr. McKay's affairs since 1978 should be viewed as an exemplar of friendship, not the administration by counsel of record. I rejected this argument out of hand. There is no historical basis in evidence to support any fiduciary relationship between

respondent and Mr. McKay other than as lawyer/client prior to Mr. McKay's stroke in 1978. Mr. McKay may have had Mr. Prevatt as a friend, but his friend was also his attorney and acted under power of attorney not friendship in the management of Mr. McKay's affairs between 1978 and the present.

The second area of mitigation presented by respondent concerned Mr. Prevatt's dependancy upon alcohol and his suffering from the disease of alcoholism. Respondent's counsel provided several treatises upon this topic, and both counsel provided case citations addressing alcoholism as an issue in mitigation.

While it is clear, and unchallenged that respondent was an abuser of alcohol and in fact was hospitalized in 1983 for medical complications associated with long term abuse, such a condition does not account for the pattern, method, scope, nature nor duration of the misconduct present over this twelve (12) year process.

Indeed over the post 1983 years, respondent describes himself as a "recovering" alcoholic, yet significant and onerous abuses of the client/attorney process continued unabated. Alcoholism is not a mitigating factor in this case.

Counsel for the Florida Bar was heard to speak on matters of aggravation and cites section 9.22(b), 9.22(c), 9.22(d), 9.22(h), 9.22(i) and 9.22(j) as being in fact ok inferentially established through the evidence.

The harm worked upon Mr. McKay, his family, his heirs, and his friends was extensive, long lasting, life altering and irreparable in point of fact.

Finally, litigation was necessary to establish a final accounting of assets. The resultant public spectacle discredited the organized Bar and revealed the abuse of position, by an attorney.

Whereupon, having previously recommended a finding of guilty I am compelled to recommend this most strong sanction of disbarment.

VI. Reasonable and necessary costs were incurred by the Florida Bar in the presentation of this matter including administrative costs, court reporters and witness fees among other costs and an affidavit of such *costs* shall be prepared by Bar counsel and appended to this report. It is recommended that all such costs and expenses be charged to the respondent.

Dated this 22 day of October, 1991.

MAURICE V. GIUNTA
Referee
Alachua County Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above report of referee has been served on Richard E. Welty, Esquire at 954 N. Temple Avenue, Starke, Florida 32091, and Staff Counsel, John T. Berry, Esquire and Assistant Staff Counsel, Mimi Daigle, Esquire, at The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 22nd day of October, 1991.

Linda Wood