IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

CHARLES B. CORCES,

Respondent,
_____/

Case No. 78,969

TFB No. 91-11,571(13A)

3/25

FILED
SID J. WHITE
MAR 11 1994
CLERK, SUPREME COURT.
By _____
Chief Deputy Clerk

**COMPLAINANT'S REPLY BRIEF AND ANSWER TO CROSS PETITION**

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## OTHER CITATIONS

## SYMBOLS AND REFERENCES

The following symbols and references will be used in this brief:

TR1: Transcript of referee hearing March 3, 1993.

TR2: Transcript of referee hearing April 22, 1993.

TR3: Transcript of referee hearing June 24, 1993.

RR: Report of Referee dated September 24, 1993.

C.'s Exh.: Complainant's Exhibit.

R.'s Exh.: Respondent's Exhibit.

CB: Complainant's Initial Brief

RB: Respondent's Brief/Cross Petition

RA: Complainant's Request For Admissions

## RESPONSE TO RESPONDENT'S STATEMENT OF THE CASE

Respondent states in his Answer Brief that the referee filed a written report wherein he found that the testimony of Ann Akonom (Respondent's office manager/bookkeeper) was "incredulous" and that the referee, based on that finding, concluded that the misappropriation was intentional. (RB p.3). The referee did find Ann Akonom's testimony incredulous, including her claim that she misread a figure that did not exist in the ledger card on the date she claims she misread it. (TR3, p.32, 1.19 - p.33, 1.4). However, the referee did not state that this testimony was the sole basis for his finding that the misappropriation was intentional. In fact in his Report of Referee, he indicates some of the other factors surrounding the transaction which confirmed his finding that Respondent's misappropriation was an intentional act, and not a clerical error of his Office Manager/Bookkeeper, Ann Akonom. The referee notes that

> "no debit memo was ever recorded on the client's ledger card, despite the testimony of Ms. Akonom that she would have done so as soon as the debit memo was received; no deficit was ever noted on the ledger card or in the trust account, so there exists no record to clearly reflect the actual reconciliation by the later use of attorney's fees due to reimburse of the client's balance; no office memo or letter or ledger card entry or other writing (either inner-office, or to the client, or to the Bar) ever contemporaneously even acknowledges the shortage, much less addresses the steps taken to rectify it." (RR p.3-4).

The referee points out

> "this is not how clerical errors are addressed under any accounting system or bookkeeping practice. This is, however, how misappropriated funds are surreptitiously

> restored. In carefully examining the numerous exhibits involving the various bank transactions and the client's trust account records, the conclusion is inescapable. This was an intentional act on the part of Respondent and not a clerical error on the part of his office manager/bookkeeper.." (Id.).

As Respondent states, the referee found remorse. He also did "not find any lack of cooperation," noting that decisions Respondent made were with advice of counsel. (TR3, p.127, l.1-8). The referee observed that apparently no documents were destroyed, and that such evidence as existed was turned over to the Florida Bar. (TR3, p.127, l. 9-11). The referee, on the other hand, found systematic attempts to conceal the misappropriation. The Complainant's initial brief details the false evidence given to the Florida Bar auditor in an attempt to conceal the misappropriation, as well as other deceptive acts during the Bar investigation and the disciplinary proceedings. (CB p.2-6). Further, Respondent made no effort to correct materially false testimony of Ann Akonom before or after the finding of guilt.

In his brief, Respondent suggests he cooperated indirectly with The Florida Bar through his bookkeeper, Ms. Akonom. He acknowledges he "worked on making all my records available to The Florida Bar and I directed Ms. Akonom to answer whatever inquiries they had with regard to the matter." (TR3, p.77, l.10-21). Respondent "cooperated" by providing, through his office manager, falsified records to The Florida Bar and false evidence to the referee.

The Respondent suggests there is an incorrect assertion by The Florida Bar that the referee found lack of cooperation in the instant case. The Bar did not so assert. In distinguishing The Florida Bar v. MacMillan, 600 So. 2d 457 (Fla. 1992), the Bar did point out that, "unlike MacMillan, Respondent did not cooperate with The Florida Bar by being candid during the investigation." (CB, p.13). That point is clearly supported by the referee's findings of fact and witness testimony. Although the referee did not find lack of cooperation as an aggravating circumstance, the facts show the lack of cooperation clearly.

## STATEMENT OF THE FACTS

Respondent indicates that "on many occasions (emphasis added) when Ms. Akonom would call the Sun Pharmacy clients to inform them that some monies had been collected, they, unlike other accounts, would inform her to hold the money until a couple more payments would come in." (RB, p.5). More accurately, she testified that "periodically....I would get with the client. Sometimes they would say....wait until we get a couple more payments and send us a check. It wasn't like some other accounts that we had that wanted it monthly." (TR1, p.24, l.19 - p.25, l.7). The Sun Pharmacy account was where client money was likely to be available for Respondent's unauthorized use. He asked about that specific account.

Respondent claimed that he knew of the problem shortly after the money was used in 1988. He attributes his not reporting it to The Florida Bar immediately to "a terrible mistake." He never did report the misappropriation. He accounts for his failure to tell the auditor and complainant's counsel as soon as the audit started about the misuse of client money to "pending criminal charges and the mental confusion it causes." (RB, p.8; TR3, p.82, l.2-18). Respondent was not yet indicted in 1988, 1989 or 1990 when the false due statements were submitted. He was not indicted when, under his scenario (rejected by the referee), he accidentally misappropriated the money and due to bad judgment, did not replace it immediately when he learned of the problem. (Id.). Respondent also tries to avoid responsibility for falsely swearing on Bar dues statements that his accounts were in

substantial compliance by suggesting that in spite of the deficit, "substantially all my accounts were in compliance." (TR3, p.89, l.6 - p.91, l.16).

Respondent testified that after the audit was done and he had reviewed his own work, his own trust account, he knew the Sun Pharmacy account was going to come to light. (TR3, p. 77, l.10-16). But during the audit, concealing the problem was attempted. During the investigation into the trust account, the Florida Bar auditor asked Ms. Akonom about the debit memo reflected on a bank statement. She did not disclose the misuse of client money. The debit memo itself, found in Respondent's records, did not indicate on its face that it was charged against Sun Pharmacy, nor was the debit memo recorded in the cash receipts and disbursements journal. The Bar auditor also inquired into three charges on Respondent's client ledger card for checks allegedly issued on the Sun Pharmacy trust account. Those checks were purportedly for attorney's fees; however no such checks had ever been issued. (TR1, p.55, l.1-18 p.56, l.11; p.60, l.18 - p.62, l.8).

In another concern raised by Respondent, he suggests that, in making a relevancy objection to character witnesses called to testify to the truth and veracity of Ann Akonom, Complainant argued that the Referee had already determined that Ann Akonom's testimony was incredulous. (RB 9-10). The total stated objection was "Objection, Your Honor. Relevancy." (TR3, p.31, l.9 - p.32, l.24). The hearing was on mitigation; the proffered testimony to which objection was being made related to the purported

truth and veracity of a witness (Ann Akonom) who had appeared in the case in chief.

Respondent indicates that several witnesses testified as to Respondent's reputation for truth and veracity. Shirley Williams so testified. She also testified that she was aware that criminal charges were brought against Respondent related to a bribery scandal, but that that did not affect her feelings about his reputation in the community because she doesn't believe anything she reads or hears. (TR3, p.12, 1.18-24). Manuel Junco did not testify to Respondent's reputation for truth and veracity: Mr. Junco simply said he found Respondent to be truthful in Mr. Junco's own contacts and his office's contacts with him.....and stated that he would not know about Respondent's dealings with someone else. Mr. Junco had not worked with Respondent for two or three years. (TR3, p.16, 1.4 - p.19, 1.3). The referee did not make a finding that Respondent had a reputation in the community for truth and veracity.

## SUMMARY OF ARGUMENT: Issue I

The referee's finding that Respondent intentionally misappropriated client funds is not clearly erroneous, and has substantial evidentiary support. Therefore, it should be upheld.

## ARGUMENT: Issue I

Respondent argues that The Florida Bar failed to present any evidence of intent, and that if Respondent's witness, Ann Akonom, had not testified, the Referee would not have concluded there was intent.

The Bar's complaint alleged unauthorized use of client funds by Respondent, who used the money to pay his personal debts. (Complaint). Those facts were deemed admitted. Further, numerous supporting exhibits were placed into evidence, such as letters from the University State Bank indicating that if Mr. Corces did not make certain payments or arrange for an extension of his loans, the matter would be sent to the bank's attorney. (C.'s Exh.3). Additional exhibits, the accuracy of which Respondent's attorney stipulated to, included the working papers of The Florida Bar Auditor (C's Exh. 4), and Respondent's ledger card for Sun Pharmacy. (C's Exh. 5). Those documents demonstrated the misuse of client money, that the use was not accidental, and provided evidence of an attempt to cover up the misuse.

Any suggestion that there is insufficient evidence of intent is further weakened by the testimony of Ann Akonom and of Respondent. Ann Akonom was a skilled and experienced bookkeeper, the only staff member responsible for the trust account records,

who said she looked at the ledger card after Respondent inquired about money in the Sun Pharmacy account. (TR1, p.19, 1.17-21; TR1, p.39, 1.2-7). Respondent admitted that he called Ann Akonom to see if there was enough money in the Sun Pharmacy account to cover the debit memo. (TR3, p.81, 1.16 - p.82, 1.6). The attorney's fees available were zero, but with the deposit of a Sun Pharmacy check already in hand when the debit memo call was made, there were clearly sufficient client funds for Respondent's loan payments. (C.s Exhs. 4, 5, 8). The debit memo caused the trust funds to be used. But even if, but for Ann Akonom's testimony, intent were not proven, Respondent has no legal basis for trying to exclude proof he placed or caused to be placed on the record.

In arguing that intent was not proven, long after the case was closed, Respondent now suggests in his brief that Ann Akonom may not have checked the records at all. (RB p.13). No evidence to that effect was presented. This position seems awkward given Ms. Akonom's testimony that she checked the records, and Respondent's insistence that she is a truthful person.

Respondent objects to the referee finding intent prior to the Respondent testifying. Respondent was allowed to give his version of the facts even after the close of evidence in the case in chief. That testimony did not cause the referee to alter his findings of intentional conversion. The facts (documents) show the bookkeeper's testimony was false, and the conversion was not due to a mistake. The referee gave no credence to the claim of accidental misappropriation. Further, there was no evidence that

after the conversion, the continued use of the misappropriated money was unintentional. In fact, even if Respondent's own testimony were true, he himself claims he knew about the misappropriation a few days after it occurred, and that he did not immediately replace the misappropriated money. (TR3, p.82, 1.2-6; TR3, p.94, 1.21-24). Of course, the Respondent prefers a conclusion that he failed to promptly repay an accidentally acquired, unauthorized borrowing of client funds to the referee's finding of intentional conversion.

The evidence of concealing the misuse of client funds, falsifying records, and not recording the debit memo, were not the sole basis for finding intent. The referee's finding of intentional misappropriation is not clearly erroneous and therefore should be upheld.

Respondent contends it was improper at the mitigation hearing for the referee to not hear character witnesses regarding the office manager's purported reputation for truth and veracity. Prior to the mitigation hearing, Respondent had stipulated to a close of evidence, except as to mitigation. (TR2, p.102, 1.25-p.103, 1.18). Then at the mitigation hearing, he attempted to bolster the bookkeeper's earlier testimony by having her testify she had been truthful, and by attempting to present character witnesses to testify that the bookkeeper had a reputation for truth and veracity. The referee properly denied this attempt to prove a witness told the truth in the case in chief by introducing evidence in the mitigation phase of her alleged reputation for truth and veracity.

Respondent alleges that the referee may have failed to consider all the evidence due to a misunderstanding. Somehow, Respondent seems to suggest, he did not anticipate the Referee making a proposed ruling on intent prior to the mitigation phase. The Florida Bar did note at the close of its evidence in the case in chief that intent was an issue of mitigation. (TR1, p.14, l.7-9). Then in the case in chief, Respondent attempted through presenting Ann Akonom's testimony to provide evidence of accidental misappropriation (lack of intent). The referee even specifically noted in the March 3, 1993 hearing that he wished to see the date of deposit because "there's a claim of mistake which is present here.' Attorney Gonzalez, Respondent's counsel, inquired of the Florida Bar auditor about the possibility of a mistake by Ann Akonom in relating the amount of attorney's fees in trust to Respondent, asking " did you identify Ann Akonom as the person responsible for this mistake or error," to which the auditor responded "the first time I heard it was a mistake on her part is now." (TR1, p.67, l.5-12). Clearly intent was a major issue.

In a last hearing in the case in chief, on April 22, it was agreed all testimony and evidence to be presented in the case in chief would be concluded that date (TR2, p.89, l.5-11 - p.103, l.5-12); Respondent did not testify. Then in his Summation of Counsel for the Respondent, submitted to the referee prior to the Referee's initial ruling on intent, findings of fact and violations, Respondent argued the issue of intent. This was prior to the hearing on mitigation.

Only after he had been found guilty did Respondent elect to come forward. He now objects that prior to Respondent's testimony the referee improperly concluded that the theft was intentional. While the referee did find intent prior to the mitigation phase, during the hearing on mitigation, the referee allowed Respondent to revisit the factual testimony regarding violations and intent. (TR3, p.79, l.17 - p.89, l.3). Respondent's testimony did not cause the referee to alter his findings of fact, nor the conclusion that the misappropriation was intentional.

The referee's finding of intentional misappropriation is clearly supported by the evidence and should be upheld.

## Summary of Argument: Issue II

Intentional misappropriation, coupled with the presentation of false evidence to The Florida Bar and with the presentation of and adoption of false evidence in the referee proceeding warrants disbarment.

## ARGUMENT: Issue II

Respondent argues that, even if the referee's conclusions are correct, the circumstances do not merit disbarment. One of the factors he notes is that the referee found that the Respondent had cooperated. That alleged finding is addressed in Complainant's Initial Brief. The Bar does not contest that the referee indicated ....

> " as far as the cooperation issue and the decisions you've made on advice of counsel, given the timing of the Bar audit, given the other circumstances in which you've found yourself, I don't believe this was bad advice of counsel .... I don't think you've been led in to any lack of cooperation." (RB p.19; TR 3, p.126, l.16 - p,127, l.8).

The referee, on the other hand, did not report cooperation as a mitigating factor. The evidence clearly shows that critical records which were turned over to The Florida Bar were falsified and incomplete. (See CB, p.2-5). A finding that cooperation occurred is unwarranted.

Respondent also claims out that the sanction recommended by the Referee was the one initially called for by the Complainant's counsel. (RB p.22). This is incorrect. In the written Closing Argument and Argument On Discipline, prior the mitigation phase, Complainant's counsel recommended a minimum of a two year

suspension. (CA, p.12). After the case in chief and after the written closing, Respondent made additional attempts to shore up the incredible testimony of his bookkeeper, and testified that his secretary's testimony was essentially correct. Respondent adopted his secretary's testimony after The Florida Bar's recommendation of a minimum two (2) year suspension. The at the final hearing, the Referee was clearly advised that the Bar's recommendation was disbarment. (TR3, p.123, l.14 - p.124, l.10).

Respondent reviews several instances where this Court did not disbar attorneys for misappropriation. He notes that in The Florida Bar v. Pincket, 398 So. 2d 802 (Fla. 1981), an attorney converted $35,000.00 in a real estate transaction and an additional $21,000.00 from an estate, but received a two (2) year suspension even though $21,000.00 had not been repaid. Respondent is essentially correct in the facts, though more accurately, regarding the real estate transaction the case indicates "Respondent (Pincket) received approximately $37,500.00 in escrow money for the sellers, but was unable to promptly account for and deliver the full amount to the sellers upon demand on Respondent's trust account." Id. at 802. Pincket then used family money to pay the $14,000.00 balance. In finding against disbarment the Court noted that Pincket voluntarily reported an additional violation where trust funds were not available, i.e. the estate case. He stipulated to a temporary suspension, entered an unconditional guilty plea, and waived grievance and referee proceedings. Cooperation in Pincket is not

to be equated with Respondent's conduct in the instant case. There is no indication Pincket presented falsified records to The Bar, directly or through his secretary, in marked contrast to Respondent's actions.

In The Florida Bar v. McShirley, 573 So. 2d 807 (Fla. 1991), as Respondent notes, the misappropriations were intentional, substantial and repeated. Before the Bar audit, McShirley restored the misappropriated money. Unlike the instant case, the referee in McShirley found absence of a prior disciplinary record, and specifically found a cooperative attitude in the disciplinary proceedings to be mitigating. In the decision, there is no reported attempt by McShirley to conceal his misappropriation by presenting false documents to The Florida Bar, nor false testimony in the proceedings. McShirley was suspended for three (3) years.

In The Florida Bar v. Stark, 616 So. 2d 41 (Fla. 1993), as Respondent relates, an attorney who knowingly used client funds amounting to about $8,466.29, and who made restitution after the referee issued his report, was suspended for three (3) years. Respondent does not point out additional mitigation in Stark: Stark was a sixty-five year old attorney who had practiced law for almost forty years with an unblemished record, and twenty-two character witnesses testified that he was a suitable candidate for rehabilitation.

Respondent also points out that the referee in the instant case commented on the suspension in The Florida Bar v. Marcus, 616 So. 2d 975 (Fla. 1993), where Mr. Marcus was suspended for

three (3) years for systematic and repeated misappropriation of client funds. What Respondent does not indicate is that the Referee in Marcus found that Marcus was addicted to cocaine, that there was a causal link between Marcus misconduct and the addiction, and that he had affiliated with the Narcotics Anonymous Program for three (3) years; had fulfilled a two (2) year contract with Florida Lawyer's Association Corporation, continued in the program voluntarily, and was active in the recovery of other suffering addicts. In the instant case, there was no evidence of addiction as a mitigating circumstance.

In Count II, as in Count I, Respondent claims the referee recommended the sanction that was initially called for by Complainant. He cites to Complainant's written closing argument: and states that Bar counsel called for a suspension " `...for a minimum of one year.' (CS-12)." This is a misquote - the written statement was "for a minimum of two (2) years," (CS-12) and this tentative recommendation was made prior to the full hearing on discipline, in accordance with the request of the referee.. The recommendation of a minimum suspension of two years was made before Respondent adopted his secretary's false testimony, and before he tried to bolster it.

Respondent also cites to three (3) unreported cases summarized in The Florida Bar News, cases which were considered by the Referee. These cases have no precedential value, and in addition, the recitation of the facts of those cases are incomplete. (RB p.19). For example, in The Florida Bar v. Speronis, Sup. Ct. No. 80,620, May 1, 1993, by consent judgment

Speronis was suspended for two (2) years for stealing $4,550.00 paid to his firm as fees. There is no indication that client funds were misappropriated. Speronis had voluntarily ceased the practice of law, made full and free disclosure, cooperated with the Bar, and had no prior discipline. None of these facts were mentioned by the referee. (TR3, p.131, l.14-25; Appendix, 7).

In The Florida Bar v. Hernandez-Yanks, Sup. Ct. Case No. 80,716, April 29, 1993, also a consent judgment, Hernandez-Yanks was suspended for one year. The referee in Hernandez-Yanks found as mitigation that the attorney was a very young and inexperienced lawyer under the undue influence of her husband, a situation since corrected. Also, the report found she fully cooperated with The Florida Bar. (Appendix, 5). In the instant case, Respondent has not entered into a consent judgment, is not young and inexperienced, and did not argued undue influence by his wife as a mitigation factor. The Florida Bar News article to which the referee referred did not mention mitigation, nor that the discipline was based on a consent judgment. (Appendix, 3).

The referee in the instant case also referred to a two (2) year suspension in William Thomas Edward, Jr.'s case, quoting The Florida Bar News account: "Edwards had converted funds from his trust account for his own personal use on thirteen (13) occasions amounting to $20,000.00," to keep his law office open. (TR3, p.131, l.1-13). In this unreported Supreme Court Case No. 80,041, The Florida Bar v. William Thomas Edwards, Jr., the Respondent admitted the use of client funds, and at the conclusion of the Bar audit made full restitution. The Florida

Bar acknowledged Edwards', full cooperation with the audit and investigation into the Complaint. The referee found that Edwards enjoyed a good reputation, was of good character, had no prior disciplinary history and was remorseful. He was suspended for two (2) years. (Appendix, 6). Unlike Edwards, Respondent in the instant case has two (2) prior disciplines (a public and a private reprimand, both on unrelated matters), and was not cooperative in the Bar investigation.

Respondent objects to what he perceives as the Bar's position that only an outright repudiation of the secretary's testimony would satisfy the Bar, arguing in his brief ... "yet if he (Corces) verily believed the facts to be as his office manager testified, he would have in fact testified falsely if he had repudiated her." (RB, p.23-24). Respondent not only did not repudiate the testimony, he tried to bolster it and adopted the material aspects of that testimony. Respondent has been an attorney for thirteen (13) years (TR3, p.70, l.22-23), has a Master of Law degree in taxation, and is admitted to practice before the United States Tax Court (TR3, p.70, l.2-12). He testified that he knows enough accounting, banking, and tax work to know that the Sun Pharmacy matter was going to be on the table from day one. (TR3, p.79, l.18-24). He says he knew from when he handed the box over with the debit memos, and the Bar was reconciling back, book and bank statements that it was going to come about... "I did not try to hide anything from the Bar." (TR3, p.83, l.7-14). The facts show otherwise.

Respondent's counsel has argued that Respondent did not

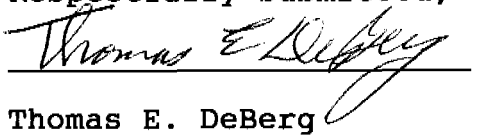
destroy documents, that he could have avoided anyone knowing about the problem, that he knew how to get around it. (TR3, p.112, l.11-16). Such a position neglects the fact that depositing the check in a non-trust account, or cashing the check, would also have been clearly shown on the check and in bank records, and more easily detected by the client than what Respondent did. Respondent's method of concealing (use of a false ledger card reflecting non-existent withdrawals of attorney's fees, not recording the deficit on the ledger card, not recording the debit memo in the cash receipts and disbursements journal, not reflecting on the debit memo that it was to be charged against Sun Pharmacy funds) could have successfully hiding the intentional nature of the misappropriation.

Respondent acknowledged he "made various deposits in his trust account from fees on other cases to replace the misappropriated money... and...my part of the fee on the $5,000.00 amounts due me from Sun Pharmacy, I left in the trust account." (TR3, p.94, l.6-12). He knew about the deficit,but as noted, the deficit was not indicated on his records. An argument that Respondent did not steal because he would have used a better method to conceal, or steal, is specious.

## CONCLUSION

Respondent intentionally misappropriated client money, presented false testimony during the referee proceedings and, through his secretary, presented falsified records to The Florida Bar Auditor in an attempt to conceal his misconduct. Misappropriation and presenting false evidence are two of the most serious offenses an attorney can commit and clearly demonstrate Respondent's unfitness to practice. The appropriate discipline is disbarment.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing COMPLAINANT'S REPLY BRIEF AND ANSWER TO CROSS PETITION, WITH APPENDIX, has been delivered by Regular U. S. Mail to Anthony Gonzalez, Counsel for Respondent, at 4314 Gainsborough Court, Tampa, Florida, 33624, this 10 day of March, 1994.

Thomas E. DeBerg
Thomas E. DeBerg
Assistant Staff Counsel

# APPENDIX

## INDEX TO APPENDIX

# Supreme Court of Florida

THURSDAY, APRIL 29, 1993



THE FLORIDA BAR,
Complainant,
v.
ANA HERNANDEZ-YANKS,
Respondent.

CASE NO. 80,716

TFB Nos. 89-70,531(07A)
89,71,023(07A); 90-71,276(07A);
90-71,292(07A)

The uncontested report of the referee is approved and respondent is suspended for one (1) year effective thirty (30) days from the filing of this order so that Respondent can close out his practice and protect the interests of existing clients. If Respondent notifies this Court in writing that he is no longer practicing and does not need the thirty (30) days to protect existing clients, this Court will enter an order making the suspension effective immediately. Respondent shall accept no new business from the date this order is filed. Respondent is further directed to comply with all other terms and conditions of the report.

Judgment for costs in the amount of $5,433.00 is entered against respondent for which sum let execution issue.

Not final until time expires to file motion for rehearing and, if filed, determined. The filing of a motion for rehearing shall not alter the effective date of this suspension.

A True Copy
TEST:

Sid J. White
Clerk, Supreme Court

KBB
cc: Hon. Robert F. Diaz, Referee
Mr. David Raben
Ms. Jan K. Wichrowski
Mr. John A. Boggs
Mr. Louis Jepeway

## Mail Fraud – Disbarment

• **Dennis Joel Simon**, 9901 Westview Drive, Coral Springs, disbarred from all practice of law in Florida, effective May 21.

According to the Bar, Simon was charged with mail fraud. As a condition of a plea agreement, Simon waived indictment, and consented to voluntary disbarment in all jurisdictions in which he was licensed to practice law.

Simon is required to pay $500 in disciplinary costs. Simon, born in 1946, was admitted to the Bar in 1973.

## Misappropriation–Suspension

• **Alan K. Marcus**, 4601 Ponce De Leon Boulevard #21, Miami, suspended for three years, retroactive to December 23, 1991, followed by a three-year period of probation upon readmission, pursuant to an order dated April 15. Marcus was found guilty of violating Bar rules concerned with dishonesty, misrepresentation, and other conduct that adversely reflects on a lawyer's fitness to practice law.

According to the Bar, Marcus systematically and repeatedly misappropriated client funds while he was employed as an associate in a law firm. Marcus [illegible] When the insurance company adjusters forwarded the designated sums, Marcus deposited the money in an account that was not maintained by the firm, and misappropriated the difference. Marcus made full restitution of all funds after the misappropriation was discovered, but before the matter came before the Bar. Marcus pleaded guilty to charges in February 1989.

Marcus is required to pay $2,665.05 in disciplinary costs. Marcus was born in 1954, and admitted to the Bar in 1978.

## Lack of Diligence–Reprimand

**Richard Dale Ogburn**, 120 E. 4th Street, P.O. Box 923, Panama City, publicly reprimanded for professional misconduct, and further placed on probation for two years effective immediately.

Ogburn was found guilty of violating Bar rules concerned with a lawyer acting with reasonable diligence and promptness in representing a client, keeping a client reasonably informed about the status of a matter, explaining a matter to the client so the client can make informed decisions, and making reasonable efforts to expedite litigation consistent with the interest of the client.

In November 1986, a couple sought retained Ogburn in March 1987 to represent them regarding a dispute over and return of their rental deposit. Ogburn did not advise his clients of the hearing. In March 1988 the case was transferred from circuit court to county court. Ogburn did not inform his clients of the transfer. Between September 1987 and December 1988 the couple received only one communication from Ogburn regarding their case. During 1989 and 1990 numerous phone calls to Ogburn by the clients went unanswered. In December 1990 they set up a conference to discuss the status of their case. Ogburn told them that within two weeks a court date would be set. A few weeks later the clients called to see if a court date had been set, but Ogburn would not return the calls.

Between January and June 1990 Ogburn met with the chief administrative judge of the county court regarding the steps necessary to reconstruct the file. In May 1991 the couple informed Ogburn's secretary that they were going to file a complaint with The Florida Bar. Subsequently, Ogburn called the couple and told them a hearing on the merits was set for June 25. On that date the court awarded the couple the return of their deposit. According to the clients, they may [illegible] fees. The court's order was signed in July 1991, and did not contain any provision regarding attorney's fees.

Ogburn is required to pay $1,741.91 in disciplinary costs. Ogburn was born in 1955, and admitted to the Bar in 1981.

## Misappropriation–Suspension

**Louis S. St. Laurent**, 801 S. Bayshore Drive, Penthouse 2070, Miami, suspended for 91 days, effective May 9. St. Laurent pleaded no contest to violating rules concerned with dishonesty and other conduct which adversely reflects on a lawyer's fitness to practice law.

The charges stem from St. Laurent's involvement in the real estate market. St. Laurent served as chief assistant state attorney for the 20th Judicial District from 1969 to 1980. He resigned to take over a company that managed a time-share condominium in the Keys. During his tenure with the company, St. Laurent was not practicing law, but he was a member of The Florida Bar, and subject to its rules.

The Bar filed two complaints against St. Laurent, alleging fraud in the way the time-share intervals were sold, and the way warranty deeds were executed and delivered. One complaint accused St. Laurent of preparing and executing warranty deeds to purchasers of time-share units which represented that the purchasers were receiving free and clear title to their units, when in fact they were not. The complaint also alleged that St. Laurent misdirected and converted to his own use those funds received from purchasers which [illegible] underlying mortgage.

The second complaint alleged that St. Laurent executed a warranty deed to a couple which purported to clear title to a time-share unit, when in actuality the property was encumbered by a mortgage. St. Laurent also misdirected and converted cash sale proceeds with regard to the couple's purchase, in that said funds were not used to satisfy the underlying mortgage on the unit. Finally, St. Laurent misdirected and converted funds which should have been held in escrow.

St. Laurent has filed a motion for rehearing that is pending. The terms of the court order, however, provide that the motion does not alter the effective date of St. Laurent's suspension.

St. Laurent is required to pay $14,932.89 in disciplinary costs. St. Laurent was born in 1938. He was admitted to the Bar in 1965.

## Resignation Pending Discipline

**James Thomas Smith**, 333 Tamiami Trail S., Suite 288, Venice, resigned in lieu of disciplinary proceedings, with leave to seek readmission after three years, effective May 15.

Three cases were pending against Smith. It is alleged that Smith delayed the handling of a dissolution of marriage. Smith was retained in March 1992. The complainant also alleged that Smith tried to convince the client to file for bankruptcy contrary to the complainant's request. It is further alleged that although the divorce was granted in July 1992, the final judgment had not been submitted to the court, and was not mailed by Smith until September 30. The final judgment was signed by the judge on October 8, 1992.

In another matter, the Bar said Smith accepted a $900 retainer but did not provide the agreed upon services. In a third case, Smith was retained for a divorce case and was paid $250. Smith was also asked to remove the complainant's mother-in-law's name from some documents, for which he was paid $75. Smith did not complete the agreed upon services.

Smith is required to pay $500 in disciplinary costs. Smith was born in 1960. He was admitted to the Bar in 1982.

*Court orders are not final until time expires to file a rehearing motion and, if filed, determined. The filing of such a motion does not alter the effective date of the discipline.*

years, effective May 21.

According to the Bar, three disciplinary cases were pending against Atti. In two instances the Bar alleged Atti misappropriated client funds and committed trust violations. In another case, the Bar said Atti failed to provide competent representation and failed to act with diligence.

Atti is required to pay $743.45 in disciplinary costs. Atti was born in 1953 and admitted to the Bar in 1987.

## Emergency Suspension

**Saul Cimbler** 1320 S. Dixie Hwy., Suite 750, **Miami** suspended on an emergency basis until further notice.

According to the Bar, an audit by Bar staff addressed the concerns of several complaints filed against Cimbler alleging misuse of escrow deposits. Cimbler, an escrow agent of a townhome development who received deposits from buyers, failed to provide an accurate accounting to the principals of the development. The auditor's affidavit indicates Cimbler maintained trust accounts composed of client funds in at least four banks. The accounts revealed a shortage of more than $10,000. Cimbler provided incomplete records concerning the escrow deposits and disbursements.

Cimbler, born in 1960, was admitted to the Bar in 1985.

## Resignation Pending Discipline

• **Early N. Davis III** 1515 Ringling Blvd., Suite 800, **Sarasota** resigned in lieu of disciplinary proceedings, with leave to seek readmission after five years, effective May 21.

According to the Bar, five disciplinary cases were pending against Davis. In one case the Bar alleged Davis has either abandoned his law practice, or is neglecting his clients' cases and not adequately communicating with them. The case also involves allegations that Davis may have misappropriated trust funds. Another case involves allegations that Davis may have misappropriated funds from a trust account in which Davis is the trustee. A third case involves allegations that Davis is involved in litigation with a former client and has failed to comply with discovery demands. In another instance, two clients allege that Davis misappropriated trust funds and abandoned their cases. A final case also alleges that Davis misappropriated trust funds.

Davis is required to pay $1,790.60 in disciplinary costs. Born in 1953, he was admitted to the Bar in 1981.

## Resignation Pending Discipline

• **Robert Kurt Hayden**, 800 Court Street, **Clearwater**, resigned in lieu of disciplinary proceedings, with leave to seek readmission after five years, effective May 21.

Three cases were pending against Hayden. Hayden is accused of inducing an expert witness to appear for a last-minute deposition on a religious holiday, then failing to compensate the witness as promised. The complainant also alleged that on several occasions Hayden said payment was forthcoming, then failed to make payment.

In another instance Hayden allegedly neglected to present specific issues requested by his client, including supervised visitation rights, attorneys' fees, court costs, and alimony. Further, he allegedly neglected to adequately prepare witnesses and use evidence regarding spousal and child abuse, to provide his client with correspondence regarding her case, return her telephone messages, and inform her of court hearings, with the exception of the final hearing. When Hayden was informed by his client of a and 1991 for violations of the Rules Regulating The Florida Bar.

Hayden is required to pay $2,319.75 in disciplinary costs. He was born in 1943 and admitted to the Bar in 1973.

## Misuse of Funds–Suspension

• **Ana Hernandez-Yanks**, 1901 N.W. South River Drive, #41, P.O. Box 350416, **Miami**, suspended for one year effective May 29.

According to the Bar, Hernandez-Yanks admitted to improperly using client funds. She misappropriated client funds for her personal use, and she failed to maintain her trust accounts in compliance with the Rules Regulating Trust Accounts. Hernandez-Yanks has since reimbursed most of the client funds.

Hernandez-Yanks is required to pay $5,433 in disciplinary costs. Hernandez-Yanks, born in 1962, was admitted to the Bar in 1986.

Statutes.

Rood is required to pay $879.98 in disciplinary costs. Rood was born in 1952 and admitted to the Bar in 1980.

## Emergency Suspension

• **Lauren A. Sill**, 572 2nd Ave. S., **St. Petersburg**, suspended on an emergency basis until further notice.

According to the Bar, in 1988 Sill was appointed personal representative to an estate. During the course of the case, between 1988 and 1992, Sill was issued numerous citations to show cause why the estate had not been closed. Sill filed approximately 12 petitions for extension of time to close the estate. Pursuant to a prior disciplinary order from the Supreme Court, a spot check was scheduled to review Sill's trust account. The auditor's spot check revealed shortages totalling more than $28,000, caused by levies assessed by the Internal Revenue a subpoena from The Florida Be ing the production of all docum records related to her represen the aforementioned estate. Two later the auditor reviewed the tion and detailed activity betw tember 1990 and March 19 auditor's examination disclo more than $283,000 had been and deposited into the estate The total of funds received by flected in checks made out to more than $263,000, leaving a of more than $3,500. The bene of the estate did not consent to ing funds of the estate.

When questioned under oath ing the status of the funds, Sill assets were in the estate bank which was a material misrepres to the court. On April 12, 1993 held in contempt of court. Wh tioned at a hearing one week lat status of the funds, Sill failed to

## Conversion–Suspension

• William Thomas Edwards, Jr., 2554 Blanding Blvd., Suite K, Middleburg, suspended for two years effective April 1 for misconduct, pursuant to an order dated March 18.

In March 1991, the Bar received a complaint against Edwards alleging conversion of trust funds, bounced trust account checks, and violations of rules relating to trust accounting procedures. In a letter to the Bar, Edwards admitted to using trust funds between 1987 and 1989 for operating his law office and expenses when other funds were not available. An audit by the Bar showed that between January 1, 1987, and August 31, 1991, Edwards had converted funds from his trust account for his personal use on 13 occasions, amounting to $20,300. Edwards admitted the "borrowings" to the auditor, explaining that he had no other way of keeping his practice open.

Edwards is required to pay $6,698.63 in disciplinary costs. Edwards was born in 1956 and admitted to the Bar in 1980.

To Tom DeBerry April 1, 1993 Bar News

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 80,176
[TFB Case Nos. 89-70,531 (07A);
89-71,023 (07A);
90-71,276 (07A);
90-71,292 (07A)]

v.

ANA HERNANDEZ-YANKS,

Respondent.
_____/

REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT

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. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits, all of which are forwarded to The Supreme Court of Florida with this report, constitutes the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - Jan K. Wichrowski

For The Respondent - Louis M. Jepeway, Jr.

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 on below, I find, pursuant to the Conditional Guilty Plea for Consent Judgment, that the factual allegations of the Complaint are admitted. The Conditional Guilty Plea for Consent Judgment and the Complaint are attached hereto and incorporated herein.

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:

Pursuant to the Conditional Guilty Plea for Consent Judgment, I find respondent guilty as admitted in the Conditional Guilty Plea for Consent Judgment. The

Conditional Guilty Plea for Consent Judgment and the Complaint are incorporated herein and attached as Attachment 1.

IV. Recommendation as to Disciplinary measures to be applied:

A. A one year suspension with proof of rehabilitation required prior to reinstatement.

B. Payment of costs which currently total $5,433.00. Should respondent ever file for bankruptcy she agrees not to list this debt to The Florida Bar in her petition for bankruptcy.

C. Restitution in Case No. 89-71,023 (07A) pursuant to the final judgment of February 12, 1990, Circuit Court, Dade County, Case No. 88-49277-16.

D. Restitution of any forthcoming Client Security Fund claims.

V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 31
Date admitted to Bar: 6/27/86
Prior Disciplinary convictions and disciplinary measures imposed therein: Case No. 88-71,501 (11C) - the respondent received a private reprimand for technical trust account violations.

I found the following mitigating factors:

The respondent has reimbursed most of the client funds she improperly utilized and/or misappropriated and will reimburse the proper party in Case No. 89-71,023 (07A) for $14,000.00 plus interest at a rate of ten percent (10%) from September 1, 1989, together with costs and attorney fees in the amount of $15,000.00 pursuant to Section 57.105, Florida Statutes prior to reinstatement. The respondent no longer handles trust monies. The respondent has expressed sincere remorse. The respondent is rehabilitated. The respondent's misconduct occurred when she was a very young, inexperienced lawyer. She was under the undue influence of her husband. That situation has been corrected. She has continuously practiced law during the past three years with no complaints resulting in discipline. The substantial delay since the misconduct occurred was not caused by the respondent. The respondent has fully cooperated with The Florida Bar in this matter.

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 | $ 703.00 |
| | 2. Bar Counsel/Branch Staff Counsel Travel Costs | $ 0 |
| B. | Referee Level Costs | |
| | 1. Transcript Costs | $ 0 |
| | 2. Bar Counsel/Branch Staff Counsel Travel Costs | $ 0 |
| C. | Administrative Costs | $ 500.00 |
| D. | Miscellaneous Costs | |
| | 1. Investigator Expenses | $2,890.15 |
| | 2. Exhibit Preparation (enlargements) | $ 336.00 |
| | 3. Bank Records Research & Copies | $1,003.85 |
| | TOTAL ITEMIZED COSTS: | $5,433.00 |

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 16 day of April 1993.

ROBERT F. DIAZ

Robert F. Diaz
Referee

A TRUE COPY

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

Ms. Jan K. Wichrowski, Bar Counsel, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801

Mr. Louis M. Jepeway, Jr., Counsel for Respondent, Biscayne Building, 19 W. Flager Street, Building #407, Miami, Florida 33130-4404

Mr. John Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

Case No. 80,041

TFB File No. 92-00817-04B

WILLIAM THOMAS EDWARDS, JR.,

Respondent.
_____/

# REPORT OF THE REFEREE

## I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On June 19, 1992, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. On October 13, 1992, a final hearing was held in this matter. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

## II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary Of Case.

As charged in the formal complaint filed herein by The Florida Bar, Respondent is alleged to have violated certain rules of discipline pertaining to conversion of trust monies and trust accounting procedures.

The referee has taken notice of the pleadings filed on behalf of the Respondent, specifically, the Answers to the Request for Admissions. The referee has also reviewed the affidavit of Clark Pearson, auditor for The Florida Bar, which was admitted into evidence without objection by Respondent. The referee has also reviewed the response of Respondent to the original complaint by The Florida Bar.

Based upon the pleadings of record herein, and the exhibits into evidence upon stipulation of the parties, I find that the following facts have been established:

On or about March 18, 1991, The Florida Bar received a complaint against Respondent alleging conversion of trust funds, bounced trust account checks and violation of rules as to trust accounting procedures.

In responding to the Bar's complaint by letter of April 10, 1991, Respondent admitted using trust funds between 1987 and 1989 for operating his law office and expenses when other fund were not available.

Beginning on September 3, 1991, the Bar's Chief Auditor, Clark Pearson, begain an audit of Respondent's trust accounts and records for a period from January 1, 1987 through August 31, 1991.

The result of the Bar's audit showed that between the above dates, Respondent converted funds from his trust account for his personal use on thirteen occasions amounting to $20,300. Respondent admitted these "borrowings" from his trust account to the Bar's auditor with the explanation that he had no other way of keeping his practice open. (Paragraph 2, Pearson affidavit.)

The Bar's audit also showed that on three separate occasions there existed on overdraft situation in Respondent's trust account. (Paragraph 2(a), Pearson affidavit.)

At the conclusion of the audit on August 31, 1991, the Bar's auditor determined Respondent's trust account shortage amounted to $13,871. Respondent deposited funds on September 9, 1991 sufficient to eliminate this shortage and bring his trust account into balance. Included in this amount was $1,667 related to alleged excessive fees taken in the Forrester case. At the hearing, the referee was informed that The Florida Bar would not proceed on these allegations and was informed by Respondent that these sums would not be sought from Mr. Forrester.

Upon review of Respondent's trust records in conducting the audit, Respondent was found to be in violation of the Bar's Rules Regulating Trust Accounts. This was based upon Respondent's failure to perform monthly comparisons of his bank statements on a regular basis. (Paragraph 2, Pearson affidavit.)

At the final hearing, The Florida Bar acknowledged the Respondent's complete cooperation with the Bar's audit and investigation into the complaint. Respondent has been on temporary probation since December 11, 1991 and has complied with the provisions of the probation in a timely fashion.

Respondent made a timely good faith effort in making restitution and there is no evidence that any clients were harmed.

Respondent has enjoyed a good reputation and is of good character as reflected in the deposition of retired Circuit Judge Giles P. Lewis. Respondent has no prior disciplinary history and is remorseful.

The referee has taken notice of the nature of Respondent's practice and the area of Clay County he represents. The referee is also aware of the need for Respondent to close his files so as not to place a burden on Respondent's clientele to find new representation.

## III. RECOMMENDATIONS AS TO GUILT.

As earlier indicated, The Florida Bar has indicated that it will not pursue the rule violations pertaining to improper or excessive

fees; i.e., Rules 4-1.5(A)(1) and 4-1.5(A)(2), of the Rules of Professional Conduct of The Florida Bar. This was announced pursuant to Respondent agreeing the evidence supported violations of Rules 4-1.15(a), 4-1.15(b), 4-1.15(d), 4-8.4(a) and 4-8.4(c), of the Rules of Professional Conduct.

Based upon the above representations and the evidence before this referee, I recommend that Respondent be found guilty of violating Rules 4-1.15(a) (a lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for costs and expenses, shall be kept in a separate account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person, provided that funds maybe separately held and maintained other than in a bank account if the lawyer receives written permission from the client to do so and provided that such written permission is received prior to maintaining the funds other than in a separate bank account. In no event may the lawyer commingle the client's funds with those of his or hers or those of his or her law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property, including client funds not maintained in a separate bank account, shall be kept by the lawyer and shall be preserved for a period of six (6) years after termination of the representation), 4-1.15(b) (upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as

stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property), 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 4-8.4(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. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. Suspension from the practice of law for two (2) years, effective April 1, 1993; and passage of the ethics portion of the Florida Bar Exam.

B. Respondent will be permitted to petition for reinstatement six (6) months prior to termination of suspension, but will not be allowed to be reinstated until termination of the period of suspension. Such early application will not allow a hearing on the petition for reinstatement until after his period of suspension has expired.

C. Prior to the effective date of April 1, 1993, Respondent shall accept no new cases and will remain under the conditions of his current temporary probation.

D. Payment of costs in these proceedings.

## V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following personal history of Respondent, to wit:

Age: 36 years old

Date admitted to the Bar: 12/12/80

Prior Discipline: None

## VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

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

| | | |
|---|---|---|
| Administrative Costs | | $ 500.00 |
| Photocopying Costs | | 34.50 |
| Court Reporter's Fees | | 208.63 |
| Bar Counsel Travel | | 126.80 |
| Auditor Expenses | | 5,828.90 |
| | TOTAL | $6,698.83 |

It is recommended that such costs be charged to 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 10th day of Nov., 1992.

COPY

ROBERT P. CATES, Circuit Judge/Referee
Alachua County Courthouse
201 East University Avenue
Gainesville, Florida 32601

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to **SID J. WHITE**, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, and that copies were mailed by regular U.S. Mail to **JOHN T. BERRY**, Staff Counsel, c/o **JOHN A. BOGGS**, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; **JAMES N. WATSON, JR.**, Bar Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; and **WILLIAM T. EDWARDS**, Respondent, c/o **JOHN A. WEISS**, Counsel for Respondent, at his record Bar address of Post Office Box 1167, Tallahassee, Florida 32302-1167, on this 8th day of Dec., 1992.

COPY

ROBERT P. CATES, Referee

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 80,620
TFB No. 92-10,613(13E)

v.

LEE PETER SPERONIS,

Respondent.
_____/

REPORT OF REFEREE

THE FLORIDA BAR

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, hearings were held. Any pleadings, notices, motions, orders, transcripts, and exhibits are forwarded to The Supreme Court of Florida with this report and constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Joseph A. Corsmeier

For The Respondent: Donald A. Smith

II. Findings of Fact as to Each Item of Misconduct With Which the Respondent Is Charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented on below, I find:

During the period of March, 1991, to July, 1991, Respondent was employed by a law firm as an attorney. During that time, Respondent received fee payments from clients which were the property of the law firm. Respondent failed to deliver these fees to the firm and used such fees for his personal benefit. These fees were in the approximate total amount of $4,550.00.

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 find Respondent guilty of violating the following rules as reflected in the Conditional Plea for Consent Judgment: Rule 3-4.3 (commission of an act which is unlawful or contrary to honesty and justice); 4-8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

IV. Recommendation as to Disciplinary Measures to Be Applied:

I recommend that Respondent be suspended for a period of two (2) years retroactive to July 17, 1991, the date Respondent ceased the practice of law as stated in his affidavit and as agreed upon in the Conditional Plea for Consent Judgment. I further recommend that Respondent be required to pay costs incurred by The Florida Bar in the amount of $1,041.00, that Respondent pay restitution in the amount of $4,550.00 as agreed upon in the Conditional Plea and that Respondent advise any law firm of the suspension and to refrain from receiving any fees or costs from clients of any law firm for which he is employed during his suspension.

V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Year of Birth: 1959
Date Admitted to Bar: October 7, 1987
Prior Disciplinary Convictions and Disciplinary Measures Imposed Therein: None

Aggravating Factors:
9.22(b) dishonest or selfish motive.

Mitigating Factors:
9.32(a) absence of prior disciplinary record.
9.32(b) timely good faith effort to rectify consequences of misconduct.
9.32(c) full and free disclosure and cooperative attitude; voluntarily ceased the practice of law.
9.32(l) remorse.

IV. Statement of Costs and Manner in Which Costs Should Be Taxed: I find the following costs were reasonably incurred by The Florida Bar: $1,041.00 as reflected in the Statement of Costs.

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 1st day of March, 1993.

DENNIS P. MALONEY

DENNIS P. MALONEY
Referee

Copies furnished to:

Joseph A. Corsmeier, Assistant Staff Counsel
Donald A. Smith, Jr., Esquire, Attorney for Respondent
John T. Berry, Staff Counsel