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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

LEO O. MYERS,

Respondent.

Case Nos. 79,472; 79,557; 80,342; 80,503;
[TFB Case Nos. 90-01,134 (04C); 90-01,145 (04C); 92-30,123 (05A); 92-30,617 (05A); 91-01,279 (05A); 92-31,214 (05A)]
and
92-31,200 (05A); 92-31,469 (05A); 92-31,682 (05A)

INITIAL BRIEF

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SYMBOLS AND REFERENCES

In this brief the complainant, The Florida Bar, shall be referred to as the bar.

The transcript of the final hearing dated October 14, 1992, shall be referred to as T.

The report of referee dated December 30, 1992, shall be referred to as RR.

STATEMENT OF THE CASE

In case number 79,472, which consists of bar case numbers 90-01,134 (04C) and 91-01,145 (04C), the grievance committee found probable cause as to case number 90-01,134 (04C) on December 13, 1991. The respondent waived probable cause with respect to case number 90-01,145 (04C) on March 14, 1991. The bar filed its complaint on March 6, 1992. The referee was appointed on March 19, 1992. The undersigned bar counsel entered his notice of appearance on May 29, 1992.

In case number 79,557, the grievance committee found probable cause on December 13, 1991. The bar filed its complaint on March 24, 1992, and the referee was appointed on April 1, 1992.

In case number 80,342, the grievance committee found probable cause on February 28, 1992. The bar filed its complaint on August 18, 1992, and the referee was appointed on August 21, 1992.

In case number 80,503, the grievance committee found probable cause on July 24, 1992. The Bar mailed its complaint on or about September 22, 1992, and the referee was appointed on or about October 2, 1992.

All of the above cases were consolidated for purposes of final hearing by order dated October 7, 1992. The final hearing was scheduled for October 14, 1992, after this court had granted the referee an extension of time on September 11, 1992, for an additional ninety days. Just prior to the final hearing, on October 12, 1992, the respondent and his counsel met with bar counsel and entered into an oral agreement whereby the respondent stipulated to the facts of the bar's case. The respondent also waived probable cause in Florida bar case numbers 92-31,200 (05A), 92-31,469 (05A), and 92-31,682 (05A) and agreed to consolidate them with the other pending matters so that the referee could dispose of all the pending cases at the final hearing.

The bar presented no evidence at the final hearing on October 14, 1992, because of the previously agreed to stipulation. The only arguments presented were as to the appropriate level of discipline. The referee issued his report on December 30, 1992, recommending that the respondent be found guilty of all the rules charged and be suspended from the practice of law for a period of six months. (Note: The specific rules are enumerated in section III of the referee's report in the appendix.) Upon reinstatement, he recommended the respondent be placed on a three year period of probation with the following terms: successful completion of an ethics course before or within one year after reinstatement; sucessful completion of a course on law office management; successful completion of a

course on trust account management; submission of quarterly case load reports to The Florida Bar withsaid reports to indicate the type of case, status and, if appropriate, disposition; and arrangement with The Florida Bar for it to review any trust account the respondent has access to during his probationary period with the bar to review and periodically monitor said trust account(s) with reasonable notice after the respondent's reinstatement. The referee also recommended the respondent pay the costs associated with the combined proceedings.

The board of governors considered the matter at its meeting which ended February 13, 1993. The board voted to appeal the referee's recommended discipline and urges a two year suspension instead along with the recommended probationary conditions. The bar served its petition for review on February 25, 1993.

STATEMENT OF THE FACTS

The following facts are taken from the report of referee unless otherwise noted.

In count I of case number 79,472, the respondent was retained by J. Paul Breazeale in 1990 to handle a matter involving a debt owed to a condominium association. Mr. Breazeale gave the respondent $2,000 with which to negotiate the payoff of the debt. Within a month of depositing the money into his trust account, the respondent, without his client's knowledge or consent, wrote two checks to himself totaling $1,400 drawn against the $2,000 deposit. The respondent then negotiated a settlement with the condominium association but failed to remit the settlement amount to the association in a timely manner. He misrepresented to the association's attorney that he had returned the money to Mr. Breazeale. As a result, the association filed suit against Mr. Breazeale and obtained a judgment against him. The respondent eventually paid the full $2,000 to the condominium association in settlement of the matter. The check was drawn on the respondent's father's trust account and payment was made only after Mr. Breazeale complained to The Florida Bar.

A review of the respondent's trust account by the bar revealed there was a shortage of at least $1,860 for a period of

several months while the respondent should have been holding $2,000 in trust for Mr. Breazeale. He also failed to maintain the minimum required trust accounting records.

In count II, the respondent represented Motor Homes of America in a suit against Lewis and Ann Webber. He obtained a final judgment in favor of his client in the amount of $6,784.67. The Webbers paid the full judgment to the respondent and he signed a satisfaction of judgment. He failed, however, to record the satisfaction of judgment for approximately one year. The respondent made only one payment, in the amount of $1,333.33, to his client from the Webber judgment prior to the matter being brought to the bar's attention. Review of the respondent's trust account by the bar indicated that the balance was insufficient to honor the obligation.

The respondent also failed to keep his client advised as to the status of the case during the representation.

In count I of case number 79,557, the respondent was retained in 1987 on a contingency fee basis to represent Southern Bell in a claim for damages against Hubbard Construction Company. There was no evidence the respondent entered into a written contingency fee contract with Southern Bell.

A jury verdict was entered in favor of Southern Bell in the amount of $6,098.70, plus costs. The defendant's co-counsel

forwarded a check from the defendant's insurer to the respondent on November 2, 1988. The check was in the amount of $6,833.93. The attorney requested that the respondent hold the funds in trust until the respondent obtained a signed release from Southern Bell. As requested, the respondent deposited the check to his trust account. The respondent and opposing counsel then negotiated a settlement of an issue concerning costs. He failed, however, to adequately communicate with his client. When Southern Bell failed to receive the proceeds of the jury award, the claims manager for the office located in Jacksonville, Mike Hogan, made inquiries of the respondent. Initially, the respondent advised Mr. Hogan the funds had not been received. Mr. Hogan finally made an inquiry with the insurance company and learned the check had been sent several months earlier. When he confronted the respondent with this information, the respondent advised him he had endorsed Mr. Hogan's name so that the respondent could cash the check.

In or around May, 1989, the claims office was restructured and moved to Atlanta, Georgia. Katrinda McQueen took over responsibility for collecting the judgment proceeds from the respondent. Despite repeated attempts, she was unable to correspond with him until after she complained to The Florida Bar in 1991. Shortly thereafter, the respondent forwarded to Southern Bell a check for $3,658.90 representing the proceeds less his 40% contingent fee and costs. He did not provide a final written settlement statement for costs although he did

provide cost statements to Southern Bell during the pendency of the litigation. The respondent advised Southern Bell that the delay had been due to the fact that he and opposing counsel had been negotiating a settlement of an issue concerning costs and he had made frequent professional moves during this time and had lost contact with Mr. Hogan after the Jacksonville office had been closed. The respondent did not keep Southern Bell apprised as to his current address. It took him approximately three years to remit the settlement proceeds.

It appears that Southern Bell disputes the amount of the settlement and a civil suit is ongoing.

Count II concerned the respondent's printing of Mike Hogan's name to the back of the check without Mr. Hogan's authorization.

A review of the respondent's trust account revealed that he wrote at least eight trust account checks when the account contained insufficient funds to cover the amounts. Further, although the account should have contained at least $3,658.90 for Southern Bell from 1988 through 1991, on January 1, 1989, the balance was only $16.05. In fact, during the entire time in question, the account never contained sufficient funds to meet the obligation owed to Southern Bell after the check was negotiated. The actual source of the payment ultimately made to Southern Bell in September, 1991, is unknown other than the fact that the funds came from the respondent's father's trust account.

In case 80,342, the respondent's father, attorney Lewis O. Myers, Jr., represented the estate of Ernest A. Markham. The estate owned a recreational vehicle lot located in Georgia which was to be sold. Richard Lewis, Sr. entered into a contract for sale and purchase of the lot and tendered payment for the full purchase price of $10,500, in March, 1991. The closing was delayed due to the fact that the documents necessary for the closing contained certain errors which needed to be corrected. Additionally, the order authorizing the sale needed to be amended so it would contain the correct legal description of the property. Mr. Lewis became concerned about the amount of time the transaction was taking to complete and in June, 1991, made a trip to the respondent's office in an attempt to meet with Lewis Myers. At the time, Lewis Myers was not in and Mr. Lewis met with the respondent to discuss the real estate transaction. The respondent had done no work on either the real estate transaction or the estate and did not review the file prior to speaking to Mr. Lewis. In advising Mr. Lewis concerning the status of the transaction, he relied upon information provided to him by his secretary. Unfortunately, this information was incorrect. The respondent erroneously advised Mr. Lewis that he had personally taken a document to the judge's office to obtain his signature relating to the sale of the estate property. He advised that he left the document with the judge's office but because the judge was in the process of moving offices, it apparently was lost. Review of the estate file by the bar revealed that it contained no such document and the employees of the judge's office advised

they had no knowledge of any such document in the estate file being lost.

The respondent further assured Mr. Lewis he would personally take care of the matter within the next few days. He then prepared a memorandum stating that his office was in the process of closing out the estate, Mr. Lewis had paid the full purchase price for the lot, and his office had submitted the appropriate pleadings and proposed order to the judge for his signature. Upon these documents being recorded, a copy would be made available to Mr. Lewis and any other interested parties. Prior to preparing this memorandum, the respondent did not check the estate file to ensure that all the necessary paperwork had, in fact, been completed. Mr. Lewis relied upon the respondent's personal assurances that he would take care of the matter. The respondent, however, did nothing further and did not consult with Lewis Myers upon his return to the office concerning what the respondent had advised Mr. Lewis.

In count I of case number 80,503, the respondent represented the natural mother in a dependency action involving her minor child. The child had been returned to the custody of the mother but HRS had retained supervisory authority over them.

The respondent filed a petition to terminate supervision or transfer venue. In his petition, the respondent stated that the court appointed guardian ad litem had indicated her services were

no longer needed. Prior to filing the petition, however, the respondent never contacted the guardian ad litem program supervisor to discuss the matter nor did he speak with the specific guardian assigned to the case. He also failed to include the guardian in the certificate of service and did not forward a copy of the petition to her. At the time the respondent filed the petition, the guardian ad litem felt her services were still needed in the case and did not want to recommend terminating HRS supervision. The guardian ad litem supervisor and the appointed guardian ad litem advised the respondent shortly after he filed the petition that the statement attributed by him to the guardian was not accurate. According to the respondent, he based the statement upon information provided to him by his client.

During a subsequent routine judicial review of the dependency case, the respondent failed to mention his petition nor did he request a separate date for the petition to be heard. In fact, the respondent stated to the court that he and his client had no objection to HRS continuing supervision or that the matter remain in the county where it was currently being heard. Only two days after making this statement to the court, the respondent filed an amended petition to terminate supervision or transfer venue. In this amended petition, he asserted the natural mother stated that the guardian ad litem had indicated to her her services were no longer needed. The respondent filed his amended petition even though it was contrary to his statements to

the court during the previous judicial review hearing.

The respondent also failed to advise the judge during the judicial review that his statement in the petition misrepresented the guardian ad litem's position despite having been made aware of the inaccuracy by both the guardian and her supervisor.

The respondent testified under oath before the grievance committee that he failed to include the guardian in the certificate of service on the petition merely due to oversight because the guardian had not been listed on any of his prior pleadings due to the fact that no guardian had yet been appointed. However, several months prior to filing the petition, the respondent filed two pleadings and wrote a letter to the presiding judge in which he listed the guardian ad litem as receiving copies of the documents.

In count II, the respondent was retained by Luther Daymon, Jr. to file bankruptcy on his behalf. He paid the respondent $120 which represented the filing fee. The respondent's fee for handling the matter was $500. Shortly after retaining the respondent, Mr. Daymon was arrested on charges of dealing in stolen property. The respondent agreed to represent Mr. Daymon concerning the criminal charges and was paid approximately $900. Ultimately, Mr. Daymon was convicted and sentenced as a habitual offender to ten years in prison. The respondent agreed to appeal

Mr. Daymon's conviction and sentence for a fee of $3,500.

The respondent testified before the grievance committee that he did not believe either Mr. Daymon or his wife could obtain the funds necessary to pay his fee so he did not proceed with the appeal. The respondent failed to file a notice of appeal and other papers as required by Florida Rule of Appellate Procedure 9.140(b)(3) on behalf of his client. Mr. Daymon submitted his own notice of appeal just prior to the expiration of the time allowed. Eventually, the public defender's office was appointed to assist him with his appeal.

Further, the respondent failed to clearly advise Mr. Daymon regarding his bankruptcy case. When Mr. Daymon contacted the clerk's office in Jacksonville, Florida, he was advised there was no record of a bankruptcy filing under his name.

With respect to The Florida Bar case number 92-31,200 (05A), the respondent was retained to represent Pamela Bryant in a uncontested dissolution of marriage action in 1991. The respondent promptly filed the petition and the former husband failed to respond. Thereafter, the respondent failed to follow through and, as a result, the court dismissed the case. The respondent did refile the petition without any additional charge, but failed to include a provision for child support as requested by his client. When questioned by Ms. Bryant, the respondent advised her that he had spoken to her former husband and he had

promised he would keep his support payments current. As a result, the respondent did not believe it was necessary to include this provision in the petition for dissolution of marriage.

From the time she first retained the respondent, it took approximately one year for Ms. Bryant to obtain her uncontested divorce. At one point, the respondent advised her that he did not have enough time to work on her case unless she was sitting in front of him in his office.

In case number 92-31,469 (05A), the respondent was retained to represent Glenn and Barbara Williamson in 1991 with respect to a bankruptcy action. During their initial consultation, they also asked his advice concerning a foreclosure action which was pending against their home. The respondent advised them he would file the bankruptcy papers and take care of notifying the civil court concerning the bankruptcy so that the foreclosure would be stayed. In 1992, the Williamsons received notification from the civil court that the final hearing on the foreclosure case was scheduled for the near future. They were unable to contact the respondent despite repeated attempts. The respondent filed the bankruptcy case the same day as the final hearing in the foreclosure action. He failed to provide his clients with copies of the bankruptcy filings.

The respondent also failed to file his client's schedules

and statements within the required time period. The Williamsons did not learn of this until the creditors meeting in the bankruptcy case. The bankruptcy judge advised them that the case would be dismissed if these documents were not filed within one week. Thereafter, the Williamsons tried again without success to contact the respondent and in March, 1992, received a motion to dismiss from the bankruptcy court.

With respect to case number 92-31,682 (05A), the respondent was retained by Betty A. Juresh in 1991 to represent her in a property settlement action. The respondent advised her his fee would be a total of $350, inclusive of attorney's fees, filing fees, court costs and related legal expenses. After approximately six months, the respondent informed Ms. Juresh that he was resigning as her attorney because he had failed to charge enough for the case and was losing money.

During the course of the representation, the respondent failed to adequately communicate with his client.

SUMMARY OF THE ARGUMENT

These cases involve repeated instances of neglect, inadequate communication with clients, failure to supervise nonlawyer employees, failure to properly maintain trust account records and a disregard for the rules governing the safekeeping of client funds. Although there is no hard evidence the respondent intentionally misappropriated funds, it appears one of his secretaries was able to steal trust monies due to the respondent's inattention to recordkeeping and general law office management. Although the respondent has been a member of The Florida Bar since 1976, all of these grievances stem from the time he first became a sole practitioner. It appears the respondent is unable to adequately cope with the rigors of running a law office and this has obviously had a delitorious effect on his clients.

According to the respondent, he is a poor bookkeeper and now relies on his father, also an attorney, to perform these services. Lewis Myers, Jr. is, however, approximately seventy years old and eventually the respondent, if he continues as a sole practitioner, will need to accept responsibility for properly maintaining the trust account. When an attorney is admitted to The Florida Bar, it is with an understanding that this person will uphold all the rules regulating The Florida Bar,

not just some of them. The rules regulating trust accounts exist to protect clients and others who must entrust their property to a lawyer. Compliance with these rules is not an option. Regardless of whether an attorney hires a bookkeeper, accountant, or other person to oversee the bookkeeping, ultimate responsibility for compliance with the rules rest alone with the attorney and if an attorney does not understand how to maintain a trust account it will be difficult, if not impossible, for that lawyer to adequately supervise the staff.

This court deals seriously with the misuse of trust funds. The Florida Bar v. Breed, 378 So. 2d 783 (Fla. 1979). Fortunately here no clients eventually lost any funds, although the shortages in the respondent's trust account revealed by the bar's audit indicate that client funds were misapplied. The bar submits that neither ignorance of the rules nor any personal inconvenience they may cause is an acceptable excuse for failing to comply with those rules. Accordingly, the suspension period for two years as requested by the board is the more appropriate one.

ARGUMENT

A TWO YEAR PERIOD OF SUSPENSION IS APPROPRIATE GIVEN THE NUMEROUS DISCIPLINARY VIOLATIONS, MANY OF WHICH INCLUDED TRUST ACCOUNT IRREGULARITIES.

The referee's finding of fact were based upon the parties' last minute stipulation where the respondent agreed not to contest the facts alleged by the bar in its complaints (T.p.3, B-Ex.1). Therefore, the bar, through the board of governors does not take issue with the findings of fact. It does, however, contest the referee's recommendation of a six month suspension, although the period of probation and conditions appear to be appropriate in this case.

Clearly, the respondent's misconduct calls for a suspension with proof of rehabilitation. The main question concerns the length of time the respondent should be suspended. Given the number of violations, pattern of misconduct and the nature of the charges, the bar submits that a two year suspension would be more appropriate even though the respondent has no prior disciplinary history. Cumulative misconduct, which includes those instances where an attorney with no prior history engages in a series of acts of misconduct, warrants increased levels of discipline where the aggregate of the violations constitutes a serious breach of ethics. The Florida Bar v. Abrams, 402 So. 2d 1150, 1153 (Fla. 1981). Taken alone, none of the misconduct alleged here would

warrant a long term suspension. However, there is a pattern of the respondent neglecting all aspects of his practice, including failing to maintain contact with the clients, failing to maintain appropriate trust account records, failing to supervise nonlawyer employees and failing to pursue cases in a timely manner. Additionally, this court is not bound by either the referee's or the bar's recommendations as to discipline. The Florida Bar v. Aaron, 606 So. 2d 623 (Fla. 1992).

The respondent's testimony before the referee at the final hearing showed he appears to have serious difficulty in properly managing either a law office and/or his own work load (T.pp.127-128). The trust account is currently maintained by the respondent's father, Lewis Myers, Jr. (T.p.126) who has expressed a desire to retire from the active practice of law (T.p.128). What is troubling is the fact that someday the respondent will no longer be able to rely on his father's bookkeeping and advice and will need to be able to properly manage a trust account on his own. The respondent must remedy his deficiencies if he is going to avoid future disciplinary problems. The fact that no clients appear to have lost any funds is due to the fortunate circumstance that Lewis Myers' law practice is sufficiently profitable that it could pay any deficiencies plus interest to the respondent's clients (T.pp.73 & 82). Had this not been the case, then at least one client, Motor Homes of America, would have lost at least $6,700 due to embezzlement by the respondent's secretary, Donna Mannudi (T.pp.81-82). Interestingly, after

learning of the embezzlement, the respondent apparently could not be bothered to investigate how much money Ms. Mannudi stole (T.p.82). According to the respondent, he simply had too many cases to be able to closely supervise either his trust account or his nonlawyer employees with whom he entrusted responsibility for maintaining the account records (T.p.87). By the time Motor Homes of America filed its grievance, the respondent had no idea as to what had happened to the money and was too busy to review the file and investigate further (T.p.88).

With respect to the settlement amount which he did not dispute was owed to Southern Bell in case number 79,557, the respondent failed to remit the funds in a timely manner simply due to the chaotic state of his law office and its files during the period of time he moved from Jacksonville to Ocala (T.pp.104-105). He was not concerned about paying the money in a prompt manner because, unlike a client in desperate need of the settlement funds, "Southern Bell was well healed (sic) and they were going to get their money, it was just a matter of [him] finding out exactly what the percentage was and whether [he] had got the cost issue resolved" (T.p.105). The reason it took nine months to do this was because the case had four files located in four different boxes and at the end of each day the respondent was just too "burned out" to deal with the problem (T.p.105). In other words, he procrastinated until the client found it necessary to lodge a grievance with The Florida Bar (T.p.100). Further, the respondent filed a motion with the court in his

client's civil action seeking to tax costs yet failed to follow through due to his travel between Jacksonville and Ocala at the time (T.pp.99-100). He also never provided Southern Bell with a closing statement detailing the costs despite having the records to do so (T.pp.108-109).

In case number 80,503, count I, the respondent testified that although he was aware the pleading he filed with the court contained an inaccurate statement, he did not bring this to the court's attention during the judicial review hearing because he did not want to reveal that opposing counsel had filed a bar grievance against him due to the inaccurate petition (T.pp.28-29). Instead, he chose to remain silent.

In case number 80,503, count II, the respondent testified that although he represented Mr. Daymon in a criminal case, he was not familiar with the Florida Rules of Appellate Procedure as they apply to criminal appeals, specifically rules 9.140(a) and 9.140(b)(3) (T.p.52). The respondent had handled civil appeals but never took the time to acquaint himself with the requirements for appeals in criminal cases (T.p.52).

With respect to closing his trust account, the respondent testified he withdrew the funds, which amounted to approximately $10,000, in the form of cash (T.pp.69-70 & 106). He did not give his father any trust records to determine the ownership of the

trust funds (T.p.107). The respondent did this as a matter of personal convenience (T.p.107). These funds were then allegedly placed in his father's money belt and kept in Lewis Myers' home (T.pp.71-72). The respondent testified his trust records were destroyed by water after he moved to Ocala because he had stored them in a leaky garage (T.p.72). The bar simply cannot determine what became of the trust funds from the respondent's account after it was closed because there are no records to either prove or disprove the respondent's assertions. For all intents and purposes the money simply vanished after the account was closed, although all clients who had funds on deposit eventually were made whole with interest (T.p.73). There is no clear and convincing evidence of intentional misappropriation although the persistent shortages in the account indicate that client funds clearly were misused.

As Justice Ehrlich observed in his dissent to The Florida Bar v. McShirley, 573 So. 2d 807, 810 (Fla. 1991), a lawyer is the shepard of his client's funds which are entrusted to the lawyer's care. It is essential to the practice of law as we now know it that the public have confidence that the attorney to whom a client's life, liberty and property are entrusted will not breach his fiduciary duties. Rule 5-1.2(b) of the Rules Regulating Trust Accounts places a duty on a lawyer, in the lawyer's special position of trust as a member of The Florida Bar, to maintain the safety and integrity of trust account records. The Florida Bar v. Rosen, 608 So. 2d 794 (Fla. 1992).

The rules and case law create a hierarchy of culpability which weighs the severity of a lawyer's misconduct in terms of the impact on the attorney's individual capacity to practice law competently and ethically, and also the impact of the misconduct on the professional reputation of the bar as an entity which must preserve the public trust. The Florida Bar v. Ward, 599 So. 2d 650, 652 (Fla. 1992). In deciding what level of discipline is most appropriate, it should be determined whether the duty owed was to a client, another attorney, the court, or a member of the public, singly or in combination. Additionally, mitigating and aggravating factors must be considered. Ward, supra.

In making his recommendation as to discipline at the final hearing, bar counsel essentially argued for a one hundred and eighty day suspension. A day later, bar counsel realized he had misspoken and wrote the referee to advise that bar counsel had intended to recommend an eighteen month suspension. The referee chose to recommend to this court the shorter suspension of one hundred and eighty days. The board of governors, after reviewing the report, voted to seek a two year suspension.

The Florida Standards for Imposing Lawyer Sanctions support a suspension. Standard 4.12 calls for a suspension when a lawyer knows or should know the lawyer is dealing improperly with client property and causes injury or potential injury to a client. Standard 4.42(a) calls for a suspension when a lawyer knowingly fails to perform services for a client and causes injury or

potential injury to a client. Standard 4.42(b) calls for a supension when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

As for aggravating factors, under standard 9.22, there is a clear pattern of misconduct, multiple offenses and substantial experience in the practice of law. The respondent has been a member of The Florida Bar since 1976, as well as the Texas and Arkansas bars (T.p.145). The respondent has also authored a book concerning debtor and creditor practice based upon his years of experience in this area (T.p.60).

In mitigation, the respondent has no prior disciplinary history and there was no indication of a dishonest or selfish motive. See Standards 9.32(a) and (b).

The case law indicates a suspension in excess of six months could be appropriate. In The Florida Bar v. Wolf, 605 So. 2d 461 (Fla. 1992), an attorney was suspended for twenty-four months after mishandling and misappropriating estate funds while serving as personal representative and misusing and overdrawing her trust accounts. With respect to the charges concerning the estate, the attorney submitted a final accounting to the court which did not reflect a true recitation of all funds received and paid out by the attorney as personal representative. She issued several checks drawn against the estate funds maintained in her trust account as payment to herself. In a second case, the attorney

issued checks from her trust account which exceeded the balance of the account. She also withdrew funds from the trust account and deposited them to a noninterest bearing trust account and thereafter issued a number of checks which had no connection to the client's case. In mitigation, the attorney had no disciplinary records prior to 1986 when she entered into a consent judgment for discipline involving the same trust accounts as involved in the current proceeding. The current charges coverd the same time period as those for which she had received her prior public reprimand. There was also evidence that she expected to replace the funds from assets and income she had available to her. She made full restitution prior to the matter being brought to the bar's attention and fully cooperated with the bar in its investigation. Further, due to marital problems, she suffered diminished capacity at the time the acts were committed. The character evidence presented indicated that she had a good reputation in the community. The offenses occurred more than six years ago and during the interim the attorney experienced no other disciplinary problems. In aggravation, there was a pattern of misconduct in handling client trust funds, there were numerous offenses and a lack of candor in her testimony as to the reasons for her improper use of the funds. This court suspended the attorney for a period of twenty-four months and required that she make restitution to one client and take and pass the ethics portion of The Florida Bar exam.

An attorney was suspended for two years in The Florida Bar

v. Hartman, 519 So. 2d 606 (Fla. 1988), due to his unintentional misuse of client funds which occurred during a short period of emotional instability and substance addiction. The attorney had been under contract with HRS and often received cost advances from putative fathers for blood tests. In several instances, the attorney failed to place these trust funds into a trust account, disburse the funds to pay for the blood tests, or forward the funds to HRS. In another instance, the attorney received money from a father as payment for child support but failed to deposit the funds into the trust account nor did he forward the funds to the mother of the child or notify her of its receipt. When the attorney's contract with HRS expired, he had in trust $4,131 on behalf of HRS clients. However, he forwarded only $550 to the new HRS attorney. He did not remit the balance in a timely manner. In another case, the attorney handled a real estate transaction but failed to properly handle the proceeds of the sale. Although he deposited the funds to his trust account, he failed to disburse them to the client. In a third case, the attorney was retained to handle certain personal debts incurred by a client. He was given cash by the client to pay the debts in full but failed to satisfy them as agreed and instead kept some of the funds without providing an accounting. Allegedly, the attorney was contesting the amount the client owed him. In another matter, the attorney was involved in a usurious loan transaction between two of his clients. The referee found in mitigation that the violations were without intent, occurred during a one and one-half year period of emotional instability,

and were due in part to drug and alcohol addiction. The referee also found the attorney had made steady progress toward rehabilitation and had maintained his law practice without complaint since the last violation almost three years from the date of the report. In addition to the suspension, the attorney was placed on a two year period of supervised probation with the requirement that he participate in Florida Lawyers Assistance, Inc. The attorney had no prior disciplinary history.

In The Florida Bar v. Padgett, 481 So. 2d 919 (Fla. 1986), charges were brought against the attorney alleging that he had mishandled and neglected his clients' businesses and cases, completely disregarded the rules governing trust accounts and had possessed contraband. The most serious charge was the manner in which the attorney handled his clients' trust funds. He used his trust account for his personal and business expenses as well as client matters. Numerous checks were written on that account which were returned due to insufficient funds. The attorney readily admitted that he knew he was mishandling the trust account and testified that he used the account improperly solely as a matter of personal convenience. The attorney attempted to excuse his conduct because no client had been injured financially. This court found that the attorney's commingling of funds merely for convenience was outrageous and such conduct could not be tolerated. He was suspended from the practice of law for a period of six months.

A three year period of suspension was ordered in The Florida Bar v. Willis, 459 So. 2d 1026 (Fla. 1984), due to numerous trust accounting violations. In one case, the attorney represented a client in connection with a criminal offense. The client pleaded guilty and was ordered to pay a $5,000 fine before a specific date. The funds were delivered to the attorney for the purpose of paying the fine and deposited to his trust account. Thereafter, the attorney withdrew the funds through a series of several checks made payable to cash. None of these funds were used to pay the fine and, as a result, a violation of probation proceeding was initiated against the client. The attorney eventually paid the client's fine by check drawn on his trust account, although it was returned once due to insufficient funds. In a second case, the attorney was provided funds by another client for the purpose of paying costs and restitution ordered in a criminal case. The attorney failed to forward the monies and as a result a warrant for violation of probation was issued for nonpayment of the required costs and restitution. It was only after the client filed a grievance with the bar that the attorney paid the funds to the appropriate agencies. A review of the attorney's account by the bar revealed that he failed to maintain the minimum required trust account records. As proof of rehabilitation, the attorney was required to submit to an examination by a psychiatrist, pass the multi-state professional responsibility examination, pay in full all costs of the disciplinary proceedings and make any necessary reimbursements to The Florida Bar Client Security Fund. After reinstatement, the

attorney was placed on a conditional two year period of probation during which time he was required to submit reports to the bar from a psychiatrist certifying him to be free of any psychiatric problems that would impair his ability to practice and failure to do so would terminate the probation.

In The Florida Bar v. Whitlock, 426 So. 2d 955 (Fla. 1982) an attorney was charged with numerous trust accounting violations including issuing checks which were returned due to insufficient funds. In one case, the attorney had been retained to handle a real estate closing. He failed to remit proceeds to one party until after a complaint was made to The Florida Bar. In defense, the attorney claimed he had sent the funds to the real estate agent handling the sale but the agent had failed to deliver any such check to the party. At any rate, the attorney failed to determine this or take any action to correct the situation until after the bar was notified. A review of the attorney's trust account revealed that he failed to make any reconciliations, checks were written in payment for personal obligations, a shortage existed in the account and real estate closing statements were prepared incorrectly thus causing overpayments to be made. After this review, the attorney opened a new trust account in an attempt to correct the deficiencies. An audit of this account and the attorney's general office account revealed a continuation of the same problems. Cost deposits were routinely deposited in and commingled with the attorney's general office account along with earned fees and personal funds of the

attorney. Numerous checks were returned due to insufficient funds drawn against the office account and the attorney allowed a nonlawyer employee to manage and control both accounts without adequate supervision or control. In mitigation, the shortages were promptly reimbursed when discovered and no client suffered any losses. The attorney cooperated fully with the bar in its investigation. He was ordered suspended from the practice of law for three years.

An attorney was suspended for two years in Breed, supra, after it was discovered that he engaged in a check-kiting scheme, failed to adequately maintain records relating to his trust account and misappropriated client funds. The check-kiting scheme did not involve the law office trust account other than the fact that it was one of the sources of funds used to cover the kite. No client suffered any loss from this misappropriation. An audit of the attorney's trust account revealed that had checks been written to all the clients for the amount due them, the account would have been overdrawn. Therefore, the attorney had converted clients' funds to his personal use. He failed to keep adequate records or reconcile the account and commingled his funds with those of his clients.

The bar submits that a two year suspension would satisfy the purposes of attorney discipline. It would be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a

qualified lawyer. The growth of the bar in recent years ensures that there is little likelihood Ocala suffers from a shortage of attorneys. The judgment would be fair to the respondent in that it is sufficient to punish a breach of ethics while at the same time encouraging reform and rehabilitation. The judgment also would be severe enough to deter others who might be prone or tempted to become involved in similar violations. The Florida Bar v. Simring, 18 Fla. L. Weekly S73 (Fla. Jan. 21, 1993).

CONCLUSION

Wherefore, The Florida Bar prays this honorable court will uphold the referee's findings of fact and recommendations as to guilt but review his recommendation that the respondent be suspended from the practice of law for a period of six (6) months with conditions and instead enter an order directing that the respondent be suspended from the practice of law for a period of not less than two (2) years and thereafter be placed on a period of probation consistent with the referee's recommendation and assess against the respondent the cost of these proceedings which are now being tabulated.

Respectfully submitted,

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BY:
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Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing Initial Brief and Appendix have been furnished by Airborne Express to the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, 32399-1925; a copy of the foregoing has been furnished by ordinary mail to the respondent's counsel, Lewis O. Myers, Jr., 403 N.W. 2nd Street, Ocala, Florida, 32670; and a copy has been furnished by ordinary mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 25th day of March, 1993.

DAVID G. MCGUNEGLE
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

LEO O. MYERS,

Respondent.

Case Nos. 79,472; 79,557; 80,342; 80,503;
[TFB Case Nos. 90-01,134 (04C); 90-01,145 (04C); 92-30,123 (05A); 92-30,617 (05A); 91-01,279 (05A); 92-31,214 (05A)]
and
92-31,200 (05A); 92-31,469 (05A); 92-31,682 (05A)

APPENDIX

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ORLANDO

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Case Nos. 79,472; 79,557;
80,342; 80,503; and

TFB Case Nos. 92-31,682 (05A);
92-31,469 (05A);
92-31,200 (05A)

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, the hearing was held on October 14, 1992. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits, all of which are 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 — Lewis O. Myers

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: The above matters were consolidated for the purposes of final hearing before this referee. Additionally, the respondent waived probable cause in case numbers 92-31,682 (05A); 92-31,469 (05A); and 92-31,200 (05A), which were pending before the grievance committee, so that they could be disposed of at the hearing held on the above date. Further, the respondent did not contest the facts alleged by the Bar and therefore no witnesses or evidence were presented. The following facts are derived from the Bar's Complaint filed herein.

CASE NO. 79,472

As To Count I

The respondent was employed by J. Paul Breazeale to handle

a matter involving a debt owed to a condominium association. Mr. Breazeale gave the respondent $2,000.00 in June, 1990, with which to negotiate payoff of the debt of $2,600.00.

Within a month of depositing the money into his trust account, the respondent, without Mr. Breazeale's knowledge or consent, wrote two checks amounting to $1,400.00 to himself drawn against the $2,000.00 deposit.

The respondent negotiated a settlement of $1,900.00 with the condominium association. He failed to remit the settlement to the association in a timely manner and misrepresented to the association's attorney that he had returned the money to Mr. Breazeale. As a result, the association filed suit against Mr. Breazeale and obtained a judgment against him in the amount of $3,647.60, including attorney's fees.

The respondent paid $2,000.00 to the attorney for the condominium association in settlement of the Breazeale matter. The check was drawn on the respondent's father's trust account and payment was made only after Mr. Breazeale complained to The Florida Bar.

A review of the respondent's trust account by the Bar revealed that there was a shortage of at least $1,860.00 for a period of several months even though the respondent was supposed to be holding $2,000.00 in trust for Mr. Breazeale. The respondent's trust account contained insufficient funds to honor the obligation during this period.

The review of the respondent's trust account also revealed that he failed to maintain the minimum required trust accounting records.

As To Count II

The respondent, on behalf of Motor Homes of America, obtained a final judgment against Lewis and Anne Webber in the amount of $6,784.67. The Webbers paid the judgment in full to the respondent and he signed a satisfaction of judgment. The respondent failed, however, to record the satisfaction of judgment until approximately one year later.

The respondent made only one payment, in the amount of $1,333.33, to his client from the Webber judgment prior to the matter being brought to the Bar's attention in 1991.

The respondent failed to keep Motor Homes of America advised as to the status of the Webber case during the representation.

A review of the respondent's trust account indicated that the balance was insufficient to honor the obligation to Motor Homes of America.

CASE NO. 79,557

As To Count I

The respondent was retained, on a contingency fee basis, in or around December, 1987, to represent Southern Bell in a claim for damages against Hubbard Construction Company. There is no evidence the respondent entered into a written contingency fee contract with Southern Bell.

The respondent successfully litigated the suit and won a jury award of approximately $6,098.70 plus costs. Hubbard's co-counsel forwarded a check from Hubbard's insurer, CNA Insurance Company, to the respondent on November 2, 1988. The check was dated October 27, 1988, and was in the amount of $6,833.93.

Opposing counsel requested that the respondent hold the funds in his trust account until he obtained a signed release from Southern Bell. As requested, the respondent deposited the check to his trust account.

When Southern Bell did not receive the proceeds of the jury award, Mike Hogan, the claims manager for Southern Bell during the time the department was located in Jacksonville, Florida, made inquiries of the respondent. Initially, the respondent advised Mr. Hogan the funds had not been received. Mr. Hogan finally made an inquiry with the insurance company and learned the check had been sent several months earlier. When Mr. Hogan confronted the respondent with this information, the respondent advised him he had endorsed Mr. Hogan's name so that the respondent could cash the check.

In or around May, 1989, the claims office was restructured and moved to Atlanta, Georgia. Katrinda McQueen took over responsibility for collecting the judgment proceeds from the respondent. Although she made repeated attempts to correspond with him, she was unable to contact him and could not determine his whereabouts. It was only after she complained to The Florida Bar in July, 1991, that the respondent contacted her.

By letter dated September 27, 1991, the respondent forwarded to Southern Bell a check for $3,658.90 representing the proceeds less his forty percent contingent fee and costs. The respondent did not provide Southern Bell with a final written settlement statement for costs although he did

provide cost statements to Southern Bell during the pendency of the litigation.

The respondent stated in his letter of September 27, 1992, that the delay had been due to the fact that he and opposing counsel had been negotiating settlement of an issue concerning costs. Further, he had made frequent professional moves during this time and had lost contact with Mr. Hogan after the Jacksonville office had been closed.

The respondent failed to keep his client apprised as to his current address. It took approximately three years for him to remit the settlement proceeds to his client.

Finally, it appears Southern Bell disputes the amount of the settlement and a civil suit is ongoing.

As To Count II

The respondent hand-printed Mike Hogan's name to the back of the check forwarded to him as settlement of Southern Bell's claim against Hubbard Construction. The respondent then signed the check in his own name.

Mr. Hogan did not endorse the check nor did he authorize the respondent to endorse his name to the check.

Although the respondent advised Southern Bell in his letter of September 27, 1991, that part of the delay had been due to the fact that he and opposing counsel had been negotiating settlement of an issue concerning costs, according to opposing counsel, the discussion concerning costs occurred during the period of November, 1988, through January 20, 1989. Thereafter, the cost issue was settled. Therefore, it appears that after January 20, 1989, the funds could and should have been forward to Southern Bell.

An audit conducted by The Florida Bar of the respondent's trust account revealed that he wrote at least eight trust account checks when it contained insufficient funds to cover the amounts. Further, the account was improperly labeled as being a "client account".

Although the account should have contained at least $3,658.90 for Southern Bell from November 4, 1988, through February 22, 1991, when the account was closed, the balance as of January 1, 1989, was only $16.05. In fact, during the time in question, the account never contained sufficient funds to meet the obligation owed to Southern Bell.

The actual source of the payment to Southern Bell in

September, 1991, is unknown other than the fact that the funds came from the respondent's father's trust account.

CASE NO. 80,342

The respondent's father, attorney Lewis O. Myers, Jr., represented the estate of Ernest A. Markham. The estate owned a recreational vehicle lot in the state of Georgia. Richard Lewis, Sr. was interested in purchasing the lot from the estate and contacted Lewis Myers. A contract for sale and purchase was entered into and Mr. Lewis tendered payment for the full purchase price of $10,500.00. The funds were deposited to Mr. Myers' trust account in March, 1991.

The contract stated that the closing would occur on April 30, 1991. However, it failed to occur on this date. Part of the delay was due to the fact that documents necessary for the closing contained certain errors which were not corrected before the closing date. Additionally, the order authorizing the sale needed to be amended to contain the correct legal description of the property.

Mr. Lewis became concerned about the amount of time the transaction was taking to complete and in June, 1991, made a trip to the respondent's office in Ocala, which he shared with his father, in an attempt to meet with Mr. Myers. At that time, Mr. Lewis was advised by the respondent's sister that Mr. Myers was out of the country. Because Mr. Myers was not available to meet with Mr. Lewis, the respondent met with him and discussed the real estate transaction.

The respondent had done no work on either the real estate transaction or the estate and did not review the file prior to speaking with Mr. Lewis. In advising Mr. Lewis concerning the status of the transaction, the respondent relied upon information provided to him by his secretary. This information was incorrect.

The respondent erroneously advised Mr. Lewis that he had personally taken the document to the judge's office to obtain his signature relating to sale of the estate property. He left the document with the judge, but because the judge was in the process of moving offices, it apparently was lost. A review of the estate file by the Bar, however, revealed that it contained no such document and employees of the judge's office advised the Bar they had no knowledge of any such document in the estate file being lost.

The respondent assured Mr. Lewis he would personally take

care of the matter within the next few days. He then prepared a memorandum stating that his office was in the process of closing out the estate, Mr. Lewis had paid $10,500.00 for the lot, and the respondent's office had submitted the appropriate pleadings and proposed order to the judge for his signature. Upon these documents being recorded, a copy would be made available to Mr. Lewis and any other interested parties.

The respondent did not check the estate file to ensure that all the necessary paperwork had, in fact, been completed prior to his typing the memorandum.

Mr. Lewis relied upon the respondent's personal assurance that he would take care of the matter. The respondent, however, did nothing further and did not consult with Mr. Myers upon his return to the office concerning the contents of his conversation with Mr. Lewis.

CASE NO. 80,503

As To Count I

The respondent represented the natural mother in a dependency action involving her minor child. He had been retained by the mother to regain custody of her child who had been placed in a foster home by HRS.

In August, 1991, the court issued an order appointing the guardian ad litem program to represent the interests of the child. In or around November, 1991, after an investigation and a hearing were conducted, the child was returned to the custody of her mother. HRS retained supervisory authority over the mother and the child.

In January, 1992, the respondent filed a petition to terminate supervision or transfer venue. In his petition, the respondent stated that the guardian ad litem had indicated that her services were no longer needed. However, prior to filing the petition, the respondent never contacted the guardian ad litem program supervisor to discuss the matter nor did he speak with the specific guardian assigned to the case. The respondent also failed to include the guardian in the certificate of service of his petition and he did not forward a copy of the petition to the guardian.

At the time the respondent filed his petition, the guardian ad litem felt her services were still needed in the case because she did not want to recommend termination of HRS supervision until the mother received counseling. Shortly

after filing the petition, the guardian ad litem supervisor and the appointed guardian ad litem advised the respondent that the statement attributed by him to the guardian was not accurate. According to the respondent, he based the statement upon information provided to him by his client.

On February 24, 1992, a routine judicial review of the dependency case was conducted. The respondent failed to mention his petition nor did he request a separate date for the petition to be heard. In fact, the respondent stated to the court that he and his client had no objection to HRS continuing supervision of the case or that the matter remain in the county were it was currently being heard.

Two days later, the respondent filed an amended petition to terminate supervision or transfer venue. In this amended petition, the respondent asserted the natural mother stated that the guardian ad litem had indicated her services were no longer needed. The respondent filed this amended petition even though it was contrary to his statements to court during the judicial review.

Further, the respondent failed to advised the judge during the judicial review that his statement in the petition misrepresented the facts regarding the guardian ad litem despite having been made aware of the inaccuracy previously by the guardian ad litem and her supervisor.

The respondent testified before the grievance committee that his failure to include the guardian ad litem in the certificate of service on his petition was merely an oversight. The guardian had not been listed on any of his prior pleadings because no guardian had yet been appointed. However, several months prior to filing the petition, the respondent filed two pleadings and wrote a letter to the presiding judge in which he listed the guardian ad litem as receiving copies of the documents.

As To Count II

The respondent was retained by Luther Daymon, Jr. in September, 1990, to file bankruptcy on his behalf. He paid the respondent $120.00 which represented the filing fee for the bankruptcy. The respondent's fee for handling the matter was $500.00.

Shortly after retaining the respondent, Mr. Daymon was arrested on charges of dealing in stolen property.

The respondent agreed to represent Mr. Daymon concerning the criminal charges and was paid approximately $900.00.

Ultimately, Mr. Daymon was convicted and sentenced as a habitual offender to ten years in prison. The respondent agreed to appeal Mr. Daymon's conviction and sentence and charged Mr. Daymon a $3,500.00 fee to handle the appeal.

The respondent testified before the Fifth Judicial Circuit Grievance Committee "A" that he did not believe either Mr. Daymon or his wife could obtain the funds necessary to pay his fee so he did not proceed with the appeal.

The respondent failed to file a notice of appeal on Mr. Daymon's behalf as required by Rule of Appellate Procedure 9.140(b)(3). Mr. Daymon submitted his own notice of appeal just prior to the expiration of the time allowed. The Public Defender's Office was appointed to assist him with his appeal.

Further, the respondent failed to clearly advise Mr. Daymon regarding his bankruptcy case. When Mr. Daymon contacted the Clerk's office in Jacksonville, Florida, to determine the status, there was no record of a bankruptcy filing under his name.

CASE NO. 92-31,200 (05A)

The respondent was retained to represent Pamela Bryant in a dissolution of marriage action in April, 1991. It was an uncontested divorce and although the respondent promptly filed the petition in April, 1991, the former husband failed to respond and the respondent failed to follow-up. As a result, the court dismissed the case. The respondent did refile the petition without additional charges, but failed to include a provision for child support as requested by the client. When questioned by Ms. Bryant, the respondent advised her that he had spoken to her former husband and he had promised that he would keep his support payments current. As a result, the respondent did not feel it was necessary to include this provision.

From the time she first retained the respondent, it took approximately one year for Ms. Bryant to obtain a divorce. At one point, the respondent advised her that he did not have enough time to work on her case unless she was sitting in front of him in his office.

CASE NO. 92-31,469 (05A)

The respondent was retained by Glen and Barbara Williamson in November, 1991, to represent them in a bankruptcy action. During their initial consultation, they also asked his

advice concerning a foreclosure action which was pending against their home. They provided the respondent with copies of the Complaint and Summons. He advised them he would file the bankruptcy papers and take care of notifying the court concerning the bankruptcy so that the foreclosure would be stayed.

In January, 1992, the Williamsons received notification from the court that the final hearing on the foreclosure case was scheduled for the near future. Although they made repeated attempts to contact the respondent concerning the status of the bankruptcy case, they were unable to speak with him.

The respondent filed the bankruptcy case the day of the final hearing in the foreclosure action. He failed to provide his clients with copies of the bankruptcy filings.

During the creditors' meeting in the bankruptcy case, the Williamsons learned for the first time from the judge that the respondent had not filed their schedules and statements within the required time period. The judge advised them that the case would be dismissed if these documents were not filed within one week.

The Williamsons tried without success to contact the respondent and in March, 1992, received a motion to dismiss from the bankruptcy court.

CASE NO. 92-31,682 (05A)

The respondent was retained by Betty A. Juresh in October, 1991, to represent her in a property settlement action. The respondent advised her that his fee would be a total of $350.00. This was to be inclusive of attorney's fees, filing fees, court costs, and related legal expenses necessary to recover the $10,000.00 plus interest owed to Ms. Juresh from the property settlement/promissory note which had grown out of her divorce action.

In April, 1992, the respondent informed Ms. Juresh that he was resigning as her attorney because he had failed to charge enough for the case and was losing money.

During the course of the representation, the respondent failed to adequately communicate with his client.

III. Recommendations as to whether or not the Respondent should be found guilty: Pursuant to an agreement between the parties, the respondent does not contest either the

allegations or the rules alleged to have been violated by the Bar. Therefore, as to each count of the complaints filed, I make the following recommendations as to guilt or innocence:

CASE NO. 79,472

As To Count I

I recommend the respondent be found guilty and specifically that he be found guilty of violating Rule of Discipline 3-4.3 for committing an act which is unlawful or contrary to honesty and justice; the following Rules of Professional Conduct: 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable request for information; 4-1.15(a) for failing to hold in trust, separate the lawyer's own property, funds and property of clients or third persons that are in the lawyer's possession in connection with a representation; 4-1.15(b) for failing to notify a client or third person upon receipt of funds or other property in which that client or third person has an interest and to promptly deliver to that client or third person any funds or other property that the client or third person is entitled to receive and, upon request, promptly render a full accounting regarding such property; 4-4.1(a) for knowingly making a false statement of material fact or law to a third person; 4-8.4(b) for committing a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as lawyer in other respects; and 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and the following Rules Regulating Trust Accounts: 5-1.1 for utilizing funds entrusted to him for a purpose other than that for which they were being held in trust; and 5-1.1(c) for failing to maintain the minimum required trust accounting records and follow the minimum required trust accounting procedures.

As To Count II

I recommend the respondent be found guilty and specifically that he be found guilty of the following violations of Integration Rules 11.02(3)(a) for engaging in conduct that is contrary to honesty, justice, or good morals; and 11.02(4) for utilizing trust funds for purposes other than those for which they were entrusted to him; and the following Disciplinary Rules of the Code of Professional Responsibility: 1-102(A)(3) for engaging in illegal conduct involving moral turpitude; 1-102(A)(4) for engaging in

conduct involving dishonesty, fraud, deceit, or misrepresentation; 1-102(A)(6) for engaging in any other conduct that adversely reflects on his fitness to practice law; 9-102(A) for failing to preserve the identity of funds and property of a client in his possession; 9-102(B)(1) for failing to promptly notify a client of the receipt of funds, securities, or other properties in which the client has an interest; 9-102(B)(3) for failing to maintain complete records of all funds, securities, and other properties of a client coming into his possession and render appropriate accounts to the client regarding same; and 9-102(B)(4) for failing to promptly pay or deliver to the client as requested the funds, securities, or other properties in his possession to which the client is entitled; Rule of Discipline 3-4.3 for committing an act which is unlawful or contrary to honesty and justice; and the following Rules of Professional Conduct: 4-1.15(a) for commingling; 4-1.15(b) for failing to notify a client or third person upon receipt of funds or other property in which that client or third person has an interest; 4-8.4(b) for committing a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects; and 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and the following Rules Regulating Trust Accounts: 5-1.1 for utilizing trust funds for purposes other than those for which they were entrusted to him and commingling.

CASE NO. 79,557

As to Count I

I recommend the respondent be found guilty and specifically that he be found guilty of the following violations of the Rules of Professional Conduct: 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and comply with reasonable requests for information; 4-1.5(F)(1) for failing to provide a client with a written statement upon the conclusion of a contingent fee matter, stating the outcome of the matter and, when there is a recovery, showing the remittance to the client and the method of determination; 4-1.15(b) for failing to notify a client upon receipt of funds in which the client has an interest; and 4-8.4(a) for violating the Rules of Professional Conduct.

As to Count II

I recommend the respondent be found guilty and specifically that he be found guilty of violating the following Rules of Discipline, to wit: 3-4.3 for committing an act which is unlawful or contrary to honesty and justice; and the following Rules of Professional Conduct: 4-1.15(a) for failing to safeguard a client's funds; 4-1.15(b) for failing

to notify a client upon receipt of funds in which the client has an interest; 4-1.15(d) for failing to comply with The Florida Bar Rules Regulating Trust Accounts; 4-8.4(a) for violating the Rules of Professional Conduct; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and the following Rules Regulating Trust Accounts: 5-1.1 for utilizing funds for a purpose other than that for which they were entrusted to him; and 5-1.2 for failing to maintain the minimum required trust accounting records and following the minimum required trust accounting procedures.

CASE NO. 80,342

I recommend the respondent be found guilty and specifically that he be found guilty of violating Rule of Discipline 3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice; and the following Rules of Professional Conduct: 4-1.1 for failing to provide competent representation to a client; 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; 4-5.3 for failing to make reasonable efforts to ensure that the firm had in effect measures giving reasonable assurance that a non-lawyer employee's conduct is compatible with the professional obligations of the lawyer; 4-8.4(a) for violating the Rules of Professional Conduct; and 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

CASE NO. 80,503

As To Count I

I recommend the respondent be found guilty and specifically that he be found guilty of the following violations of the Rules of Discipline, to wit: 3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice; and the following Rules of Professional Conduct: 4-3.3(a)(1) for making a false statement of material fact or law to a tribunal; 4-8.4(a) for violating or attempting to violate the Rules of Professional Conduct; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

As To Count II

I recommend the respondent be found guilty and specifically

that he be found guilty of violating the Rules of Discipline, to wit: 3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice; and the following Rules of Professional Conduct: 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; 4-8.4(a) for violating the Rules of Professional Conduct; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

Pursuant to the respondent's waiver of probable cause, I recommend he be found guilty and specifically, that he be found guilty of the enumerated rule violations in the following cases:

<u>Case No. 92-31,200 (05A)</u>

Rules of Professional Conduct: 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; 4-3.2 for failing to make reasonable efforts to expedite litigation consistent with the interests of the client; and 4-8.4(a) for violating the Rules of Professional Conduct.

<u>Case No. 92-31,469 (05A)</u>

Rules of Professional Conduct: 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; 4-1.4(b) for failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; 4-3.2 for failing to make reasonable efforts to expedite litigation consistent with the interests of the client; 4-8.4(a) for violating the Rules of Professional Conduct; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

<u>Case No. 92-31,682 (05A)</u>

Rules of Professional Conduct: 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; 4-1.4(b) for

failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; 4-3.2 for failing to make reasonable efforts to expedite litigation consistent with the interests of the client; 4-8.4(a) for violating the Rules of Professional Conduct; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

IV. Recommendation as to Disciplinary measures to be applied: I recommend that the respondent be suspended for a period of six months and thereafter until respondent shall prove rehabilitation as provided in Rule 3-5.1(e), Rules of Discipline. I further recommend that after reinstatement the respondent be placed on a three year period of probation, the terms of which are as follows:

1. Successful completion of an ethics course before or within one year after reinstatement.

2. Successful completion of a course on law office management.

3. Successful completion of a course on trust account management.

4. Submission of quarterly caseload reports to The Florida Bar with said reports to indicate the type of case, status and, if appropriate, disposition.

5. The respondent shall be responsible for arranging with The Florida Bar for it to review any trust account he has access to during his probationary period. The Bar shall review and periodically monitor said trust account(s) with reasonable notice after the respondent's reinstatement.

I further recommend the respondent shall pay the costs associated with these proceedings.

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: 46
Date admitted to Bar: December 18, 1975
Prior Disciplinary convictions and disciplinary measures imposed therein: None

Other personal date: The respondent is married and has one minor dependent. Most of the misconduct occurred during a time that he was a sole practitioner. He has since associated with his father and is no longer maintaining his own trust account.

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	$ 751.00
2.	Bar Counsel/Branch Staff Counsel Travel Costs	$ 327.69

B. Referee Level Costs

1.	Transcript Costs	$NOT YET AVAILABLE
2.	Bar Counsel/Branch Staff Counsel Travel Costs	$ 239.14

C. Administrative Costs $ 500.00

D. Miscellaneous Costs

1.	Investigator Expenses	$2,085.34

TOTAL ITEMIZED COSTS: $3,903.17

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 30 day of Nov, 1993.

Stan R. Morris

Referee

Copies to:

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Mr. Lewis O. Myers, Jr., Counsel for Respondent, 403 N.E. 2nd Street, Ocala, Florida, 32670.

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