



7. Article 2 of the trust had nine (9) tiers of distribution.
8. Pursuant to Article 2 of the trust, respondent and/or his children were potential beneficiaries of the sum of twenty-six thousand dollars (\$26,000).
9. Eva Utley died on February 12, 1981.
10. Respondent, at Willard Utley's behest, participated in the preparation of the Last Will and Testament of Willard Utley dated June 23, 1981 ("will").
11. Respondent and his children were named beneficiaries in the will.
12. The will provided that respondent was to receive, among other things, the sum of twenty-five thousand dollars (\$25,000) less any amount he received from the trust.
13. Respondent was the named successor personal representative in the will.
14. Willard Utley died on March 17, 1988.
15. On March 23, 1988 Letters of Administration were issued to respondent as personal representative for the estate of Willard Utley.
16. On March 24, 1988 respondent mailed certified copies of the letters of administration to the bank.
17. On March 25, 1988, an order was entered revoking the letters of administration issued to respondent on March 23, 1988.
18. The order revoking respondent's letters of administration was predicated upon a caveat to the will which caveat was filed on March 23, 1988, the same day letters of administration were issued to respondent.
19. Respondent was served with a copy of the March 25, 1988 order and was therefore aware his letters of administration had been revoked.
20. At the time respondent was served with the order revoking his letters of administration, respondent was aware the will was being challenged.
21. At all times after receiving from respondent notice of his appointment as personal representative, representatives of the bank believed respondent was the personal representative of the estate and were never advised otherwise by respondent.
22. Respondent met with bank representatives on June 21, 1988 and discussed the distribution of trust assets.

23. Respondent never advised the bank that his letters of administration had been revoked and that he was no longer the personal representative of Willard Utley's estate.

24. At the time of the June 21, 1988 meeting, the bank continued to believe respondent was the personal representative of Willard Utley's estate and had authority to act in that capacity.

25. At the June 21, 1988 meeting, respondent represented to the bank that Willard Utley's estate would make no demand on the trust for reimbursement of debts, costs or taxes.

26. On June 23, 1988, a trust officer of the bank wrote respondent a letter to confirm the procedures which had been discussed and agreed upon at the June 21, 1988 meeting, including respondent's representation that the estate would make no demand on the trust for costs, debts or taxes.

27. On June 27, 1988, respondent signed the June 23, 1988 letter from the bank to indicate his concurrence with the content of the letter.

28. At the time of the June 21, 1988 meeting, respondent was not the personal representative of Willard Utley's estate and therefore could not assert a position which could only be asserted by the personal representative.

29. Predicated upon respondent's representation that the estate would make no demand upon the trust for reimbursement of costs, debts or taxes, the trust assets were distributed, and respondent received the sum of five thousand dollars (\$5,000).

30. But for respondent's representation, the trust assets would not have been disbursed.

31. Had the estate made demand on the trust for payment of debts, costs, and taxes, the trust assets would have been exhausted and respondent would not have received a distribution from the trust.

III. Recommendation as to Whether or Not Respondent Should Be Found Guilty: As to the one count in the complaint, I recommend that the respondent be found guilty of misrepresentation predicated upon his failure to advise the bank that his letters of administration had been revoked and his representation to the bank that the estate would make no demands on the trust for reimbursement when he had no authority to do so. Specifically, I recommend that the respondent be found guilty of violation of Rules 3-4.2 and 3-4.3, Rules of Discipline and Rules 4-4.1(a), 4-8.4(a) and 4-8.4(c), Rules of Professional Conduct.

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the respondent receive a public reprimand.

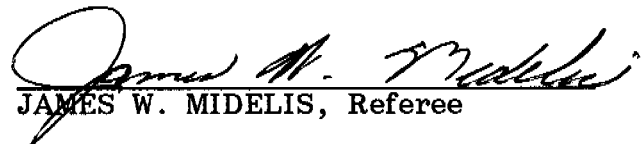
V. Personal History and Past Disciplinary Record: I further find the following personal history and prior disciplinary record of the respondent to be as follows:

Age: 52  
Date of Admission: October 6, 1972  
Prior disciplinary convictions: 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:

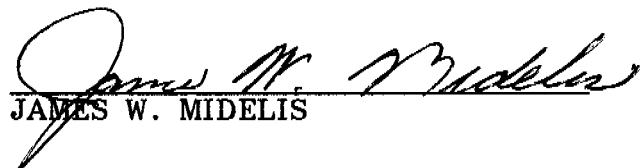
|  |                   |
|--|-------------------|
| Administrative Costs<br>(Rule 3-7.6(k)(1)(E))                    | \$500.00          |
| Court Reporter Costs   |                   |
| Status Conference (appearance and transcript)<br>(phone) 3-24-93 | 78.00             |
| Deposition 4-16-93 (appearance and transcript)                   | 316.85            |
| Final Hearing 4-29-93 (appearance and transcript)                | 434.00            |
| Bar counsel travel costs (mileage only)                          | 60.72             |
| Bar counsel copy costs   | <u>67.25</u>      |
| <b>TOTAL ITEMIZED COSTS</b>                                      | <b>\$1,456.82</b> |

Dated this 13<sup>th</sup> day of May, 1993.

  
JAMES W. MIDEELIS, Referee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of the foregoing Report of Referee have been sent by U.S. Mail to Patricia J. Brown, Esq. attorney for respondent, 300 Colorado Avenue, Suite 203, Dehon Building, Stuart, FL 34994, Luain T. Hensel, Esq., Bar Counsel, The Florida Bar, 5900 N. Andrews Avenue, Suite 835, Fort Lauderdale, FL 33309 and to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 on this 14<sup>th</sup> day of May, 1993.

  
JAMES W. MIDEELIS