017

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

DENNIS MICHAEL JANSSEN,

Respondent.
_____/

CASE NO. 81,774

TFB No. 93-11,493(6D)(HRE)

INITIAL BRIEF

OF

THE FLORIDA BAR

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SYMBOLS AND REFERENCES

In this Brief, the Petitioner, Dennis Michael Janssen, will be referred to as the "Petitioner". The Florida Bar will be referred to as "The Florida Bar" or "The Bar". "RR" will refer to the Report of Referee. "TR." will refer to the transcript of the Final Hearing held on October 11, 1993.

STATEMENT OF THE FACTS AND OF THE CASE

By Order dated April 2, 1992, the Supreme Court of Florida suspended Petitioner from the practice of law for a period of one (1) year, effective May 4, 1992. Petitioner violated the following Rules Regulating The Florida Bar:

Rule 4-1.15(a) (personal funds including earned fees and loans left in the trust account and personal disbursements were made against such funds by trust checks); Rule 4-1.15(d) (a lawyer shall comply with Bar rules Regulating Trust Accounts); Rule 5-1.1 (shortages represented use of clients' trust funds for purposes other than specific purpose for which they were entrusted to Respondent); Rule 5-1.1(a) and Rule 5-1(b)(1) (trust account labeled as "escrow" rather than the required trust designation); Rule 5-1.1(c) (minimum trust accounting records shall be maintained); Rule 5-1.1(d) (failure to place interest in IOTA); Rule 5-1.2(b)(5) (no cash receipts and disbursements journal available from November 1987 through check 1764 on March 1, 1991); Rule 5-1.2(b) (ledger cards did not contain the date on which funds were received or disbursed, and in many cases were not in chronological order and did not reflect the correct unexpended balance at the end of each month, and many ledger cards not provided); Rule 5-1.2(c)(1)(b) (monthly comparisons were not provided); Rule 4-1.8(a) (a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership possessory, security, or other pecuniary interest adverse to a client); Rule 4-3.4(c) (knowingly disobey an obligation under the rules of a tribunal); and Rule 4-8.4(a)

(violate or assist another to violate Rules of Professional Conduct). (Copies of the Supreme Court of Florida Order dated April 2, 1992, Report of Referee dated March 19, 1992, Statement of Costs, and Conditional Guilty Plea for Consent Judgment dated March 4, 1992 are attached as Appendix A).

The above-referenced Rules were based upon trust accounting violations, including trust account shortages. There was no evidence of any misappropriation by Petitioner. In addition, Petitioner was disciplined for improprieties relating to receiving loans from clients.

Regarding the receipt of loans from clients, in one instance, Petitioner borrowed settlement proceeds of $24,000.00, with the approval of the minor's parents, for the renovation of Petitioner's office. Petitioner provided no security for the loan and the loan was made without court approval. Petitioner eventually repaid the loan. (Appendix A - Conditional Guilty Plea for Consent Judgment).

In another instance, Petitioner borrowed approximately $26,000.00, with the consent of the wife of an injured client. Petitioner provided no security for this loan, and borrowed the money to purchase a boat. Petitioner repaid the loan. (Appendix A - Conditional Guilty Plea for Consent Judgment).

On or about May 17, 1993, Petitioner filed the instant Petition for Reinstatement. On May 23, 1993, the Honorable Claudia R. Isom was appointed as referee in this matter.

After the filing of the Petition for Reinstatement, The Florida Bar conducted an investigation to determine Petitioner's

fitness to resume the practice of law.

On May 27, 1993, at approximately 10:00 a.m., Martin Egan, a Staff Investigator of The Florida Bar met with Petitioner and Richard T. Earle, Jr., Petitioner's attorney, at Mr. Earle's office. (Tr. p. 124, l. 23). The purpose of the meeting was to discuss the investigation to be conducted by the Bar regarding Petitioner's background. Mr. Egan inquired of Petitioner as to whether there were any pending judgments or arrests. Petitioner advised Mr. Egan there were none. (Tr. p. 126, l.14). Further, Mr. Earle assured Mr. Egan that Petitioner had no pending judgments or arrests. (Tr. p. 132, l. 8).

Unbeknownst to either Mr. Egan or Mr. Earle, Petitioner had been arrested for driving under the influence of alcohol (D.U.I.) shortly after midnight on May 27, 1993. (Tr. p. 25). After Mr. Egan left Mr. Earle's office, Petitioner advised Mr. Earle of the arrest. (Tr. p. 30, l. 7-9). However, an amendment to the petition was not filed advising of the arrest, nor was The Florida Bar contacted by Petitioner or his counsel regarding the arrest. (Tr. p. 31, l. 1-4).

On July 7, 1993, Mr. Egan discovered the D.U.I. arrest during a search of records at the St. Petersburg Beach Police Department pursuant to his investigation. (Tr. p. 126, l.22). On July 20, 1993, Petitioner's deposition was taken by The Florida Bar. During the deposition, Petitioner was asked about any pending arrests. Petitioner then disclosed the D.U.I. arrest. Petitioner made no disclosure between the date of the interview with Mr. Egan on May

27, 1994, until questioned at the deposition on July 20, 1993.

The Florida Bar conducted an inquiry as to the facts surrounding the D.U.I. arrest. Petitioner made certain misrepresentations to law enforcement incident to his arrest. When requested to conduct field sobriety tasks, Petitioner advised that he was unable to perform the tasks because of injuries sustained while playing football at Florida State University. (Tr. p. 113, l. 5-7, and p. 120, l. 2-5). It was established at the Final Hearing that Petitioner never played varsity or junior varsity football at Florida State University. (Tr. p. 31, l. 24).

In addition, Petitioner advised the police officers that he needed to be released as he had to be in court in the morning. Petitioner in fact needed to be released because of the meeting with The Florida Bar investigator and Mr. Earle at 10:00 a.m. that same day. (Tr. p. 136, l. 19-25, p. 137, l. 1-3; p. 147, l. 6, p. 148, l. 1-2; p. 151, l. 11-13).

The Florida Bar discovered during the investigation that Petitioner also misrepresented to his former employer, attorney Larry Beltz, that he sustained injuries while playing basketball at Florida State University. Petitioner misrepresented to Mr. Beltz that he played in the 1972 college basketball championship game for Florida State University. (Tr. p. 98, l. 3-9).

The Florida Bar also learned through a review at the public records that Petitioner had been the subject of litigation resulting from a dissolution of marriage and subsequent modification proceedings. At the Final Hearing, The Florida Bar

presented the testimony of Gail Sasnett-Stouffer, Petitioner's ex-wife, that Petitioner was $14,200.00 in arrears as of the date of the Final Hearing. (Tr. p. 85, l. 11). Ms. Stouffer had not sought contempt action against Petitioner as she was under the impression, based upon her conversations with Petitioner, that Petitioner was making a minimal amount of money as a law clerk. (Tr. p. 88, l. 22). Ms. Stouffer was likewise unaware that Petitioner had income of approximately $300,000.00 for the period of time covering May 4, 1992 to January 1, 1993. (R. Bar Ex. 5 and Tr. p. 94, l. 25).

Petitioner had not disclosed his child support financial obligations as a liability on the Financial Statement attached as Exhibit 2 to the Petition for Reinstatement.

Petitioner failed to establish clear evidence of the elements requisite to establishing reinstatement to the practice of law. At the Final Hearing herein, the Petitioner did not present any witnesses in support of the petition except for his own testimony.

On December 14, 1993, Judge Isom served the Report of Referee, recommending that Petitioner be reinstated to the practice of law. The Report of Referee was considered by the Board of Governors at its meeting which ended February 24, 1994. The Board of Governors voted to seek review of the Report of Referee. A Petition for Review of Referee's Report was filed with the Supreme Court of Florida on March 1, 1994.

SUMMARY OF ARGUMENT

Petitioner failed to meet the heavy burden of establishing by clear evidence "unimpeachable character" and a "good reputation for professional ability". The Florida Bar presented evidence demonstrating Petitioner's lack of "unimpeachable character".

The Florida Bar presented evidence that Petitioner did not disclose substantial child support arreages in his sworn Petition for Reinstatement. Petitioner misrepresented to The Florida Bar Investigator that there were no arrests at a time when he had been arrested just hours before. Petitioner also allowed his attorney to unknowingly misrepresent to The Florida Bar Investigator that Petitioner was "clean". Petitioner misrepresented to the St. Petersburg Beach Police officers that he played football for Florida State University to minimize his field sobriety tasks. Further, Petitioner misrepresented to the St. Petersburg Beach Police officers that he needed to be released so as to represent a woman in court that morning. Petitioner also allowed his criminal defense attorney in the driver's license reinstatement hearing to misrepresent that Petitioner played basketball and football at Florida State University. Petitioner's former employer also testified that Petitioner misrepresented that he played basketball at Florida State in the 1972 championship game.

Petitioner also misrepresented to his ex-wife that he was making a meager law clerk salary. Petitioner's failure to pay child support at a time when he had income of approximately $300,000.00 alone should warrant a denial of his Petition for

Reinstatement to the practice of law in this state.

Petitioner's misrepresentations and omissions to the police, The Florida Bar, his former law associate, and his ex-wife demonstrate a lack of "unimpeachable character". Petitioner's Petition for Reinstatement should be denied.

ARGUMENT

ISSUE: WHETHER THE REFEREE'S RECOMMENDATION OF REINSTATEMENT IS ERRONEOUS GIVEN THE ABSENCE OF CLEAR EVIDENCE SUPPORTING PETITIONER'S FITNESS TO PRACTICE LAW.

A referee's findings of fact and recommendations are presumed to be correct and should be upheld unless clearly erroneous and without support in the record. The Florida Bar v. Vannier, 498 So. 2d 896, 898 (Fla. 1986).

The referee's recommendation that Petitioner should be reinstated in the instant case is clearly erroneous and contrary to the case law.

In the case of, In re Timson, 301 So. 2d 448 (Fla. 1974), the Supreme Court of Florida denied Mr. Timson's petition for reinstatement and held that Mr. Timson failed to establish by clear evidence a good reputation for professional ability. The elements to be considered in a reinstatement proceeding are as follows:

1) Strict compliance with the disciplinary order;

2) Evidence of unimpeachable character;

3) Clear evidence of a good reputation for professional ability;

4) Evidence of lack of malice and ill feeling toward those involved in bringing the disciplinary proceedings;

5) Personal assurances of sense of repentance and desire to conduct practice in an exemplary manner; and

6) Restitution of funds.

(See In re Dawson, 131 So. 2d 472 (Fla. 1961).)

Petitioner failed to present any witnesses to establish the

elements set forth in Timson, other than the testimony of Petitioner. Conversely, The Florida Bar presented testimony and evidence that clearly impeaches Petitioner's character.

On May 27, 1993, Martin Egan, a Florida Bar Staff Investigator, met with Petitioner, and Richard T. Earle, Jr., attorney for Petitioner. (Tr. p. 124, l. 23). Mr. Egan has had considerable experience in conducting investigations and has been employed with The Florida Bar as an investigator for twelve (12) years. Additionally, Mr. Egan was a former special agent with the Federal Bureau of Investigations (F.B.I.) for twenty-four (24) years. (Tr. p. 122). Mr. Egan testified that he conducted approximately thirty-five (35) to forty (40) prior reinstatement investigations. (Tr. p. 123, l. 18).

Pursuant to standard areas of inquiry relative to investigating a petitioner's background and fitness to resume the practice of law, Mr. Egan inquired as to whether Petitioner had any pending judgments or arrests. The Petition for Reinstatement submitted by Petitioner under oath, on May 3, 1992, reflected on page four (4), paragraph ten (10) that Petitioner, during the period of suspension, had not been arrested.

Mr. Egan then inquired of Petitioner whether there were any judgments, liens, or arrests subsequent to the submission of the Petition for Reinstatement. (Tr. p. 125, l. 21-25). Mr. Egan testified that Petitioner responded that he did not have any arrests, convictions, or judgments. (Tr. p. 126, l. 1-16). In addition to the misrepresentations made by Petitioner, Mr. Earle,

Petitioner's attorney, assured Mr. Egan that Petitioner would be "clean". (Tr. p. 132, l. 9).

Unbeknownst to both Mr. Egan and Mr. Earle, Petitioner had been arrested for driving under the influence of alcohol (D.U.I.) just hours before the meeting. After the meeting concluded, Petitioner apparently advised Mr. Earle that he had been arrested for D.U.I. shortly after midnight on May 27, 1993.

On July 7, 1993, Mr. Egan discovered the D.U.I. arrest during a review of the records of the St. Petersburg Beach Police Department. (Tr. p. 126, l. 22).

On July 20, 1993, The Florida Bar took the deposition of Petitioner. During questioning by The Florida Bar, Petitioner disclosed the arrest. However, neither Petitioner nor Mr. Earle had previously advised The Florida Bar of the arrest, nor had Petitioner filed an Amended Petition for Reinstatement subsequent to the meeting with Mr. Earle.

Petitioner denied during the reinstatement hearing that Mr. Egan asked him directly about any arrests or judgments. (Tr. p. 28, l. 20). Petitioner asserted that Mr. Egan stated that he would check the public records for arrests or judgments. Petitioner testified that Mr. Earle then offered that Petitioner had no judgments or arrests. (Tr. p. 29, l. 14). Assuming, arguendo, that Petitioner did not directly offer false information to The Florida Bar investigator as testified to by Mr. Egan, Petitioner, by his own testimony, allowed Mr. Earle to unknowingly give false information. Mr. Egan could have relied on the representation

given by Mr. Earle and not pursued the investigation of whether any arrests or judgments existed. The referee stated that Petitioner's failure to correct Mr. Earle's misstatement to Mr. Egan was "highly unfair to Mr. Earle because Mr. Earle's reputation is his tender in trade". (Tr. p. 201, l. 5-6). Clearly, Petitioner's concealment of the D.U.I. reflects on his lack of "unimpeachable character".

After the discovery of Petitioner's D.U.I. arrest, The Florida Bar conducted an investigation as to the facts underlying the arrest. It was determined that Petitioner made several misrepresentations to the St. Petersburg Beach police officers.

During the course of conducting field sobriety tasks, Petitioner advised the police officers that he was not able to perform the tests because of injuries sustained while playing football and basketball at Florida State University. Petitioner did not play varsity or junior varsity football or basketball at Florida State University. (Tr. p. 31, l. 24). The testimony at the Final Hearing also reflected that Petitioner had repeated these "stories" to others as well. Gail Sasnett-Stouffer, Petitioner's ex-wife, also heard rumors as to Petitioner playing basketball for Florida State University.

During an administrative hearing on June 29, 1993 regarding Petitioner's drivers license, Petitioner's criminal defense attorney made reference to Petitioner playing basketball and football for Florida State University. Petitioner did not correct the misstatement of his defense counsel. (Tr. p. 32).

The Florida Bar presented the testimony of Petitioner's ex-

employer, Larry Beltz, Esq. Mr. Beltz testified that Petitioner told him that he had played basketball for Florida State University and, in fact, had played in the 1972 championship game. (Tr. p. 98, l. 3-9). In addition, as pointed out by Judge Isom, Petitioner misrepresented to his physician that he was an "ex-Florida State University football player". (R. Petitioner's Ex. 1, Tr. p. 199, l. 20).

The referee found that the "Petitioner attempted to mislead the police officers, Larry Beltz, and the various doctors into believing that he played on the Florida State University varsity and/or junior varsity football teams, but that these efforts were solely for his self-aggrandizement and were not for the purpose of financial gain or the perpetration of any fraud". (RR, p.3, ¶ 1). The Bar respectfully disagrees that Petitioner told the police officers his injuries were sustained while playing football and or basketball for Florida State solely for self-aggrandizement. It is evident that Petitioner made the misrepresentations in part to minimize or explain his performance on the field sobriety tests. Petitioner also attempted to convey some concocted mystique to the injuries.

Petitioner then permitted his criminal defense counsel to repeat the misrepresentations. During cross-examination in the administrative driver's license hearing, defense counsel stated, "and subsequently you learned that he had suffered a rather severe injury to his ankles and knees playing basketball and football at Florida State University; is that correct?". (Tr. p. 49, l. 4-7).

Petitioner also made misrepresentations to the police officers that he needed to be released because he had to represent someone in court that morning. Petitioner made the following misrepresentation to Officer Scott Vaughn of the St. Petersburg Beach Police Department:

> Officer Vaughn: I had pretty much finished up most of my paperwork. I was coming back through the hallway. I wanted to explain to him what would be happening next as far as transportation to the county jail. He said, well...he said "I have a meeting in the morning with a woman, victim of a domestic violence thing." He said "You deal with that all the time. You know what I'm talking about." And I said "Yes". He said "I have to be with her in court tomorrow morning." (Tr. p. 136, l. 19-25, p. 137, l. 1-3).

Petitioner then repeated this misrepresentation to Sgt. Eugene King of the St. Petersburg Beach Police Department who also testified that Petitioner told him that "he needed to be in Court in the morning to represent a woman.....". (Tr. p. 147, l. 6). Later, Petitioner told Sgt. King, "I have got to be in court in the morning. I really have to be there". (Tr. p. 148, l. 1-2). Petitioner also told Officer John Bellin of the St. Petersburg Beach Police Department that he needed to be released as he had "something to the effect of court in the morning and he didn't elaborate on that. That was basically it". (Tr. p. 151, l. 11-13). It is clear that Petitioner made the misrepresentations to law enforcement so as to be released from custody.

Petitioner also failed to disclose in his Petition for Reinstatement, arrearages in child support. These arrearages were

approximately $14,200.00 at the time of the Final Hearing. (Tr. p. 85, l. 11). Petitioner made no payments of child support to his ex-wife between January 1992 and October 11, 1993, the date of the Final Hearing. The ex-wife, Gail Sasnett-Stouffer, had requested payments within three (3) or four (4) months prior to the Final Hearing. Petitioner told Ms. Stouffer that he would make some payment to her "when a small fee comes in" or when he sold his boat. (Tr. p. 84, l. 6-11). Ms. Stouffer elected not to pursue contempt action against Petitioner as she was under the "impression that he was making a minimal amount as a clerk". (Tr. p. 88, l. 22).

Petitioner failed to make child support payments, even though Petitioner's income, according to his Petition for Reinstatement, was $297,766.68 for the period of time covering from May 4, 1992 to January 1, 1993. (Petition for Reinstatement, p. 3, ¶ 6.(c)). Petitioner's 1992 Federal Tax Return reflects Petitioner's income in excess of $300,000.00. (R. Bar. Ex. 5).

The referee found Petitioner's failure to meet his child support obligations was not reasonable. (RR p. 5, ¶ 3). Subsequent to the Final Hearing, Petitioner paid $14,400.00 to his ex-wife for child support.

In The Florida Bar v. Shores, 587 So. 2d 1313 (Fla. 1991), this Court noted Shore's failure to pay child support as one of several factors in denying reinstatement. While Petitioner herein made the arreage payments it was only after the referee stated "... I am going to recommend that he be allowed to be reinstated but it

is going to be on the proviso that he pay in full all of his child support arrearages". (Tr. p. 193, l. 8-11).

Petitioner's failure to make child support obligations at a time when his income exceeded over $300,000.00 indicates a lack of "unimpeachable character". In The Florida Bar v. Rubin, 323 So. 2d 257, 258 (Fla. 1975), Rubin was denied reinstatement because of "unsatisfied judgments, and a failure to acknowledge judgment liens in a personal financial statement filed for the purpose of demonstrating reinstatement....". The Court in Rubin stated that an "attorney once removed or suspended must demonstrate rehabilitation, and the burden of doing so requires more than recitations of intent and contrition." Id. 258.

Petitioner did not present any witnesses, other than Petitioner, regarding Petitioner's reputation for professional ability. In The Florida Bar v. Jahn, 559 So. 2d 1089 (Fla. 1990), wherein Jahn was denied reinstatement based upon his falsifying his resume and concealing his criminal history while seeking employment, Jahn attempted to justify the concealment on the basis that prospective employers refused to consider him whenever he disclosed his criminal convictions. The Court in Jahn stated that "reinstatement is more a matter of grace than of right and is dependent upon rehabilitation". In re Stoller, 36 So. 2d 443, 444 (Fla. 1948). The Court further stated that the "petitioner seeking reinstatement bears the heavy burden of establishing rehabilitation, and one element to be considered in regard to reinstatement is the petitioner's character."

The Court in Jahn stated that a reinstatement proceeding was analogous to initial admission to the Bar wherein the applicant must demonstrate good moral character. The Court further held that "good moral character is not restricted to acts reflecting moral turpitude, but, rather, includes "acts and conduct which would cause a reasonable man to have substantial doubts about an individual's honesty, fairness and respect for the rights of others and the laws of the state and nation." Id. 1090.

Respondent has not met the heavy burden of establishing by clear evidence "unimpeachable character". Petitioner likewise failed to present clear evidence of a "good reputation for professional ability" as required by The Florida Bar v. Timson, 301 So. 2d 448 (Fla. 1974).

Petitioner presented no witnesses to establish that he has a "good reputation for professional ability". As Petitioner failed to establish a "good reputation for professional ability" and failed to prove clear evidence or "unimpeachable character", his Petition for Reinstatement should be denied. The referee found Petitioner's "conduct was somewhat less than sterling", but nevertheless recommended reinstatement. (RR. p. 7, Conclusions of Law). Petitioner's conduct was less than sterling and he should not be reinstated.

CONCLUSION

Petitioner failed to meet the heavy burden of establishing by clear evidence "unimpeachable character" and a "good reputation for professional ability" as set forth by case law.

Petitioner's misrepresentations to the St. Petersburg Beach Police Officers, The Florida Bar, his former employer, and his ex-wife establish a clear lack of moral character. Petitioner further allowed his legal counsel to unknowingly make false statements to The Florida Bar and the driver's license administrative hearing officer.

Petitioner's reinstatement should be denied.

Respectfully submitted,

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Florida Bar No. 358576

JOSEPH A. CORSMEIER
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(813)875-9821
Florida Bar No. 492582

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by Regular U.S. Mail to Sid J. White, Clerk, The Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927; a copy of the foregoing has been furnished by U.S. Mail to Richard T. Earle, Jr., 150 Second Avenue North, Suite 910, St. Petersburg, FL 33701; and a copy of the foregoing has been furnished by Regular U.S. Mail to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 18th day of March, 1994.

David R. Ristoff
Branch Staff Counsel

APPENDIX

Supreme Court of Florida

THURSDAY, APRIL 2, 1992

THE FLORIDA BAR, Complainant,	*	
v.	*	CASE NO. 78,267
DENNIS MICHAEL JANSSEN, Respondent.	*	TFB No. 92-10,000(HTS)(6C)

The uncontested report of the referee is approved and respondent is suspended for one (1) year effective May 4, 1992, thereby giving respondent thirty (30) days to close out his law practice. During the close out period he shall not accept any new business. Respondent is further directed to comply with all other terms and conditions of the report.

Judgment for costs in the amount of $6,315.54 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: SUPREME COURT OF THE STATE OF FLORIDA
Sid J. White
Clerk, Supreme Court

TC
cc: Hon. Robert J. Simms, Referee
David R. Ristoff, Esquire
Joseph a. Corsmeier, Esquire
John A. Boggs, Esquire
Richard T. Earle, Jr., Esquire

STYLE
CASE NO. DIVISION
OFFERED IN EVIDENCE AS
EXHIBIT # 7 ON MO. DAY YR.
JUDGE X ACCEPTED

TFB Exhibit #~~10~~ 7

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

DENNIS MICHAEL JANSSEN,

Respondent.
_____/

Case No. 78,267
TFB No. 92-10,000(HTS)(6C)

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, 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: David R. Ristoff
Joseph A. Corsmeier

For The Respondent: Richard T. Earle, Jr.

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 those facts as set forth in the Consent Judgment.

III. Recommendations as to Whether or Not the Respondent Should Be Found Guilty: I make the following recommendations as to guilt or innocence:

I find Respondent guilty of those violations set forth in the Consent Judgment.

IV. Recommendation as to Disciplinary Measures to Be Applied:

I recommend that Respondent be disciplined by a one (1) year suspension. I also recommend that Respondent be required to pass the Ethics portion of Multistate Bar Examination during the period of the suspension as a requirement prior to reinstatement to the practice of law.

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: 1946
Date Admitted to Bar: 8-9-76
Prior Disciplinary convictions and Disciplinary Measures Imposed Therein: None
Aggravating Factors: Selfish motive, pattern of misconduct
Mitigating Factors: No prior disciplinary record

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

A.	Referee Level Costs	
	1. Transcript Costs.....	$ 486.50
	2. Branch Staff Counsel travel Costs to deposition....	$ 14.08
	3. Branch Staff Counsel travel costs to prepare Consent Judgment.....	$ 17.08
B.	Administrative Costs (Rule 3-7.6(k)(1)).....	$ 500.00
C.	Miscellaneous Costs	
	1. Investigator Expenses.....	$1,448.02
	2. Auditor Expenses.....	$3,849.86
	TOTAL ITEMIZED COSTS:	$6,315.54

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 19th day of March, 1992.

Robert J. Simms

Honorable Robert J. Simms
Referee

Copies:

David R. Ristoff, Bar Counsel, The Florida Bar, Tampa Airport, Marriott Hotel, Suite C-49, Tampa, Florida 33607

Richard T. Earle, Jr., Counsel for Respondent

John T. 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,

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DENNIS MICHAEL JANSSEN,

Respondent.
_____/

Case No. 78,267
TFB No. 92-10,000(HTS)(6C)

STATEMENT OF COSTS

Referee Level Costs	
1. Transcript Costs	$ 486.50
2. Branch Staff Counsel travel Costs to deposition	$ 14.08
3. Branch Staff Counsel travel costs to prepare Consent Judgment	$ 17.08
Administrative Costs (Rule 3-7.6(k)(l))	$ 500.00
Miscellaneous Costs	
1. Investigator Expenses	$1,448.02
2. Auditor Expenses	$3,849.86
TOTAL ITEMIZED COSTS:	$6,315.54

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Florida Bar No. 358576

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Statement of Costs has been furnished to Richard T. Earle, Jr., Attorney for Respondent, at 150 2nd Avenue North, Suite 910, Southtrust Bank Building, St. Petersburg, Florida 33701, by regular U.S. Mail, and a copy to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, by regular U.S. Mail, this 5th day of Jan., 1992.

David R. Matthews

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

DENNIS MICHAEL JANSSEN,

Respondent.
_____/

Case No. 78,267
TFB No. 92-10,000(HTS) (6C)

CONDITIONAL GUILTY PLEA FOR
CONSENT JUDGMENT

COMES NOW, Dennis Michael Janssen, Respondent, pursuant to Rule 3-7.9, Rules of Discipline, and states his intention to tender a conditional plea of guilt to certain of the violations of said rules as set forth in the Petition For Temporary Suspension filed by the Florida Bar as are more specifically set out herein. The Petition for Temporary Suspension will serve as the complaint herein and Respondent's response to Petition for Temporary Suspension will be treated as Respondent's answer thereto. Finding of probable cause by a Grievance Committee has been waived by the Respondent. This stipulation and the plea of guilt to certain violations of the Rules of Discipline is conditioned upon the Respondent being suspended from the practice of law in the State of Florida for a period of one (1) year and Respondent being required to pass the ethics portion of the Multistate Bar Examination prior to his reinstatement to the practice of law.

FACTUAL BASIS OF VIOLATIONS OF RULES OF DISCIPLINE

1. Respondent is, and at all times mentioned herein was, a

member of The Florida Bar, subject to the jurisdiction of The Supreme Court of Florida.

2. On or about March 5, 1991, a subpoena duces tecum was issued by the grievance committee chairman for the "C" Grievance Committee for the Sixth Judicial Circuit for the production of Respondent's trust account records.

3. On or about March 7, 1991, the subpoena duces tecum for Respondent's trust account records was served upon Respondent.

4. On March 7, 1991, Respondent advised Florida Bar Staff Investigator Ernest J. Kirstein, Jr., and Florida Bar Staff Auditor Pedro J. Pizarro, that the requested trust account records were not available at the law office for inspection.

5. On March 19, 1991, Mr. Kirstein and Mr. Pizarro returned to Respondent's law office and were furnished a portion of the trust account records.

6. On March 7, and March 19, 1991, Respondent was interviewed by Staff Investigator Kirstein and advised Mr. Kirstein of the following:

a. Respondent was holding approximately $24,000.000 for John J. Tannoia, Jr., a minor.

b. The Tannoia funds were received pursuant to a court approved settlement.

c. Respondent borrowed the $24,000.00 with the approval of the minor's parents, for the renovation of his office.

d. Respondent provided no security for the loan.

e. Respondent repaid the $24,000.00 from monies

borrowed from his father-in-law.

f. Respondent deposited $25,000.00 into his trust account on March 13, 1991, in repayment of the loan.

7. Staff Investigator Kirstein then reviewed Respondent's client file regarding John J. Tannoia, Jr. . Mr. Kirstein reviewed an Order Approving Settlement Of Minor's Claim, entered on January 26, 1990, by the Honorable Robert Michael, Circuit Court Judge for Pinellas County, Florida.

8. The Order referred to above stated that the "funds in the amount of $24,231.39 are to be placed in an account at Chase Bank, N.A. in the name of John J. Tannoia, Sr., as parent and guardian of John J. Tannoia, Jr., pursuant to this Order, frozen and not subject to the withdrawal for any reason or purpose without prior approval by this Court pursuant to the entry of an Order directing the specific amount and purpose for the withdrawal of any of these funds."

9. During the course of his investigation, Staff Investigator Kirstein reviewed the official court file in the Tannoia matter. The court file did not contain the Order Approving Settlement Of Minor's Claim referred to above.

10. Staff Investigator Kirstein then made contact with Judge Michael's Judicial Assistant and confirmed that the Judge had, in fact, signed the Order. The Judicial Assistant advised Mr. Kirstein that it is customary for Judge Michael to sign orders and the attorney then files the order.

11. The allegations in paragraphs 6, 7, 8, 9 and 10 are true

but in fairness to the Court, the Bar and to Respondent, the following factual explanation should be given:

a. Respondent filed the "Petition for Approval for Settlement of Minor's Claim" in the Probate Division of the Circuit Court of Pinellas County, Florida.

b. The Petition not only requested approval of the Settlement Agreement but contained the following language:

> "12. That the petitioner, herein, John J. Tannoia, Sr., as parent and natural guardian of John J. Tannoia, Jr., is desirous of setting up a depository of the funds available to John J. Tannoia, Jr., as a result of this settlement, said depository to be Chase Bank N.A., and petitioner herein is further desirous of this Court entering an Order prohibiting the withdrawal of any funds from the account set up in the name of John J. Tannoia, Sr., as parent and natural guardian of John J. Tannoia, Jr., without prior Court approval."

c. The Petition came on to be heard before Judge Robert E. Michael, Circuit Judge in the Probate Division on January 26, 1990.

d. Under the law, the Father could not serve as the "natural guardian" of the minor because the settlement was for more than $5,000.00. It was therefore necessary that a guardian be formally appointed under applicable statutes which had become effective on October 1, 1989.

e. Judge Michael has no independent recollection of what occurred at the hearing held on January 26, 1990. However his calendar reflects a notation made by him to the effect that

Respondent would file pleadings necessary for the appointment of a guardian. Based upon this notation, Judge Michael believes that he advised the Respondent that it would be necessary for Respondent to file such pleadings and to secure the formal appointment of a guardian for the minor. Believing that the Respondent would comply with his suggestion, Judge Michael entered the Order. It will be noted that said Order refers to John J. Tannoia, Sr. as parent and guardian of the minor. The word "natural" does not appear in the Order. Neither Judge Michael nor Respondent know whether the Judge gave the Order to Respondent or sent the same to the Clerk's office. In any event, the original Order was never filed by the Clerk and in some manner, came into the possession of the Respondent.

f. Because of the cumbersome proceedings necessary to secure the appointment of a Guardian under the Guardianship Act, which became effective October 1, 1989, the costs which would be incurred, including fees for having a Guardian appointed, serving for one (1) year, filing a formal accounting and securing a discharge would be substantial. Respondent believed that such fees and costs would be approximately $5,000.00 or more. John J. Tannoia, Sr. refused to execute any papers necessary for the appointment of a Guardian for his minor son thereby incurring said fees and costs. In as much as no Guardian was appointed, the Order entered by Judge Michael was never filed.

g. The funds representing the monies payable to the Ward were deposited in Respondent's Trust Account. With the

consent of John J. Tannoia, Sr., Respondent disbursed said sums to himself and gave to John J. Tannoia, Sr. his Promissory Note in the amount of $24,000.00 bearing interest at the rate of twelve percent (12%) per annum and payable "on demand or not later than April 8, 1991," the 18th birthday of John J. Tannoia, Jr. Said note was promptly paid.

h. Respondent did not suggest to Mr. Tannoia that he should consult with another lawyer relative to making this loan.

12. Staff Investigator Kirstein also learned that Respondent borrowed approximately $26,000.00 with the consent of the wife of a client. Mr. Kirstein also discovered the following:

a. The client, Richard Miller, had been injured in an automobile accident.

b. On or about April 3, 1989, Mr. Miller received approximately $26,000.00 as a portion of his settlement.

c. Mr. Miller's settlement proceeds were placed in Respondent's trust account.

d. Respondent borrowed $26,000.00 for approximately two (2) months at ten percent (10%) interest which was promptly repaid.

e. Respondent provided no security for the loan.

f. Respondent repaid the loan on or about June 2, 1989.

g. Respondent claimed to have repaid the loan with funds from an attorney fee which was actually earned at a subsequent date.

h. Respondent borrowed the money to purchase a boat.

13. On May 24, 1991, Respondent provided all of the settlement or disbursement statements in his possession. Mr. Kirstein's comparison of Respondent's ledger cards with the settlement statements revealed seven (7) settlement statements reflecting settlements wherein there were no corresponding client ledger cards: Further, there were eight (8) client ledger cards indicating settlements for which there were no settlement statements.

14. Staff Auditor Pizarro conducted an examination of Respondent's trust account records. Mr. Pizarro's examination provided the following:

a. Personal funds were commingled with trust account funds.

b. Shortages existed, reflecting the use of client's trust funds for purposes other than the specific purpose entrusted. As of October 29, 1990, a shortage of $39,522.79 existed in the trust account, which included the $24,000.00 Tannoia funds. As of April 30, 1991, the trust account shortage was reduced to $1,671.27.

c. The trust account was labeled "escrow" rather the required trust designation.

d. Funds of clients that were not placed in interest for clients were not placed in the IOTA program.

e. There was no cash receipts and disbursements journal available from November 1987 through March 1, 1991.

f. The ledger cards did not contain the date on which funds

were received or disbursed. No ledger cards were available for a number of clients.

g. No annual listings of unexpended balances were provided.

i. Respondent's bank had not been authorized to notify The Florida Bar in the event of a returned check due to insufficient funds or uncollected funds.

j. Closing statements with full itemization were not provided for several clients.

15. Mr. Pizarro also discovered that the closing statement for a client, Alberta Southward, included a medical bill to be paid to Dr. Mosca in the amount of $7,578.00. Check No. 1602 was issued to Dr. Mosca for $5,000.00, or a difference of $2,578.00. Fees and costs to Respondent were $8,458.00, according to the closing statement. Checks issued for Respondent's fees and costs amounted to $10,996.50, an excess of $2,538.10. Prior to the issuance of the closing Statement of Alberta Southward, Respondent loaned Dr. Mosca, a friend of his, $2,500.00. When settlement was made in the Southward case, Dr. Mosca suggested that the Respondent deduct $2,578.00 from the amount billed by Dr. Mosca to Mrs. Southward and pay the same to himself in payment of the Mosca debt. Respondent acceded to this request, paid Dr. Mosca $5,000.00 and paid himself $2,578.00 in full payment and satisfaction of the Mosca debt.

16. As to all paragraphs, the following facts should be added:

a. Respondent attended an out-of-state law school which did not require a course in ethics. At the time the

Respondent took the Bar examination to be admitted to The Florida Bar, there was no separate division on the examination for Ethics or Professional Responsibility. As a result thereof, Respondent was not required to take any course relative to Ethics or Professional Responsibility. This is not offered as an excuse for Respondent's conduct because Respondent recognizes that he had a duty to be completely familiar with the Code of Ethics or Professional Responsibility for this state at all times, which responsibility Respondent did not fulfill.

b. Immediately after Respondent became cognizant that he was being investigated by the Florida Bar, he employed a C.P.A. and a bookkeeper to set-up his books and records so as to fully comply with the rules then in existence relative to professional responsibility. He has set up his books and records in accordance with the suggestions of said C.P.A.

c. So far as is known, no client has been injured by Respondent's conduct.

DISCIPLINARY RULES VIOLATED

Rule 4-1.15(a) (personal funds including earned fees and loans left in trust account and personal disbursements were made against such funds by trust checks);

Rule 4-1.15(d) (a lawyer shall comply with Bar rules Regulating Trust Accounts);

Rule 5-1.1 (shortages represent use of clients' trust funds for purposes other than specific purpose for which they were entrusted to Respondent);

Rule 5-1.1(a) and Rule 5-1 (b)(1) (t r u s t account labeled as "escrow" rather than the required trust designation);

Rule 5-1.1(c)(minimum trust accounting records shall be maintained);

Rule 5-1.1(d) (failure to place interest in IOTA);

Rule 5-1.2(b) (5) (no cash receipts and disbursements journal available from November 1987 through check 1764 on March 1, 1991);

Rule 5-1.2(b) (ledger cards did not contain the date on which funds were received or disbursed, and in many cases were not in chronological order and did not reflect the correct unexpended balance at the end of each month, many ledger cards not provided);

Rule 5-1.2(c)(1)b (monthly comparisons were not provided);

Rule 4-1.8(a) (a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership possessory, security, or other pecuniary interest adverse to a client);

Rule 4-3.4(c) (knowingly disobey an obligation under the rules of a tribunal);

Rule 4-8.4(a) (violate or assist another to violate Rules of Professional Conduct.

DISCIPLINE

Respondent shall be suspended from the practice of law in the State of Florida for a period of one (1) year. Respondent shall be required to pass the Ethics portion of Multistate Bar Examination during the period of the suspension as a requirement prior to reinstatement to the practice of law.

COSTS

Referee Level Costs		
1.	Transcript Costs.....	$ 486.50
2.	Branch Staff Counsel Travel Costs to Deposition....	$ 14.08
3.	Branch Staff Counsel Travel Costs to Prepare Consent Judgment.....	$ 17.08
Administrative Costs (Rule 3-7.6(k)(1).....		$ 500.00

Miscellaneous Costs

1.	Investigator Expenses.....	$ 1,448.02
2.	Auditor Expenses.....	$ 3,849.86

TOTAL ITEMIZED COSTS: $ 6,315.54

Dated this 4th day of March, 1992.

Dennis Michael Janssen
Respondent

Richard T. Earle, Jr.
Attorney for Respondent

David R. Ristoff
Branch Staff Counsel
The Florida Bar

Telephonically approved by:
Edwin T. Mulock
Designated Reviwer

John T. Berry
Staff Counsel