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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ANDREW MICHAEL KASSIER,

Respondent.

Supreme Court Case

No. 87,617

The Florida Bar Case

No. 95-71,003 (11A)

95-71,308 (11A)

96-70,207 (11A)

CLERK, SUPREME COURT

By

Chief Deputy Clerk

ON PETITION FOR REVIEW

INITIAL BRIEF OF THE FLORIDA BAR

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INTRODUCTION

For the purposes of this brief, The Florida Bar will be referred to as "The Florida Bar", "the Bar" or "Complainant". Andrew Michael Kassier will be referred to as "Respondent" or "Mr. Kassier" or "Andrew Michael Kassier".

Abbreviations utilized in this brief are as follows: "TR" will be used to refer to the transcript of the final hearing held on September 18, 1996 and on September 24, 1996. "A" will be used to refer to the appendix.

As to the Appendix:

"A-1" will be used to refer to the complaint of The Florida Bar filed on March 20, 1996.

"A-2" will be used to refer to the request for admissions filed on March 20, 1996.

"A-3" will be used to refer to the August 29, 1996 letter submitted on respondent's behalf to The Florida Bar.

"A-4" will be used to refer to the referee's report executed on October 15, 1996.

STATEMENT OF THE CASE AND OF THE FACTS

On March 21, 1996, The Florida Bar filed its complaint charging the respondent with issuing worthless checks, misappropriation of client's funds, failing to respond to inquiries of The Florida Bar and neglect of clients' matters. (A-1) The Florida Bar's requests for admissions, which mirrored the complaint, were served at the same time. (A-2) On April 1, 1996, this court issued its order to the chief judge of the eleventh judicial circuit requiring the appointment of a referee. Pursuant to said order, the Honorable Stuart M. Simons, circuit judge was appointed on June 5, 1996.¹

On August 30, 1996, the referee granted The Florida Bar's motion for sanctions since the respondent had failed to respond to interrogatories and requests to produce, subsequent to the filing and granting of a motion to compel. As a sanction, the respondent was ordered to pay attorney's fees in the amount of \$500.00 to The Florida Bar's Client Security Fund by September 9, 1996.² On September 6, 1996, the respondent withdrew his previously filed

¹ Four other referees were appointed and **recused** themselves prior to Judge Simons' appointment.

² Respondent forwarded payment to The Florida Bar's Client Security Fund on November 11, 1996.

responses to The Florida Bar's requests for admissions, thereby admitting to the facts and rule violations set forth. On September 18, 1996, the referee granted The Florida Bar's second motion for sanctions since the respondent had failed to reduce his list of character witnesses pursuant to the referee's order.

A final hearing as to discipline only was held before Judge Simons on September 18 and 24, 1996. The respondent presented the Honorable Rodolfo Sorondo, a circuit judge sitting in the criminal division of the eleventh judicial circuit since 1992 in mitigation. (TR 6-33) The judge had known the respondent for ten (10) years and believes him to be honest and possessing outstanding legal abilities and professionalism. (TR 10-11) Judge Sorondo has appointed the respondent to handle difficult capital cases. (TR 11-15) Over objection of The Florida Bar, and out of the presence of the referee, the witness was permitted to proffer his recommendation that the respondent should receive a short term suspension, despite his limited understanding of the facts in the case. (TR 17-26) On cross examination Judge Sorondo stated that he had never reviewed the complaint filed by The Florida Bar in this matter and was only aware of the allegations through discussions with the respondent and his attorney. (TR 28) The witness did not

know that the respondent had failed and refused on numerous occasions to respond to inquiries of The Florida Bar. (TR 33)

The respondent then presented the Honorable Fredericka Smith, a circuit judge sitting in the eleventh judicial circuit since 1980 in mitigation. (TR 34-47) Judge Smith had known the respondent for seven (7) to eight (8) years and believes him to be a very competent, professional lawyer with the highest regard for his integrity. (TR 36) Over objection of The Florida Bar, and out of the presence of the referee, the witness was permitted to proffer her recommendation that the respondent should receive a short term suspension, being aware that the respondent had used client's funds and replaced them. (TR 39-40) On cross examination the witness stated that her opinion was based, in part, on her belief that the respondent had made full restitution and that opinion would change if full restitution had not been made. Judge Smith was not aware that Mr. Kassier had continued to issue worthless checks within the week prior to the final hearing in excess of a thousand dollars to employees and that the respondent had failed to respond to inquiries of The Florida Bar. (TR 44-46)

Edith Georgi, a senior trial attorney with the Dade County Public Defender's Office was Mr. Kassier's next witness in mitigation. (TR 47-59) Ms. Georgi was acquainted with the

respondent during his employ with the Public Defender's Office beginning in 1982 or 1983. Mr. Kassier had left the office five (5) years earlier. (TR 56) According to the witness, the respondent was held in the highest regard and had a reputation for the highest integrity and highest moral kind of leadership. (TR 52-53) The witness, however, had no cases with the respondent for the past five (5) years nor had she had any conversations with any member of the legal community concerning Mr. Kassier's reputation for honesty and integrity in those five (5) years. Ms. Georgi had not read the complaint of The Florida Bar. (TR 56-57)

Thereafter, the deposition of the Honorable Thomas Wilson was admitted into evidence. (TR 60) Judith Thomas was then presented by the respondent. (TR 62-71) The respondent represented Ms. Thomas in a post dissolution matter over certain funds. She was satisfied with the representation. Mr. Kassier held money in trust for Ms. Thomas. Mr. Kassier had discussed his financial difficulties with her. Ms. Thomas offered to loan money to the respondent on two (2) occasions. Mr. Kassier rejected the offers. Ms. Thomas testified that she learned that the respondent had borrowed funds from her and had no objection. (TR 64-66) On cross examination, Ms. Thomas admitted that she could not authorize respondent's use of money in his trust account which belonged to her ex-husband. (TR 68) Ms.

Thomas claimed that Mr. Kassier had borrowed over \$16,000.00 of her monies held in his trust account. (TR 69) The Florida Bar moved to strike the testimony of Ms. Thomas as irrelevant on the basis that the complaint of The Florida Bar, as admitted to by the respondent, alleged the misappropriation of funds due to Ms. Thomas' ex-husband in the amount of \$8,297.75. Further, the only funds which involved Ms. Thomas was Mr. Kassier's issuance of a \$500.00 check to Ms. Thomas, which was returned for insufficient funds. The referee denied the motion and stated that The Florida Bar could argue the matter in closing. (TR 71-72)

Mr. Kassier testified in his own behalf. (TR 73-115; 135-160; 166-213) The respondent practices law and serves as an adjunct professor at the University of Miami Law School. He graduated cum laude from the University of Pennsylvania in 1977 and from the University of Miami Law School in 1980. He was employed by the Dade County Public Defender's Office initially as a legal intern and then **as an** attorney from 1978 until 1990, when he opened a private practice. (TR 73-80) Prior to entering private practice the respondent did not have any experience in running or managing a business. Respondent's practice is predominantly criminal appellate and trial and between 25% and 30% is domestic work. Mr. Kassier participates in the wheel for appointments for **Criminal**

cases for which he has been appointed to approximately fifteen (15) capital cases and a sundry of other serious criminal matters. (TR 81-84) The respondent was married in 1982 to another attorney named Margaret Ann Rosenbaum who currently serves as a general master in the eleventh judicial circuit. The couple was separated in September of 1991. They owned a home together. (TR 84-85) They do not have children. (TR 183) Mr. Kassier began counseling in early 1990 since he was under unbearable stress in his marriage as a result of tremendous pressure placed on him by his wife for him to be successful and earn money. He attended weekly sessions for five (5) years, which included three (3) unsuccessful marriage counseling sessions. (TR 85-87) The respondent asserted that the amount of gratuities left at restaurants became a running battle between he and his wife. (TR 89)

In the spring of 1992 the respondent tried back to back attempted first degree and two (2) first degree murder cases and suffered "burn out" as a result. (TR 91-94) Mr. Kassier stated that he had difficulty obtaining payment from Dade County on court appointed cases. (TR 96) As a result, the respondent took on more cases than he could handle, as well as borrowing money from his wife and his parents. Despite the difficulties getting paid, the respondent continued to take court appointments since he knew

eventually there would be a check. (TR 184) In August of 1992 Hurricane Andrew caused a hundred thousand dollars (\$100,000.00) of damage to the respondent's marital home. (TR 106-107) The insurance company paid \$100,000.00 in personal property losses and \$70,000.00 to repair the home. The respondent agreed to give his wife \$167,000.00 and pay half of the mortgage on the home as well as other expenses. (TR 110-112; 135) The respondent's yearly gross income was between \$100,000.00 and \$150,000.00 and his net income was between \$50,000.00 and \$75,000.00. His wife earned \$60,000.00 a year. (TR 113-114) The emotional and financial difficulties the respondent is having with his wife are ongoing. (TR 182)

The respondent represented Judith Thomas in regard to monies owed to her by her former husband. (TR 136) Mr. Kassier received and held \$21,000.00 of the Thomas' monies in his trust account. The respondent **was** having financial difficulties at the time. Mr. Kassier removed money from his trust account on two (2) occasions for a total of \$14,000.00. The respondent repaid all monies, with the exception of \$500.00 over a period of five (5) months. (TR 137-142) On cross examination Mr. Kassier swore that the \$8,297.75 The Florida Bar alleged that he had misappropriated belonged to Fred Thomas, and not to his client Judith Thomas. (TR 174) Mr. Kassier had put personal funds into the trust account to cover the

disbursement of \$8,297.00 since he had removed funds previously.

(TR 178-179)

The respondent gave testimony in regard to the worthless trust account check he issued to Gary Moody, a Gainesville attorney, as set forth in count I of The Florida Bar's complaint. Mr. Kassier represented an individual who had issued a worthless check to Mr. Moody's client. The client gave Mr. Kassier the money **owed and he** forwarded a check to Mr. Moody. Six (6) months later Mr. Moody returned the check advising that it had remained in his client file, was now stale and needed to be reissued. The respondent forwarded another check, which was returned for insufficient funds. Mr. Moody called the respondent, who failed to return his calls because he was in trial. The check was eventually made good. (TR 149-152)

Mr. Kassier attested in regard to the two (2) worthless trust account checks he issued to the clerk of the court, also set forth in count I of the complaint. The respondent was retained to file two (2) matters. The clients agreed to bring money for filing fees. The respondent issued checks to the clerk of the court prior to the money being brought in. (TR 152-153)

In regard to the complaint of Lillie Harris, as set forth in count II of the complaint, the respondent asserted that he

represented Ms. Harris concerning a landlord-tenant dispute. The respondent swore that he had returned Ms. Harris' retainer of \$350.00 her, as well as returning her file. Although the respondent responded to The Florida Bar to the initial complaint filed by Ms. Harris with The Florida Bar, he did not respond to the second grievance since there **was a** pending investigation of his trust account. (TR 154-157)

In regard to the complaint of Letitia Potts, **as** set forth in count III of the complaint, the respondent asserted that he represented Ms. Potts concerning the purchase and sale of a coin laundry. The respondent swore that he **had** returned Ms. Potts' retainer of \$250.00 to her. Argument ensued since the respondent had admitted in his response to The Florida Bar's requests for admissions that he had not returned the file to Ms. Harris or the retainer to Ms. Potts. The respondent agreed to the appearance of witnesses or submission of affidavits on these points since he was confident that the witnesses would corroborate his testimony. (TR 157-160) The respondent asserted that he forwarded Ms. Potts' money to her a month prior to the final hearing. He did not have **a** copy of the check or any other paperwork. He did not send it by certified mail and did not recall whether he sent a cover letter. (TR 171-172) The respondent also testified that he sent Lillie

Harris her money a month prior to the final hearing, but had no cover letter, or copy of a canceled check and had not forwarded same by certified mail. (TR 172-173)

Mr. Kassier regrets what he has done. His most profound regret is what he has done to himself and the humiliation he has suffered and will suffer. He also has let a lot of good people down, namely the witnesses who testified on his behalf. (TR 166-167) The respondent was questioned in regard to an August 29, 1996 letter submitted on his behalf to The Florida Bar. The letter was admitted as an exhibit of The Florida Bar. (TR 187; A-3) The letter provided assurances to The Florida Bar that the respondent now had systems in place in his law office with an individual named John Turner, who would be signing trust accounts check and making sure the office ran smoothly. (TR 189) The Florida Bar proceeded to introduce certified documents reflecting that John Barry Brothers had pled guilty and was convicted of eighty three (83) counts of uttering forged instruments, forgery, and owing \$325,000.00 to State Farm Insurance Company as a result of the convictions; and certified documents reflecting that John Barry Brothers' name was legally changed to Jonathon Turner by his attorney, Andrew Kassier. (TR 194)

The Florida Bar introduced and the respondent testified that he had issued a worthless check dated July 12, 1996 from his operating account to Jenny O. Jeria in the amount of \$582.35 (TR 194-195) That check has not been satisfied. (TR 210) The respondent testified that he is involved in a corporation called Turner-Geller-Kassier Financial Services Group, Inc. of which he has signatory capacity on a checking account. The respondent was aware of a worthless check issued by that entity dated July 31, 1996 to "The Dry Cleaner" in the amount of \$688.71. (TR 195,200) The respondent also recalled issuing a check in the amount of \$779.50 to Lourdes Julia on that account dated July 26, 1996 which the respondent knew had been returned as insufficient. (TR 201) The respondent further attested to issuing a check in the amount of \$1,571.00 to Lourdes Julia on his attorney at law operating account dated August 9, 1996. Mr. Kassier testified that he had not repaid Lourdes Julia all of the sum due to her, believing he has repaid \$400.00 or \$450.00. (TR 201-202; 210)

The respondent presented John Hogan as a witness in mitigation. (TR 162-165) The witness is the chief of staff to the Attorney General of the United States since 1993. He practiced with the Dade County State Attorney's Office from 1979 until 1987 and left to serve as Statewide Prosecutor. He returned to the State

Attorney's Office in 1989 and remained there until 1993 (TR 160-163) Mr. Hogan had known the respondent for ten (10) years. He always thought the respondent had an excellent reputation in the legal community for truthfulness and integrity (TR 163-164) Mr. Hogan has not been part of the Dade County legal community since 1993. (TR 165)

The Florida Bar presented Leslie Lundgren in aggravation. (TR 123-130) Mr. Lundgren had been in the check cashing business for the past twenty (20) years. He filed a grievance with The Florida Bar against Mr. Kassier on August 8, 1996 in which he alleged receiving worthless checks from the respondent's attorney at law operating account. The worthless check in the amount of \$2,806.50 was dated July 9, 1996. Mr. Lundgren received reimbursement five (5) weeks later, after filing his complaint with The Florida Bar (TR 123-125) That particular check was a replacement for four (4) other worthless checks that Mr. Kassier had issued on his law office account in the previous year. (TR 127-128)

At the conclusion of the hearing on September 18, 1996, the referee indicated his desire to take testimony from Ms. Harris and Ms. Potts regarding the return of their retainers and Ms. Harris' file. (TR 240) On September 24, 1996 Lillie Harris testified that she had neither received monies back or original documents she had

requested many times from the respondent. (TR 262) Letitia Potts testified that she had not received monies back from Mr. Kassier. (TR 266) Mr. Kassier's attorney proffered the respondent's testimony as to this issue. He stated that Mr. Kassier gave his secretary checks to forward to the two (2) complainants, but due to the secretary's incompetence they were not mailed. As evidence of that proposition, the respondent presented a copy of the ledger from his personal account to establish that the checks were written on August 11, 1996. (TR 268) The referee reviewed the copy of the ledger and noted that had the checks been received and cashed by Ms. Harris and Ms. Potts they would have been returned as worthless since the account did not contain sufficient funds to cover them. The respondent advised the referee that he in fact had enough funds, although the ledger did not reflect so. (TR 270-273) The respondent was unable to produce the checks which he alleged to have signed and designated for forwarding to Ms. Harris and Ms. Potts. (TR 277) Mr. Kassier did not contact either Ms. Harris or Ms. Potts prior to the final hearing to ascertain their receipt of the funds he alleged to have forwarded. (TR 279)

The referee announced findings. He stated that although disbarment is an option he could choose he believed a one (1) year suspension to be appropriate. He noted that Mr. Kassier has not

returned client's papers, agreed to repay monies to Lillie Harris in July of 1995 and failed to do so, and failed to respond to The Florida Bar despite numerous requests. The referee additionally stated that if the respondent either could not afford to be in private practice or did not know how to function in private practice, he should not be doing so. The referee labeled the respondent "a runaway freight train" It was further stated that since the pressure is no different now, there is no reason to suspect it will be different thereafter. (TR 291-294) The referee announced that The Florida Bar had sustained all of the allegations. (TR 296)

The report of referee was executed on October 15, 1996. (A-4) In addition to the oral pronouncements the referee found that the respondent continued to write checks drawn on accounts in which there were insufficient funds at the time of the final hearing, that although the respondent had testified that he had paid the two (2) complainants he failed to produce evidence to establish that they were paid, that the respondent failed to cooperate with The Florida Bar's investigation and failed to acknowledge any wrongdoing until the date of the final hearing. In addition to a one (1) year suspension the referee ordered that the respondent be placed on probation for three (3) years, attend ethics school prior

to petitioning for reinstatement, initiate a LOMAS evaluation, be subjected to random audits during the period of his probation, and report monthly to The Florida Bar regarding his trust account.

The Bar seeks disbarment, and this appeal follows.

SUMMARY OF ARGUMENT

As a result of the respondent's issuance of a trust account check returned for insufficient funds to another member of The Florida Bar, an audit of respondent's trust account commenced. The audit revealed that the respondent had issued other worthless trust account checks to a client and to the clerk of the court. It was further revealed that the respondent had misappropriated in excess of \$8,000, which he had subsequently replaced. Additionally, the respondent had neglected two client matters and failed to respond to the Bar's inquiries. A disciplinary proceeding ensued in which the respondent failed to comply with discovery giving rise to two orders imposing sanctions. Additionally, the respondent continued to issue worthless checks around the time of the final hearing as well as advising the referee that reimbursement had been made to the two neglected clients where testimony revealed that not to be the case. Further, the respondent advised The Florida Bar that his financial chaos would be cured by the employment of an individual with an extensive business background, who would serve as a signatory on respondent's trust account. The respondent, however, failed to advise The Florida Bar that said individual, who respondent had served to legally change his name, was convicted of

eighty three (83) counts of felonious economic activity and remained indebted to State Farm Insurance Company for \$325,000.00.

The referee recommended a one year suspension, to be followed by three years probation and other conditions. It is the position of The Florida Bar that respondent's misconduct together with his subsequent actions warrant disbarment.

POINT OF APPEAL

WHETHER DISBARMENT RATHER THAN A ONE YEAR
SUSPENSION IS THE APPROPRIATE SANCTION?

ARGUMENT

DISBARMENT RATHER THAN A ONE YEAR SUSPENSION IS THE APPROPRIATE SANCTION.

It is well established that the Florida Supreme Court enjoys a broader scope of review over a referee's recommendation for discipline than over a referee's findings of fact in support of such discipline. The Florida Bar v. Anderson, 538 So.2d 852 (Fla. 1989). The Court has also stated that disbarment should be reserved for the most serious cases. The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970).

It has been additionally held that a finding that an attorney has misused or misappropriated funds creates a presumption that disbarment is the appropriate penalty. The Florida Bar v. McIver, 606 So.2d 1159 (Fla. 1992). The Florida Bar v. Schiller, 537 So.2d 992 (Fla. 1992).

In the instant case The Florida Bar pled, and the respondent admitted that he misappropriated the funds of Fred Thomas. (TR 174) The referee while recognizing that disbarment was an option instead imposed a much lesser sanction presumably as a result of his belief that the respondent "is an intelligent person with a commitment to the practice of law". (A-4, p.7) Although such findings are

complimentary they are not sufficient to mitigate the presumptive finding of disbarment to a one year suspension.

In fact, this case is much more than a one time theft where the funds were repaid before the Bar's involvement. The genesis of Mr. Kassier's involvement with The Florida Bar was his issuance of a worthless trust account check to another member of The Florida Bar. As stated in the complaint, and admitted to by the respondent, the respondent issued three other worthless trust account checks. Two of those checks were issued to the clerk of the court. The aforementioned checks were issued in 1994. Apparently the respondent was unaffected by the disciplinary proceedings against him since The Florida Bar established in aggravation, that the respondent continued to issue worthless checks as late as within three weeks prior to the final hearing of this cause held on September 18, 1996. (TR 201-202, 210) Attorneys have received one year suspensions from this tribunal for the issuance of worthless checks. The Florida Bar v. Davis, 361 So.2d 1123 (Fla. 1990); The Florida Bar v. Mayo, 439 So.2d 888 (Fla. 1983).

Counts II and III of the admitted to allegations concerned respondent's neglect of legal matters, failure to communicate with clients and failure to respond to inquiries of The Florida Bar.

Multiple instances of neglect warrant a suspension. The Florida Bar v. Daniel, 641 So.2d 1331 (Fla. 1994); The Florida Bar v. Jones, 543 So.2d 751 (Fla. 1989).

Further, the Rules Regulating The Florida Bar now mandate that an attorney respond to inquiry of The Florida Bar. Rules 3-4.8; 4-8.4(g) of the Rules Regulating The Florida Bar. In The Florida Bar v. Grosso, 681 So.2d 2491 (Fla. 1994) that attorney received a ten (10) day suspension for his failure to respond to one (1) Bar inquiry.

The respondent admitted that he had failed to return a fee and file and swore under oath that he had made restitution to the two complaining witnesses Lillie Harris and Letitia Potts. (TR 156, 158) The referee became concerned with the conflicting positions taken by the respondent, particularly in light of The Florida Bar's representation that a complainant had advised the day prior that she had not received a refund. (TR 171,250) As a result, further testimony was taken which established that neither complainant had received restitution or return of their documents. (TR 262, 266)

The respondent maintained that an incompetent secretary had failed to forward the checks. (TR 259-260, 274-275) The respondent could neither produce a cover letter, or check or explain why he had not taken steps to confirm the receipt of these items by the

complainant. (TR 277, 279) The referee found; that "... in truth and in fact, they had not been paid at the time". (A-4, p.6) This occurrence is significant and must be noticed, in light of the court's previous pronouncements

We can conceive of no ethical violation more damaging to the legal profession and process than lying under oath, for perjury strikes at the very heart of our entire system of justice - the search for truth. An officer of the court who knowingly and deliberately seeks to corrupt the legal process can logically expect to be excluded from that process.

The Florida Bar v. Rightmyer, 616 So.2d
953,954 (Fla. 1993)

The respondent's accounting irregularities which began in 1994 continued until prior to the final hearing. In an attempt to convince The Florida Bar that these problems were cured the respondent advised that an individual named John Turner with an extensive business background was engaged as respondent's office manager to handle financial matters and serve as a signatory on respondent's trust account. This information at first blush was consoling. That consolation ceased abruptly when The Florida Bar discovered and introduced evidence establishing that John Turner, formerly known as John Barry Brothers had been convicted in Dade County of eighty-three (83) counts of uttering forged instruments and forgery. In addition, this individual, as a part of his

conviction remained indebted to State Farm Insurance Company for the sum of \$325,000.00. Incidentally, John Turner had his name changed legally by his attorney, the respondent, Andrew M. Kassier. (TR 194). This action was further evidence of respondent's poor judgment and inability to recognize the position of trust an attorney must hold.

The referee noted in his report, although not finding in mitigation, that the respondent has come upon difficult emotional stresses due to his divorce of some years ago.³ (A-4, p.7) In The Florida Bar v. Shanzer, 572 So.2d 1383 (Fla. 1991), that respondent misappropriated client funds and sought to excuse said conduct because of marital strife. Mr. Shanzer, like Mr. Kassier, presented no expert testimony or other evidence to corroborate the assertion. This court held:

In the case before us, we likewise fail to find that the mitigating evidence submitted warrants a discipline less than disbarment. Respondent argues that his depression, primarily over his marital and economic problems, led him to use his trust account for personal purposes. These problems, unfortunately, are visited upon a great number of lawyers. Clearly, we cannot excuse an attorney for dipping into his trust funds as a means of solving personal problems.

³The record, however, from the testimony of the respondent reflects that the couple was separated in 1991 and remain married. (TR 84, 182)

Shanzer, at 1383, 1384 (footnote omitted)

In fact, Mr. Shanzer, unlike Mr. Kassier was ridden with remorse and extended his full cooperation to The Florida Bar. The referee herein stated that the respondent did not acknowledge any wrongdoing until days before the final hearing and failed to cooperate with the Bar's investigation. Such lack of cooperation was further evidenced when the respondent was sanctioned on two occasions by the referee for failing to comply with discovery in these proceedings.⁴

The respondent presented several impressive members of the legal community in mitigation. Most interestingly, the referee failed to make any mention in his report of their impact; thereby not finding that testimony as mitigating.

The respondent has misappropriated funds, issued worthless trust account checks, continued to issue worthless checks up until

⁴Although respondent's counsel sought to take responsibility in the record in this regard neither the orders nor the referee's pronouncement reflect same. (TR 229) Rather, the referee stated the following:

THE REFEREE: Whatever comes out of this thing, apparently there was a prior order imposing sanctions and imposing certain costs. So that should be contained in whatever order ultimately is issued in the case.

MS. LAZARUS: I will --

THE REFEREE: Even if I forget later on. So the obligation is on you to remind me.

(TR 230-231)

the final hearing, neglected legal matters, made misrepresentations to the referee about making restitution, failed to respond to inquiries of The Florida Bar and employed and associated with a convicted felon in economic crime to cure his financial instability in his law office. The respondent's conduct throughout **warrants** disbarment.

CONCLUSION

Based upon the foregoing reasons and citations of authority, The Florida Bar respectfully requests that this Honorable Tribunal not follow the referee's recommendation to suspend the respondent for one year and find instead that the respondent should be disbarred.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of The Florida Bar's initial brief **was** forwarded via Airborne Express to **Sid J. White**, Clerk, Supreme Court of Florida, 500 So. Duval Street, Tallahassee, Florida 32399, and a true and correct copy was mailed to Louis Jepeway, Jr., Attorney for Respondent, 19 West Flagler Street, Suite 407, Miami, Florida 33130 this 26th day of December, 1996.



RANDI KLAYMAN LAZARUS

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Appendix Part 1

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No.

VS.

The Florida Bar File
Nos. 95-71,003 (11A)
95-71,308 (11A)
96-70,207 (11A)

ANDREW MICHAEL KASSIER,
Respondent.

COMPLAINT OF THE FLORIDA BAR

THE FLORIDA BAR, Complainant, files this complaint against Andrew Michael Kassier, Respondent, pursuant to Chapter 3, Rules Regulating The Florida Bar and alleges the following:

1. Respondent is and was at all times **material herein** a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

count I

The Florida Bar File No. 95-71,003(11A)

2. That The Florida Bar conducted an audit **of** the Respondent's trust accounts predicated upon the grievance filed by C. Gary Moody.

3. That Respondent issued a trust account check **#1110** from his trust account at United National Bank Account **#008-112991-8** to C. Gary Moody in the amount of \$525.00 on **or** about January 15, 1995 .

4. That check #1110 was dishonored by the bank due to insufficient funds in the Respondent's trust account. (Attached hereto and incorporated herein as Exhibit "A" is a copy of the returned check #1110).

5. That The Florida Bar reviewed two trust accounts of the Respondent. Florida Bar Foundation Inc., Andrew M. Rassier Atty at Law, IOTA Trust account maintained at United National Bank account #008-507148-8, for the period January 1, 1994, to February 28, 1995, and Andrew M. Rassier Atty At Law, Trust Account maintained at United National Bank account #008-112991-8 for the period January 1, 1994 to February 28, 1995.

6. That the audit of Respondent's trust account #008-112991-8 revealed that the balance in the trust account on the date check #1011 was drawn was \$30.98. The audit further revealed that for the period reviewed, trust account #008-12991-8 never had a balance of \$525.00.

7. That on January 15, 1994 the Respondent's other trust account, #008-507148-8 had a balance of \$100.34.

8. That the audit of trust account #008-112991-8 revealed other checks which were dishonored due to insufficient funds, to wit:

a) Respondent issued check #1105 from the trust

account in the amount of \$196.00, payable to the Clerk of the Court on or about May 25, 1994.

- b) That check #1105 was presented to the bank for payment on June 1, 1994, and was dishonored by the bank due to insufficient funds. The balance in the trust account on June 1, 1994 was \$7.80. (Attached hereto and incorporated herein as Exhibit "B" is a copy of the returned check #1105).
- c) That on **or** about **November** 16, 1994, Respondent issued check #1107 from his trust account in the amount of \$153.00, payable to the Clerk of the court in the amount of \$153.00.
- d) That check #1107 was presented to the bank for payment on November 22, 1994 and was dishonored by the bank due to insufficient funds. The balance in the trust account on November 22, 1994 was \$18.04. (Attached hereto **and** incorporated herein as "C" is a copy of the returned check #1107).
- e) That there is no evidence that these funds were ever paid to the Clerk of the Court.

9. That the audit of Respondent's trust account, #008-507148-8 revealed evidence, that Respondent had misappropriated client funds from this trust account, to wit:

- a) That the balance in the trust account on April 12, 1994 was \$1,651.25. That on April 12, 1994, Respondent deposited a check from his personal IRA account into his trust account in the amount of \$9,940.34.
- b) That on April 29, 1994, Respondent, in connection with a representation in a divorce proceeding, issued trust account check #1195 in the amount of \$8,297.75 made payable to Neal Lewis Trust Account as partial payment of insurance proceeds from damage to the marital home in Hurricane Andrew.

- c) That trust account check #1195 was negotiated on May 2, 1994, and the funds used to pay for this check were Respondent's personal funds obtained from Respondent's IRA account.
- d) That the total amount of insurance proceeds owed by Respondent's client totaled **\$12,500.00**. The difference between the amount paid to Neal Lewis Trust Account and the total of insurance proceeds left a balance of over \$4,000 unaccounted for in the trust account.
- e) That on July 1, 1994 the balance in the trust account was **\$5,067.84** and Respondent had an outstanding check in the amount of \$5,000 which left a reconciled bank balance of \$67.84.
- f) That also on July 1, 1994, Respondent deposited a check from his operating account in the amount of **\$5,000.00** into the trust account. Respondent made a payment from these funds to Waste Management for the cleaning of a client's property.
- g) That on July 19, 1994 Respondent deposited another check from his operating account into his trust **account** in the amount of **\$4,000.00**.
- h) That the check from Respondent's **operating** account was returned by the bank due to insufficient funds on July 20, 1994.
- i) That on or about September **27**, 1994, Respondent issued trust account check #1214 in the amount of **\$500.00** to his client Judith Thomas as a transfer of funds.
- j) That trust account check #1214 was presented to the bank for payment on September 29, 1994, and **was** dishonored by the bank due to insufficient funds. (Attached hereto and incorporated herein as Exhibit "D" is a copy of the returned check #1214).
- k) The balance in the trust account on September 29,

only
account
money
to her

1994, was \$2.84.

10. By reason of the foregoing, Respondent has violated Rule 4-8.4(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); Rule S-i.1 (Money or other property entrusted to an attorney for a specific purpose, including advances for costs and expenses, is held in trust and must be -applied only to that purpose) of the Rules of Professional Conduct.

Count II

The Florida Bar File No. 95-71,308(11A)

11. That Respondent was retained by Lillie M. Harris, hereinafter referred to as "Harris", on or about November of 19.92 to represent her in an action in negligence against her landlord for damages sustained to Harris' belongings.

12. That Harris paid Respondent--a fee of \$350.00..

13. That The Florida Bar opened a file on the original grievance under The Florida Bar file number 94-71,500(11A) .

14. That Harris alleged that Respondent had failed to act diligently in the matter and failed to properly communicate the status of the matter with her.

15. That The Florida Bar file number 94-71,500(11A) was closed by The Florida Bar on or about August 10, 1994, based upon representations by the Respondent that he would take necessary steps to resolve the pending matter.

16. That Harris wrote to The Florida Bar on or about January 20, 1995, stating that Respondent had not taken any action to resolve the matter.

17. The Florida Bar wrote to Respondent on February 9, 1995 requesting a response to Harris' allegations. (Attached hereto and incorporated herein as "E" is a copy of The Florida Bar's letter to Respondent dated February 9, 1995).

18. That Respondent failed to respond to The Florida Bar's letter-of February 9, 1995 and The Florida Bar again wrote to Respondent on March 3, 1995 requesting a response. (Attached hereto and incorporated herein as Exhibit "F" is a copy of The Florida Bar's letter to Respondent dated March 3, 1995).

19. That Respondent again failed to respond to The Florida Bar's inquiries and The Florida Bar again wrote to Respondent on March 20, 1995 requesting a response to Harris' letter. (Attached hereto and incorporated herein as Exhibit "G" is a copy of The Florida Bar's letter to Respondent dated March 20, 1995).

20. That Respondent failed to respond and the file was

reopened under The Florida Bar file number **95-71,308(11A)**.

21. That Respondent has failed to keep Harris informed **as** to the status of the matter and to promptly reply to requests for information from Harris.

22. That Harris has attempted to contact the Respondent on several occasions to obtain her file so that she could retain new counsel.

23. That Respondent failed to respond to Harris' requests or return the files.

24. By reason of the foregoing, Respondent **has violated Rule 3-4.8** (A lawyer is obligated to respond to all investigative inquiries); **Rule 4-1.4(a)** (A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable **requests for** information); and **Rule 4-8.4(g)** (A lawyer shall not fail to respond, in writing, to any inquiry by a disciplinary agency when such agency is conducting **an** investigation into the lawyer's conduct) of the Rules of Professional-Conduct.

Count III

The Florida Bar File No. 96-70,207(11A)

25. That Respondent **was** retained by Letita A. Potts, hereinafter referred to as "**Potts**", to **represent her** in a contract dispute with the buyers of a coin laundry previously owned by

Potts.

26. That Potts gave Respondent a fee of \$250.00. (Attached hereto and incorporated herein as "H" is a copy of check #0984 from NationsBank to Respondent from Potts).

27. That Respondent failed to do anything with regard to the matter, return the fee, or assist Potts in retaining new counsel.

28. That Potts sent two certified letters to Respondent on or about June 14, 1995 and July 28, 1995 in an effort to ascertain the status of the representation. (Attached hereto and incorporated herein as composite Exhibit "I" are copies of the signed return receipts from the letters sent to Respondent and a copy of the July 28, 1995 letter to the Respondent).

29. That Respondent failed to keep Potts reasonably informed as to the status of the matter and failed respond to the requests for information from Potts.

30. That The Florida Bar sent letters to the Respondent on August 16, 1995 and September 7, 1995 requesting a response to the complaint made by Potts. The September 7, 1995 letter was sent certified mail return receipt requested, and a signed receipt was returned to The Florida Bar. (Attached hereto and incorporated herein as composite Exhibit "J" are copies of the August 16, 1995 and the September 7, 1995 letter with the signed return receipt

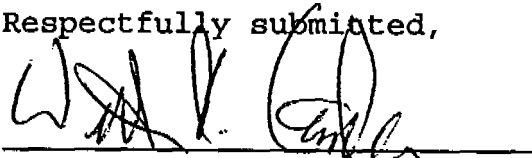
sent from the Bar to the Respondent).

31. That Respondent failed to respond to the inquiries sent by The Florida Bar.

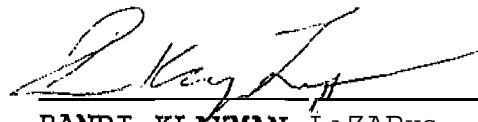
32. By reason of the foregoing, Respondent has violated Rule **3-4.8** (A lawyer is obligated to respond to all investigative inquiries); Rule **4-1.3** (A lawyer shall act with reasonable diligence and promptness in representing a client); Rule **4-1.4(a)** (A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information); and Rule **4-8.4(g)** (A lawyer shall not fail to respond, in writing, to any inquiry by a disciplinary agency when such agency is conducting an investigation into the lawyer's conduct) of the Rules of Professional **Conduct**.

WHEREFORE, The Florida Bar respectfully requests that Andrew Michael **Kassier**, Respondent, be appropriately disciplined in accordance with Chapter- 3, Rules Regulating The Florida Bar.

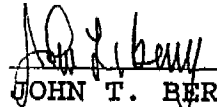
Respectfully submitted,



WILLIAM X. CANDELA, Chair
Grievance Committee 11"A"
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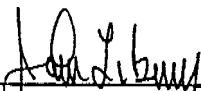
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original Complaint was served by U. S. Mail upon Sid J. White, Clerk, Supreme Court of Florida, 500 S. Duval Street, Tallahassee, Florida; and a true and correct copy was served to Andrew M. Kassier, Respondent, at his record Bar address of One N.E. 2nd Avenue, Suite 200, Miami, Florida 33132, by Certified Mail Return Receipt Requested (#Z 164 126 015), and upon

Louis Jepeway, Jr., Attorney for Respondent, at 19 West Flagler Street, Suite 407 Biscayne Building, Miami, Florida 33130, by Certified Mail Return Receipt Requested (#Z 164 126 016), on this 20th day of March, 1996.



JOHN T. BERRY, STAFF COUNSEL

NOTICE OF TRIAL COUNSEL

PLEASE TAKE NOTICE that the trial counsel in this matter is Randi Klayman Lazarus, Assistant Staff Counsel, whose address and telephone number are 444 Brickell Avenue, Suite M-100, Miami, Florida 33131, (305) 377-4445. Respondent need not address pleadings, correspondence, etc., in this matter to anyone other than trial counsel and to John A. Boggs, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300.

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