

097

FILED

SR J. WHITE

SEP 2 1997 9/22

CLERK, SUPREME COURT

Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. 89,006

[TFB Case No. 96-30,802 (09E) (OSC)]

v.

ROYCE DERRELL PIPKINS,

Respondent.

THE FLORIDA BAR IS INITIAL TEF

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5600
ATTORNEY NO. 123390

JOHN T. BERRY
Staff Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5600
ATTORNEY NO. 217395

AND

Eric M. Turner
Bar Counsel
The Florida Bar
880 North Orange Avenue
Suite 200
Orlando, Florida 32801-1085
(407) 425-5424
ATTORNEY NO. 37567

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

SYMBOLS AND REFERENCES iii

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS , 3

SUMMARY OF THE ARGUMENT 5

ARGUMENT 6

A NINETY-ONE DAY SUSPENSION, REQUIRING PROOF OF REHABILITATION, ALONG WITH PAYMENT OF THE BAR'S COSTS IS THE APPROPRIATE DISCIPLINE IN THIS CASE RATHER THAN THE REFEREE'S RECOMMENDATION OF PAYMENT OF THE BAR'S COSTS AND NO FURTHER DISCIPLINE GIVEN THE CASE LAW AND THE RESPONDENT'S PRIOR DISCIPLINARY HISTORY.

CONCLUSION 11

CERTIFICATE OF SERVICE , 13

APPENDIX TO THE FLORIDA BAR'S INITIAL BRIEF 14

APPENDIX INDEX 15

TABLE OF AUTHORITIES

CASES

The Florida Bar v. Bauman,
558 So. 2d 994 (Fla. 1990) 8,9

The Florida Bar v. Lecznar,
690 So. 2d 1284 (Fla. 1997) 6

The Florida Bar v. McAtee,
674 So. 2d 734 (Fla. 1996) 7,9

The Florida Bar v. Mitchell,
645 So. 2d 414 (Fla. 1994) 9

The Florida Bar v. Rood,
678 So. 2d 1277 (Fla. 1996) 7,9

The Florida Bar v. [REDACTED],
508 So. 2d 341 (Fla. 1987) 9

The Florida Bar v. Wilson,
425 So. 2d 2, 4 (Fla. 1983) 10

R. Regulating Fla. Bar

3-6.1(c) 1,5,6

4-1.15(a) 4,5,6

SYMBOLS AND REFERENCES

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

The transcript of the final hearing held on March 25, 1997, shall be referred to as "T" followed by the cited page number.

The Report of Referee dated June 3, 1997, will be referred to as "ROR" followed by the referenced page number(s) of the Appendix, attached. (ROR-A-__)

The bar's exhibits will be referred to as Bar Ex. __, followed by the exhibit number.

The respondent's exhibits will be referred to as Respondent Ex. __, followed by the exhibit number.

STATEMENT OF THE CASE

The bar filed its Petition for Order to Show Cause on September 20, 1996. This court issued its Order to Show Cause on September 30, 1996. The respondent served his response on October 18, 1996. The bar served its reply to respondent's response on October 23, 1996. The final hearing was held on March 25, 1997. The bar served its Affidavit of Costs on May 20, 1997. The referee entered his report on June 3, 1997, recommending that the respondent be found in contempt of court for receiving, disbursing, or otherwise handling trust funds or property while suspended in violation of R. Regulating Fla. Bar 3-6.1(c). The referee recommended the respondent pay the costs of the proceeding and that no further discipline be imposed.

The board of governors considered the referee's report at its July, 1997, meeting and voted to seek review of the referee's recommendation. The board finds that a more appropriate discipline, considering the facts of this case and that respondent was suspended for sixty days followed by 18 months probation for trust account violations, would be a ninety-one day suspension that would require him to prove rehabilitation prior to resuming the

practice of law, along with payment of the bar's costs. The bar served its Petition for Review on July 30, 1997. This Initial Brief is submitted in support of the bar's petition.

STATEMENT OF THE FACTS


Unless otherwise noted, the following facts are derived from the Report of Referee, appended hereto.

The respondent was suspended from the practice of law by order dated January 12, 1995, for a period of sixty days, effective thirty days hence, with automatic reinstatement. The respondent also was placed on an eighteen month period of probation following reinstatement. The respondent's suspension became effective on February 11, 1995, and he was reinstated on April 13, 1995. A true and correct copy of the court's order is attached to the bar's Petition for Order to Show Cause.

The respondent made a total of 13 deposits totaling \$11,715.80 and issued check numbers 4130 through 4167 against his trust account, number 2140000612000 maintained at First Union National Bank, from February 13, 1995 through April 6, 1995 while on suspension, in contradiction to the Supreme Court Order in Case No. 82,144, January 12, 1995.

The respondent admitted utilizing the trust account to collect previously earned fees from clients, which should have been appropriately placed in an office account. This resulted in the respondent commingling his client funds with his own in violation of R. Regulating Fla. Bar 4-1.15(a).

The respondent admitted utilizing the trust account to transact business on behalf of a corporate client, Infinity General, because it did not maintain its own banking account. The respondent was also Secretary/Treasurer of the corporation.

The respondent  paid to assume representation of Tina Gesper on January 4, 1995, although he did not file a Motion for Substitution of Counsel until January 13, 1995, prior to his receipt of the Supreme Court Order of January 12, 1995, suspending him. The respondent's representation of Ms. Gesper did not appear to violate the Court's prohibition of accepting new business.

SUMMARY OF THE ARGUMENT

The referee has recommended the respondent be found in contempt of court, under R. Regulating Fla. Bar 3-6.1(c). For this violation, the referee has recommended the respondent pay the bar's costs of these proceedings. The facts are not in dispute and explicitly show that respondent used his trust account during his suspension and commingled his personal funds with those of his clients. Such conduct was clearly in violation of rules 3-6.1(c) and 4-1.15(a), respectively.

In the instant matter the referee's recommendation of no discipline is in conflict with other discipline **cases** involving operating trust accounts while suspended and commingling of personal and client funds, where the appropriate level of discipline was a suspension, requiring proof of rehabilitation. In light of the respondent's prior suspension regarding trust account matters, a ninety-one day suspension, with proof of rehabilitation and payment of the bar's costs is warranted in this case.

ARGUMENT

A NINETY-ONE DAY SUSPENSION, REQUIRING PROOF OF REHABILITATION, ALONG WITH PAYMENT OF THE BAR'S COSTS IS THE APPROPRIATE DISCIPLINE IN THIS CASE RATHER THAN THE REFEREE'S RECOMMENDATION OF PAYMENT OF THE BAR'S COSTS AND NO FURTHER DISCIPLINE GIVEN THE CASE LAW AND THE RESPONDENT'S PRIOR DISCIPLINARY HISTORY.

The referee has recommended the respondent be found in contempt of court, under R. Regulating Fla. Bar 3-6.1(c), for receiving, disbursing, or otherwise handling trust funds or property while suspended. In his findings of fact, the referee found that the respondent commingled his own funds with those of his clients in violation of R. Regulating Fla. Bar 4-1.15(a) (ROR-A-1). For this violation, the referee has recommended the respondent pay the bar's costs of these proceedings, with no further discipline imposed on the respondent. This Court has held that a referee's recommendation of discipline will not be second-guessed so long as that discipline has a reasonable basis in existing case law. The Florida Bar v. Lecznar, 690 So. 2d 1284 (Fla. 1997). In the instant matter the referee's recommendation of no discipline is in conflict with other discipline cases involving operating trust accounts while suspended and commingling personal

and client funds. In light of the respondent's prior suspension regarding trust account matters, a ninety-one day suspension, with proof of rehabilitation and payment of the bar's costs is warranted in this case.

In The Florida Bar v. McAtee, 674 So. 2d 734 (Fla. 1996), this court disbarred an attorney for representing a client before the Social Security Administration while under a 91-day suspension for improper use and handling of a trust account, collecting an excessive fee, and inappropriately representing clients with adverse interests. The court took into account respondent's three prior disciplinary actions.

In The Florida Bar v. Rood, 678 So. 2d 1277 (Fla. 1996), this court disbarred the respondent, without leave to apply for readmission for a period of five years, for failing to notify all his clients of his suspension from the practice of law, meeting, representing, and advising clients and continuing to receive and disburse client funds from his bank accounts while under suspension. The respondent had been suspended for two years and was later suspended for an additional year.

In The Florida Bar v. Bauman, 558 So. 2d 994 (Fla. 1990), an attorney was disbarred for appearing in court on behalf of a client while under a six month suspension. The court found that the respondent had engaged in five distinct acts of unauthorized practice of law while suspended. The court went on to state "[w]e can think of no person less likely to be rehabilitated than someone like respondent, who wilfully, deliberately, and continuously, refuses to abide by an order of this Court."

An attorney was suspended for ninety-one days, followed by a one year period of probation, for commingling personal funds and legal fees with trust funds, failing to maintain minimum trust account records and other violations. The referee considered the respondent's personal and prior disciplinary history which included a private reprimand and a public reprimand with two years probation. Both reprimands were for failing to maintain appropriate trust accounting records. In aggravation, the respondent failed to appear for a deposition and a hearing necessitated by that failure. This Court held specifically "in light of the fact that [respondent] has been disciplined for similar trust account violations in the past a ninety-day

suspension followed by probation is warranted." The Florida Bar v. Mitchell, 645 So. 2d 414 (Fla. 1994).

The respondent's **case** is similar to those mentioned above. As in Rood, the respondent continued receiving and disbursing funds from his account while under suspension. The respondent in Mitchell commingled his funds with client funds and had previously been disciplined for trust accounting violations. This is factually similar to respondent's own behavior and history. In McAtee, the respondent had a disciplinary history of improperly using and handling his trust account, as does the respondent in the instant matter. The respondent refused to abide by an order of this court. It was for this precise behavior that this court found serious discipline was warranted in Bauman.

In attorney discipline **cases**, the main concerns of the bar are protection of the public, to serve as a deterrent to other members of the profession from engaging in similar misconduct, to impose the appropriate discipline upon the errant lawyer, and to encourage reformation and rehabilitation. The Florida Bar v. Sommers, 508 so. 2d 341 (Fla. 1987). In the present case The Florida Bar is most concerned with exacting the appropriate discipline upon the

respondent that will encourage his reformation and protect the public. It is doubtful that payment of the bar's costs alone will reinforce this obligation. However, a ninety-one day suspension, with proof of rehabilitation and payment of the bar's costs should provide the respondent with the opportunity for the reformation that he clearly needs. "[I]f the discipline does not measure up to the gravity of the offense, the whole disciplinary process becomes a sham to the attorneys who are regulated by it". The Florida Bar v. Wilson, 425 So. 2d 2, 4 (Fla. 1983) .

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact and recommendation of payment of the bar's costs alone and instead impose a ninety-one day suspension, with proof of rehabilitation and tax costs against the respondent that currently total \$1739.84.

Respectfully submitted,

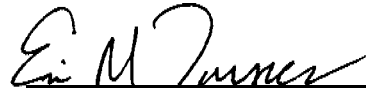
JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5600
ATTORNEY NO. 123390

JOHN T. BERRY
Staff Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5600
ATTORNEY NO. 217395

AND

Eric M. Turner
Bar Counsel
The Florida Bar
880 North Orange Avenue
Suite 200
Orlando, Florida 32801-1035
(407) 425-5424
ATTORNEY NO. 37567

By:



Eric M. Turner
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Initial Brief and Appendix have been sent by regular U.S. Mail to the Supreme Court of Florida, Supreme Court Building, 500 s. Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by regular U.S. Mail to the respondent, Royce Derrell Pipkins, 258 East Altamonte Drive, Post Office Box 162645, Altamonte Springs, Florida 32716-2645; and a copy of the foregoing has been furnished by regular U.S. Mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 28th day of August, 1997.

Respectfully submitted,



Eric M. Turner
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. 89,006

[TFB Case No. 96-30,802 (09E) (OSC)]

v.

ROYCE DERRELL PIPKINS,

Respondent.

APPENDIX TO THE FLORIDA BAR'S INITIAL BRIEF

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5600
ATTORNEY NO. 123390

JOHN T. BERRY
Staff Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5600
ATTORNEY NO. 217395

AND

Eric M. Turner
Bar Counsel
The Florida Bar
880 North Orange Avenue
Suite 200
Orlando, Florida 32801-1035
(407) 425-5424
ATTORNEY NO. 37567

APPENDIX INDEX

Report of Referee A-1

JUN 1 01997

THE FLORIDA BAR
ORLANDO

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

vs.

ROYCE DERRELL PIPKINS,
Respondent.

)
)
)
) Case No. 89,006
) [TFB Case No. 96-30, 802(09E)(OSC)]
)
)
)

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, a hearing was held on March 25, 1997. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to the Supreme Court of Florida, with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar
For The Respondent

Eric M. Turner
Royce Derrell Pipkins

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED: After considering all the pleadings and evidence before me, pertinent portions of which are commented on below, I find:

1. The Respondent utilized his trust account, number 2140000612000 maintained at First Union National Bank, in direct contradiction to Supreme Court Order in Case No. 82,144, January 12, 1995.
2. The Respondent admitted utilizing the trust account to collect previously earned fees from clients, which should have been appropriately placed in an office account. This resulted in the respondent commingling his client funds with his own in violation of rule 4-1.15(a).
3. The Respondent admitted utilizing the trust account to transact business on behalf of a corporate client, Infinity General, because it did not maintain its own banking account. The Respondent was also Secretary/Treasurer of the corporation,
4. The Respondent was paid to assume representation of Tina Gesper on January 4, 1995, although he did not file a Motion for Substitution of Counsel until January 13, 1995, prior to his receipt of the Supreme Court Order of January 12, 1995, suspending him. The Respondent's representation of Ms. Gesper does not appear to violate the Court's prohibition of accept new business.

III. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND IN CONTEMPT: The Respondent's admissions and actions clearly indicate he was in contempt of the court order of January 12, 1995

IV. RULE VIOLATIONS FOUND: 3-6.1(c)


v. RECOMMENDATION AS TO **DISCIPLINARY** MEASURES TO BE APPLIED: I recommend the Respondent pay costs of the proceeding. The Respondent was placed on probation for 18 **months** and it does not appear any other violations occurred during his probationary period. No further discipline is recommended.

VI. STATEMENT OF COSTS **AND MANNER** IN WHICH COSTS SHOULD BE TAXED: I find the following costs were reasonably incurred by The Florida Bar.

1.	Grievance Committee Level Costs	
a.	Transcript Costs	\$-0-
b.	Bar Counsel Travel Costs	\$-0-
2.	Referee Level Costs	
a.	Transcript Costs	\$337.20
b.	Bar Counsel Travel Costs	55.10
3.	Administrative Costs	\$750.00
4.	Miscellaneous Costs	
a.	Investigator Expenses	\$194.38
b.	Witness Fees	\$-0-
c.	copy costs	\$-0-
d.	Telephone Charges	\$-0-
e.	Auditor Costs	\$403.16
	Total Itemized Costs:	\$1,739.84

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 3rd day of June, 1997.



Randall G. McDonald - Referee

Original to Supreme Court with Referee's original file

Copy of this Report of Referee only to:
Eric M. Turner, Bar Counsel, The Florida Bar
Royce Derrell Pipkins
John T. Berry, Staff Counsel, The Florida Bar