

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

N. DAVID KORONES,

Respondent.

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CASE NO. 92,873

TFB NO. 97-11,179(6D)

98-11,073(6D)

**RESPONDENT'S ANSWER BRIEF**

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**STATEMENT OF THE FACTS AND OF THE CASE**

The Respondent, N. DAVID KORONES (hereinafter "David", "Respondent", or "Mr. Korones"), is 62 years of age and has been a resident of Pinellas County, Florida, since childhood. He received his Bachelor of Arts degree from Tulane University in 1960 and his Juris Doctor from Tulane University in 1962 (T-69). He was admitted to the Florida Bar in 1963 and is a Board-Certified lawyer in the area of Marital and Family Law. Respondent has a long history of a deep commitment to the Bar and to his community.

Respondent has a distinguished record as an attorney over the past thirty-six (36) years. He served on the Board of Governors of The Florida Bar from 1978 through 1992. He was President of his local bar association, the Clearwater Bar Association, from 1975 to 1976. He is a Fellow in the American Academy of Matrimonial Lawyers. A more detailed recitation of his Bar activities are set forth in greater detail in his curriculum vitae, that was accepted into evidence, and is attached hereto as Appendix 1.

Like his parents before him, Respondent's community activities are extensive. (T-68-69) The Temple B'nai Israel was formed in his living room when he was a young child. (T-79) He has served as the president of many civil and benevolent organizations, including the presidency of The

Clearwater Chamber of Commerce, the Temple B'nai Israel, Family Services, Visiting Nurses Association of Pinellas County, and Largo Little League. He is the former chairman of the HCA Largo Medical Center Hospital, The Greater Clearwater YMCA, and the March of Dimes Annual Drive. He is the recipient of the David Bilgore Memorial Award for Humanitarian Services, and the YMCA Order of the Red Triangle. His list of community activities goes on and on, and they are also set forth in greater detail in Appendix 1.

Against the backdrop of a person whose life stands as a model of service and giving to the Bar and community, Respondent has been charged with misappropriating approximately \$128,750.00 during the years 1989, 1990 and 1991, while serving as the Personal Representative of his uncle's estate.<sup>1</sup>

Following the charge of misappropriation, the Bar reviewed the Respondent's trust records to determine if any other funds had been converted. The audit, which was

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<sup>1</sup> The Bar makes a great deal out of both the finding of facts and amount of the Judgment entered against the Respondent in North Carolina. This reliance is misplaced and misguided. First, the Complaint served upon the Respondent, Bar Exhibit 18, claimed that the Respondent misappropriated \$130,000.00, an allegation admitted to by the Respondent herein. The ultimate Judgment entered in North Carolina however, was based upon an Amended Complaint, Bar Exhibit 27, that was not shown to have been served upon the Respondent, and that was entered without the presentation of any defense, and without the presence of the Respondent.

voluntarily complied with, revealed that no other funds were missing or misapplied. The examination however, failed to discover the presence of reconciling records for the required six (6) years. Based upon the Bar's stipulation that the failure to maintain these records were "minor technical violations", no further defense of that claim was offered. This type of violation typically, would warrant no more than a letter of advice.

The record below revealed that Respondent is a person whose life has been lived with the spirit of giving and commitment, the evidence also however, offered insight into a life troubled by health issues, marital difficulties, and great financial pressure that contributed to Respondent's misdeeds.

In mid-1985, Respondent began having health problems, which were ultimately attributed to atrial fibrillation, the pooling of blood in the heart. (T-78) Respondent suffered episodes of dizziness, lack of balance, high blood pressure and erratic heartbeats.<sup>2</sup>

In addition to his health problems, during that same time, Respondent was also under significant financial stress due, in part, to the expenses of educating three children in private schools; (T-83) and his marriage was on the rocks. (T-83) A dissolution of marriage proceeding was instituted against him in 1991, and it continued through 1995.

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<sup>2</sup> His cardiologist, Dr. Jerome Rygorsky testified that in conjunction with this his ailments, David was taking a variety of medications, including Xanax and Fiorinal, both of which had the potential to impair his judgment. Dr. Rygorsky expressed the view that those medications could have caused David to take a course of action while thinking that everything would work out ok, notwithstanding that the course of action was ill advised. (T-47)

In 1995, David had coronary bypass surgery.

In addition to that evidence, the referee was presented with an impressive group of witnesses who uniformly expressed great confidence in Respondent's legal ability, his honesty and integrity; and his ability to continue as an honorable member of the Bar, notwithstanding the charges herein.

Mr. Burton Young, a former President of The Florida Bar told the referee that he had known David for thirty (30) years, (I-36) closely for the last twenty (20). He became associated with David, on a regular basis, when David served on the Board of Governors of The Florida Bar, and he observed David many times at conferences and meetings of the American Academy of Matrimonial Lawyers (T-37). About David, Mr. Young said:

"I was impressed about his compassion" (T-37), "...and he was a fighter, and I perceived it to be, for making the practice and the profession better and very few people in our profession really step out in such a way for that, which is sad, and he impressed me. I thought he made a difference, positive difference, that's my point."

Mr. L. David Shear, likewise a former President of The Florida Bar testified that he had known the respondent since his boyhood days (T-157), and that they renewed their relationship after respondent became involved with The Florida Bar on the Board of Governors. With respect to David's honesty and integrity, Mr. Shear observed:

"...my contact with David has always been of the highest. I have always considered him a very special individual, a committed individual in this community, both in the legal community and in the, if I may say, the public community. I have known him to be a fine lawyer... I have always found him to be of the highest integrity professionally and personally, and I found him to be a person very caring and decent individual. Always understanding of other people. Always having a very good relationship with people. He



interacted well and always has with individuals. I have just the ultimate highest regard for David and for his integrity and his personal attributes. That is my perception of David."

With regards to whether or not David could continue to serve honorably as a member in good standing of The Florida Bar? Mr. Shear stated:

"A: I do. I don't say this lightly because I think what occurred is something that is very difficult, and it's not something that I would condone in any shape or form. I think it was a very unique blip in the screen of David's life that I would highly doubt could ever happen again. I believe based upon his past commitments and his past performance both as a lawyer and as a citizen, that he could continue to practice law. In fact, I felt comfortable enough with my regard to my belief in David that I have personally contributed to a fund to assist in his retribution (sic) of the family." (T-160)

Mr. Ky Koch, a former member of the Board of Governors of the Sixth Judicial Circuit, Past President of the Clearwater Bar Association, Chair of the Council of Bar Associations' President; former member of the Executive Council of the Florida Bar Family Law Section, and Chair-Elect of the Florida Bar Family Law Section, told the referee that he had known David for twenty-five (25) years. (T-28) He told the referee that David has been a part of just about every community activity that exists in Clearwater, Florida. That he has litigated against David on numerous occasions and that his experience in litigation with him was "very, very favorable" (T-29). With regards to David's trustworthiness, Mr. Koch said:

"David's integrity is beyond compare. When David tells me something, I know it to be true."

"He's quite a good lawyer. One of the things I have always admired about him is I think his primary objective in divorce work is to settle cases, and I

don't think that's true of most of our brethren in this particular field. We have butted heads in some nasty trials. We haven't gone out for a beer afterwards, but our relationship has been such that we could if we wanted to. David is a great lawyer."

Former Circuit Judge Clare Luten, informed the referee that she had known the respondent for about twenty-five (25) years, that she had seen him as an adversary, and as an attorney practicing in front of her when she served on the bench. She said:

"I found him to be one of the few lawyers that if he came in and said, you know, it was sunny on such a day, I knew that was so. I never had to doubt his veracity. Everything he told me was straight forward and accurate, and that's true when I was an attorney too." (T-143)

Judge Luten informed the referee that the respondent's reputation for honesty and integrity is "very good". With respect to whether or not he could continue to serve as a respected member of the Bar, Judge Luten advised:

"I think he could still be a very well respected and definitely well thought of professional in our business." (T-146)

Dr. Sidney J. Merin, a local psychologist, who has known the respondent for approximately fifteen (15) years, informed the referee that David is a particularly honest individual with a high degree of integrity (T-150); that David is the type of individual who did not play dirty, but liked to try to stay above the fray (T-151); and that David could continue to serve as a honorable member of the legal profession. Dr. Merin also told the referee that he would feel comfortable referring clients to David and that he would feel comfortable with the David handling his money. (T-151)

Mr. Stan Givens, an attorney Board Certified in Marital and Family Law, and a

Fellow in the American Academy of Matrimonial Lawyers, whose practice is located in Hillsborough County, testified that David has a reputation as a recognized scholar in the area of matrimonial and family law. (T-94) He said:

"I view this, knowing him and knowing his reputation, I view this as a bump in what otherwise is a very smooth path, professional and personal path that he has taken through life. I mean, there is a special place in heaven for people who have done the types of things that he has done with regards to giving back to the community and giving back to the profession. ...I think this is different than someone who has a history of malfeasance. I think certainly that there is... that he should continue to practice law, and I think he can be very productive in doing that." (T-96)

Numerous other witnesses testified, and additional evidence was submitted by way of affidavits, which were admitted into evidence by stipulation of the parties.

Ms. Arnelle M. Strand, an attorney whose offices are located in New Port Richey, Florida, and who has been licensed to practice since 1994, told the court:

"Notwithstanding the fact that he (respondent) has practiced thirty (30) years more than me, I have always found David to be courteous, professional, and competent. He has made himself available to me to provide with the benefit of his lengthy experience in the family law litigation as a mentor. I believe that it would be a lost to the public should the incident, which gave rise to The Florida Bar's complaint against Mr. Korones, result in his lost of his license to practice." (Strand Affidavit)

Ms. Julie Wilkensen, a CPA, Wharton School of Business graduate, owner of an insurance agency, mother of two, and former client of Mr. Korones informed the referee that David represented her in her dissolution of marriage action against her former husband, an attorney. The litigation was complex and conscientious, but she found David's representation to be ethical, prompt and conscientious. Ms. Wilkensen told the

referee "The Florida Bar needs lawyers like David Korones." (Wilkensen Affidavit)

Mr. Kenneth L. Weiss, an attorney licensed to practice law in the State of Florida since 1972, told the referee:

"David is an honest, hardworking, insightful lawyer who places the interest of his clients first, and has always been a great asset to the Bar, in his representation of his clients. I believe that the incident complained of herein is completely out of character for David, and that he can continue to be an asset to the community and to the Bar." (Weiss Affidavit)

Ms. Jane Arnold and Ms. Lois Arnold, have known David since he was 12 years old, they were his teachers in the seventh grade, and in junior and senior high school. Both informed the referee that they continue to place great confidence in respondent both in his capacity as an attorney and in his honesty and integrity.

After the presentation of the evidence, and following a period to reflect on same, the referee made findings of fact, and expressed conclusions of law in conjunction with her recommended order. With regards to mitigating factors, she found the following to be present:

Personal or emotional problems;

Good-faith efforts to make restitution or rectify consequences of misconduct;

Full and fair disclosure to disciplinary board;

Cooperative attitude towards proceedings;

Good character and reputation;

Physical or mental disability;

Impairment and remorse.

In addition to the listed mitigating factors; based upon her review of the evidence, personal evaluation of the witnesses, and her observation of the respondent, the referee also found:

"The respondent himself seemed almost crushed by the weight and terrible responsibility for what he had done." (Page 2, Report of Referee)

"Respondent truly believed that he would be able to pay back the money at the time he converted it to his own use." (Page 2, Report of Referee)

"The respondent is clearly remorseful for his transgression and there appears to be little likelihood that such a similar event would again occur." (Page 5, Report of Referee)

"Respondent has continued to practice law, and aided clients in the years that have passed since his improper disbursement of estate funds to himself, and his son, without negative incident." (Page 5, Report of Referee)

"Several individuals have loaned the respondent the money to make the full restitution deserved and requested by his relatives. These individuals expect to be repaid by respondent through his earnings in the practice of law, as he has no other assets than his skill as an attorney and his license to practice law." (Page 5, Report of Referee)

"Respondent has made plans for restitution, and is unquestionably remorseful for his deeds." (Page 7, Report of Referee)

"Suspending the respondent, a 61 year old man, for more than ninety (90) days would require him to go through the reinstatement process and prove rehabilitation, the court finds rehabilitation has been proven in this proceeding." (Page 7, Report of Referee)

"Suspension for longer than ninety (90) days would delay the time for respondent to begin repaying those who are loaning him the funds for restitution." (Page 7, Report of Referee)

"Respondent has suffered estrangement from his family, much embarrassment, legal expenses, and continuing personal stress as a result of his mistakes, and shall continue to suffer them." (Page 7, Report of Referee)

The referee reasoned that the incident complained of was isolated, unlikely to occur again, and that against the backdrop of respondent's exemplary record as a lawyer and as a citizen, a period of suspension of ninety (90) days was an appropriate punishment.

## **SUMMARY OF THE ARGUMENT**

Respondent was accused of and admitted to the misappropriation of \$123,750.00 from the Estate of Sol Korones, Respondent's uncle. The misappropriation occurred during years 1989, 1990 and 1991. The referee below recommended that the Respondent be suspended from the practice of law for ninety (90) days based upon a long list of well documented mitigating factors and based upon Respondent's lengthy distinguished record in the Bar and in his community. That recommendation should be accepted by this Court.

## ARGUMENT

**A NINETY (90) DAY SUSPENSION IS AN APPROPRIATE SANCTION FOR RESPONDENT'S CONDUCT, BASED UPON RESPONDENT'S EXEMPLARY BACKGROUND, BOTH IN THE CONNECTION WITH THE PRACTICE OF LAW AND HIS SERVICE AND COMMITMENT TO THE COMMUNITY, AND BASED UPON THE OTHER MITIGATING FACTORS.**

The purpose of attorney discipline is to protect the public from unethical conduct, and have a deterrent effect, while still being fair to the attorney. See The Florida Bar v. Neu, 597 So.2d 266 (Fla. 1992). As observed by the referee below, the establishment of an appropriate punishment therefore requires a balancing of the gravity of the offense, against the background and character of the accused, and an analysis of the circumstances under which the offense was committed.

While the Florida Standards for Imposing Lawyers Sanctions provide a format to determine the appropriate sanctions in attorney disciplinary matters, the Standards specifically recognize that they should be balanced against aggravating or mitigating circumstances.

It is without dispute that the misappropriation of funds by an attorney generally calls for the disbarment or a lengthy suspension of the accused attorney. The Florida Bar v. Golub, 550 So.2d 455 (Fla. 1989). On the other hand, this court has sanctioned lesser punishments where proper mitigating circumstances were shown to exist.

Before reviewing some of the cases where the record has been found to support a lesser punishment, it should be emphasized that there is no prior reported case from this court



where the accused attorney has had such an impressive record of service and giving to the Bar and to his community.

In The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983), the referee found some of the similar mitigating factors relied upon by the referee below as a basis for his recommendation of a three month suspension for the accused attorney's failure to file tax returns for twenty-two years. In Lord, the referee's list of mitigating factors was far less inclusive than the list present here, but included proof of rehabilitation, loss of professional esteem, and an inability to repay the funds without retention of a license to practice law.

Likewise in The Florida Bar v. Schiller, 537 So.2d 992 (Fla. 1989), this court specifically recognized that any presumption of disbarment in a case involving misappropriation of funds can be rebutted by evidence of mitigation.

Here, the referee found a long list of both mitigating factors and factors that support the logic of the recommended suspension. That list comes to this court with the presumption of correctness and is to be followed unless "clearly off the mark", The Florida Bar v.

Vinning, 707 So.2d 670 (Fla. 1998). That list includes:

Respondent's prior service to the Bar;

Respondent's contribution and commitment to his community;

Respondent's legal ability;

Respondent's reputation for honesty and integrity.

Respondent's age. Respondent is presently 62 years of age, any suspension of greater

than ninety (90) days will effectively end respondent's practice of law.

Restitution: Respondent has entered into an agreement with the beneficiaries of the estate to pay to them one hundred ten thousand (\$110,000) Dollars in full restitution.

Consummation of that restitution agreement is pending resolution of criminal charges presently outstanding against Respondent.

Without the practice of law, respondent cannot make restitution.

Respondent's impaired health at the time of the event.

The financial burdens upon the respondent at the time of the incident.

The length of time that has past since the event without other incident.

Respondent's remorse.

The fact that a similar incident is not likely to ever occur again.

Based upon far less compelling lists of mitigating factors, this court has approved sanctions short of that requested by the Bar. For example, in The Florida Bar v. Cramer, 643 So.2d 1069 (Fla. Sup.Ct. 1994), this court approved the referee's recommendation of a ninety (90) day suspension where the attorney who had encountered health problems, misappropriated clients funds.

Likewise in The Florida Bar v. Behrman, 658 So.2d 95 (Fla. 1995), this court affirmed the referee's recommend-ation of a ninety (90) day suspension of a 79 year old attorney who misapplied client's funds following his emergency suspension from the practice of law.

In The Florida Bar v. Farver, 506 So.2d 1031 (Fla. 1987), this Court imposed a one year

suspension from the practice of law for an attorney who misappropriated, and was charged with the theft of, funds from his law firm. In The Florida Bar v. Ward, 599 So.2d 650 (Fla. 1992), this court sanctioned a suspension of one year, for theft of funds from the law firm's operating account to repay the accused attorney's personal debts and purchase home furnishings.

Here, however, the Bar asserts that Mr. Korones' lengthy commitment to the Bar and to his community should have no bearing on the establishment of an appropriate sanction, and that misappropriation warrants disbarment in all cases. That position is contrary to the pronouncements of this Court, and contrary to logic.

The Florida Bar is now made up of over sixty thousand licensed attorneys. Regrettably, only a handful of those will ever establish themselves as givers of their time, energy and money like Mr. Korones has established himself. How a person has lived his life, the commitment he has made to community, friends and to his profession must have some bearing on the proper level of punishment when that person commits an isolated inappropriate act. No one is infallible. Here the referee appropriately balanced the aggravating and mitigating circumstances and crafted a resolution that does fairness to Respondent's relatives, the beneficiaries of the Estate of Sol Korones, to the Bar, to the public and to Mr. Korones.

## **CONCLUSION**

The referee's recommendation of a ninety (90) day suspension, based upon the unique circumstances of this case should be sustained by this Court.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. mail to David R. Ristoff, Esquire, The Florida Bar, Suite C-49, Tampa Airport, Marriott Hotel, Tampa, Florida 33607, this 6th day of May 1999.

MARTIN ERROL RICE, P.A.

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**APPENDIX 1**

CURRICULUM VITAE