

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. 92,873

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

98-11,073(6D)

vs.

N. DAVID KORONES,

Respondent.

REPLY BRIEF
OF
THE FLORIDA BAR

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SYMBOLS AND REFERENCES

In this Brief, The Florida Bar, Petitioner, will be referred to as “**The Florida Bar**” or “**The Bar**”. The Respondent, N. David Korones, will be referred to as “**Respondent**”.

“**TR**” will refer to the transcript of the final hearing before the Referee in Supreme Court Case No. 92,873 held on November 20, 1998.

“**RR**” will refer to The Report of Referee dated December 4, 1998.

“**RB**” will refer to Respondent’s Answer Brief in this matter.

“**TFB Exh.**” will refer to exhibits presented by The Florida Bar and “**R. Exh.**” will refer to exhibits presented by the Respondent at the final hearing before the Referee in Supreme Court Case No. 92,873.

“**Rule**” or “**Rules**” will refer to the Rules Regulating The Florida Bar. “**Standard**” or “**Standards**” will refer to Florida Standards for Imposing Lawyer Sanctions.

“**Stip.**” will refer to the Stipulation of Facts and Rule Violations agreed to by the parties in Supreme Court Case No. 92,873 on November 20, 1998.

STATEMENT OF THE CASE AND OF THE FACTS

Supreme Court Case No. 92,873

In his Answer Brief, Respondent discusses his admitted technical violations of trust accounting rules. Respondent states that “[t]his type of violation typically, would warrant no more than a letter of advice.” (RB p. 3) This is incorrect. A letter of advice would typically be sent to a Respondent when a grievance committee finds no probable cause for further proceedings. Specifically, it refers to a finding of no probable cause with a letter of advice. See Rule 3-7.4(K), Rules of Discipline. Certainly there was a basis for discipline. Respondent stipulated to trust accounting violations. (Stip. para. 9). These violations alone would warrant an admonishment under Standard 4.14 which states “[a]dmonishment is appropriate...where there is a technical violation of trust account rules....”

Respondent states that “[t]he misappropriation occurred during 1989, 1990 and 1991.” (RB p. 13). However, these misappropriations were not the end of Respondent’s misconduct. In July of 1994, Respondent created a misleading memo and a false final accounting and sent copies to the residual beneficiaries of the estate in an attempt to conceal his theft. (TFB Exh. 11). Sometime during the same year, Respondent converted an additional \$2,000.00 - \$3,000.00 of estate funds in order to pay off his son after his son threatened to report Respondent’s previous thefts of

estate funds to The Florida Bar. (TR p.102. lines 12-23, p.117 lines 7- p. 119 line 1; TFB Exh. 13).

Respondent claims that he has entered into an agreement with the beneficiaries of his uncle's estate to pay them one hundred ten thousand (\$110,000) dollars in full restitution. (RB p. 16) This is the same assertion he made at the final hearing on November 20, 1998. However, Respondent has yet to provide The Florida Bar with evidence that restitution has been made or that the judgement has been satisfied. Respondent has indicated that payment of restitution hinges on the outcome of criminal proceedings relating his conversion of estate funds. Even if full restitution is made, under Sanction 9.4 (a), forced or compelled restitution is a factor that should not be considered as either aggravating or mitigating.

The Florida Bar would also bring to this Court's attention an apparent typographical error in Respondent's Answer Brief. Respondent states that he served on the Board of Governors of The Florida Bar from 1978 through 1992. (RB p.1). According to Respondent's curriculum vitae, which is attached to Respondent's Answer Brief, the actual dates served were from 1978 through 1982. (RB Appendix 1).

SUMMARY OF ARGUMENT

The Referee's recommended discipline of a ninety (90) day suspension and costs is wholly insufficient based upon the facts of the case, the Florida Standards for Imposing Lawyer Sanctions, and relevant case law. The discipline recommended by the Referee is not sufficient to deter others from the same or similar conduct. Respondent intentionally misappropriated \$123,750.00 in estate funds entrusted to him, converted these funds to his personal use, and then by misrepresentation attempted to cover up his theft. The mitigating evidence in this case is not sufficient to outweigh Respondent's egregious acts of misconduct, and Respondent should be disbarred.

ARGUMENT

I. DISBARMENT IS THE APPROPRIATE SANCTION FOR RESPONDENT'S CONVERSION OF ESTATE FUNDS AND RELATED CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT, AND MISREPRESENTATION BASED ON THE RECORD, CASE LAW AND STANDARDS FOR LAWYER SANCTIONS

In support of his argument that mitigating factors in this case warrant a ninety-day suspension, Respondent cites this Court's decision in The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983). Respondent states that in Lord "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." (RB p.15). It is true that the referee in Lord recommended ninety days. However, this Court did not approve the referee's recommended discipline. Instead, this Court imposed a six month suspension over strong dissents by three Justices concerning the appropriate discipline.

Justices McDonald and Erlich would have disbarred Lord, and Justice

Alderman would have imposed a three year suspension. (Lord at 987). In his dissenting opinion, Justice Erlich stated, “[b]y imposing a mere token sanction against such misconduct we fail to deter others who may be tempted to behave similarly; far worse we diminish the credibility of the entire bar as a self regulating profession, ever vigilant to insure strict compliance to the values embodied in the Code of Professional Responsibility.” (Lord, at 987.) (Erlich, J., dissenting).

Justice McDonald stated that “[f]rom an ethical standpoint I see little difference in a lawyer converting a client’s trust funds, for which we regularly disbar, from a lawyer converting the funds belonging to the United States in the form of a wilful failure to send them in when due. Lord’s conduct was cumulative and gross and so far below what we expect of lawyers that he should forfeit the privilege of practicing law.” (Lord, at 987.) (McDonald, J., dissenting).

In Lord the conduct involved a failure to file tax returns from 1954 to 1976. (Lord at. 984). In 1980, Lord was charged with four misdemeanor counts for failing to file income tax returns. (Id.). Lord entered guilty pleas to all counts and was sentenced to one-year imprisonment (suspended except for ninety days), three years probation and four hundred hours community service. (Id.). Lord also plead guilty to The Florida Bar’s Complaint concerning his failure to file tax returns. (Id.) The referee considered numerous factors in mitigation including:

Lord's age and years of service to his clients, community, his Bar and his Country; the testimony of leaders of the Palm Beach County Bar and members of the community as to Lord's character and rehabilitation; that Lord had not pled or been found guilty of a felony; that the federal judge on his case was satisfied with probation and time served in a minimum security facility; personal hardships including loss of standing in the community, loss of his position in an outstanding law firm, embarrassment and personal tragedies; the necessity for Lord to continue practice in order to pay his debt to the government; and the fact that the Bar did not present argument in support of disbarment. (Id. at 985.)

The Respondent, in his fiduciary capacity as the personal representative of the Korones estate, engaged in dishonest, fraudulent, and deceitful conduct that included misrepresentations to the residual beneficiaries. Respondent's uncle, Sol Korones bestowed his trust upon Respondent to see that all the beneficiaries of his will were cared for after his death. Instead of abiding by the law and the terms of the will, Respondent betrayed his uncle's trust and misappropriated \$123,752.00 from his uncle's estate. Respondent converted these funds over a period of three years. Respondent then attempted to hide his wrongdoing by filing false documents and creating a false final accounting in order to deceive his relatives. Respondent should be disbarred for this misconduct.

CONCLUSION

Pursuant to the foregoing and the evidence, including the stipulation, the applicable Standards for Imposing Lawyer Sanctions, and the pertinent case law, Respondent should be disbarred. In addition, Respondent should be assessed The Florida Bar's costs in these disciplinary proceedings and be required to make full restitution prior to applying for readmission.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and seven (7) copies of The Florida Bar's Initial Brief has been furnished by Airborne Express to Debbie Causseaux, Acting Clerk, The Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399-1927; a true and correct copy by regular U. S. Mail to Martin Errol Rice, Esq., Counsel for Respondent, at 333 Third Avenue North, Suite 325, Post Office Box 205, St. Petersburg, FL 33731; and a copy by regular U. S. Mail to John Anthony Boggs, Esq., Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, all this _____ day of _____, 1999.

CERTIFICATION OF FONT SIZE AND STYLE

I HEREBY CERTIFY that this brief has been written in font size Times New Roman 14 pt.

David Robert Ristoff
Branch Staff Counsel