

IN THE
SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ROBERT L. TRAVIS, JR.,

Respondent.

Case No. 93,559

TFB File No. 98-00709-02

AMENDED ANSWER BRIEF

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A. CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Times New Roman 14.

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D. SUMMARY OF ARGUMENT

The referee's recommendation of a 90 day suspension effective from the date of the hearing on discipline (October 14, 1998) and 3 years probation is the appropriate discipline in this case. (Restated).

Respondent did not contest the complaint in this matter and the only issue to be resolved by the referee was a recommendation as to the appropriate discipline to be imposed. The referee heard from numerous witnesses and from the Respondent himself. After carefully weighing all the aggravating and mitigating factors, the referee determined the appropriate discipline in this case is a 90 day suspension to be followed by 3 years probation. This court should accept the referee's recommendation.

The witnesses who appeared on Respondent's behalf all spoke of his unselfish nature and his devotion to providing legal services to those who otherwise would be unable to afford counsel. Several witnesses also spoke of the way in which Respondent places service to the community over the pursuit of making money.

The Florida Bar asserts Respondent is somehow attempting to use his clinically diagnosed depression as a "shield" to protect him from discipline. This is not the case. The evidence of depression was presented to attempt to explain how Respondent could make such grievous mistakes in judgement after such a long and unblemished career as an attorney.

The evidence presented in this case overcomes the presumption for disbarment. Respondent has a long and distinguished career of service to the

public and to The Florida Bar. Respondent has received many pro bono awards and other recognition of his adherence to the principle of service above self.

E. ARGUMENT

The referee's recommendation of a 90 day suspension effective from the date of the hearing on discipline (October 14, 1998) and 3 years probation is the appropriate discipline in this case. (Restated).

The sole issue to be decided in this case is the appropriate discipline for Respondent's admitted misconduct. Respondent has never denied he committed the violations with which he was charged. The referee determined after hearing from numerous witnesses and from the Respondent himself that the appropriate discipline to be imposed in this case is a 90 day suspension to be followed by 3 years probation. This court should accept the referee's recommendation.

One theme which ran constant throughout the testimony of all Respondent's witnesses was the unselfish nature of Respondent and his devotion to providing legal services to those lower-income people who would otherwise be unable to afford legal counsel. Perhaps the best way to capture the essence of the man and the attorney, Robert L. Travis, Jr., is to quote from the testimony of those witnesses who appeared on his behalf before the referee. For example, the Honorable Nikki Ann Clark referred to Respondent as "the Dean" of the Tallahassee Barristers Association. (Tr-12). In addition, she described Respondent as being a "very able, very capable" attorney who was always very candid with the court. (Tr-13).

Bishop Marvin Alls spoke of Respondent as being "the onliest lawyer that I have ever used that was able to help me and my family and my church." (Tr-18). In touching upon the unselfish nature of Respondent, Bishop Alls observed that "so many times Travis would go overboard and hurt his self to help someone else." (Tr-19).

Jack Harnett, who has known Respondent since Respondent first moved to Quincy, Florida approximately 20 years ago, spoke of how "impeccably honest" Respondent is (Tr-32) and how Respondent always "dealt with his clients very fairly and very honestly." (Tr-34). In trying to explain how Respondent had so uncharacteristically detoured from the path of honesty, Mr. Harnett stated that "this transgression is one of the mind and not of the heart." (Tr-37).

The Honorable George F. Reynolds, III, who serves on the board of the John G. Riley House Foundation with Respondent, noted how Respondent always "did a good job in representing a number of people who, without his presence, would have gone unrepresented in my opinion." (Tr-47).

The Honorable N. Sanders Sauls, before whom Respondent has appeared innumerable times, especially in Gadsden County, Florida, observed that Respondent is the kind of lawyer a judge likes to see because the court can rely upon his representations. Judge Sauls also observed that "there would be a substantial detriment to the ability of a lot of folks in Gadsden County who are poor folks that wouldn't have representation" if Respondent were to be disbarred. (Tr-57).

The unselfish nature of Respondent's practice as an attorney was also reflected in the comments of Benjamin Crump, President of the Tallahassee

Barrister's Association. Mr. Crump noted that Respondent "is one of those type of lawyers who he thinks it's just as important to serve the community as to make money." (Tr-59). Mr. Crump felt that the legacy Respondent gives to the Barrister's Association is one of service and one of trying to help people. (Tr-60).

The report of referee referred to how one of Respondent's colleagues testified that approximately one year prior to the final disciplinary hearing one of Respondent's cases which the colleague reviewed was not up to the standard of Respondent's normal practice. (RR-8). The colleague referred to was Valarie Janard. Ms. Janard testified she began sharing office space with Respondent in 1982. (Tr-64). One thing that impressed Ms. Janard was Respondent's community and volunteer service. As she noted, "I don't think I've ever been in another lawyer's office and seen so much evidence of community service and volunteer service." (Tr-66). In addition, Ms. Janard felt it was very obvious that Respondent was a very committed person and was not a lawyer because he wanted to get rich. (Tr-66).

Ms. Janard described a change which occurred in Respondent because of the bad influence of Luther Smith, a now disbarred attorney. As Ms. Janard described it, Respondent is the kind of person who if there is a wounded bird lying on the front lawn he would pick it up. Mr. Smith was Respondent's wounded bird and Respondent took him in. (Tr-68).

As noted by the referee, when Ms. Janard reviewed Respondent's file she was surprised at the quality of work. In her opinion, it wasn't the Bob Travis she

knew. (Tr-70). She also described Respondent as one who has never been "self-motivated, deceitful, out for his own personal gain." (Tr-73).

One thing which became clear at the referee hearing was the loyalty people have toward Respondent despite his admitted misconduct. One of those individuals who has remained loyal and supportive of Respondent is Kristine Knab, Executive Director of Legal Services of North Florida. Ms. Knab hired Respondent as a paralegal in the Quincy office of Legal Services of North Florida when she learned he had been suspended from practicing. (Tr-93-94). When asked how she could hire Respondent to work in her organization while allegations of misconduct were pending against Respondent, Ms. Knab responded, "[i]f I had any doubt whatsoever about his honesty or integrity, I would not have called him or offered him that opportunity." (Tr-95).

The initial brief of The Florida Bar asserts "Respondent's claim of depression should not be used as a shield to protect him from his misuse of client funds, particularly where there is no evidence to link the effects of depression to the taking of the funds." (IB at 12). Respondent is in no way using his clinically diagnosed depression as a "shield" to protect him from discipline. The purpose of presenting the testimony regarding Respondent's depression was to attempt to explain how a man who has devoted his entire professional life to helping provide legal services for free or little cost to those less fortunate, who has been a leader of the African-American Bar, and who has performed so many other good works could suffer such a fall from grace.

According to Dr. Dejene Abebe, who was not compensated in any way for his testimony (Tr-123), Respondent suffered from major depression for at least

7 to 8 months prior to October 1998. (Tr-108). Dr. Abebe feels Respondent suffered from milder depression before that time. One out-growth of depression is lack of good judgement. (Tr-110). Since prescribing medication to Respondent, Dr. Abebe has seen noticeable improvement in Respondent's attention span, memory, energy and motivation. (Tr-113).

This court is the final arbiter in matters of attorney discipline. While there is no question there is a presumption for disbarment in cases of this type, this presumption may be overcome. The testimony of those witnesses listed above and the referee's recommendation should carry great weight with this court, but the court should also consider the history of Robert L. Travis, Jr.

Respondent is a former executive director of Florida Legal Services. Under his directorship, the program expanded from 21 counties to 62 counties in the state of Florida. (Tr-143). Respondent helped create Legal Services of North Florida. (Tr-144). He also served on the board of Florida Rural Legal Services. (Tr-144).

Respondent has been active in many Florida Bar activities. He served on the Legal Aid Committee, the Student Education and Admissions to the Bar Committee, and on The Florida Bar Foundation. (Tr-147). Respondent also served on the Judicial Nominating Commission for the Second Judicial Circuit. (Tr-148). Respondent is a past recipient of the Second Judicial Circuit Pro Bono Award (Tr-148) and The Florida Bar Presidential Pro Bono Award. (Tr-150).

As Valarie Janard stated, Luther Smith was the wounded bird Respondent took in. Unfortunately for Respondent, Mr. Smith was not simply nursed back to health and allowed to fly off again on his own. Instead, Mr. Smith played a part in Respondent's troubles.

According to Respondent, he had known Luther Smith for many years. Luther Smith came to Respondent because he had a drug problem and needed work. (Tr-159). Respondent agreed to run Mr. Smith's funds through Respondent's trust account because of Mr. Smith's drinking and drug problems. (Tr-161).

In 1996, Mr. Smith came to Respondent in need of funds because his car was being repossessed. Mr. Smith told Respondent a check was in the mail and he wanted funds in advance. After verifying that the check was coming, Respondent advanced fees to Mr. Smith. (Tr-162). Unfortunately, this began a pattern of Respondent paying bills for his office, seeking reimbursement from Luther Smith, being told he didn't have the money, to take it out of this check or that check, and Respondent would then do so. (Tr-163). When Luther Smith finally left the office, he owed Respondent about \$20,000. (Tr-164).

Significantly, the Bar investigation arose from a complaint by one of Mr. Smith's clients that Mr. Smith had received settlement money and not paid a doctor. This complaint led to the discovery Mr. Smith was using Respondent's trust account. None of Respondent's clients had complained about any missing funds. (Tr-169-170).

The initial brief of complainant cites cases which support disbarment. Respondent, on the other hand, cited several cases to the referee which support a sanction of less than disbarment in this case. The referee considered those cases, as well as the mitigating and aggravating factors set forth in the report of referee, and determined disbarment was not appropriate. In addition, the referee

determined a suspension requiring rehabilitation was not warranted. This court should follow the referee's recommendation.

The Florida Bar v. Cramer, 643 So. 2d 1069 (Fla. 1994) supports the referee's recommendation. In *Cramer*, the respondent used trust funds for personal use, wrote numerous checks which were returned due to insufficient funds, and deliberately misused his trust account in an attempt to mislead the Internal Revenue Service. *Id.* at 1070. This court suspended Mr. Cramer from the practice of law in Florida for 90 days. *Id.* at 1071.

The Florida Bar v. Mitchell, 635 So. 2d 414 (Fla. 1994) also supports a 90 day suspension. The respondent in *Mitchell* was charged in a 6 count complaint with various trust account violations. *Id.* at 415. Mr. Mitchell had previously received a private reprimand for failing to maintain appropriate trust accounting records and a public reprimand plus probation for the same offense. *Id.* at 416. Mr. Mitchell likewise received a 90 day suspension. *Id.* at 416.

One final factor this court should consider is the true length of Respondent's suspension. While the report of referee recommended the suspension commence October 14, 1998, Respondent has already been suspended well over 90 days. In Case Number 93,036 this court entered an order temporarily suspending Respondent from the practice of law effective 30 days from June 5, 1998. This suspension remains in effect.

F. CONCLUSION

For the reasons stated above, Respondent requests this court follow the recommendation of the referee and impose a 90 day suspension to be followed by 3 years of probation with specified conditions.

Respectfully submitted,

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G. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery/U.S. mail to Donald M. Spangler, Bar Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32301; and John A. Boggs, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32301, this _____ day of April, 1999.

RICHARD A. GREENBERG

xc: Robert L. Travis, Jr.