

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. 93,559

v.

TFB File No. 98-00709-02

ROBERT L. TRAVIS, JR.,

Respondent.

REPLY BRIEF

DONALD M. SPANGLER
Bar Counsel, The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850)561-5845
Attorney Number 0184457

JOHN ANTHONY BOGGS
Staff Counsel, The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850)561-5600
Attorney Number 253847

JOHN F. HARKNESS, JR.
Executive Director, The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850)561-5600
Attorney Number 123390

TABLE OF CONTENTS

TABLE OF CITATIONS	-ii-
ARGUMENT	1
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF CITATIONS

<u>Cases Cited</u>	<u>Page Number</u>
<i>The Florida Bar v. Aaron</i> , 606 So 2d 623 (Fla. 1992)	2
<i>The Florida Bar v. Anderson</i> 594 So 2d 302 (Fla. 1992)	2, 4
<i>The Florida Bar v. Cramer</i> 643 So 2d 1069 (Fla. 1994)	1
<i>The Florida Bar v. Mitchell</i> 645 So 2d 414 (Fla. 1994)	1, 2

ARGUMENT

Respondent relies upon *The Florida Bar vs. Mitchell*, 645 So2d 414 (Fla.1994) and *The Florida Bar vs. Cramer*, 643 So2d 1069 (Fla. 1994) in support of his argument that the referee's recommendation of a ninety day suspension should be the appropriate discipline in this case. These cases, however, are factually distinguishable from the case at bar. In neither of these cases was there any injury to a client, whereas in the case at bar there was repeated use of a number of clients' settlement funds which were being held in trust for the payment of medical fees for which the clients remained liable (TR 174-175, 225), nor was there any effort made for restitution to those effected clients (TR 225), unlike the single incident of misuse of client funds found in *Cramer*.

The *Cramer* case involved the respondent's use of his trust account to conceal his own funds from IRS scrutiny, by commingling his own funds with client funds. In the single isolated incident of misuse of client funds cited, it was determined that he had replaced those funds out of his own pocket and the client thus was unharmed, unlike this case where there has been no attempt at restitution (TR225).

In *Mitchell* the trust account violations enumerated were found to be technical in nature and arose out of inadvertence or negligence, unlike the case at bar where the

misappropriation of the funds was a part of a continuing and knowing pattern that took place over a period of years (TR 185, 189, 225).

Respondent's Answer Brief is replete with examples of the supportive testimony given by character witnesses in mitigation, including several members of the judiciary. This Court is urged to overlook the intentional, deliberate, continuing nature of the admitted misconduct and abuse of the client's trust, and concentrate on respondent's good works, contrary to the concept expressed in *The Florida Bar v. Aaron*, 606 So2d 623 (Fla.1992) at page 624 where it was stated ". . .(His) good work does not overcome his pattern of misusing client's funds, one of the most serious offenses a lawyer can commit."

That portion of the mitigation evidence which concentrates on the need for respondent's legal services in the African-American community and among the less affluent members of the community is emphasized in the Answer Brief, but respondent overlooks the fact that it was those same, deserving members of that community whose trust was abused and whose funds were misappropriated to respondent's own use. Further, this Court has taken the position, as stated in *Mitchell* (*supra*, at page 415) that a respondent's ethnic status and role in the ethnic community cannot serve as a mitigating factor. [Also citing *The Florida Bar vs. Anderson*, 594 So2d 302 (Fla.1992) for the same proposition.]

It is difficult to accept the assessment of respondent's character, such as is described by witness Janard as never having been "self-motivated, deceitful , out for his personal gain.", when contrasted with the fact that his practice was to take the funds preserved for payment of clients' medical providers, negotiate a reduction of the medical bills, then convert that savings to the personal use of himself and his family, rather than pass it back to the needy members of the community he represented (TR 174-175). It is equally difficult to reconcile the testimony of others, such as the quoted testimony to the effect that "his transgression is one of the mind, not the heart" when the transgressions were part of an ongoing scheme that lasted for at least the two year period studied by The Florida Bar's audit and, by the respondent's own admission, which had continued beyond that two year period (TR189).

Finally, respondent advances the suggestion that his troubles began out of a humanitarian gesture toward a colleague, described as a "wounded bird", Luther Smith, conveniently overlooking the fact that it was respondent who permitted Smith's misuse of his trust account, and now seeks to use Smith as a scapegoat. If the rehabilitation of this colleague was his initial motivation, there were other methods by which the same end could have been accomplished, such as assisting Smith to establish his own trust account, or establishing a separate account for the deposit of

the Luther Smith trust funds, rather than commingling Smith's funds with those of his own clients. And ultimately, as observed in the Anderson opinion, supra,

"We are aware of Anderson's allegations regarding the purported corruption of the Tampa Housing Authority. Even if we assume these allegations to be true, they do not excuse Anderson's conduct. No one is privileged to commit crime merely because others are doing so." (594 So2d 302, 303)

Respondent cannot excuse his own misconduct merely because another was doing so.

CONCLUSION

The mitigation evidence is not sufficient to overcome the presumption of disbarment. Respondent should be disbarred with leave to apply for readmission after five years.

Respectfully submitted,

DONALD M. SPANGLER
Bar Counsel, The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850)561-5845
Attorney Number 0184457

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed by first class mail to Richard A. Greenberg, Esquire, Counsel for Respondent, at Post Office Box 925, Tallahassee, Florida 32302, on this _____ day of _____, 1999.

I also certify that this brief has been printed using 14 point proportionately spaced Times New Roman font.

DONALD M. SPANGLER, Bar Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850)561-5845
Attorney Number 0184457

cc: Director of Lawyer Regulation