IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

IRIC VONN SPEARS,

Respondent.
_____/

Case Nos. 94,769 & 96,180
TFB Nos. 1998-11,393(6E)
1999-11,472(6E)

REPLY BRIEF
OF
THE FLORIDA BAR

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SYMBOLS AND REFERENCES

In this Reply Brief, The Florida Bar, Complainant, will be referred to as "The Florida Bar" or "The Bar". The Respondent, Iric Vonn Spears, will be referred to as "Respondent".

The Amended Report of Referee in Supreme Court Case Nos. 94,769 and 96,180, dated February 4, 2000, will be referred to as "ARR". The Florida Bar's Petition for Review, dated February 9, 2000, will be referred to as "PR".

The Florida Bar's Initial Brief will be referred to as "IB". The Respondent's Reply (Answer) Brief will be referred to as "RB".

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

STATEMENT OF THE CASE AND THE FACTS

Respondent objects to the Bar addressing the reasonableness of the Referee's findings of fact, stating that the Petition for Review of The Florida Bar did not specifically indicate that the Bar was contesting both the recommended discipline and the findings of fact. (RB, p.4). Rule 3-7.7(c)(1), Rules Regulating The Florida Bar, does indeed indicate that the Petition for Review shall specify the portions of the Report of Referee to be reviewed. The Petition of The Florida Bar indicates that the recommended discipline of the Referee is insufficient in light of the evidence before the Referee, as well as inconsistent with the Florida Standards for Imposing Lawyer Sanctions. (PR). This statement is sufficient notice to the Respondent that both the conclusions drawn by the Referee from the evidence before him and the recommended discipline are being challenged.

Issues III and IV of the Bar's Initial Brief address whether it is properly considered as mitigation that prior to entering into the consent judgment for a three year suspension, the Bar did not detect Respondent's failure to insure that restitution had been made, and that the Bar did not update the audit before the consent judgment was finalized to insure that Respondent did not convert additional money after the Bar audit was completed. Those are not factual

issues. It was mitigating to the referee that the Bar relied on, and was misled by, documents given to the Bar by Respondent. The Bar's discussion of discipline (mitigation) should not be stricken even if Respondent were to otherwise prevail on his argument that the Bar should not be able to argue facts in this appeal. The statement by Respondent that "the Referee recommended that Respondent be suspended for three years as he was in the earlier Case Number 92,180 (RB, p. 4)", is potentially misleading. The Referee found that the discipline received by Respondent in a prior consent judgment for a three-year suspension was sufficient to cover the additional offenses, (ARR, p. 4). In other words, he found that no separate discipline was warranted for Respondent's misconduct. He found this after noting that the Carey matter was deplorable and in violation of several trust accounting rules. (ARR, p. 3). In his report, the Referee did not specifically address the fact that the Carey money was misappropriated after the Bar had completed its audit. The Referee did not note that the Carey money was taken after the time that Respondent had the Bar believing he had repaid all money previously taken (when Respondent was in his state of "accidental non-repayment"). The referee does not address Respondent's claim that he still did not reconcile trust accounts, even though Respondent had blamed his previous failure to reconcile for the earlier misuse of client money. Of course, reconciling the trust account would

not have shown the Carey misappropriation, since the money was placed into Respondent's general account.

The referee found that Respondent's claim in the disciplinary hearing that his client, Carey, knew that Respondent had received the settlement (trust) money and was attempting to negotiate outstanding medical bills was totally undermined by the evidence. (ARR, p.3). The Referee recommended no separate or additional discipline.

SUMMARY OF THE ARGUMENT

There was sufficient notice to Respondent that The Florida Bar was going to contest the Referee's opinion based on the evidence. Given the referee's factual findings, the recommendation of no additional discipline is erroneous.

The referee's finding that the respondent should receive no discipline for misleading the Florida Bar about making restitution is clearly erroneous,

It is inappropriate to consider as mitigating that Respondent concealed his misconduct, and that his failure to pay restitution and his additional misappropriation were not more promptly detected.

ARGTJMENT

I. THE REFEREE'S FINDING THAT THE RESPONDENT SHOULD RECEIVE NO DISCIPLINE FOR MISLEADING THE FLORIDA BAR ABOUT MAKING RESTITUTION IS CLEARLY ERRONEOUS

The arguments of Respondent and The Bar are clearly articulated in their respective Initial Brief and Answer ("Reply"), and will not be rehashed in detail.

The Bar would simply point out that Respondent relies on a claimed oversight to explain not mailing any of the restitution checks and their accompanying letters. Those checks and letters had been shown to the Bar as proof of having made restitution, as a basis for arguing mitigation during consent judgment negotiations. Respondent relies on Bar misstatements about outstanding trust balances to support his claim that he believed restitution had been made. He ignores the fact that in establishing the trust balances, the Bar had taken into account the restitution checks supposedly given to clients and their accompanying transmittal letters, non of which Respondent had actually sent. Respondent explains away his claimed failure to detect that he had not mailed the checks by alleging continuing failure to follow trust accounting procedures, leading him to fail to detect that the money had not been repaid as he claimed to the Bar.

Respondent converted the Carey trust money after the Bar audit was completed. He seems to suggest that his failure to promptly repay that money is also somehow The Bar's fault for not detecting his post-audit misappropriation. That misappropriation he, of course, attributes to just another instance of carelessness. There is no reasonable inference that Respondent merely (emphasis added) relied upon the representations made by The Florida Bar in his Consent Agreement, as Respondent suggests. (See RB, p. 11)

II. THE REFEREE'S RECOMMENDATION OF NO ADDITIONAL DISCIPLINE IS NOT APPROPRIATE UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE.

As Respondent notes, The Florida Bar v. Korones, 25 Fla. L. Weekly S56 (Fla. Jan. 27, 2000), can be distinguished from the case at Bar. That does not negate the principle for which Korones is cited, which is that clients place their lives, their money, and their causes in the hands of their lawyers with a degree of blind trust, and that the direct violation of this trust by stealing client's money, compounded by lying about it, mandates a punishment commensurate with such abuse, Id. at 57, citing The Florida Bar v. Ward, 599 So.2d 650, 652 (Fla. 1992). In the instant case, Respondent stole Carey's money, even after Respondent had been audited, and then Respondent lied to the Referee in claiming he was negotiating Carey's medical bills and that that was the reason for not disbursing the funds. The Referee rejected Respondent's argument, Respondent repaid Carey the money that had been taken, but only after Respondent found he was being investigated.

Respondent notes that other cases cited by The Bar can also be distinguished from the instant case. That is true. The Bar is unaware of a case that is factually similar to the instant case (misuse of client money, not returning money to clients after representing to the Bar in writing that you had done so, converting more

money after a disciplinary audit was completed). Therefore, the Bar has cited cases for the principles for which they stand, not because they are indistinguishable from the instant case.

Respondent cites The Florida Bar v. Boland, 702 So.2d 229 (Fla. 1997), as a case in which an attorney who engaged in more egregious conduct received less than disbarment. Boland was a severe alcoholic. The Court noted that they would be inclined to consider a harsher discipline than the two year suspension given, but that in light of the disability or impairment considered in mitigation, they would accept the two year recommendation of the referee. The referee had found that Boland had a physical or mental disability or impairment. Id. at 23 1 . In the instant case, Respondent has not claimed a mental or physical disability or impairment.

The Florida Bar v. Corces, 639 So.2d 604 (Fla. 1994), is cited by Respondent as an example of a theft of $7,000 resulting in a two-year suspension rather than disbarment. Trust money was taken by Corces to pay personal debts, then repaid prior to the Bar being aware of the conversion, The referee in Corces found that the misuse of client money was an isolated incident, and that Corces cooperated with the Florida Bar. In the instant case, Respondent cannot rightfully claim that his misconduct was an isolated incident, nor that the money was repaid prior to the Bar and other authorities detecting the misappropriations.

The Florida Bar v. Krasnove. 697 So.2d 1208 (Fla. 1997), cited by Respondent, is clearly distinguishable from the case at Bar. Krasnove, as Respondent reports, made restitution, cooperated with the Bar, and exhibited remorse. In the instant case, Respondent claimed to make restitution at first, then did so only after his failure was detected. In the Carey instance, he made restitution only after he found out that the State Attorney was investigating him. The Referee in the instant case did not find remorse as a mitigating circumstance, nor did he note cooperation with The Florida Bar. Other differences are glaring: there is no indication that Krasnove misappropriated trust money of several different clients, that he took money after a Bar audit, nor that he "neglected" to send out restitution checks to clients after providing "proof' that he had done so to The Florida Bar as part of working out a consent judgment.

Respondent suggests that he received more discipline in the Consent Judgment than he should have received, perhaps suggesting that therefore, any additional misconduct merely got Respondent to where he should have been for the discipline in the first case. The issue is not what Respondent should have received in the Consent Agreement, which he entered into freely and of his own accord. The issue is whether there should be further discipline for the misrepresentations during the process of negotiating the Consent Judgment, for the additional

misappropriation after the audit which led to the Consent Judgment, and in light of Respondent's restitution occurring only after it became a forced choice.

CONCLUSION

For Respondent to receive no discipline for his misconduct which was not part of the prior Consent Judgment is clearly inappropriate. The correct discipline in the instant case is disbarment.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of this brief have been provided by regular U. S. mail to **The Honorable Thomas D. Hall,** Clerk, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, FL 32399-1927; a true and correct copy by regular U. S. mail to **Scott K. Tozian, Esq.,** 109 North Brush Street, Suite 150, Tampa, FL 33602; 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 19 of May, **2000.**

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CERTIFICATION OF TYPE SIZE AND STYLE
CERTIFICATION OF VIRUS SCAN

Undersigned counsel does hereby certify that this brief is submitted in 14 point proportionally spaced Times New Roman font, and the computer disk filed with this brief has been scanned and found to be free of viruses, by Norton Antivirus for Windows.

Thomas Edward DeBerg