IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JAMES HARVEY TIPLER,

Respondent.
_____/

Case No. SC06-1775

TFB File Nos.
2004-01,318(1B), 2005-00,311(1B)
2005-00,457(1B), 2005-00,481(1B)
2005-01,037(1B), 2006-00,301(1B)
2006-00,429(1B), 2006-00,591(1B)

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to R. Regulating Fla. Bar 3-7.6, the following proceedings occurred:

On August 31, 2006, The Florida Bar filed its Complaint against Respondent in these proceedings. After a referee was appointed on September 19, 2006, Respondent filed a Motion to Disqualify on November 21, 2006, which was denied on November 29, 2006. The Florida Bar filed a Notice of Application for Default on February 8, 2007, and a Motion for Default on March 7, 2007. The Referee entered a Default against

Respondent on March 12, 2007, and a final penalty hearing was scheduled for April 18, 2007.

Respondent filed a Motion from Relief from Default on March 21, 2007. The Florida Bar submitted an Amended Notice of Final Penalty Hearing setting the final penalty hearing for June 29, 2007. On April 30, 2007, Respondent filed a Corrected Motion to Disqualify, which was denied on May 7, 2007.

The Florida Bar served Respondent with a Request for Admissions, a Request for Production of Documents and a First Set of Interrogatories on May 9, 2007, in reference to the penalty hearing. Respondent filed a Motion for Rehearing on his Motion to Disqualify on May 15, 2007, which the Referee denied on May 29, 2007. The Florida Bar filed its Objection to Respondent's Motion for Relief from Default on May 18, 2007.

On June 5, 2007, Respondent submitted a third Motion to Disqualify to which The Florida Bar filed its Reply on June 11, 2007. On June 11, 2007, Respondent also filed his Response to The Florida Bar's Request for Admissions, but failed to respond to any other discovery requests.

After a second Referee was appointed to this case, The Florida Bar set down the final penalty hearing for September 29, 2007. Respondent filed a Notice of Hearing on Motion to Overturn Default on September 4, 2007. Respondent subsequently filed on September 17, 2007, a Motion for Continuance and Motion for Mediation as well as a Notice of Hearing on these two motions and his default motion. After the hearing on September 19, 2007, the Referee denied Respondent's Motion to Overturn Default,

reserving a final decision on Respondent's Motion for Continuance and for Mediation, as well as The Florida Bar's Motion in Limine, until the final hearing date. On September 26, 2007, a final penalty hearing was held. At the hearing, Respondent did not present any mitigation evidence, and the motions became moot.

All of the aforementioned pleadings, responses thereto, transcripts, affidavits, exhibits in evidence, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida, and the Rules Regulating the Florida Bar.

B. Narrative Summary Of Case.

Based on the allegations in the Florida Bar's Complaint that were deemed admitted pursuant to the Order Granting the Florida Bar's Motion for Default, I would make the following findings of fact:

As to TFB File No. 2004-01,318(1B)-Carol K. Stout

1. On or about August 1, 2002, Respondent was hired by Carol Stout to represent her on a first offense DUI case.

2. Respondent orally represented to Ms. Stout that his attorney's fee was $5,000 which she paid in full via cashier's check dated August 7, 2002.

3. In September 2002, Respondent advised his client that she needed

to immediately overnight an additional $10,000 to him to hire experts to assist him in the defense of her DUI charge.

4. On September 25, 2002, Ms. Stout sent a cashier's check for costs, in the amount of $10,000, to Respondent for the specific purpose of paying experts to attack the Intoxilizer machine results in her DUI case.

5. Respondent met with Ms. Stout in October 2002, and informed her that he needed another $10,000 in costs for the specific purpose of posting a cash bond so that he could have the Intoxilizer machine inspected by experts.

6. Respondent assured Ms. Stout that the $10,000 would be refunded after the inspection was completed.

7. Relying on his assurances that the $10,000 cash bond would be refunded, Ms. Stout gave Respondent a personal check for $10,000 on October 18, 2002.

8. After October 2002, despite numerous attempts by Ms. Stout and her Tennessee lawyer, Charles C. Drennon III, Esq., Respondent failed to communicate with his client or her attorney to keep her informed on the status of her case.

9. On February 10, 2003, Mr. Drennon wrote to Respondent requesting the return of the cash bond to Ms. Stout.

10. On February 13, 2003, Respondent sent a letter via facsimile to Mr. Drennon, indicating that he was going to meet with an expert witness to discuss

the case, and requested another $10,000 for additional expert fees from Ms. Stout.

11. On February 14, 2003, Mr. Drennon sent an email to Respondent advising him not to engage an expert witness in Ms. Stout's DUI case.

12. Respondent filed a Motion to Inspect the Intoxilizer Machine on February 14, 2003, and, after a hearing on February 18, 2003, it was denied by the court.

13. On February 27, 2003, Mr. Drennon, sent a letter to Respondent via facsimile advising that Ms. Stout had decided to terminate Respondent's legal services, requesting again the refund of the $10,000 cash bond, and the balance of the $15,000 attributable to unearned fees and unexpended costs.

14. When Respondent failed to return the cash bond or the balance of the unearned fees and unexpended costs to Ms. Stout, Mr. Drennon sent a second letter dated May 1, 2003, requesting a reply by May 5, 2003.

15. In a letter dated May 1, 2003, to Mr. Drennon, Respondent claimed that he had used the $10,000 for the cash bond to pay expert fees, but, to date, has provided no documentation to The Florida Bar to substantiate his claim.

16. On June 30, 2003, Ms. Stout appeared in court with another attorney who was paid $2,500 to try her DUI case, and who was successful in having her first offense DUI charges dismissed.

17. The Florida Bar's auditor conducted an audit of Respondent's trust account for the period November 1, 1999, through December 31, 2003.

18. The Florida Bar's auditor concluded that the $10,000 for the expert fees and the $10,000 for the cash bond paid by Ms. Stout were trust funds and should have been deposited into Respondent's trust account.

19. After examining the bank statements and other financial documents presented by Respondent, The Florida Bar's auditor found no deposits into Respondent's trust account from September 2002 through December 2003 on behalf of Ms. Stout.

20. Respondent failed to deposit the $10,000 in costs for the expert fees and the $10,000 in costs for the cash bond into his trust account.

21. Contrary to the representations he made to his client, Respondent failed to use the $10,000 for the specific purpose of posting a cash bond relating to the Intoxilizer machine.

22. Further, documentation provided to The Florida Bar by Respondent indicated that only $1,000 of the $10,000 in costs was paid by Respondent to an expert witness for his review of Ms. Stout's case.

23. If, as Respondent claimed in his response to The Florida Bar, the $25,000 paid by Ms. Stout was for his attorney fees, then Respondent charged and collected a clearly excessive fee, because the fee for a first offense DUI exceeded a reasonable fee for services provided to such a degree as to constitute clear overreaching or an unconscionable demand.

24. Respondent also charged and collected a clearly excessive fee

because the fee was sought and secured by means of intentional misrepresentation or fraud upon his client.

25. Respondent had not represented Ms. Stout in the past, and failed to communicate to her his total fee before or within a reasonable time after commencing his legal representation.

26. Respondent did not protect his client's interests by failing to return any unearned fees and unexpended costs, and to promptly turn over her file to substitute counsel.

27. Respondent's failure to account for and deliver over the unexpended costs and unearned fees to Ms. Stout is a conversion.

28. By converting Ms. Stout's costs and unearned fees to his own benefit and use, Respondent knew, or should have known, that he engaged in criminal activity, namely theft, in violation of § 814.014(1), Fla. Stat.

29. Respondent failed to apply the monies to the specific purposes for which Ms. Stout entrusted the funds to him.

30. Subsequent to February 10, 2003, despite numerous demands by Mr. Drennon for the return of Ms. Stout's costs and unearned fees, Respondent failed to promptly render an accounting and to promptly deliver over Ms. Stout's funds to which she was entitled.

31. To date, Respondent has failed to refund the $10,000 cash bond, the unexpended costs, and the unearned fees paid by Ms. Stout.

32. Respondent failed to diligently pursue his client's DUI case as reflected by the court docket sheet.

33. Respondent failed to respond to The Florida Bar's inquiry letter dated May 13, 2004, and mailed to his record Bar address of 4460 Legendary Drive, Suite 190, Destin, FL 32541.

As to TFB File No. 2005-00,311(1B)-Scott E. Schutzman, Esq.

34. Respondent was hired in November 2002 by Robert Ogden Mudd and Charles Lawless who paid him an initial retainer of $3,000 to represent them in a copyright infringement dispute against Charles and June Sublett.

35. Respondent negotiated a settlement of the copyright dispute which called for an initial good faith payment of $20,000 to be held in trust by Respondent until the settlement agreement was finalized.

36. On December 16, 2002, Respondent sent a letter to his clients confirming their agreement that, out of the $20,000 payment, he would receive one-half to be credited against hours worked on the litigation, and receive fifteen per cent of gross revenues from the settlement agreement with the Subletts.

37. Respondent received from the Subletts three checks in the amounts of $10,000, $5,000, and $5,000, delivered to him on December 18, 2002, December 23, 2002, and December 31, 2002, respectively.

38. Respondent failed to inform his clients, however, that he had received and deposited the entire $20,000 escrow payment in his personal bank

account by the end of December 2002.

39. Respondent engaged in further negotiations on behalf of his clients in January and February 2003, informing Mr. Mudd in an email dated February 18, 2003, that a final agreement was forthcoming.

40. On February 20, 2003, opposing counsel sent a draft of a Memorandum of Agreement stipulating to a settlement for the $20,000 payment that had been delivered to Respondent in December 2002, and a percentage of future royalty payments. The terms of the Memorandum provided that the $20,000 payment would become non-refundable upon execution of a definitive agreement, and, if no agreement was reached, then the $20,000 was to be refunded to the Subletts. The Memorandum had an expiration date of March 14, 2003.

41. On March 10, 2003, Respondent sent a counteroffer to the Subletts' counsel that was also faxed to his client, Mr. Mudd. In this letter, Respondent admitted that the Subletts had previously paid to him the $20,000 escrow payment per the original settlement agreement.

42. On March 17, 2003, the Subletts' counsel rejected Respondent's counteroffer, cited terms of a new proposal, and demanded the return of the $20,000 paid to Respondent in escrow if no release was executed by March 28, 2003, by his clients.

43. Respondent failed to forward a copy of the March 17, 2003, letter with the new counteroffer to his clients.

44. After March 10, 2003, Respondent abandoned his clients' legal case and did not engage in any further settlement negotiations.

45. Mr. Mudd attempted to contact Respondent on numerous occasions to inquire as to why the copyright infringement action was not moving forward, but Respondent failed to return his client's telephone calls to keep him advised on the status of his case.

46. In June 2003, Mr. Mudd sent an additional $2,000 in fees to Respondent to "motivate him to move forward" with his legal action.

47. With the statute of limitations running and no action in his lawsuit, in July 2003, Mr. Mudd terminated Respondent's services and requested that he return the case file so that he could proceed with the litigation with Scott Schutzman, Esq., a California attorney.

48. Respondent responded to Mr. Mudd's request to return the case file by returning a single CD. Despite numerous requests, neither Mr. Mudd nor Mr. Schutzman ever received the case file from Respondent.

49. Subsequently, Mr. Schutzman filed a copyright infringement lawsuit in the U.S. District Court, Central District of California, on behalf of Mr. Mudd and Mr. Lawless against the Subletts. After the lawsuit was filed, the Subletts filed a counterclaim for breach of contract and fraud against Mr. Mudd and Mr. Lawless claiming that they had fraudulently induced the Subletts to pay the $20,000. For the first time, Mr. Mudd learned that Respondent had not returned the $20,000

escrow deposit to the Subletts.

50. After receiving notice of the Subletts' lawsuit, Mr. Mudd contacted Respondent who claimed that he had the $20,000 escrow payment.

51. Despite being instructed by Mr. Mudd to return the $20,000 escrow payment immediately to the Subletts, to date, Respondent has failed to do so.

52. The Florida Bar's auditor conducted an audit of Respondent's trust account for the period November 1, 1999 through December 31, 2003.

53. The Florida Bar's auditor concluded that the $20,000 escrow payment by the Subletts were trust funds and should have been deposited into Respondent's trust account.

54. After examining the bank statements and other financial documents presented by Respondent, however, The Florida Bar's auditor found no $20,000 was deposited into Respondent's trust account from September 2002 through December 2003 on behalf of his clients.

55. Respondent failed to comply with The Florida Bar rules governing trust accounts because he failed to hold the $20,000 escrow payment in his trust account and to apply the monies to the specific purpose for which the funds were entrusted to him.

56. Respondent failed to diligently pursue his clients' legal case for copyright infringement, abandoned the settlement negotiations, and retained the $20,000 escrow payment for his own benefit and use to the detriment of his clients.

57. Respondent failed to consult with his client regarding counteroffers between him and opposing counsel, and failed to follow his clients' instruction to return the $20,000 escrow payment to the Subletts.

58. Upon termination of his representation, Respondent did not protect his clients' interest by failing to provide a copy of the case file to the clients or their new attorney.

59. Respondent also failed to protect his clients' interests by not returning the $20,000 good faith payment that he was required to hold in escrow thereby generating a counterclaim for breach of contract and fraud against his clients in their copyright infringement lawsuit in a California federal district court.

60. Respondent's failure to account for and deliver over the $20,000 escrow payment to the Subletts is a conversion.

61. By converting the $20,000 escrow payment to his own benefit and use, Respondent knew, or should have known, that he engaged in theft in violation of § 814.014(1), Fla. Stat. by failing to refund to the Subletts the $20,000 escrow payment.

62. Respondent engaged in misrepresentation, fraud, and deceit, by failing, *inter alia*, to notify his clients of the Subletts $20,000 escrow payment to him in December 2002, to deposit the $20,000 escrow payment into his trust account, the Subletts' counteroffer in March 2003, and his retention of the $20,000 escrow payment after the termination of his legal services.

63. Respondent failed to promptly notify his client in December 2002 that he had been paid the $20,000 by the Subletts as an initial good faith payment.

64. Respondent failed to respond to The Florida Bar's inquiry letters dated October 1, 2004, and December 8, 2004, that were mailed to his record Bar address of 4460 Legendary Drive, Suite 190, Destin, FL 32541.

65. Respondent failed to respond in writing to the grievance committee's investigating member who sent him a letter dated August 16, 2005.

As to TFB File No. 2005-00,457(1B)-Marion Schlachter

66. Respondent was hired by Marion Schlachter on October 12, 2004, to represent her in a dissolution action that included obtaining a domestic violence injunction and an immigration green card so that she could remain in this country after her dissolution was final.

67. On that same date, Ms. Schlachter paid Respondent $4,500 of the $5,000 flat fee that he requested for his legal services.

68. After accepting his client's money, Respondent failed to diligently pursue any further action on behalf of Ms. Schlachter.

69. Despite many attempts by Ms. Schlachter to speak with him about the status of her legal case, Respondent refused to communicate with his client regarding the basis of his fee, the payment of costs of suit, or any legal action he intended to take on her behalf.

70. Unable to communicate with Respondent or to get him to take any

immediate action to protect her legal rights in the dissolution, Ms. Schlachter terminated Respondent's legal services and demanded a refund of her fees on November 16, 2004.

71. To date, Respondent has failed to refund any of his client's fees.

72. Respondent charged and collected an excessive fee because he took his client's money and failed to perform any legal services on behalf of his client.

73. Respondent failed to protect his client's interests by returning any unearned fees when Ms. Schlachter terminated his services.

74. Respondent's actions are prejudicial to the administration of justice because he appropriated the $4,500 fee and failed to provide the agreed legal services or to return his client's fee.

75. Respondent failed to respond to a letter dated April 6, 2005, from the grievance committee investigating member that specifically requested documents to show his billable hours and the work performed on Ms. Schlachter's legal case.

As to TFB File No. 2005-00,481(1B)-Dana E. Keeney

76. On or about May 1, 2004, Respondent was paid a flat, nonrefundable fee of $5,000 to represent Dana Keeney and two other related plaintiffs in an action for defamation and for damages.

77. After the initial consultation, where Respondent promised to take immediate legal action against the defendants, Mr. Keeney never met or spoke with Respondent again from May 2004 through October 2004 when Mr. Keeney

terminated Respondent's legal representation.

78. When he could not communicate and no action had been taken on his legal case, Mr. Keeney mailed Respondent a letter on October 5, 2004, via certified return receipt mail, discharging Respondent as his attorney, and requesting a copy of his case file, an itemized bill, and a refund of any unearned fees.

79. To date, Respondent has failed to provide a copy of the case file, an itemized bill or any refund of unearned fees to Mr. Keeney.

80. Subsequent to being discharged by Mr. Keeney, Respondent filed a three-page complaint for defamation on October 6, 2004, in Okaloosa County, Shalimar, Florida.

81. On November 17, 2004, the defendants in the defamation action filed an answer and affirmative defenses.

82. Respondent failed to take any further action in Mr. Keeney's case, and failed to withdraw as attorney of record.

83. On December 15, 2005, the court granted the defendants' motion to dismiss for lack of prosecution because there was no record activity in Mr. Keeney's case for over a year.

84. Respondent did not file a motion to withdraw as Mr. Keeney's attorney until March 27, 2006.

85. On April 10, 2006, the court awarded fees and costs to the defendants in Mr. Keeney's case.

86. Respondent failed to diligently represent his clients because he did not file the defamation complaint until the day *after* Mr. Keeney mailed a letter terminating his legal services, failed to timely withdraw as Mr. Keeney's counsel of record, and did not file any other pleadings with the court until the motion to withdraw in March 2006.

87. Despite numerous telephone calls by Mr. Keeney from July 2004 through October 2004, to his office, Respondent failed to communicate with his client or to keep him informed on the status of his case.

88. Respondent charged and collected an excessive fee because he took his client's money and, other than filing a three-page complaint after being discharged by his client, failed to perform the legal services for which he was retained.

89. Respondent failed to protect his client's interests by returning any unearned fees when Mr. Keeney terminated his services.

90. When Respondent refused to return the unearned fees, Mr. Keeney had no additional funds to pay another attorney to represent him in the defamation action.

91. Respondent's actions are prejudicial to the administration of justice because he failed to provide the agreed legal services, refused to return the unearned fees, failed to take any record activity in over a year to protect his client's suit from dismissal, and failed to promptly file a motion to withdraw.

92. Respondent failed to reply to The Florida Bar's inquiry letter, dated

December 17, 2004, that was sent to his record Bar address of 4460 Legendary Drive, Suite 190, Destin, Florida 32541.

As to TFB File No. 2005-01,037(1B)-Ronnie and Joyce Terry

93. Respondent was hired by Ronnie and Joyce Terry on or about March 2002 to represent them in filing two separate personal injury claims against Okaloosa County for two different accidents.

94. On or about May 16, 2003, Respondent filed two separate personal injury complaints on behalf of the Terrys in Okaloosa County Circuit Court

95. Respondent failed to provide a copy of the signed contingency fee agreement and Statement of Clients' Rights in either lawsuit to the Terrys.

96. After discovery, both lawsuits proceeded to a settlement with Okaloosa County in February 2004.

97. As part of the settlement agreement, on February 16, 2004, Okaloosa County issued two checks for $4,750.00 each payable to the Terrys and Respondent.

98. Respondent contacted the Terrys to come to his office on the weekend and sign the checks indicating that he would provide them with copies of the checks and the written closing statements the next business day.

99. The settlement funds were paid out on February 24, 2004, after the checks were endorsed by the Terrys and Respondent.

100. The back of the checks indicate that the checks were cashed by

Respondent, but were not deposited into Respondent's trust account.

101. There were approximately four outstanding medical bills associated with the accidents totaling about $2500.

102. Respondent paid one check to the Terrys on March 5, 2004, for $1,005.98, and a second check on March 16, 2004, for $864.98, alleging that these amounts were the balance of the settlement funds after his fees and the medical bills were paid.

103. Later in 2004, however, when the Terrys applied for a loan, they discovered a problem with their credit report because none of the medical bills had been paid by Respondent.

104. From November 2004 through March 2005, the Terrys attempted to communicate on numerous occasions with Respondent who represented that he would provide them with a copies of the closing statements, and also copies of the checks that he had mailed to the medical providers to verify payment of the bills.

105. Despite numerous requests from his clients, however, to date, Respondent has never provided to his clients a written closing statement for either personal injury case, or copies of the checks for the alleged medical payments that he claimed he made on behalf of the Terrys.

106. Due to Respondent's failure to pay a $1,924.00 hospital bill, Ronnie Terry was sued and a judgment entered against him for $2,481.15 on February 15, 2005.

107. Respondent failed to diligently pursue the Terrys' legal cases by promptly paying the medical providers thereby exposing his clients to future liability in collection actions against them, and damaging their credit status.

108. Respondent failed to communicate with his clients regarding copies of the closing statements, county checks, and medical payment checks they had requested.

109. Respondent failed to abide by the The Florida Bar's ethical rules governing contingency fee agreements in personal injury cases because he did not execute a written closing statement that was reviewed and signed by the clients before making any disbursement of settlement proceeds.

110. Respondent misrepresented to his clients that he had paid the medical providers out of the settlement proceeds from their personal injury suits.

111. Respondent failed to hold in trust the settlement proceeds for the specific purpose of paying the medical providers on behalf of the Terrys.

112. Respondent's refusal to account for and deliver over the settlement proceeds to the medical providers is a conversion.

113. Respondent failed to promptly notify the medical providers that he had received the settlement proceeds from Okaloosa County.

114. Respondent failed to promptly deliver over the settlement proceeds to the medical providers and to render a full accounting of the settlement proceeds to his clients despite numerous requests by the Terrys.

Comment [ok1]: 12 1

As to TFB File No. 2006-00,301(1B)-The Florida Bar

115. On September 2, 2003, Respondent filed a Voluntary Petition for Bankruptcy in the United States Bankruptcy Court, Northern District of Florida.

116. Respondent signed the bankruptcy petition verifying under penalty of perjury that the information provided in the petition was true and correct.

117. One of the unsecured claims listed on Respondent's Creditor's List was for Francis James, P.O. Box 1061, Andalusia, Alabama, in the amount of $487,714.81.

118. After the bankruptcy petition was filed, Francis M. James III and the James & James Law Firm, as Plaintiffs, brought an adversary proceeding against Respondent objecting to the bankruptcy discharge of their creditor's claim based on 11 U.S.C. §§ 727(a)(2), (3), and (4), and 11 U.S.C. §§523(a)(2), (4), and (6).

119. The Bankruptcy Court sustained the Plaintiffs' objections to discharge based on 11 U.S.C. §§727(a)(2), (a)(3), and (a)(4), and therefore did not address any objections based on 11 U.S.C. §523.

120. Sections 727(a)(2), (a)(3), and (a)(4) provide in pertinent part:

> (a) the court shall grant the debtor a discharge unless……
>
> (2) the debtor, with intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of the property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—
>
> (A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all the circumstances of the case;

(4) the debtor knowingly and fraudulently, in or in connection with the case-

(A) made a false oath or account;

121. After a full evidentiary hearing, on September 13, 2005, the U. S. Bankruptcy Judge issued a detailed 37-page Order Denying Discharge of the Debtor, sustaining the Plaintiffs' objection to Respondent's discharge pursuant to 11 U.S.C. §§727(a)(2), (a)(3), and (a)(4), thereby denying Respondent's discharge of debts in its entirety.

122. The Bankruptcy Court specifically found that Respondent's actions indicated that he intended to hinder, delay, or defraud his creditors, and that Respondent's failure to file income tax returns for four years, as well as to maintain and preserve adequate records, made it impossible for the creditors to ascertain Respondent's financial condition.

123. In particular, the Bankruptcy Court found that Respondent "made numerous false and conflicting statements under oath" and Respondent "knowingly and fraudulently made a false oath or account in connection with his bankruptcy case" in violation of 11 U.S.C. §727(a)(4).

124. Respondent failed to reply to The Florida Bar's inquiry letter, dated September 26, 2005, that was sent to his record Bar address of 4460 Legendary Drive, Suite 190, Destin, Florida 32541.

As to TFB File No. 2006-00,429(1B)-Bob Delaney

125. Respondent was hired on June 20, 2005, for $2,500 by Bob Delaney to represent him in a lawsuit against his former employer, John Franklin and Franklin Pools.

126. At the time Respondent accepted the retainer, Respondent knew, or should have known, that he was representing Franklin Pools.

127. After speaking to another attorney, Mr. Delaney believed that it would be a conflict of interest for Respondent to represent him in a law suit against Franklin Pools and its owner, John Franklin.

128. On the afternoon of that same date, due to the conflict of interest, Mr. Delaney requested Respondent not to take any action in his legal matter, and to return his $2,500 retainer fee.

129. Respondent promised to return the $2,500 retainer fee, but, despite numerous requests by Delaney in person and by telephone to return the money, Respondent has failed to do so.

130. After the matter was referred to a grievance committee member for investigation, Respondent sent a letter dated January 18, 2006, to the investigating member in which he stated that the $2,500 was half the retainer to represent Mrs.

Delaney in a real estate matter, and that he had never represented Mr. Delaney in any matter against John Franklin of Franklin Pools.

131. Subsequently, Mr. Delaney provided additional information to The Florida Bar to refute Respondent's allegations to the grievance committee showing that Respondent had assisted him in filling out three small claims forms against John Franklin, and that Respondent did not represent Mrs. Delaney in any legal matter.

132. Respondent's misrepresentations to the grievance committee investigating member are contrary to honesty and justice, and were committed in the course of his dealings with the grievance committee investigation.

133. Respondent charged an excessive fee because he did no work for the $2,500 paid to him by Mr. Delaney and refused to return the fee.

134. Respondent failed to protect his client's interest because when his services were terminated, he failed to return any unearned fee to Mr. Delaney.

135. Respondent knew, or should have known, that he represented John Franklin and Franklin Pools, and that taking a fee from Mr. Delaney to sue Mr. Franklin or Franklin Pools was a conflict of interest as well as a violation of the ethical rules.

136. Respondent failed to respond to The Florida Bar's inquiry letter dated November 7, 2005, that was mailed to his record Bar address of P.O. Box 10, Mary Esther, Florida 32569.

As to TFB File No. 2006-00,591(1B)-Sharon Santisteven

137. Respondent was hired on June 7, 2005 for $5,000 by Sharon Santisteven for assistance in resolving a real estate dispute.

138. Respondent wrote two letters to opposing counsel on June 4, 2005, and June 24, 2005, then took no further action on his client's behalf.

139. On October 19, 2005, Ms. Santisteven called and emailed Respondent to notify him that she was being sued by the opposing party in the real estate dispute, but Respondent failed to respond to her messages.

140. When Respondent failed to reply to numerous telephone and email messages left for him by his client on October 21, (3 messages), October 24 and October 26, 2005, Ms. Santisteven retained another attorney who resolved the dispute in nine days for a total fee of $910.00.

141. Respondent refused to follow his client's instructions to resolve the real estate dispute as quickly as possible so that the lien on her home could be lifted and she could timely complete the real estate closing on her home.

142. Respondent failed to diligently pursue his client's legal matter.

143. Respondent failed to communicate with his client, and, after the initial consultation, Ms. Santisteven was never able to speak personally to Respondent again.

144. Respondent charged an excessive fee of $5,000 because he wrote two letters on behalf of his client, then he took no further action on his client's case,

and he did not resolve the real estate dispute for which he was retained.

145. Upon termination of his representation, Respondent failed to protect his client's interest by failing to return any unearned fees, and provide a copy of the case file to the client's new attorney.

146. Respondent defrauded his client by taking her money and converting it to his own use and benefit without performing the legal services for which he was retained.

147. By converting Ms. Santisteven's unearned fees to his own benefit and use, Respondent knew, or should have known, that he engaged in criminal activity, namely theft, in violation of § 814.014(1), Fla. Stat.

148. Respondent's actions are prejudicial to the administration of justice.

149. Respondent failed to hold any disputed fees in his trust account.

150. Despite numerous requests from Ms. Santisteven, Respondent refused to account for the $5,000 fee to the client, or to return any portion of the fee.

151. Respondent failed to respond to The Florida Bar's inquiry letter dated December 9, 2005, that was mailed to his record Bar address of P.O. Box 10, Mary Esther, Florida 32569.

III. RECOMMENDATIONS AS TO GUILT.

In all of the above cases, I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar, to wit:

As to TFB File No. 2004-01,318(1B)-Carol K. Stout: 4-1.3 (Diligence), 4-1.4 (Communication), 4-1.5 (Legal Fees for Services), 4-1.16(d) (Protect Client's Interests), 4-8.4(b) (Engage in Criminal Activity), 4-8.4(g)(1)(Failure to respond to The Florida Bar), 5-1.1(b)(Application of Trust Funds for a Specific Purpose),
5-1.1(e) (Delivery and Accounting for Trust Funds).

As to TFB File No. 2005-00,311(1B)-Scott E. Schutzman, Esq.: 4-1.2(a)(Scope of Representation), 4-1.3 (Diligence), 4-1.15 (Safekeeping of Property), 4-1.16(d) (Protect Client's Interests), 4-8.4(b)(Engage in Criminal Activity), 4-8.4(c) (Misrepresentation, Fraud, Deceit), 4-8.4(g)(1)(Failure to respond to The Florida Bar), 4-8.4(g)(2) (Failure to respond to Grievance Committee), 5-1.1(b)(Application of Trust Funds for a Specific Purpose), 5-1.1(e)(Notice of Receipt of Trust Funds, Delivery, Accounting), 5-1.1(f)(Disputed Funds).

As to TFB File No. 2005-00,457(1B)-Marion Schlachter: 4-1.3 (Diligence), 4-1.4 (Communication), 4-1.5 (Fees for Legal Services), 4-1.16(d) (Protect Client Interests), 4-8.4(d) (Conduct Prejudicial to the Administration of Justice), and 4-8.4(g)(2) (Failure to respond to the grievance committee).

As to TFB File No. 2005-00,481(1B)-Dana E. Keeney: 4-1.3 (Diligence), 4-1.4 (Communication), 4-1.5 (Fees for Legal Services), 4-1.16(d) (Protect Client Interests), 4-8.4(d) (Conduct Prejudicial to the Administration of Justice), and 4-8.4(g)(Failure to respond to The Florida Bar).

As to TFB File No. 2005-01,037(1B)-Ronnie and Joyce Terry: 4-1.3 (Diligence),

4-1.4 (Communication), 4-1.5(a)(f)(1), (f)(2), (f)(4)(A), (f)(5) (Fees and Costs for Legal Services), 4-1.15 (Safekeeping of Property), 4-8.4(a)(Violate Bar Rules), 4-8.4(c) (Fraud, Deceit, Misrepresentation), 5-1.1(a)(Commingling of Funds), 5-1.1(b) (Application of Trust Funds for a Specific Purpose), and 5-1.1(e) (Notice of Receipt of Trust Funds; Delivery; Accounting).

As to TFB File No. 2006-00,301(1B)-The Florida Bar: 3-4.3 (Misconduct and Minor Misconduct), 4-8.4(c) (Fraud, Deceit, Misrepresentation), 4-8.4(d) (Conduct Prejudicial to the Administration of Justice), and 4-8.4(g) (Failure to Respond to the Florida Bar).

As to TFB File No. 2006-00,429(1B)-Bob Delaney: 3-4.3 (Misconduct and Minor Misconduct), 4-1.5(Fees for Legal Services), 4-1.16(d) (Protect Client's Interests), 4-1.7(Conflict of Interest-General Rule), and 4-8.4(g)(1) (Failure to respond to The Florida Bar).

As to TFB File No. 2006-00,591(1B)-Sharon Santisteven: 4-1.2(a)(Scope of Representation, 4-1.3 (Diligence), 4-1.4(Communication), 4-1.5(Fees for Legal Services), 4-1.16(d) (Protect Client's Interests), 4-8.4(b)(Engage in Criminal Activity), 4-8.4(d) (Conduct Prejudicial to the Administration of Justice), 4-8.4(g)(1)(Failure to respond to The Florida Bar), 5-1.1(a)(1)(Trust Account Required), 5-1.1(b) (Application of Trust Funds for a Specific Purpose), and 5-1.1(f)(Disputed Ownership of Funds).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

Based on the foregoing Findings of Fact, I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined as follows:

A. Disbarment for five years pursuant to R. Regulating Fla. Bar 3-5.1(f). In recommending this discipline of disbarment, I took into consideration the Florida Standards for Imposing Lawyer Sanctions, namely, 4.11(Failure to Preserve Client's Property), 4.41(Lack of Diligence), 4.61 (Lack of Candor), 5.11(f)(Failure to Maintain Personal Integrity), 6.11(False Statements, Fraud, and Misrepresentation), 7.1(Violation of Other Duties Owed as a Professional), and 8.1(Prior disciplinary Orders). Respondent's repetitive misconduct by misappropriation of his clients' trust funds, by taking substantial legal fees and not performing the legal services for which he was retained, and by misrepresentation to the federal bankruptcy court, warrants disbarment. I also considered the aggravating factors below and the fact that Respondent did not present any competent substantial evidence of mitigation.

The case law also supports disbarment for attorneys who demonstrate a pattern of misconduct and a history of discipline involving multiple rule violations. See The Florida Bar v. Cox, 718 So. 2d 788(Fla. 1998)(attorney's misconduct with prior discipline for 27 rule violations in four cases including dishonesty and misrepresentation warranted disbarment. Id. at 794). In The Florida Bar v. Springer, 873 So. 2d 317(Fla. 2004),where the attorney had committed multiple offenses involving lack of competence, diligence and communication with clients, as well as demonstrated a pattern of misconduct, the Court, in a special concurrence by Justice Lewis, held that "[a]s the

uncontested facts demonstrate, Springer violated a multitude of rules governing the legal profession numerous times over many years, and the ill effects of his misconduct seriously injured not one, but multiple clients." Id. at 324.

In a similar case, The Florida Bar v. Porter, 684 So. 2d 810 (Fla. 1996), the Court upheld a default entered against the attorney, and imposed disbarment for misuse of trust funds, the attorney's prior disciplinary record, and the absence of any mitigation. Id. at 813. The rule violations in this case are also similar to prior disciplinary offenses for which Respondent previously received an admonishment, a public reprimand and a 91-day suspension. See The Florida Bar v. Knowles, 572 So. 2d 1373(Fla. 1991)("repeated instances of similar misconduct should be treated cumulatively so that a lawyer's disciplinary history can be considered as grounds for more serious punishment." Id. at 1375).

B. Based on the lay witnesses and expert witness testimony presented at the final penalty hearing, Respondent shall pay restitution pursuant to R. Regulating Fla. Bar 3-5.1(i) as follows:

(1) In TFB File No. 2004-01,318(1B), I find that while the work performed on Ms. Stout's legal case may have been worth the $5,000 legal fee, Respondent cannot keep the $20,000 in costs that were to be held in his trust account on behalf of his client, and converted them to his own benefit and use. Ms Stout testified that as of the date of the hearing, over four years after she terminated Respondent's legal services, she has not received any costs returned to her. No cash bond was permitted

by the court in Ms. Stout's DUI case. Therefore the $10,000 in costs paid to Respondent for the cash bond shall be returned in full. The Florida Bar provided invoices obtained from Respondent showing that $1,000 out of the $10,000 that Ms. Stout paid to Respondent was utilized for expert fees. Respondent provided no competent substantial evidence to show that any additional expert fees were paid on behalf of his client. Therefore, since Respondent converted the trust funds to his own benefit and use, $9,000 of the $10,000 in costs paid to Respondent for expert fees shall be returned in full to Ms. Stout. Within one year after the Supreme Court issues its final order in this case, Respondent shall pay a total of $19,000 to: Carol Stout, 333 Wilkinson Place, Memphis, Tennessee, 38111.

(2) In TFB File No. 2005-00,311(1B), I find that Respondent failed to return the settlement proceeds of $20,000 which he was to hold in trust until a final settlement was reached in the case of Kid Songs for You, LLC, and converted the trust funds to his own benefit and use. Mr. Schutzman and Mr. Mudd both testified that Respondent had the $20,000 but failed to return it to the Subletts when the settlement negotiations were unsuccessful. In a lawsuit in federal court, Kid Songs for You, LLC later settled for $29,000, of which $20,000 was deducted for the trust funds misappropriated by Respondent. Respondent shall pay $20,000 to Kid Songs for You, LLC, and send the money to Robert Lee Mudd, P.O. Box 3465, Running Springs, CA 92382.

(3) In TFB File No. 2005-00,457(1B), I find that Respondent collected an excessive fee because he did not provide legal services worth $4,500 to Marion

Schlachter. Therefore, within one year after the Supreme Court issues its final order in this case, Respondent shall pay $4,000 to: Ms. Marion Schlachter, 218 Wekiva Cove, Destin, Florida 32541.

(4) In TFB File No. 2005-00,481, I find that Respondent collected an excessive fee because he did not provide legal services worth $5,000 to Dana Keeney. Therefore, within one year after the Supreme Court issues its final order in this case, Respondent shall pay $4,250 to: Mr. Dana Keeney, 1579 Venice Avenue, Fort Walton Beach, Florida 32547.

(5) In TFB File No. 2005-01,037(1B), I find that Respondent failed to pay Ronnie Terry's medical bills out of the settlement proceeds in the lawsuit, and converted the trust funds to his own benefit and use. Therefore, within one year after the Supreme Court issues its final order in this case, Respondent shall pay on behalf of Ronnie Terry, $2,933.44 plus interest at 7% on the outstanding judgment against Mr. Terry to: Stokes & Clinton, PA, P.O. Box 991801, Mobile , Alabama 36691-08801, $470 to: Okaloosa County EMS, P.O. Box 116783, Atlanta, GA, 30368, $482 to: Dr. Marcene F. Kreifels, 1198 Ferdon Blvd., Crestview, FL 32536, and $45 to: Johnson Chiropractic Clinic, P.O. Box 486, Paxton, Florida 32538-0486.

(6) In TFB File No. 2006-00,429(1B), I find that Respondent collected an excessive fee because he did not provide legal services worth $2,500 to Bob Delaney. Therefore, within one year after the Supreme Court issues its final order in this case, Respondent shall pay $2,250 to: Mr. Bob Delaney, 4466 Kings Lynn Road, Niceville,

Florida 32578.

(7) In TFB File No. 2006-00,591(1B), I find that Respondent collected an excessive fee because he did not provide legal services worth $5,000 to Sharon Santisteven. Therefore, within one year after the Supreme Court issues its final order in this case, Respondent will pay $4,250 to: Ms. Sharon Santisteven, 1330 Solitaire, Round Rock, Texas 78664.

(8) Respondent will notify and provide proof of payment of restitution as set forth in part B(1) through B(7) above to Headquarters Division of Lawyer Regulation of The Florida Bar upon payment of the above restitution. Respondent will provide a copy of the check, back and front, or other similar proof of payment that is satisfactory to The Florida Bar.

C. The payment of taxable costs to The Florida Bar in the amount of $8,576.97 in these proceedings pursuant to R. Regulating Fla. Bar 3-7.6(q)(1).

V. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1), I considered the following:

A. Personal History of Respondent:
Age: 56
Date admitted to the Bar: May 31, 1985

Prior Discipline:

The record reflects Respondent's prior disciplinary history in Florida:

*TFB File No. 1991-00,998(1B)---Public Reprimand before the Board of Governors of The Florida Bar with one year probation by court order dated December 24, 1992, relating to an arrest for possession of cocaine.

*TFB File No. 2000-00,038(1B)---Public Reprimand before the referee with one year of probation by court order dated December 31, 2001, for charging an excessive fee.

*TFB file No. 2000-01,104(1B)---Admonishment for Minor Misconduct by the grievance committee which was final on August 6, 2001, for trust account issues.

*TFB file No. 2002-00,311(1B)---91-day suspension in a reciprocal discipline case, effective March 27, 2006, by court order dated February 23, 2006, for failure to protect settlement proceeds that were the subject of a referral fee dispute in Alabama.

I also considered Respondent's prior disciplinary record in Alabama:

*Public Reprimand entered on July 17, 1994---reciprocal discipline for disciplinary action in Florida in TFB File No. 1991-00,998(1B).

*Public Reprimand entered on October 26, 2001---for a conflict of interest relating to a former client.
*Suspension for 91 days entered on June 18, 2003---for failure to protect settlement proceeds that were the subject of a referral fee dispute.

*Suspension for 120 days entered on February 22, 2005---determination that a plea to misdemeanor interference with judicial proceedings was a "serious crime" under Rule 22(a)(2) of the Alabama Rules of Disciplinary Procedure.

*Suspension for 15 months entered on February 22, 2005--- for engaging in prohibited sexual conduct with a client in exchange for fees.

B. I considered the following Florida Standards for Imposing Lawyer Sanctions:

4.11 Disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury.

4.41 Disbarment is appropriate when:

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.61 Disbarment is appropriate when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another regardless of injury or potential injury to the client.

5.11 Disbarment is appropriate when:

(f) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

6.11 Disbarment is appropriate when a lawyer:

(a) with the intent to deceive the court, knowingly makes a false statement or submits a false document; or

7.1 Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

8.1 Disbarment is appropriate when a lawyer:

(b) has been suspended for the same or similar misconduct, and intentionally engages in further similar acts of misconduct.

C. Aggravating Factors: I considered the following aggravating factors:

(a) prior disciplinary offenses

(b) dishonest and selfish motive—Respondent kept costs, settlement proceeds and unearned fees that he used for his own personal financial benefit and use.

(c) pattern of misconduct- This factor is supported by the number of rule violations as well as the long period of time over which Respondent engaged in ethical misconduct.

(d) multiple offenses—There are 60 rule violations in these cases.

(h) vulnerability of victims—The clients relied on Respondent and trusted him to protect their best interests.

In the Stout case, his client, who lived out of state, relied on him to advise her as to procedures used here in Florida on a first DUI offense. Respondent instead took $5,000 in fees and then advised her that additional costs of $20,000 were necessary to fully defend her lawsuit. Respondent kept the costs and did not return them to the client. He also failed to deposit them in his trust account spending only $1,000 on expert fees.

In the Schutzman case, Respondent's clients were accused of fraud in a counterclaim in their federal case, because Respondent kept the settlement proceeds he was to hold in trust, and never returned them even after his client requested him to do so. His former clients had to accept less in damages to settle lawsuit because the $20,000 was deducted from their final settlement agreement.

In the Schlachter case, the client was a German immigrant who did not understand the domestic violence injunction process. Respondent jeopardized her person and her legal rights by not promptly proceeding in her case, and by not returning his unearned fees.

In the Terry case, both clients thought that Respondent had paid their medical bills with the remaining proceeds that were kept by Respondent. It was two years later when they were denied a loan that they discovered the bills were not paid by Respondent, thereby damaging their credit rating. The hospital obtained a final judgment against Mr. Terry, and the other medical bills were sent to collection.

In the Keeney case, Respondent did nothing on the legal case for defamation for nine months. Respondent failed to return the

unearned fees, and failed to withdraw from the case for two years after his client terminated his services. His client's case was dismissed for lack of prosecution.

In the Delaney case, although the client advised Respondent on the same day that he hired him that there was a conflict of interest, Respondent refused to return his fees.

In the Santiseven case, Respondent failed to return the unearned fees, refused to communicate with his client and to advise her what to do when she was sued. His client had to hire another attorney to resolve the legal matter.

(i) substantial experience in practice of law—Respondent was admitted to The Florida Bar in May 1985

(j) indifference to making restitution –No costs, no settlement proceeds, and no fees have been refunded to Respondent's clients, or to any third parties.

D. Mitigating Factors: None

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs, pursuant to R. Regulating Fla. Bar 3-7.6(q)(1)(I)	$ 1,250.00
Court Reporter Fees	2,213.50
Bar Counsel Expenses	705.60
Investigative Costs and Expenses	892.46
Witness Expenses	1,164.11
Expert Witness Fees and Expenses	2,186.00
Copy Costs	165.30
TOTAL	**$ 8,576.97**

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within thirty days of said judgment becoming final, Respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this _____ day of _____, 2007.

_____
JUDGE JAMES KEVIN GROVER
REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; OLIVIA PAIVA KLEIN, Bar Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and JAMES HARVEY TIPLER, Respondent, at his record Bar address of P.O. Box 10, Mary Esther, FL 32569-0010, on this _____ day of _____, 2007.

_____
JUDGE JAMES KEVIN GROVER
REFEREE