IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

KRISTINE W. VALENTINE-MILLER,

Respondent.
_____/

Case No. SC06-1629
[TFB Nos. 2006-31,155(05A);
2006-31,398(05A);
2006-31,434(05A);
2006-31,530(05A);
2006-31,735(05A),
2006-32,079(05A),
2006-32,108(05A)]

INITIAL BRIEF

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TABLE OF CONTENTS

TABLE OF CONTENTS ..... **i**
TABLE OF CITATIONS ..... **ii**
SYMBOLS AND REFERENCES ..... **iv**
STATEMENT OF THE CASE **1**
STATEMENT OF THE FACTS **3**
SUMMARY OF ARGUMENT **10**
ARGUMENT **11**
ISSUE I **11**
THE REFEREE ERRED IN MAKING CERTAIN FINDINGS AS TO MITIGATING AND AGGRAVATING FACTORS REGARDING RESPONDENT'S ABANDONMENT OF HER PRACTICE AND CONVERSION OF CLIENT FUNDS.
ISSUE II **18**
THE REFEREE ERRED IN MAKING A FINDING THAT RESPONDENT HAD A FUTURE ABILITY TO MAKE RESTITUTION TO THE VICTIMS OF HER THEFT.
ISSUE III **20**
DISBARMENT IS THE APPROPRIATE DISCIPLINE FOR THIS CASE INVOLVING THEFT OF CLIENT FUNDS AND ABANDONMENT OF HER PRACTICE WITH SERIOUS CLIENT PREJUDICE.
CONCLUSION **29**
CERTIFICATE OF SERVICE **30**
CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN **31**
APPENDIX **32**
INDEX **33**

TABLE OF CITATIONS

Page No.

Cases

The Florida Bar v. Broome, 932 So. 2d 1036 (Fla. 2006).....20, 22
The Florida Bar v. Friedman, 511 So. 2d 986 (Fla. 1987).....26, 27
The Florida Bar v. Golub, 550 So. 2d 455 (Fla. 1989) 23, 24
The Florida Bar v. Gross, 896 So. 2d 742 (Fla. 2005)..... 20
The Florida Bar v. Hardman, 516 So. 2d 262 (Fla. 1987)..... 27
The Florida Bar v. Kavahaugh, 915 So.2d 89 (Fla. 2005)..... 11
The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983) 20
The Florida Bar v. McFall, 863 So. 2d 303 (Fla. 2003) 20, 21, 22
The Florida Bar v. Prevatt, 609 So. 2d 37 (Fla. 1992)..... 25
The Florida Bar v. Ribowsky-Cruz, 529 So. 2d 1100(1988) 27
The Florida Bar v. Riggs, 944 So. 2d 167 (Fla. 2006) 12, 25
The Florida Bar v. Setien, 530 So. 2d 298 (Fla. 1988) 27
The Florida Bar v. Shanzer, 572 So. 2d 1382 (Fla. 1991).....20, 26
The Florida Bar v. Shoureas, 892 So.2d 1002 (Fla. 2004) 20
The Florida Bar v. Shuminer, 567 So. 2d 430 (Fla. 1990) 24, 25
The Florida Bar v. Smith, 512 So. 2d 832 (Fla. 1987)..... 26
The Florida Bar v. Spear, 887 So. 2d 1242 (Fla. 2004) 20
The Florida Bar v. Tauler, 775 So. 2d 944 (Fla. 2000).....20, 21
The Florida Bar v. Travis, 765 So. 2d 689 (Fla. 2000).....20, 25
The Florida Bar v. Whigham, 525 So. 2d 873(Fla.1988) 12

Other Authorities Cited

Rules Regulating The Florida Bar

4-1.1 1
4-1.2 1
4-1.3 1
4-1.4 1
4-1.5 1
4-1.5(f)(5).....1
4-1.15.....1
4-1.16(d).....1
4-5.3 1
4-8.4(c).....1, 2, 12, 17
4-8.4(g).....8

4-8.4(g)(1) 1
4-8.4(g)(2) 1
5-1.1 1
5-1.1(a)(1) 1
5-1.1(b) 1
5-1.1(e) 1
5-1.1(f) 1
5-1.2 1
5-1.2(b)(2) 1
5-1.2(b)(5) 1
5-1.2(b)(6) 1
5-1.2(b)(7) 1
5-1.2(c)(1) 1

Florida Standards for Imposing Lawyer Sanctions

4.11 23
4.41(a) 23
4.41(c) 23
4.51 23
4.61 23
7.1 23
9.22(b) 15
9.22(c) 15
9.22(d) 15
9.22(e) 15
9.22(h) 15
9.22(j) 17
9.32(a) 11
9.32(b) 11
9.32(c) 11
9.32(f) 11, 13
9.32(h) 11
9.32(j) 11, 13
9.32(l) 11

SYMBOLS AND REFERENCES

In this brief, the complainant, The Florida Bar, shall be referred to as "The Florida Bar" or "the bar."

The transcript of the final hearing held on October 20, 2006, shall be referred to as "T" followed by the cited page number. (T-____)

The Report of Referee dated November 22, 2006 will be referred to as "ROR" followed by the referenced page number(s) of the Appendix, attached. (ROR-____)

The bar's composite exhibit will be referred to as (No. ____ in bar's exhibit 1).

The respondent's exhibit will be referred to as respondent's exhibit 1.

STATEMENT OF THE CASE

The Florida Bar filed a Petition for Emergency Suspension with supporting documentation on June 14, 2006, alleging that respondent abandoned her clients and misappropriated funds from her trust account (No. 1 in bar's exhibit 1). The Supreme Court of Florida placed respondent on emergency suspension by order dated June 19, 2006 (No. 2 in bar's exhibit 1). On August 15, 2006, the bar filed its Complaint following emergency suspension, alleging respondent engaged in conduct that violated various Rules Regulating The Florida Bar. Respondent answered the complaint on September 6, 2006, denying all rule violations and pleading alcoholism as an affirmative defense.

On October 3, 2006, the bar filed its Amended Complaint alleging respondent engaged in conduct that violated Rules Regulating The Florida Bar 4-1.1; 4-1.2; 4-1.3; 4-1.4; 4-1.5; 4-1.5(f)(5); 4-1.15; 4-1.16(d); 4-5.3; 4-8.4(c); 4-8.4(g)(1); 4-8.4(g)(2); 5-1.1; 5-1.1(a)(1); 5-1.1(b); 5-1.1(e); 5-1.1(f); 5-1.2; 5-1.2(b)(2); 5-1.2(b)(5); 5-1.2(b)(6); 5-1.2(b)(7); and, 5-1.2(c)(1). The bar filed a Motion to Compel Answers to Interrogatories and Request to Produce on October 12, 2006 which the referee granted at a hearing on October 16, 2006. Also on October 16, 2006, respondent filed Respondent's Answer to Amended Complaint wherein she admitted all the allegations in the amended complaint except for Rule Regulating The Florida Bar, 4-8.4(c). Four days later, at the October 20, 2006 final hearing, held in expedited fashion as required in emergency suspension cases,

respondent admitted to violating Rule 4-8.4(c) (T-7-8; 67-68). Thus, the final hearing was actually a hearing as to discipline only (T-7-9).

On November 22, 2006, the referee entered the Report of Referee finding respondent guilty of all the allegations in the bar's Amended Complaint. The referee recommended respondent be suspended for three years *nunc pro tunc* to June 19, 2006, the date of her emergency suspension, and indefinitely until she can prove rehabilitation for her substance abuse and until she has made all her former clients whole. He further recommended that she thereafter be placed on probation for three years conditioned on her not opening or maintaining a trust account until she has successfully completed The Florida Bar's Trust Accounting Workshop and LOMAS or a similar course in office management and recordkeeping procedures. (ROR-18)

The Board of Governors of The Florida Bar, at its December 2006 meeting, voted to seek an appeal of the referee's recommendation of discipline, including the findings on applicable mitigating and aggravating factors. The bar served its Petition for Review on December 12, 2006. The bar filed its Motion for Extension of Time to File Initial Brief on December 28, 2006. The Supreme Court of Florida issued its order granting the bar's motion on January 3, 2007.

STATEMENT OF THE FACTS

The facts are not in dispute in this case. It is noted that the final hearing in this case became a hearing for the purpose of discipline only after respondent admitted each and every allegation shortly prior to or at the final hearing (Respondent's Answer to Amended Complaint; T-7-9). In early 2006, the bar began receiving complaints that respondent had abandoned her personal injury solo practice located in Ocala, Florida and that clients were prejudiced because they could not speak to respondent about their pending cases, recover settlement funds due to them, or obtain their client file and documentation necessary in their cases (No. 1 in bar's exhibit 1).

The respondent failed to provide required responses to the bar and failed to appear for her duly noticed deposition scheduled on May 4, 2006. Respondent's response to a Subpoena Duces Tecum for her trust records and client files was inadequate resulting in a contempt finding by the grievance committee. The bar was forced to investigate the numerous complaints without cooperation from the respondent and to obtain the necessary trust records from her bank. (No. 1 in bar's exhibit 1)

An audit was completed by the bar. Respondent converted client funds to her personal use (ROR -12). The Florida Bar's Chief Branch Auditor Clark V. Pearson's audit found that on February 28, 2006, respondent had a shortage of between approximately $31,000 and $51,000 in her trust account (No. 16 in bar's exhibit 1; ROR-5). The clients' funds were converted to respondent's use when she wrote checks drawn

upon the trust account to herself far exceeding any funds to which she was entitled (T-38, 52-53). Respondent's misconduct has resulted in serious harm to her clients, who lost funds held in trust by respondent. There is no possibility that the amount of clients' funds lost to respondent's conversion could be less than $31,000 (T-54). It is impossible for Mr. Pearson to give a more exact figure due to respondent's lack of cooperation in providing closing statements and client files (T-51-52). Respondent admitted that she took money out of her trust account knowing that she was converting client funds to her own use (T-77, 99).

Approximately $6,000 of the trust account shortage was due to ATM theft in 2004 by respondent's inadequately supervised former secretary, Diane McGaw (ROR-6; T-36). However, the bank replaced the majority of the funds stolen by the secretary in 2004 so respondent's personal conversions caused the majority of the shortages in the trust account (T-36).

Respondent's mother passed away in 2000 and respondent was appointed Personal Representative in her mother's estate (T-81, 87). During the period of 2004 through 2006, respondent took funds held in trust from her mother's estate without legitimate purpose or approval from the estate beneficiaries or probate court (T-48, 100). Respondent took money from her mother's estate and placed it in her operating account because she was low on funds (T-100). She had no authorization from either the probate court or the other beneficiaries for the withdrawal of the funds from the estate (ROR-7-8;

No. 20 in bar's exhibit 1, pages 22-23). "…Respondent knowingly acted improperly by not obtaining prior court approval with notice to the other beneficiaries…" (ROR-13). Respondent claimed that she would be entitled to the funds in the future. Respondent acknowledged on redirect-examination by the bar that her brother had filed for an accounting of these expenditures from her (T-92-93, 99). Respondent acknowledged that she was confused as to the exact status of the probate matter (T-90). Although demanded, no final accounting had been made (T-93, 99). Although acknowledging that only incomplete bank records for the estate were produced and that the probate remained pending, the referee accepted respondent's testimony claiming that she only took money that would be due to her upon the closure of the probate proceedings (ROR-7-8).

Many of respondent's clients were harmed as a result of respondent's misconduct. Phillip Ardizzone, whom respondent represented in a personal injury action, lost funds due to respondent's conversions (No. 3 in bar's exhibit 1). Mr. Ardizzone's case settled resulting in a deposit of $65,000 into respondent's trust account. Respondent took a $21,666.45 attorney's fee and $1,683.99 as costs incurred and then failed to negotiate bills from two medical providers. Respondent failed to remit any proceeds to Mr. Ardizzone (T-13). Further, the respondent owed a partial attorney's fee of $6,500 in Mr. Ardizzone's case to attorney James L. Richard (No. 1 in bar's exhibit 1). Respondent failed to remit the fee owed to Mr. Richard (ROR-7). Respondent did not have the funds available in her trust account to pay Mr. Richard. Respondent's trust account shortage

increased to $51,291.41 when her obligation to Mr. Richard was included (No. 16 in bar's exhibit 1).

Respondent abandoned her civil personal injury practice without notifying her clients (Respondent's Answer to Amended Complaint; T-14, 20, 31, 105). She neglected the cases of Phillip Ardizzone, Edward Davis, Philip Dunlap, Latonya Thomas, Richard A. Carter, John Alvarez, Jacqueline Gamble, Kelly Laurito, and other clients with pending cases. Respondent failed to diligently pursue her clients' cases, failed to adequately communicate with her clients, misrepresented the status of their cases, failed to return their original documents, failed to properly handle trust money, and converted client funds (ROR-7; T-10-32).

Respondent was incompetent to provide adequate representation to her clients due to her alcohol and prescription drug addictions (No. 20 in bar's exhibit 1, at pages 50 and 59). Respondent admitted that she was incompetent in each and every client's case that she had at this time, including all of the cases assigned to her as an assistant public defender, making each of those criminal cases ripe for claims of ineffective assistance of counsel (T-65-66). Respondent worked for a civil law firm prior to her 1997 admission in the bar and became an assistant public defender for a year and a half after her admission. From January 1999 to January 2000, she worked for a private law firm doing personal injury work until she was terminated due to her lack of organization (No. 20 in bar's exhibit 1, pages 41-44). She worked as a solo practitioner doing personal injury

work from 2000 on and additionally worked as an assistant public defender again at the time of her emergency suspension (T-65, 110, 143).

Respondent's trust accounting procedures did not comply with the bar rules (No. 1 in bar's exhibit 1). In her bar dues statements, respondent misrepresented that she was in compliance with the Rules Regulating The Florida Bar for the fiscal years 2003-2004 and 2004-2005 (No. 15 in the bar's exhibit 1). Respondent stated that she did not intend to make misrepresentations to the bar regarding her compliance and that she believed that she had made handwritten notes on one dues statement clarifying her answer. At the final hearing, respondent was shown the dues statements and acknowledged that no such representation appeared on either dues statement (No. 20 in bar exhibit 1, page 54; T-60-61). Misrepresentations were made by the respondent in this case. On March 23, 2006, respondent's counsel submitted a letter to the bar (No. 13 in bar's exhibit 1) which stated in part:

> "We cannot reasonably take the position that no rules were violated, in light of my client not responding to your inquiries in a timely fashion. But on the whole, the rule violations are minor, and we do not believe the final investigation will reveal any misappropriation (certainly there won't be any intentional misappropriation) or any client harm. Additionally, most of the problems resulted from a staff person not fulfilling responsibilities entrusted to her, in particular in respect to communication with clients, and relaying information and messages to my client."

This obviously is not the case as reflected by the testimony and evidence. There was intentional misappropriation and clients were definitely harmed by respondent's

conduct. The respondent did not offer any substantial cooperation with the bar's investigation until she appeared for her deposition on September 18, 2006, just one month before the final hearing in the case. At that time, respondent had just been released from residential rehabilitation which she had sought due to her drug and alcohol addictions (No. 20 in bar's exhibit 1).

Respondent failed to file any of the numerous responses to the bar required by Rule Regulating The Florida Bar, Rule 4-8.4(g) (No. 12 in bar's exhibit 1; T-66).

Respondent, her husband, and two of her friends testified as to the mitigating factors in the case. They described respondent's alcoholism and drug addiction, her mother's death, her melanoma, and the betrayal of her former secretary and friend, Diane McGaw (T-55-102, 110, 113-140). Respondent entered an in-patient rehabilitative center in June 2006 (T-51), the same month that the Petition for Emergency Suspension was filed and granted in this case (Nos. 1 and 2 in bar exhibit 1). Although respondent testified to her efforts to rehabilitate her drug and alcohol addictions, no testimony from competent medical providers or from Florida Lawyers Assistance, Inc. was provided on the issue.

Respondent did not make any restitution in the case.

SUMMARY OF ARGUMENT

Respondent has committed two of the most heinous offenses possible for an attorney. She has converted client funds to her own use and abandoned her practice of law. The misconduct resulted in serious client harm. Additionally, she has misrepresented facts in an attempt to impede the bar's investigation. No restitution has been made.

While her attempt to seek drug and alcohol rehabilitation subsequent to the initiation of these proceedings is commendable, these serious offenses warrant nothing less than disbarment. The referee erred in ignoring respondent's misrepresentations and other aggravating factors and in crediting for certain mitigating factors that either do not qualify as mitigating factors or are not supported by the evidence. For example, the referee erred in finding that respondent had no selfish or dishonest motive in the admitted conversions and that respondent could make restitution to her clients from future funds to be received from a probate matter as these were an assumption of facts that were not in evidence.

The seriousness of respondent's misconduct along with the significant aggravating factors in this case call for respondent's disbarment from the practice of law. The Florida Standards for Imposing Lawyer Sanctions and case law support disbarment in this case rather than the suspension recommended by the referee.

ARGUMENT

ISSUE I

THE REFEREE ERRED IN MAKING CERTAIN FINDINGS AS TO MITIGATING AND AGGRAVATING FACTORS REGARDING RESPONDENT'S ABANDONMENT OF HER PRACTICE AND CONVERSION OF CLIENT FUNDS

It is well settled that the referee's findings of fact are given great weight by this court, The Florida Bar v. Kavanaugh, 915 So.2d 89 (Fla. 2005). The bar does not seek to overturn the referee's findings of fact but rather to point out errors in the referee's findings as to mitigating and aggravating factors. The referee found respondent had the following mitigation: Florida Standards for Imposing Lawyer Sanctions 9.32(a) absence of prior disciplinary record, 9.32(b) absence of a dishonest or selfish motive, 9.32(c) personal or emotional problems, 9.32(f) inexperience in the practice of law, 9.32(h) physical or mental impairment, 9.32(j) interim rehabilitation, and 9.32(l) remorse.

It is the bar's position that respondent has failed to demonstrate several of these factors. In regard to 9.32(b), absence of a dishonest or selfish motive, the referee's finding is puzzling. Respondent converted between $31,000 and $51,000 of client funds to her own use. She has admitted that she took money from her trust account knowing that she was converting client funds to her own use (T-77, 99). Respondent further admitted her motive in taking unauthorized funds from her mother's estate- she needed the money (T-100; No. 20 in bar's exhibit 1, pages 22-23).

The referee indicates that respondent's addiction to drugs and alcohol while she

made these conversions lessens her motives (ROR-12-13). The referee's finding on page 17, citing The Florida Bar v. Whigham, 525 So. 2d 873 (Fla. 1988), that her conversion of client funds was not willful follows this line of thinking. However, Whigham must be distinguished from this case. In Whigham, respondent was charged with a probation violation for failing to submit required trust account reconciliations. No clients complained and there was only commingling and a temporary shortage in the trust account. The facts of Whigham bear little resemblance to the situation at hand where respondent's intentional conversion of between $31,000 and $51,000 is not in question. Moreover, the respondent admitted and the referee found her guilty of 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Given respondent's acknowledgement that she knew her actions were wrong, The Florida Bar v. Riggs, 944 So.2d 167 (Fla. 2006), rehearing denied (Nov 30, 2006), is significant. In Riggs at 171, the court found the respondent guilty of 4-8.4(c) in regard to conversions which respondent blamed upon the non-lawyer personnel he had entrusted to manage his trust account. The court found him guilty of the dishonesty rule because of his intent to knowingly fail to use proper accounting procedures, at 171. Just as Riggs knew that he had entrusted the management of his trust account to others, respondent knew that she was dipping into client funds and not managing her account properly. Thus, it appears that the referee erred in making a finding that respondent had no dishonest or selfish motive in her actions.

The referee's finding that respondent's inexperience in the practice of law is a mitigating factor, 9.32(f), is also disputed. The respondent has practiced law since 1997 (ROR-5; T-56). This case involves abandonment of a law practice and conversion of client funds, not isolated errors in practice resulting from lack of legal experience. Moreover, respondent testified that she had some familiarity with the basic rules of trust accounting from working at a previous personal injury firm (T-74-75). Thus, it is difficult to accept respondent's lack of experience as a lawyer as a mitigating factor, particularly where she had clerked at a law firm prior to her admission to the bar (No. 20 in bar's exhibit 1, pp. 41-42) and been a practicing lawyer between seven to nine years at the time of the misconduct.

The issue of interim rehabilitation, 9.32(j) found by the referee as a mitigating factor, is troubling. The respondent has an acknowledged drug and alcohol addiction for which she did not seek help until some six months after the initiation of these proceedings. At final hearing, testimony was presented that respondent's original 30-day stay in the rehabilitation center was extended to 97 days and she was released September 18, 2006, approximately one month prior to the final hearing (T- 73; ROR-11). There was testimony that respondent had an addictive personality (T-97) and may have a gambling addiction as well that was not addressed in treatment (ROR-8, T-78, 97, 103-104). The only expert evidence for respondent's rehabilitation treatment was an unsworn letter from her treatment facility indicating that her prognosis for abstinence and sobriety is good

(respondent's exhibit 1; ROR-11). Respondent's own attorney acknowledged the tenuous status of respondent's recovery during closing argument, stating, "You could observe her demeanor here today, and she is still not 100 percent. She still struggles. Her days are difficult. She has a hard time recalling things and finding the words. Her life is far from fixed." (T-156-157) The referee acknowledged that respondent's recovery was just beginning, noting, "[r]espondent was clearly severely addicted during the period these violations occurred (2004, 2005, and 2006) and continues to have significant problems. Her demeanor and appearance at the 20 October 2006 hearing demonstrated that she has just begun her journey to recovery." (ROR -12) Further, at the recommendations section of the Report of Referee, the referee clearly expresses the court's concerns that respondent may have additional rehabilitation issues still needing treatment: "As to the continuing substance abuse treatment under contract with Florida Lawyers Assistance, Inc., it is recommended that she be evaluated for 'dual diagnosis' treatment, defined as treatment of patients who have both mental health disorders and substance use disorder." (ROR-18) Thus, the referee's own independent conclusion that further treatment is needed indicates the questionable status of respondent's rehabilitation.

The bar also disagrees with the aggravating factors indicated by the referee. The only aggravating factors found by the referee were 9.22(c) pattern of misconduct, 9.22(d) multiple offenses, and 9.22(h) vulnerability of victim. For the same reasons that the referee erred in finding that respondent did not have a selfish or dishonest motive, above,

the bar argues that 9.22(b), selfish or dishonest motive, applies as an aggravating factor.

Further, the referee failed to give weight to respondent's repeated obstruction of the disciplinary process in failing to find 9.22(e) as an aggravating factor for bad faith obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the disciplinary agency. Respondent has repeatedly demonstrated a disturbing lack of honesty. The bar received only one written response to its many inquiries to respondent. That response was a misrepresentation. On March 23, 2006, respondent's counsel submitted a letter (No. 13 in bar's exhibit 1) which stated in part:

> "We cannot reasonably take the position that no rules were violated, in light of my client not responding to your inquiries in a timely fashion. But on the whole, the rule violations are minor, and we do not believe the final investigation will reveal any misappropriation (certainly there won't be any intentional misappropriation) or any client harm. Additionally, most of the problems resulted from a staff person not fulfilling responsibilities entrusted to her, in particular in respect to communication with clients, and relaying information and messages to my client."

This obviously is not the case as reflected by the testimony and evidence presented. There was intentional misappropriation and clients were definitely harmed by respondent's conduct (T p. 84). Had the bar accepted this representation, which was not corrected until shortly before the final hearing, it seems likely that respondent's misconduct would have continued to cause even more client harm. Fortunately, the bar's investigation proceeded despite respondent's failure to respond to a single factual inquiry by bar or the grievance committee.

From the beginning of the bar's investigation, respondent has continually failed to cooperate with the bar. She failed to comply with a properly issued subpoena resulting in a contempt finding, failed to respond to the bar's multiple inquiries which required responses, and failed to appear for a deposition. Days before the scheduled final hearing, the bar was forced to file a Motion to Compel Answers to Interrogatories and Requests to Produce when respondent failed to respond to the Requests to Produce in any fashion and failed to provide proper answers to certain interrogatories. The referee concurred with the bar and an Order on Motion to Compel Answers to Interrogatories and Request to Produce was entered on October 16, 2006, just four days before the scheduled final hearing. Finally, respondent refused to admit to violating 4-8.4(c) until after the final hearing had commenced (T-7-8, 29).

The other aggravating factor which the referee should have included is 9.22 (j) given respondent's failure to make restitution. Respondent suggested at the final hearing that she would have made accountings to her clients but for the bar's refusal to agree to a continuance three days prior to the final hearing (T-99, 102). Respondent was aware of the bar's investigation into her conduct as early as January 2006 (No. 12 in bar's exhibit 1). Giving respondent the benefit of the doubt, she was aware that the handling of her trust account was at issue as of the subpoena duces tecum personally served on her on February 27, 2006. Respondent had at least eight months within which to perform an accounting and make restitution to her clients. Respondent failed to produce any

evidence that she had taken any measures to even begin making an accounting and restitution prior to the final hearing, and then blamed the bar's refusal to agree to a last minute continuance on the reason that no accountings or restitution were made. Respondent acknowledged that no continuance for this purpose was ever sought from the referee (T-99). The referee acknowledged that respondent placed blame upon her office staff to some degree rather than accepting full responsibility for the trust account violations (ROR-10).

ISSUE II

THE REFEREE ERRED IN MAKING A FINDING THAT RESPONDENT HAD A FUTURE ABILITY TO MAKE RESTITUTION TO THE VICTIMS OF HER THEFT.

Respondent, in her answer, admitted to paragraph 24 of the bar's Amended Complaint, which stated: "Respondent was appointed Personal Representative in her mother's estate. During the period of 2004 through 2006, respondent took funds held in trust from her mother's estate without legitimate purpose or approval from the estate beneficiaries or probate court."

In his report, the referee stated he "…anticipates that [r]espondent will have as much as $25,000.00 to $30,000.00 upon final distribution of estate assets with which to make restitution to her clients, their medical providers promised protection, and attorneys entitled to a share of fee." (ROR-8)

Unfortunately, the respondent's testimony is insufficient to support such a finding and it is improper for the referee to rely upon facts not in evidence. As acknowledged by the referee in the report, the respondent's severe addictions have caused her and continue to cause her significant problems. A review of the respondent's testimony in regard to the estate demonstrates more questions than definite answers about the status of her mother's estate (T-87-90, 91-94).

Certainly, the record is inadequate as a basis for the referee's finding that

respondent is due $25,000 to $30,000 from the estate with which to make restitution. Respondent admitted that her brother had demanded she provide an accounting of the estate funds but no accounting had been made and the matter was still pending before the probate court (T-93). The respondent provided only partial bank records in the probate matter. The record is devoid as to the status of the priority of the respondent's bequest over outstanding debts. The record is further devoid of any stated intent by respondent to prioritize restitution should she receive these proceeds. Moreover, the total restitution owed, $31,000 to $51,000, exceeds the estate proceeds estimated to be due the respondent by the referee.

Respondent's misrepresentations of facts in this case are multifold as noted above. The standard of clear and convincing evidence demands more than assumptions or presumptions based solely upon the testimony of an admittedly confused respondent who is faced with disbarment.

ISSUE III

DISBARMENT IS THE APPROPRIATE DISCIPLINE FOR THIS CASE INVOLVING THEFT OF CLIENT FUNDS AND ABANDONMENT OF A PRACTICE WITH SERIOUS CLIENT PREJUDICE

This case requires a more serious discipline than that recommended by the referee. Discipline must serve three purposes: it must protect the public, be fair to the respondent and be severe enough to deter other attorneys from committing similar misconduct. The Florida Bar v. Shoureas, 892 So. 2d 1002 (Fla. 2004); The Florida Bar v. Lord, 433 So. 2d 983 (Fla. 1983). The referee's recommendation of a three-year suspension is inadequate for these purposes.

Disbarment is the presumed discipline for conversion of client funds. See**,** The Florida Bar v. Gross, 896 So. 2d 742 (Fla. 2005); The Florida Bar v. Spear, 887 So. 2d 1242 (Fla. 2004); The Florida Bar v. Travis, 765 So. 2d 689 (Fla. 2000); and The Florida Bar v. Shanzer, 572 So. 2d 1382 (Fla. 1991).

The referee, at page 17 of his report, cited The Florida Bar v. Tauler, 775 So. 2d 944 (Fla. 2000), The Florida Bar v. McFall, 863 So. 2d 303 (Fla. 2003) and The Florida Bar v. Broome, 932 So. 2d 1036 (Fla. 2006) to support his recommendation of a three-year suspension. However, these cases are distinguishable from the instant case.

Tauler, like respondent, wrote checks to herself from her trust account to which she was not entitled for her personal use. Unlike respondent, Tauler engaged in only three instances of misappropriation over a period of five months. The Court distinguished

Tauler's isolated instances of misappropriations from a continuing pattern of misappropriation as found here by the referee. Further, Tauler replaced all the misappropriated client funds timely and in good faith. Respondent, as of the final hearing, had not made any restitution to her clients nor did she demonstrate any effort to do so. The Court found that "without the unique mitigating circumstances presented in the instant case and Tauler's clear commitment to providing legal assistance to those in need, we would not hesitate to disbar Tauler." Tauler at 949. Respondent has not demonstrated such a commitment as is evidenced by her abandonment of her clients without notice.

In McFall, the attorney, who suffered from impaired judgment resulting from medication and mental health issues, misappropriated client funds. In mitigation, the Court found that McFall had no prior discipline, made full restitution, the misappropriation was isolated in time and limited to one account, and McFall admitted the violations and was cooperative with the bar. Conversely, respondent has made no efforts at timely and good faith restitution, the misappropriation was not isolated and involved not only respondent's trust account but her mother's probate estate for which she was personal representative, and respondent repeatedly failed to cooperate with the bar. The Court noted that the decision not to disbar McFall was a close one. The mitigation found in McFall simply does not exist in respondent's case.

In The Florida Bar v. Broome, 932 So. 2d 1036 (Fla. 2006), Broome received a

one-year suspension for multiple instances of neglect, inadequate communication, contempt, excessive fees and failure to respond to the bar's investigation. While the misconduct in Broome is certainly serious it does not rise to the level of the admitted misconduct in respondent's case. While Broome neglected several clients, she did not wholly abandon her practice of law with no notice given to her clients. Further, while Broome took an excessive fee, she did not misappropriate any client funds.

Additionally, the referee found Broome had the following mitigation: no prior discipline, personal or emotional problems, physical or mental disability or impairment, interim rehabilitation, absence of a dishonest or selfish motive, and remorse. The Court noted had it not been for Broome's mitigation, the sanction might have been disbarment. As established in Issue I, the mitigating factors of lack of prior discipline, interim rehabilitation, absence of a dishonest or selfish motive and remorse are inapplicable in respondent's case. Finally, unlike in Broome, there is no evidence in the record that respondent's failure to pay restitution was due to her inability to pay rather than indifference.

It is the bar's position that the only appropriate sanction for respondent's misconduct is disbarment. The Florida Standards for Imposing Lawyer Sanctions assist in determining appropriate discipline. These standards support disbarment when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury (Standard 4.11), when a lawyer abandons the practice and causes serious or potentially

serious injury to a client [Standard 4.41(a)], when a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client [Standard 4.41(c)], when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client (Standard 4.51), 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 (Standard 4.61), and 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 (Standard 7.1).

In The Florida Bar v. Golub, 550 So. 2d 455 (Fla. 1989), the Court disbarred Golub for removing substantial sums from an estate without authorization despite his lack of prior discipline, cooperation in the bar proceedings by stipulating to the facts, voluntarily self-imposed suspension from his law practice, and alcoholism as a mitigating factors. The Court held that "[w]hile alcoholism explains the respondent's conduct, it does not excuse it." Like the case at hand, Golub made no restitution. The Court found that he betrayed the client's trust. Respondent engaged in numerous violations that were not present in Golub. When the totality of the circumstances in respondent's case, including that respondent was uncooperative in the disciplinary proceedings and has a prior disciplinary record, are considered the only reasonable discipline, as in Golub, is

disbarment.

In The Florida Bar v. Shuminer, 567 So. 2d 430 (Fla. 1990), Shuminer was disbarred for misappropriating client funds. The Court considered disbarment appropriate despite Shuminer's extensive mitigation which included lack of prior disciplinary record, great emotional and personal problems, timely, good faith effort at restitution, cooperation with the bar, inexperience in the practice of law, mental impairment, rehabilitation for over one year, and genuine remorse.

Respondent failed to present mitigating evidence comparable to Shuminer. While respondent, her husband, and her friends testified that respondent was "in a fog" because of her alcoholism, respondent presented no evidence from a qualified medical authority linking respondent's misconduct to her alcohol and drug abuse. The evidence as to respondent's rehabilitation is lacking. Respondent tendered an unsworn letter from her rehabilitation center indicating that respondent's prognosis for recovery looked good. However, respondent had just left in-house treatment. While respondent's efforts at rehabilitation are to be commended, it is hardly the established rehabilitation as demonstrated in Shuminer. Respondent, like Shuminer, failed to establish that her addictions sufficiently outweighed the seriousness of her offenses.

In The Florida Bar v. Travis, 765 So. 2d 689 (Fla. 2000), Travis was disbarred for intentionally misappropriating trust funds over a substantial period of time despite mitigation. Travis, like respondent, admitted the bar's Complaint allegations. Further,

respondent has admitted intent pursuant to Riggs, supra. Travis had several witnesses who testified on his behalf as to his character and fitness to practice law and who testified regarding his contribution to the legal community. Unlike respondent, Travis presented a qualified expert regarding his mental impairment. Travis failed to provide an accounting to his clients or return the misappropriated funds much like respondent. Despite the mitigation presented by Travis, which is greater than that presented by respondent, the Court found disbarment was appropriate.

In The Florida Bar v. Prevatt, 609 So. 2d 37 (Fla. 1992), Prevatt was disbarred despite his alcoholism for using client funds as his own and failing to repay the funds for over ten years. He stole one client's funds through a power of attorney and joint saving account. Respondent used her position as a fiduciary (as signatory of her trust account and as personal representative of her mother's estate) to remove funds to which she was not entitled for her personal use. She had no legitimate purpose or authorization for the removal of the funds rather she did so because she was short of her own funds.

In The Florida Bar v. Shanzer, 572 So. 2d 1382 (Fla. 1991), Shanzer was disbarred for admittedly violating trust account recordkeeping requirements, retaining interest on trust accounts for personal use, misappropriating funds, and causing shortages in trust accounts. Evidence was presented in mitigation that the misconduct occurred over a relatively short period, he fully cooperated with the bar, he was remorseful, he suffered from depression resulting from marital and economic problems, he was

rehabilitated and he paid restitution.

Respondent engaged in misconduct that extends well beyond misappropriation of funds. In particular, abandonment of clients is another egregious violation which is present in this case. "[A]bandonment of one's law practice evidence[s] a total disregard for the most fundamental obligations a lawyer owes his clients." The Florida Bar v. Friedman, 511 So. 2d 986, 987 (Fla. 1987). "A lawyer's abandonment of his practice, without taking steps needed for an orderly withdrawal from representation, results in wholesale neglect of legal business entrusted by clients and exposes clients to the possibility of irreparable harm." The Florida Bar v. Smith, 512 So.2d 832 (Fla.1987).

In The Florida Bar v. Hardman, 516 So. 2d 262 (Fla. 1987), the court looked at a similar issue when respondent's neglect and conversion of client funds was coupled with an abandonment of practice due to chemical dependency. The court found that while respondent's attempt at rehabilitation was encouraged, "… respondent's belated attempt to establish that he intends and has begun to rehabilitate himself was an insufficient basis for mitigation of discipline[,]" at 263. The Court disbarred Hardman.

In The Florida Bar v. Setien, 530 So. 2d 298 (Fla. 1988), Setien was disbarred for abandoning his clients without notice and writing bad checks. He stipulated to the facts at the final hearing. The Court concluded that Setien's prior lack of discipline, recovering drug and alcohol dependency, distinguished prior service as a police officer and alleged lack of a dishonest or selfish motive explain his behavior but does not excuse it.

In The Florida Bar v. Ribowsky-Cruz, 529 So. 2d 1100 (Fla. 1988), Ribowsky-Cruz was disbarred for abandoning her practice without notice or taking any steps to allow clients or the bar to contact her and failing to refund unearned fees.

In The Florida Bar v. Friedman, 511 So. 2d 986 (Fla. 1987), disbarment was the appropriate sanction for completely abandoning a law practice thus neglecting several client matters, misappropriating and mishandling trust funds, and failing to appear and provide records pursuant to a grievance committee subpoena.

Respondent failed to demonstrate sufficient mitigation to overcome the presumption of disbarment for the substantial and grave misconduct which occurred in the subject case. Disbarment is the fitting sanction in light of the harm to the public and the multiple egregious violations committed by respondent which fly in the face of the high ethical standards to which an attorney is held.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the record in this case, the referee's findings of guilt, and the recommendation of a three-year suspension *nunc pro tunc* to June 19, 2006, the date of her emergency suspension, and thereafter until she can prove rehabilitation for her substance abuse and until she has made all her former clients whole, followed by probation for three years conditioned on her not opening or maintaining a trust account until she has successfully completed The Florida Bar's Trust Accounting Workshop and LOMAS or a similar course in office management and recordkeeping procedures and instead impose a sanction of disbarment and payment of costs.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Brief and Appendix have been sent by Federal Express Overnight Mail to the Clerk of the Court, The Supreme Court of Florida, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by regular U.S. Mail to Barry William Rigby, Counsel for Respondent, whose record bar address is 924 North Magnolia Avenue, Suite 319, Orlando, Florida 32803-3850; and a copy of the foregoing has been furnished by regular U.S. Mail to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, this _____ day of February, 2007.

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CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN

Undersigned counsel does hereby certify that the Initial Brief is submitted in 14 point proportionately spaced Times New Roman font, and that the brief has been filed by e-mail in accord with the Court's order of October 1, 2004. Undersigned counsel does hereby further certify that the electronically filed version of this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

_____

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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

KRISTINE W. VALENTINE-MILLER,

Respondent.
_____/

Case No. SC06-1629
[TFB Nos. 2006-31,155(05A);
2006-31,398(05A);
2006-31,434(05A);
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2006-31,735(05A),
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2006-32,108(05A)]

APPENDIX TO COMPLAINANT'S INITIAL BRIEF

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INDEX

PAGE

Report of Referee 1
Transcript of October 20, 2006, Final Hearing..... 20