

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

CASE NO. SC09-2022

Complainant,

TFB File Nos. 2008-00,715(8B),  
2009-00,113(8B),  
2009-00,116(8B),  
2009-00,142(8B).

v.

WILLIAM BEDFORD WATSON, III,

Respondent,

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REPORT OF REFEREE  
(Sanction Phase)

On May 21, 2010, the Referee served the Report of Referee. In the Report, the Referee bifurcated the proceedings. After making a determination on the guilt phase, the Referee conducted a penalty phase hearing on June 11, 2010. At that hearing, the Referee heard evidence as to mitigation and aggravation, and argument about appropriate sanctions. This Report is an addendum to and is incorporated in the Report dated May 21, 2010. In this Report, the Referee makes the findings and recommendations as to disciplinary measures to be applied and costs to be taxed.

I. STANDARDS FOR IMPOSING LAWYER SANCTIONS

The Referee has considered the following Florida Standards for Imposing Lawyer Sanctions (“Standards”):

Standard 3.0, setting forth the factors to be considered in imposing sanctions.

Standard 4.11, stating that disbarment is a proper remedy when a lawyer knowingly or intentionally converts client property.

Standard 9.22, factors which may be considered in aggravation.

Standard 9.32, factors which may be considered in mitigation.

## II. CASE LAW

The Referee has considered the following case law in determining appropriate recommended sanctions:

A referee's recommended discipline will stand if it is authorized under the Florida Standards for Imposing Lawyer Sanctions, and has a reasonable basis in existing case law. *The Florida Bar v. Barrett*, 897 So.2d 1269, 1276 (Fla. 2005).

There are three purposes of lawyer discipline: First, the judgment must be fair to society. Second, the judgment must be fair to the respondent. Third, the judgment must be severe enough to deter others. *Id.* at 1275 (Fla. 2005).

The misuse of client's funds held in trust is one of the most serious offenses a lawyer can commit, and disbarment is presumed to be the appropriate remedy. The presumption of disbarment is particularly heavy when the attorney's misuse is intentional, rather than a result of negligence or inadvertence. *The Florida Bar v. Travis*, 765 So.2d 689 (Fla. 2000). In *Travis*, the attorney misappropriated funds from his trust account for his own personal benefit.

Disbarment may be proper when a lawyer misappropriates third party funds. *The Florida Bar v. Martinez-Genova*, 959 So.2d 241 (Fla. 2007). In *Martinez-Genova*, the attorney withdrew third party funds from her trust account and used them for her personal benefit.

In imposing sanctions for trust account violations, the case law suggests a clear distinction between cases in which a lawyer's conduct is deliberate and intentional, and cases where a lawyer acts in a negligent or a grossly negligent manner. *The Florida Bar v. Weiss*, 586 So.2d 1051, 1053 (Fla. 1991). In *The Florida Bar v. Diaz-Silveira*, 557 So.2d 570 (Fla. 1990), the intentional and deliberate misuse of a client's funds warranted disbarment, while in *The Florida Bar v. Whigham*, 525 So.2d 873 (Fla. 1988), a lawyer's gross negligence in managing a client trust account, absent willful misappropriation of client funds, warranted a three year suspension, not disbarment.

In *The Florida Bar v. Berman*, 659 So.2d 1049 (Fla. 1995), the court imposed a six month suspension for a lawyer for wrongfully disbursing a third party's funds from his trust account, rather than using the funds for an investment as intended.

In order to find that an attorney has acted with dishonesty, misrepresentation, deceit, or fraud, the necessary element of intent must be proven by clear and convincing evidence. *The Florida Bar v. Neu*, 597 So.2d 266 (Fla. 1992).

In *The Florida Bar v. Hirsch*, 342 So.2d 970 (Fla. 1977), the attorney was placed on a three month suspension after having taken a client's funds from his trust account. In discussing disbarment as a sanction, the court stated: "Disbarment is the extreme and ultimate penalty in disciplinary proceedings. It occupies the same rung of the ladder in these proceedings as the death penalty in criminal proceedings." *Id.* at 971.

### III. AGGRAVATING AND MITIGATING FACTORS

The Referee makes the following findings as to aggravating factors:

- (a) There were a total of four victims in two separate transactions.
- (b) Although admitting that he should have done things differently to avoid the same results, the Respondent has not acknowledged any wrongdoing.
- (c) The Respondent has substantial experience in the practice of law. He has practiced for over forty years, and has expertise in handling commercial transactions.
- (d) Two of the victims had little or no investment experience, although the Respondent has no direct contact with them. The two victims that the Respondent communicated with, and the non-victim third parties involved in these transactions, had significant investment experience or were not particularly vulnerable.
- (e) There is no evidence that the Respondent submitted false statements during these proceedings, as asserted by the Bar.

The Referee makes the following findings as to mitigating factors:

(a) The Respondent has no prior disciplinary record.

(b) The Respondent did not have a dishonest or selfish motive; he acted negligently or carelessly, but did not intend to steal the victims' monies.

(c) The Respondent did make an effort to get the victim's funds returned.

(d) The Respondent did cooperate with the Bar's audit of his trust account, and had a cooperative attitude toward these proceedings.

(e) The Respondent has an outstanding legal and personal character and reputation. He has served on a grievance committee in the past.

#### IV. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

The Respondent is 69 years old. He was admitted to the Florida Bar on November 4, 1966. He has no prior disciplinary record.

#### V. APPLICATION OF LAW TO FACTS

The Referee has recommended that the Respondent be found guilty of four counts of violating Rule 5-1.1(b), Rules Regulating the Florida Bar. The Respondent's conduct was not deliberate and intentional. He acted in a negligent manner. The Respondent did not use the victim's funds for his own benefit. Instead, he was careless in disbursing those funds. There is no clear and convincing evidence that the Respondent was guilty of dishonesty, deceit, misrepresentation, or fraud. The Respondent's conduct did, however, result in significant financial

damages to the victims, and he has not replaced the funds. There are both aggravating and mitigating circumstances, as described above. It is unlikely, given the Respondent's exemplary history, that this conduct will ever occur in the future.

#### VI. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED

The Referee recommends the following disciplinary measures to be applied:

(A) The Respondent serve a ninety (90) day suspension, retroactive to October 1, 2010, which is on or about the effective date of the Respondent's emergency suspension (Case No. SC09-1507); and

(B) The Respondent be placed on probation for a period of three (3) years following the suspension.

#### VII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

The Referee reviewed the Florida Bar's Request for Payment of Disciplinary Costs and supporting Affidavit, and the Respondent's Objection to the Payment of the Florida Bar's Costs. The Referee agrees with the Respondent's position, except for his argument that the costs should be reduced because the Bar did not prevail on all of its charges. Although that is correct, the time spent investigating and prosecuting the case would not be any different simply because the Bar did not carry its burden of proof on those interrelated issues.

The Referee finds that the following costs were reasonably incurred by the

Florida Bar:

Administrative Costs:	\$1,250.00
Court Reporter Fees:	\$4,375.90
Bar Counsel Travel:	\$1,239.01
Investigative Costs:	\$1,293.00
Witness Expenses:	\$2,108.58

Total: \$10,266.49

The Referee recommends that the costs be charged to the Respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final, unless paid in full or otherwise deferred by the Board of Governors of the Florida Bar.

Submitted this 22 day of June, 2010.

S/ \_\_\_\_\_  
Lawrence J. Semento  
Referee

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the Report of Referee was forwarded by U.S. Mail to The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399, that true and correct copies were forwarded by U.S. Mail to the following: James A.G. Davey, Jr., Bar Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; Kenneth L. Marvin, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; and John A. Weiss, Counsel for the Respondent, Weiss & Etkin, 2937 Kerry Forest Parkway, Suite B-2, Tallahassee, Florida 32309 on this 22 day of June, 2010.

S/  
Judicial Assistant