IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. SC11-1136
[TFB No. 2010-31,479(09B)]

v.

CLINT JOHNSON,

Respondent.
_____/

THE FLORIDA BAR'S REPLY BRIEF

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SYMBOLS AND REFERENCES

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

The transcript of the final hearing held on September 1, 2011, September 2, 2011, September 7, 2011, and September 13, 2011, shall be referred to as "T" followed by the cited page number(s). (T-__)

The Report of Referee dated September 19, 2011, shall be referred to as "ROR" followed by the referenced page number(s). (ROR-_)

The bar's exhibits will be referred to as "B-Ex." followed by the exhibit number. (B-Ex.__)

The respondent's exhibits will be referred to as "R-Ex." followed by the exhibit number. (R-Ex.__)

The trust account previously referred to as "trust account ending in 4380" shall be referred to as the "TA-1 account."

Respondent's Answer Brief shall be referred to as "A.B." followed by the cited page number. (A.B. p.__)

ARGUMENT

POINT I

THE EVIDENCE IN THIS MATTER SUPPORTS RESPONDENT'S PATTERN OF DELIBERATE AND KNOWING MISCONDUCT IN REGARD TO THE MISMANAGEMENT OF HIS TRUST ACCOUNTS.

The main argument in respondent's Answer Brief is that his misconduct in regard to his trust accounts was entirely negligent rather than deliberate or knowing. Based on the record evidence and testimony, it is clear that for an extended period of time, respondent failed to follow trust accounting procedures, failed to maintain adequate records, and engaged in sloppy bookkeeping for all his numerous trust accounts. The shortages identified in the compliance audit were regarding respondent's TA-1 account. Respondent's misconduct was therefore intentional, whether he personally caused the trust account violations or whether he grossly neglected the supervision of his trust accounts.

Further, the bar contends that respondent made a series of knowing and deliberate decisions which led to serious trust account violations and which support the significant aggravating factors discussed in the bar's Initial Brief. Although respondent was competent to reap the benefits of his large debt management practice, he failed to take the appropriate steps to safeguard his clients' funds. The bar submits that respondent's deliberate and knowing misconduct also encompasses

his failure to comply with the bar's requests for trust account records and the aggravation regarding his failure to comply with this Court's orders. As a result of respondent's deliberate conduct, a compliance audit could only be completed on his TA-1 account.

Respondent admitted that he failed to maintain the proper trust records and procedures during the audit period, and that he failed to continually and directly supervise his trust accounts. At the dissolution hearing, and during his deposition, respondent further admitted that he alone bears the responsibility for the deficiencies in his trust accounts (B-Ex. 26, p. 212, l. 3-6; B-Ex. 24, p. 54, l. 11-18). Respondent specifically stated that he failed to review his trust records and procedures during nearly the entire audit period of January 1, 2009 through November 30, 2010 (T-496-499; B-Ex. 24, p. 57, l. 18-25, p. 58-60). Respondent admitted that he failed to review bank statements containing negative daily balances and trust records reflecting numerous shortages in the TA-1 account (B-Ex. 26, p. 226, l. 7-21; B-Ex. 23, p. 40, l. 4-14). Such admitted conduct by respondent, especially over an extended period of time, clearly amounts to deliberate and knowing misconduct.

Respondent merely acknowledges that "he made an uninformed and ill-fated decision, at the outset, to place the credit-counseling/debt-settlement portion of his

law practice and its multiple trust and operating accounts under the umbrella of his small law firm and its rudimentary bookkeeping system." (A.B. p. 2). However, respondent specifically used a fee agreement which required that he and his law firm hold client funds in trust (B-Ex. 2). Regardless of the number of trust accounts, respondent was obligated, under the provisions of Chapter 5 regarding Trust Accounts, to take the necessary steps to ensure that all his trust accounts were in substantial compliance when holding client funds in trust. Respondent made a decision to place his debt management/settlement trust accounts under the liability of his law firm. Respondent subsequently failed to take appropriate action to ensure his compliance. Respondent cannot now effectively argue that his decision was strictly negligent, especially when he took no steps to rectify it prior to the commencement of the bar's investigation.

Next, respondent made the decision to delegate the handling of his trust accounts to Deanna Cintron, someone who had no formal education and almost no accounting experience (T-257-259). More importantly, Ms. Cintron testified that she was not responsible for performing the required trust procedures for any of respondent's trust accounts (T-301). According to Ms. Cintron, her responsibilities included opening the bank statements, making deposits and writing trust checks (T-258, 275, 301, 306-307, 337). Ms. Cintron specifically testified that respondent and

Ingrid Valdez were responsible for maintaining the records and performing the procedures for respondent's TA-1 account (T-302). This was the trust account with the significant shortages as well as the checks returned for insufficient funds.

Respondent knew of Ms. Cintron's limited qualifications, and still placed her in a role with significant responsibility. Respondent admitted that he failed to adequately supervise Ms. Cintron and frequently failed to verify when she told him that something had been done (T-483). Furthermore, Ms. Cintron was unable to clearly describe the training and/or supervision respondent provided to her pertaining to his trust accounts (T-301, 309-310). Nevertheless, respondent deliberately and knowingly allowed Ms. Cintron to continue handling his multiple trust accounts without adequate supervision.

As discussed herein and in detail in its Initial Brief, the bar maintains that respondent's overall conduct in regard to his trust accounts was not merely negligent. The bar's auditor determined that respondent made numerous transfers of funds to or from the TA-1 trust account for his personal use, including cash withdrawals, vehicle payments, various purchases, airline tickets, donations and restaurants (B-Ex. 24). There was no evidence or testimony presented to refute respondent's personal uses of funds which were improperly transferred from the TA-1 account to the OA-1 account (T-474-493). It is implausible that Ms. Cintron

was apparently transferring trust money to cover respondent's personal expenses, all without respondent's knowledge or direction.

It is also important to note that respondent cannot effectively blame Ms. Cintron's admitted theft for all of his trust account shortages. The bar's auditor testified that Ms. Cintron's $50,000.00 theft from the OA-1 account would not account for all of the shortages in the TA-1 account (T-208, l. 21; T-209, l. 4-11). Respondent's monthly comparisons, which were created with the assistance of retired bar auditor, Pedro Pizzaro, and respondent's bookkeeper, Vince Millen, reflected shortages in the TA-1 account which ranged up to $153,912.03, and the account had shortages in 22 months of the 23 month audit period (B-Ex. 13; T-107-108). Respondent maintains that he was the victim of a "treacherous and incompetent employee" (A.B. p. 18). Nonetheless, respondent was ultimately responsible for supervising that employee's handling of his trust accounts. This strict liability applies to all members of The Florida Bar who maintain trust accounts. Thus, respondent cannot absolve himself from his obligations as a member of The Florida Bar.

During the bar's investigation of this matter, respondent deliberately failed to notify the bar about all of his trust accounts as required by a subpoena. In his report, the referee stated that "the Respondent did fail to identify all his trust

accounts when specifically requested by TFB despite his obligation to do so" (ROR-12). The referee's unequivocal finding indicates respondent's deliberate and knowing misconduct.

The bar maintains that respondent's own admissions, coupled with the referee's findings, support that respondent displayed the requisite intent to violate Rule 4-8.4(c). Respondent admittedly opened and maintained several trust accounts for his debt management/settlement clients which were tied to his small law firm and its rudimentary bookkeeping system; he admittedly placed Ms. Cintron, a minimally qualified employee, in charge of all of his trust accounts; he admittedly allowed Ms. Cintron to remain in control of his trust accounts, which ultimately grew to over 13,000 client matters, even after Ms. Cintron showed signs of being unable to handle the pressure of her employment; and, he admittedly failed to adequately review Ms. Cintron's work in regard to the maintenance of his trust accounts. As emphasized in the Initial Brief, in The Florida Bar v. Riggs, 944 So.2d 167, 171 (Fla. 2006), the Court held that knowingly or negligently engaging in sloppy bookkeeping amounts to intent under Rule 4-8.4(c). In addition to respondent's serious trust account mismanagement, he knowingly failed to disclose all of his trust accounts to the bar.

POINT II

RECENT CASE LAW SUPPORTS AT LEAST A THREE YEAR SUSPENSION FOR RESPONDENT'S MISCONDUCT.

In his Answer Brief, respondent attempts to materially distinguish his misconduct from the misconduct detailed in Riggs, 944 So.2d 167 (Fla. 2006). In his argument, respondent improperly places the primary responsibility on his employee, Ms. Cintron. In Riggs, the Court ordered a three year suspension for trust account violations and held that an *attorney's failure to supervise his employee* constituted intent because he knowingly assigned his trust account responsibilities to the employee and then failed to manage her activities. Id. at 171 (emphasis added). The evidence in this matter clearly shows that respondent failed to properly supervise Ms. Cintron's management of the trust accounts, which involved several serious violations in addition to her admitted theft (B-Ex. 13; T-107-108; T-208, l. 21; T-209, l. 4-11). Respondent knowingly assigned his trust account duties to Ms. Cintron and then, knowingly failed to supervise her more closely upon learning that she was overwhelmed and derelict in those duties. Therefore, the bar has met the requirements to prove respondent's intent as provided by the Court in Riggs.

In his Answer Brief, respondent relies heavily on The Florida Bar v. Stanton, Case No. SC06-408, to support his argument that a three year suspension is not

appropriate in this matter. Respondent failed to address this Court's position regarding disciplinary sanctions as set forth in The Florida Bar v. Herman, 8 So.3d 1100 (Fla. 2009), wherein it was emphasized that the Court "has moved towards stronger sanctions for attorney misconduct" in recent years. See The Florida Bar v. Rotstein, 835 So.2d 241, 246 (Fla. 2003). Stanton is a disciplinary matter, without a published opinion, where an attorney received an admonishment for trust account violations perpetrated by an embezzling employee. Stanton does not discuss a violation of Rule 4-8.4(c), and respondent's misconduct involves a much more serious pattern of aggravation (as detailed extensively in the bar's Initial Brief) which would warrant a suspension from the practice of law. Also unlike Stanton, the bar's auditor in this matter testified that his analysis revealed theft from the TA-1 account for respondent's personal use (T-154, l. 17-23). In addition, Stanton was never placed on emergency suspension, while respondent remains on emergency suspension pursuant to this Court's orders dated April 11, 2011 and November 3, 2011. Finally, without an opinion or analysis from the Court, neither respondent nor the bar is aware of the Court's complete reasoning for recommending an admonishment in Stanton.

Recent case law, with the exception of Stanton, supports long-term suspension or disbarment for misconduct similar to that engaged in by respondent.

In The Florida Bar v. Watson, 2011 WL 6090078 (Fla., Dec. 11, 2011), the Court recently held that a three year suspension from the practice of law was the appropriate sanction for an attorney's deliberate and knowing misconduct in connection with his handling of trust account funds of investors, who had invested money in his client's development project. The Court compared Watson's conduct to Riggs' conduct, stating that Watson allowed his client to improperly direct him in handling trust funds, similar to the way Riggs permitted his paralegal to handle the trust account without Riggs' proper management. Id. at 10. The Court stated that Watson, like Riggs, "did not properly fulfill his responsibilities as an attorney in managing his trust account. He did not exercise the necessary care and discretion." Id. at 10. The bar submits that respondent, likewise, failed to exercise proper discretion in the management of his trust accounts. Therefore, respondent's misconduct in this matter, even without the alleged aggravation, warrants a three year suspension as ordered in Riggs and Watson.

CONCLUSION

The Florida Bar submits that there is ample clear, competent and substantial evidence that respondent's misconduct in regard to his trust account demonstrates the requisite intent to support a violation of Rule 4-8.4(c). The bar further maintains that the case law supports a three year suspension for respondent's admitted misconduct in this matter.

WHEREFORE, The Florida Bar submits that respondent should receive at least a three year suspension from the practice of law and be required to pay the bar's disciplinary costs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Reply Brief have been sent by First Class Mail to the Clerk of the Court, The Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by electronic filing to the Clerk of the Court; a copy of the foregoing has been furnished by First Class Mail to Chandler R. Muller, Counsel for Respondent, at Law Offices of Muller & Sommerville, P.A., Post Office Box 2128, Winter Park, Florida 32790-2128; and a copy of the foregoing has been furnished by First Class Mail to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, this _____ day of January, 2012.

Respectfully submitted,

_____
Patricia Ann Toro Savitz
Bar Counsel

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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