

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,  
Complainant,

v.

GREGORY HARTMAN,  
Respondent.

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CONFIDENTIAL

CASE NO. 69,243 & 70,377  
TFB NO'S. 12A85H54,  
12A85H59, 12A86H27 &  
12A86H47

THE FLORIDA BAR'S REPLY BRIEF

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TABLE OF CONTENTS

	<u>PAGE</u>
Table of Authorities .....	ii
Complainant's Reply .....	1
Conclusion .....	5
Certificate of Service .....	6

TABLE OF AUTHORITIES

	<u>PAGE</u>
<u>The Florida Bar v. Pahules,</u> 233 So.2d 130 (Fla. 1970) .....	1, 2
<u>The Florida Bar v. Breed,</u> 378 So.2d 783 (Fla. 1979) .....	2
<u>The Florida Bar v. Larkin,</u> 420 So.2d 1080 (Fla. 1982) .....	3, 4

COMPLAINANT'S REPLY

Respondent was found guilty of three counts of violating Disciplinary Rule 9-102(A) (Failure to deposit client trust funds into an identifiable bank account), Disciplinary Rule 9-102(B) (Failure to render accountings to clients for trust funds and to promptly deliver those funds to clients when requested), and of violating numerous rules related to trust account requirements. (Report of Referee (R) III). He has admitted to converting client trust funds (Answer to Complaint (AC) 7, 8, 12, 13, 19). Additionally, he was found guilty of violating Disciplinary Rule 7-101(A)(3) (Prejudicing or damaging a client) and Disciplinary Rule 7-102(A)(8) (Knowingly engaging in illegal conduct) (R III). Given the pattern of misconduct exhibited by respondent, and his disdain for rules governing attorneys and for the laws of this State, disbarment is warranted.

The respondent argues that the Court's holding in Pahules provides support for upholding the referee's recommendation of a suspension in the instant case. The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970). In Pahules, the respondent failed to deposit trust funds into a trust account, instead commingling them with his personal funds and using them for his own interests. Pahules voluntarily made full restitution before The Florida Bar initiated any action.

Unlike Pahules, the respondent in the instant case did not pay restitution prior to the commencement of Bar proceedings. In fact, the respondent failed to cooperate with efforts by clients and an attorney to obtain an accounting for trust funds until after The Florida Bar initiated its investigation. (AC 48, 50) Further, the respondent's misconduct was more egregious than the commingling and possibly inadvertent use of client moneys which occurred in Pahules. In the instant case, some trust monies were converted before they reached the trust account, making it highly unlikely that the conversion was due to an error. (AC 7, 8, 12, 13). It also should be noted that Pahules was decided prior to The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1979), in which the Court made it clear that they would not be reluctant to disbar attorneys for commingling, misuse and misappropriation of client funds.

Not only did respondent convert client trust funds, he also assisted clients in engaging in felonious conduct which potentially could have subjected all parties involved to criminal prosecution. (TR p. 23, 1.19-24) & (AC 17). Respondent's misconduct, especially when considered in conjunction with his use of illegal drugs (TR p. 1.8), evidences a disrespect for the law which clearly warrants disbarment.

The respondent in the instant case points out that the referee found no evidence of intent to misuse client funds nor that he converted trust money to his own use. However, the fact

that he was using illegal drugs (cocaine) at the time of the offenses (TR p.36, 1.12-14) strongly suggests a more central role in the conversions than respondent would have the Court believe. Respondent cites The Florida Bar v. Larkin, 420 So.2d 1080 (Fla. 1982), for the proposition that where alcoholism is the underlying cause of professional misconduct and the individual is willing to cooperate in seeking rehabilitation, the Court should take these circumstances into account in determining appropriate discipline. In Larkin, the Court found that the respondent's misconduct stemmed totally from the effects of alcohol abuse. That misconduct was neglect, not conversion of client trust money, nor facilitating the commission of criminal conduct by clients. Larkin did not exhibit the same indifference to regulations of the Bar and society as demonstrated by the respondent in the instant case.

Respondent states that disbarment would fail to offer him further opportunity for rehabilitation with the Florida Lawyers' Assistance Program. To the contrary, his participation in continued treatment with the Lawyer's Assistance Program could be ongoing during a period of disbarment if he so chooses.

Abuse of alcohol and use of cocaine prior to and/or during a period in which client trust funds are converted and clients are assisted in committing a criminal act does not warrant giving a suspension for what would otherwise be a disbarment offense. The

use of an illegal drug, in and of itself a crime, is an aggravating, not a mitigating, circumstance.

Respondent's conversion of client trust money, numerous failures to meet even minimal trust accounting requirements, and participation in illegal conduct with clients warrant disbarment. The referee's recommended one-year suspension coupled with a two year probation is insufficient given the pattern of misconduct exhibited by the respondent.

CONCLUSION

Respondents' repeated conversion of client trust money, failure to provide client trust account records, his numerous other failures to meet even minimal trust accounting requirements, and participation in illegal conduct with clients warrants disbarment. The referee's recommended one year suspension coupled with a two year probation is insufficient given the pattern of misconduct and disdain for rules and law exhibited by the respondent in the instant case.

  
THOMAS E. DEBERG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing The Florida Bar's Reply Brief has been furnished by Certified Mail, Return Receipt Requested #P 130 629 482 to Gregory S. Hartman, 2165 Main Street, Suite A, Sarasota, Florida 33577 and John T. Berry, Staff Counsel, The Florida Bar, 600 Apalachee Parkway, Tallahassee, Florida 32301, on this 6 day of October, 1987.

  
THOMAS E. DEBERG