

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

KENNETH E. PADGETT,

Respondent.

FILED

SID J. WHITE

MAR 14 1988

CLERK, SUPREME COURT

Deputy Clerk

Case Nos. 70,586 & 70,933

TFB Case No. 86-21,116(19)

[Formerly 87-21,336(19)]

and 87-27,713(19)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Integration Rule and The Rules Regulating The Florida Bar, a telephone motion hearing was held on December 1, 1987, and a final hearing was held on January 26, 1988. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - David G. McGunegle

For The Respondent - Robert E. Stone

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented on below, I find:

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1. In 1978, the respondent was retained to represent [REDACTED] a minor child, in a personal injury action. A settlement was reached and [REDACTED] her mother, was named as guardian in 1978.

2. In late 1979, the respondent became aware that [REDACTED] was spending the funds inappropriately.

3. In July, 1982, it was agreed that the guardianship would be transferred to [REDACTED] [REDACTED] [REDACTED]'s ex-husband. Previously the remaining \$45,000 had been removed from the guardianship bank account and placed in the respondent's interest bearing money market account. Mrs. [REDACTED] agreed to the transfer and the account was maintained in the respondent's name.

4. After the transfer of the guardianship to Mr. [REDACTED] the respondent paid over to him a total of \$30,000 in two payments over a period of two years.

5. After the second payment in the early part of 1984, Mr. [REDACTED] returned to Germany and was thereafter unable to contact the respondent. After trying unsuccessfully on several occasions to call, he finally sent a letter by certified mail, return receipt requested. The receipt was returned but the letter went unanswered. Mr. [REDACTED] never received any accounting of the funds.

6. In late 1985, Mr. [REDACTED] wrote to the judge in the guardianship matter to advise him of the apparent problem in getting information regarding the remaining \$15,000. In early 1986 the authorities were notified.

7. Respondent was charged by information of grand theft on April 10, 1986. On August 12, 1986, the respondent was found guilty as charged by a jury. The case was appealed and the verdict affirmed by the Fourth District Court of Appeals in an opinion filed January 13, 1988. The \$15,000 was repaid a few weeks prior to the trial.

8. As a result of the felony conviction, the respondent was suspended from the practice of law on October 15, 1986 pursuant to Rule 3-7.2 of the Rules of Discipline.

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9. Respondent handled certain legal matters for [REDACTED] [REDACTED] who died on July 23, 1984. He was to probate Mr. [REDACTED]'s estate after his death. The major assets were money market certificates worth \$175,000 and a checking account of \$9,000 as of August,

1982, when respondent drew up Mr. ██████████'s will. At the time of Mr. ██████████'s death the estate was worth over \$210,000.

10. In August, 1984, a partial distribution of \$150,000 was made by respondent to the three beneficiaries. The sum of \$100,000 was paid to ██████████ and ██████████ and \$25,000 was paid to each of two sisters as direct devisees called for by the will. Out of the remaining monies which totaled \$62,700.19, the respondent was to have paid all the debts of the estate, his fees and divide the residue equally to Ms. ██████████ and one sister, Ms. ██████████ who was also the named personal representative. Respondent advised her by letter dated August 15, 1984, that he foresaw no problems in concluding the estate.

11. Mrs. ██████████ testified the respondent also advised her that he estimated each residual beneficiary would receive about \$27,000.

12. In the fall of 1985, the respondent forwarded a check to Mrs. ██████████ in the amount of \$1,800 to cover her travel expenses from Ohio to Florida connected with the memorial service.

13. On December 13, 1985, the respondent wrote to Ms. ██████████ to apologize for the delay in closing the estate. He assured her it would be completed within sixty days. Ms. ██████████ never received any accounting from the respondent regarding the payments made in conjunction with the estate or the remaining balance. She simply heard nothing from him.

14. In April, 1987, after many unsuccessful attempts to contact the respondent, Mrs. ██████████ and her husband traveled to Florida from their home in Ohio in an attempt to locate him.

15. She contacted the Vero Beach branch of Florida Federal Savings and Loan and learned the respondent had withdrawn all of the estate funds approximately one year earlier.

16. After considerable inquiry, Mrs. ██████████ was able to locate the respondent and he arranged for a meeting to discuss the situation. During their meeting he advised her the estate funds were simply "gone." He promised to repay the full amount plus interest.

17. It appears the remainder of approximately \$60,000 has never been accounted for by the respondent. His trust account contained insufficient funds at times during this period to honor any of the obligations.

III. Recommendations as to whether or not the Respondent should be found guilty: As to each count of the complaint I make the following recommendations as to guilt or innocence:

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I recommend that the respondent be found guilty and specifically that he be found guilty of violating rules in Article XI of The Florida Bar's Integration Rule:

11.02(3) (a) by engaging in conduct contrary to honesty, justice or good morals; and 11.02(4) for refusing to account and deliver over the trust funds upon demand. Additionally, I find the respondent has violated the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility: 1-102(A)(3) for engaging in illegal conduct involving moral turpitude; 1-102(A)(4) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 1-102(A)(6) for engaging in other misconduct which reflects adversely on his fitness to practice law; 9-102(B)(3) for failure to maintain complete trust records of all funds, securities and other properties of a client coming into his possession and failure to render appropriate accounts to his client regarding them; and 9-102(B)(4) for failure to properly pay over and deliver to the client funds received as requested.

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I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Rules in Article XI of The Florida Bar's Integration Rule:

11.02(3) (a) for engaging in conduct contrary to honesty, justice or good morals, and Rule 11.02(4) for conversion of trust funds, and the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility: 1-102(A)(3) for engaging in illegal conduct involving moral turpitude; 1-102(A)(4) for engaging in conduct involving fraud, dishonesty, deceit, or misrepresentation; 1-102(A)(6) for engaging in other misconduct reflecting adversely

on his fitness to practice law; 6-101(A)(3) for neglecting a legal matter entrusted to him; 7-101(A)(1) for the intentional failure to seek the lawful objectives of his client; 7-101(A)(2) for failure to carry out a contract for employment; 7-101(A)(3) for causing prejudice or damage to his client during the course of the professional relationship; 9-102(B)(3) for failure to maintain complete records of funds, securities, or other properties of a client coming into his possession and failure to render appropriate accounts to his client regarding them; and 9-102(B)(4) for failure to promptly pay or deliver over to the client as requested the funds, securities, or other property in his possession which the client is entitled to receive.

IV. Recommendation as to Disciplinary measures to be applied:

I recommend the respondent be disbarred from the practice of law in Florida as provided in Rule 3-5.1(f) of the Rules of Discipline. Respondent has been suspended twice for misconduct involving his trust account although it appears to relate to the same period in time. Respondent is currently suspended from the practice of law for his felony conviction of grand theft of \$15,000 in the Angelette Anderson case. I find he does not understand or cannot accept the burdens associated with the high privilege of being a member of The Florida Bar. He should no longer be one.

V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 41
Date admitted to Bar: November 10, 1972
Prior Disciplinary convictions and disciplinary measures imposed therein:

The Florida Bar v. Padgett, 481 So.2d 919 (Fla. 1986) -
six month suspension for knowingly commingling personal and client funds merely as a matter of personal convenience.

The Florida Bar v. Padgett, 501 So.2d 593 (Fla. 1987) -
A three month extension of the respondent's existing

six month suspension for mishandling trust funds and for failing to properly disburse funds after a settlement.

The Florida Bar v. Padgett, Case 69,315 - Felony suspension ordered on September 16, 1986.


VI. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar.

- A. Grievance Committee Level Costs
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|---|-----------|
| 1. Administrative Costs | \$ 150.00 |
| 2. Transcript Costs | \$ 390.24 |
| 3. Bar Counsel/Branch Staff Counsel
Travel Costs | \$ 23.37 |
| 4. Investigator's Expenses | \$ 191.15 |
- B. Referee Level Costs
- | | |
|---|-----------|
| 1. Administrative Costs | \$ 150.00 |
| 2. Transcript Costs - not yet available | |
| 3. Bar Counsel/Branch Staff Counsel
Travel Costs | \$ 49.12 |
| 4. Investigator Expenses | \$ 366.56 |

TOTAL ITEMIZED COSTS: \$1,320.44

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 8 day of March, 1988.


J. William Woodson
Referee

Copies to:

Mr. David G. McGunegle, Bar Counsel
Mr. Robert E. Stone, Counsel for Respondent
Mr. John Berry, Staff Counsel, The Florida Bar,
Tallahassee, Florida 32301