

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

TOM K. DOUGHERTY,

Respondent.

Case No. 72,068

[TFB Case No. 88-30,069 (05B)]

FILED

SID J. WHITE

JAN 9 1989

THE FLORIDA BAR'S REPLY BRIEF

CLERK, SUPREME COURT

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ARGUMENT

NOTHING LESS THAN A PUBLIC REPRIMAND IS APPROPRIATE IN THIS CASE INVOLVING MULTIPLE RULE VIOLATIONS INCLUDING CONFLICT OF INTEREST, TRUST ACCOUNT VIOLATIONS, AND FAILURE TO RENDER TIMELY ACCOUNTINGS.

Respondent's attempt to mitigate the serious facts of this case by distinguishing between the fiduciary relationship of respondent as trustee to Ms. Zepp rather than an attorney-client relationship is inappropriate. Respondent never limited or clarified this relationship with Ms. Zepp in this manner. Further, he prepared, as an attorney, mortgages on the money he lent, from Ms. Zepp's trust funds, to his own corporation and to his clients. His relationship with Ms. Zepp was clearly one encompassed by the rules regulating attorney conduct and subjecting him to discipline for violations thereof. It is the position of The Florida Bar that public discipline is required in this case rather than the private reprimand recommended by the referee.

In addition to the inapplicability of the referee's recommendation of minor misconduct pursuant to Rules of Discipline, Rule 3-5.1(b), this case should receive public discipline due to the serious nature of the multiple rule violations involved in the case. The violations include neglecting to properly administer the testamentary trust, failure

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ARGUMENT

NOTHING LESS THAN A PUBLIC REPRIMAND IS APPROPRIATE IN THIS CASE INVOLVING MULTIPLE RULE VIOLATIONS INCLUDING CONFLICT OF INTEREST, TRUST ACCOUNT VIOLATIONS, AND FAILURE TO RENDER TIMELY ACCOUNTINGS.

Respondent's attempt to mitigate the serious facts of this case by distinguishing between the fiduciary relationship of respondent as trustee to Ms. Zepp rather than an attorney-client relationship is inappropriate. Respondent never limited or clarified this relationship with Ms. Zepp in this manner. Further, he prepared, as an attorney, mortgages on the money he lent, from Ms. Zepp's trust funds, to his own corporation and to his clients. His relationship with Ms. Zepp was clearly one encompassed by the rules regulating attorney conduct and subjecting him to discipline for violations thereof. It is the position of The Florida Bar that public discipline is required in this case rather than the private reprimand recommended by the referee.

In addition to the inapplicability of the referee's recommendation of minor misconduct pursuant to Rules of Discipline, Rule 3-5.1(b), this case should receive public discipline due to the serious nature of the multiple rule violations involved in the case. The violations include neglecting to properly administer the testamentary trust, failure

to render timely accountings, and loaning the trust funds to another client as well as to his own corporation without disclosure.

In The Florida Bar v. Wagner, the respondent was suspended for 18 months followed by three years probation, with proof of rehabilitation and payment of restitution to former clients required where he committed substantially similar violations. As in the case at hand, the Court found no evidence of illegal activity by the respondent, who was also acting as trustee for a client's trust funds. Mr. Wagner lent his client's trust funds to another client and also entered a business transaction between his client and the attorney's own corporation while acting as the client's attorney resulting in financial loss to his client. Although significant client loss was not present in the case at hand, there was certainly the potential for it, particularly since respondent failed to record the deed recording Ms. Zepp's security interest for 13 months, RR-3,4, R-9.

Additionally, respondent failed to administer Ms. Zepp's trust account as well as his general trust account in accordance with the rules, resulting in two non-sufficient funds checks and inaccurate trust payments to Ms. Zepp. Trust violations alone have been held to warrant a public reprimand and probation for a period of three years, The Florida Bar v. Armas, 518 So.2d 919 (Fla. 1988).

As noted in The Florida Bar's Initial Brief, anything less than a public reprimand is clearly inappropriate under caselaw and current standards for imposing attorney discipline.

Therefore, The Florida Bar requests this Court to find the respondent in violation of the rules as recommended by the Referee and to impose the public discipline warranted in this case.

CONCLUSION

WHEREFORE, The Florida Bar respectfully requests this Honorable Court to review the Report of Referee, findings of fact, and recommended discipline, and impose nothing less than a public reprimand or stronger public discipline as well as order payment of costs in this matter, currently totalling \$1944.79.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing Reply Brief has been furnished by regular U.S. mail to the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927; a copy of the foregoing has been furnished by regular U.S. mail to Counsel for respondent, George E. Hovis, at Post Office Box 848, Clermont, Florida, 32711; and a copy has been furnished by regular U.S. mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 5th day of January, 1989.

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