

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.
HAROLD S. WILSON,
Respondent.

CASE NO.
(TFB No. 88-11,317 (SE))

FILED
SID J. WHITE

JUN 7 1990

CLERK, SUPREME COURT
By _____
Deputy Clerk

COMPLAINANT'S FIRST REQUEST FOR ADMISSIONS

THE FLORIDA BAR, complainant, requests respondent, HAROLD S. WILSON, pursuant to Fla.R.Civ.P. 1.370(a), within thirty (30) days after service of this Request, to admit the truth of the following matters, subject to all pertinent objections to their admissibility which may be interposed at the hearing in this matter.

1. You are, and at all times mentioned herein were, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.

2. You represented Cleveland Hill, individually, on various matters for a number of years prior to April, 1985.

3. Sometime prior to April 5, 1985, you met with Cleveland Hill and it was agreed that you would assist in creating a corporation called Pinellas Paving, Incorporated (Pinellas Paving).

4. On or about April 5, 1985, Pinellas Paving was formed to conduct a construction and paving business in the State of Florida.

5. The Articles of Incorporation of Pinellas Paving named you incorporator, registered agent, secretary and a member of the board of directors of the corporation. Cleveland Hill **was** named president of the corporation. The Charter authorized issuance of 500 shares of Class "A" common stock at a par value of one dollar **(\$1.00) per share.**

6. No stock was ever issued as authorized by the charter.

7. You did not contribute any capital toward the formation of Pinellas Paving.

8. After formation of the corporation, you continued to **represent** Cleveland Hill individually and also agreed to provide legal representation and business advice to Pinellas Paving.

9. You failed to inform and advise Cleveland Hill of potential conflicts of interest in your representation of both the corporation and Mr. Hill.

10. In or about July, 1985, you loaned money to Cleveland Hill to purchase a house and real property on Island Estates in Pinellas County, Florida.

11. **You took a mortgage** in favor of Mary Ellen Wilson, your wife, which was satisfied in October, 1985.

12. You failed to inform and advise Cleveland Hill of potential conflicts of interest regarding representation of Cleveland Hill and Pinellas Paving and engaging in a loan transaction with Cleveland Hill.

13. On or about August 23, 1985, you accepted a check for \$103,000.00 from Cleveland Hill written **on** a Pinellas Paving account. You deposited the check into a trust account of your law practice.

14. On or about August 28, 1985, you wrote a check from your trust account to your office operating account in the amount of \$103,000.00. The check was endorsed by you **and** labeled "**for fees**".

15. You were **not** owed \$103,000.00 in fees in August, 1985 by Pinellas Paving or Cleveland Hill.

16. After about August 29, 1985, and until February 12, 1986, you were to receive \$2,000.00 monthly from Pinellas Paving. The payments included \$1,675.00 **for** attorney **fees** and \$375.00 **for** your non-legal **work** for the corporation. You were to receive the attorney **fees** regardless of whether you performed any legal work **for** Pinellas Paving.

17. In December, 1985, you ,borrowed \$34,000.00 from Pinellas Paving to purchase a motor vehicle and executed **an** unsecured promissory note **in** favor of Pinellas Paving in the amount of \$34,000.00.

18. **On** or about December 20, 1985, Black Magic, Inc., (Black Magic), was formed. The Articles of Incorporation named Cleveland Hill as president. You were **named** secretary, registered agent and a member of the board of directors. The charter authorized the issuance of common stock. You claimed

ownership of 25% of the corporation and Cleveland Hill claimed ownership of the remaining 75%. You did not contribute any capital toward the formation of Black Magic.

19. You also agreed to represent Black Magic as attorney for the corporation.

20. You failed to inform or advise Cleveland Hill of the potential conflicts of interest of your continued representation of Cleveland Hill personally and your representation of Black Magic. You also did not inform Cleveland Hill of the potential conflicts regarding your business and financial interest in the corporation.

21. After formation of Pinellas Paving and Black Magic, you placed funds earned by the corporation in your law office trust and operating accounts.

22. About the time of the formation of Pinellas Paving, Cleveland Hill agreed to a conversion of assets he owned into corporation assets. The assets included five (5) pieces of real estate and heavy construction equipment.

23. Cleveland Hill signed a series of promissory notes in his capacity as president of Pinellas Paving between February and May, 1986. Certain of the promissory notes were paid by renewal and merger into a promissory note for \$149,242.33 dated May 29, 1986 and a note for \$96,620.55 dated June 2, 1986.

24. On or about June 18, 1986, Cleveland Hill signed a two (2) page mortgage instrument prepared by you. Mr. Hill signed

the instrument in his capacity as president of Pinellas Paving.

25. The note signed by Cleveland Hill showed you as the mortgagee and Pinellas Paving as mortgagor. Additionally, the mortgage stated on its face that security for the mortgage would be in the form of "legal descriptions attached" to the mortgage instrument and called for payment of \$139,712.22 "upon maturity".

26. The legal descriptions mentioned in the previous paragraph were not attached to the mortgage instrument when signed by Cleveland Hill.

27. You later provided a copy of what was purportedly the same mortgage instrument to Cleveland Hill. You had recorded the mortgage with the Clerk of Court.

28. The second instrument contained four (4) pages, including a new second page which had language providing for twenty-four (24) payments beginning June 29, 1986 with a balloon payment of \$139,719.22 due on June 29, 1988. The payment schedule was not included in the original instrument signed by Cleveland Hill and Cleveland Hill did not agree to or authorize the payment schedule.

29. The second instrument added Mary Ellen Wilson, your wife, as a mortgagee. Cleveland Hill did not authorize or agree to this addition to the mortgage instrument.

30. The second instrument contained a legal descriptions page which listed five pieces of real estate. This **page** was not included in the original instrument signed by Cleveland Hill and was not authorized or agreed to by Cleveland Hill.

31. You failed to inform or advise Cleveland Hill of the possible conflicts of interest relating to your obtaining a business interest in Pinellas Paving by lending the corporation \$139,722.22. You also **failed** to inform Cleveland Hill of his right to seek independent counsel to review the mortgage instrument.

32. Between approximately April 10, 1986 and May 7, 1986, Pinellas Paving performed work on undeveloped property in Oldsmar, Florida, which was 80% owned by you. The work performed was heavy equipment earth work to level and grade the land. About 20,000 yards of dirt were added to the land from an adjacent shopping center construction site.

33. Pinellas Paving presented a bill to you **for** \$101,922.45. You stated to Cleveland Hill that you would attempt to obtain reimbursement from your 20% partner, Mr. James Nichols. You paid **only** \$8,000.00 of the outstanding bill and refused to pay the balance when it was demanded. You later purchased the improved property from Mr. Nichols.

34. In about September, 1987, you filed a foreclosure action on the five (5) pieces of real estate that had been added to the second recorded mortgage instrument previously noted in paragraphs 24-30 of this First Request for Admissions. You filed the foreclosure actions after Cleveland Hill refused to sell certain of the parcels. At the time of the filing of these foreclosure actions you continued to represent Pinellas Paving

and Cleveland Hill individually. Additionally, you represented yourself in the foreclosure actions and failed to inform Cleveland Hill of the conflict.

35. On about July 18, and August 22, 1988, an audit **was** conducted of your records at AmeriBank trust account, No. 0009105 by Pedro J. Pizarro, Staff Auditor of The Florida Bar. The audit covered the period from January, 1985 through July, 1988.

36. The trust account was **labeled** "escrow" rather than "trust" during the entire period covered by the audit.

37. You failed to maintain a cash receipts and disbursements journal during the entire period covered by the audit.

38. You failed to perform bank reconciliations and, except for a few sporadic months, failed to make monthly comparisons of your client ledgers with bank reconciliations during the entire period covered by the audit.

39. You deposited funds from your personal businesses and transactions into your trust account, thus commingling personal funds with trust account (client) funds. You also disbursed these funds from the trust account.

40. The trust account contained shortages in various client balances for all monthly periods between January 1985 and July, 1988 except for May and June, 1985. The shortages resulted mainly from clients' negative balances, fees paid to you in excess of funds available for certain clients, bank charges, and amounts paid by you relating to your personal transactions.

41. Your trust account records and procedures were not in substantial compliance with minimum requirements adopted by The Florida Bar.


42. On February 15, 1990, the Sixth Judicial Circuit Grievance Committee "E" found probable cause for further disciplinary proceedings.

43. Pursuant to the foregoing, you have violated the following Rules Regulating The Florida Bar:

Rule 5-1.2(c) (1); 5-1.2(c) (2); 5-1.2(c) (3) (Bylaws Section 11.02(4)(c)3a; 11.02(4)(c)3b; 11.02(4)(c)3c before January 1, 1987) (Bank reconciliations and monthly comparisons not maintained); 5-1.1 (Bylaws Section 11.02(4)(c)3d before January 1, 1987) (Use of trust funds for purposes other than the specific purpose for which they are entrusted to the lawyer); 5-1.15(a) (DR 9-102(A) before January 1, 1987) (Commingling funds related to lawyer's personal businesses and transactions deposited into and disbursed from trust account); 4-8.4(c) (DR 1-102(A)(4) before January 1, 1987) (Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); 4-1.5 (DR 2-106(A) before January 1, 1987) (Entering into an agreement for, charging or collecting an illegal, prohibited, or clearly excessive fee.) 4-1.8(a) (DR 5-101(A), DR 5-102, DR 5-103, DR 5-104 before January 1, 1987) (Entering into a business transaction with a client or knowingly acquiring an ownership possessory, security, or other pecuniary interest adverse to a

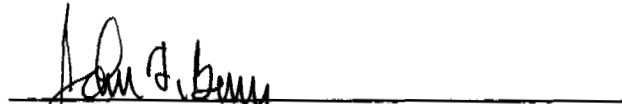
client without full disclosure, transmitted in writing, giving the client a reasonable opportunity to seek advice or independent counsel and written client consent).

Respectfully Submitted,


JOSEPH A. CORCORAN #709502
Assistant Staff Counsel
The Florida Bar
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Tampa, Florida 33607
(813) 875-9821

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Complainant's First Request for Admissions has been furnished to HAROLD S. WILSON, at his record Bar address of 2380 Drew Street, Unit 2, Clearwater, Florida 34625-3311, by Certified Mail, return receipt requested, No. P300 206 885, this 6th day of June, 1990:


JOHN T. BERRY