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The Florida Bar v. Kristine Valentine-Miller

SC06-1629

>> NEXT CASE ON CALENDAR IS
THE FLORIDA BAR VERSUS
VALENTINE-MILLER.

>> MAY IT PLEASE THE
COURT --

>> THE -- AS OF A -- IN A
CASE WHERE WE HAVE TWO
INSTANCES OF CONDUCT, THAT
CALL FOR.

>> CAN I ASK A QUESTION ON
WHAT REFEREE ACTUALLY
REMEMBERED THREE YEARS --
RECOMMENDED THREE YEARS
INDEFINITE SUSPENSION UNTIL
REHABILITATED FULL
RESTITUTION THAT TO ME SO I
JUST USUALLY THE LONGEST
SUSPENSION CAN BE THREE
YEARS, SO BY -- SAYING, THAT
IT IS THREE YEARS PLUS
INDEFINITE SUSPENSION, UNTI
REHABILITATED, FULL
RESTITUTION ISN'T THAT
ALMOST THE FUNCTIONAL --
EQUIVALENT OF DISBARMENT OR
IS IS THAT EVEN DO YOU READ
THAT BEING WHAT THE REFEREE
SAID.

>> YES THE RULES AUTHORIZING
-- MORE THAN A -YEAR
SUSPENSION.

>> I DIDN'T SEE THAT AS --
AS THE BAR'S ARGUMENT,
THOUGH.

>> IT IS A POINT WELL TAKEN
HOWEVER.

THE -- BAR NOTING THAT THE
REFEREE RECOMMENDED THAT SHE
GET -- EVALUATION, OF --
MITIGATING FACTOR AND
REHABILITATION, WE -- SORT
OF GOES AROUND THAT AGAIN,
AND SAYS THAT CONFIRM ABOUT
-- AND HAD NOT BEEN

ADDRESSED LIKE, EVALUATION,
TO THAT.

-- [INAUDIBLE]
EVALUATION --

>> LET ME ASK IN A MORE
POINTED WAY, AS FAR AS THE
RECOMMENDATION OF THE
REFEREE, YOU ARE FAMILIAR
OBVIOUSLY WITH REFEREE'S
REPORT.

>> YES, SIR.

>> AND ON PAGE 17, OF THE
REFEREE'S REPORT, SEEMS TO
BE THE CRITICAL FINDING, OF
THE REFEREE.

AND LET ME READ THAT TO YOU,
THIS SORT OF CONCLUDING
PARAGRAPH, THE REFEREE SAYS
UPON CONSIDERATION OF ALL
THE EVIDENCE PRESENTED BY
BOTH PARTIES, THE REFEREE
FINDS THAT RESPONDENTS
CULPABILITY WAS DIMINISHED
DUE TO EVENTS BEGINNING IN
EARLY 2004, PARTICULARLY HER
SUBSTANCE ADDICTIONS, THE
REFEREE ALSO FINDS THAT
RESPONDENT'S CONVERSION OF
CLIENT FUNDS WAS NOT
WILLFUL, HER CONDUCT WAS
NEGLIGENT, RATHER THAN
INTENTIONAL, NOW IN BETWEEN
HE CITES CASES, AND BAR
STANDARDS, WHATEVER.
SEEMS TO ME THAT IS THE
HEART OF THE REFEREE'S
FINDING, IN DECIDING,

AGAINST RECOMMENDING
DISBARMENT IN FAVOR OF
RECOMMENDING SIMILARLY
SEVERE SANCTION OF - YEAR
SUSPENSION PLUS THE
CONDITIONS THAT THE JUSTICE
HAS REFERRED TO, SO TELL ME
HOW REFUTING THE
REFEREE'S CONCLUSIONS --

>> THREE CASES CRUCIAL TO
REFEREE'S CONCLUSION --
CULPABILITY, THIS CASE IS --
MORE RECENT --

>> AS OPPOSED TO CASES, I'M
CONCERNED THAT THESE THIS
THESE APPEAR TO BE, REALLY,
CREDIBILITY, AND FACTUAL

FINDINGS, OF THE TRIAL COURT, WHEN YOU EVALUATE, CULPABILITY, AND THE FACTORS THAT WENT INTO THE CONDUCT OF THE LAWYER AND THE PROSECUTION, ISN'T IS THAT WHAT IS GOING ON HERE? AND WE OF COURSE DEFER TO THE REFEREE, IN TERMS OF THE EVALUATING CREDIBILITY, AND FACTUAL FINDINGS, SO HOW CAN WE GO BEHIND THESE FINDINGS, THAT TALK ABOUT HER SUBSTANCE ADDICTIONS, BEGINNING OF THIS, SERIES BEGINNING IN EARLY 2004, IF I UNDERSTAND IT IN 2004 THIS IS WHEN HER MOTHER PASSED AWAY, AND ALSO, THAT SHE WAS DIAGNOSED WITH A SERIOUS CONDITION THAT SHE THOUGHT WAS TERMINAL?

AND THAT THIS WAS ALL PART OF SO HOW CAN WE GO BEHIND THESE PARTICULAR FINDINGS?

>> I BELIEVE THAT THE WAY THAT THE -- LOOKED AT, DEMONSTRATE -- [INAUDIBLE] THIS COURT -- AND DETERMINE WHETHER OR NOT.

>> MAYBE LET ME ASK YOU A DIFFERENT WAY, I ALWAYS THOUGHT THOSE CASES INVOLVING NEGLIGENCE WAS JUST WHERE SOMEBODY WAS SLOPPY IN THEIR TRUST ACCOUNT, AND THEREFORE THERE WAS SOMETIMES IT WAS OUT OF BOUNDS, I THOUGHT HERE, THAT AT LEAST, LET'S JUST TAKE ONE CLIENT, THAT IS -- PHIL ARDIZZONE, A 65,000 DOLLAR SETTLEMENT DEPOSITED SHE TOOK 21,000, DIDN'T GIVE ANYTHING TO THE CLIENT, NOW -- WHAT WAS PRESENTED ON THAT, AT TRIAL? IT IS HARD TO THINK THAT IS -- PRODUCT OF NEGLIGENCE THAT SEEMS INTENTIONAL EVEN THOUGH WHETHER SOMEBODY WAS ALWAYS UNDER THE INFLUENCE, I MEAN DOESN'T GET AWAY FROM THE FIRST-DEGREE MURDER OR

EVEN A DEATH CASE IF YOU ARE
YOU KNOW IN A CRIMINAL SIDE,
SO, COULD YOU JUST MAYBE
FOCUS TO ME I WOULD WAS
TRYING TO UNDERSTAND IF
THERE WAS CLIENT HARM HERE,
OR JUST SLOPPY TRUST
ACCOUNT, OR AND THEN PLUS WE
HAVE ABANDONMENT MAYBE FOCUS
JUST ON THAT ONE ALLEGATION,
BECAUSE THAT IS PRETTY
SUBSTANTIAL.

>> -- WE -- TO -- AS -- WE
AFTER MENTIONED ARE --
NOTICED THAT ATTORNEY FEES,
THIS IS ALL ON RECORD.

>> WHAT OKAY SHE TOOK 21,000
AS ATTORNEY FEES, 1600 FOR
CAUSE WHAT HAPPENS TO THE
OTHER 40,000 WAS THAT CHECK
SHE ALSO WRITE CHECK FOR
40,000 ALSO TO HER SELF-?

>> NO SHE WAS LOOKING FOR --
>> IN THAT EVIDENCE -- --
ADVING THAT 16 -- OF --
EXHIBIT -- CHECK TO HERSELF
IN LARGE AMOUNT.

>> THERE IS NO -- THERE IS
NO DISPUTE THAT SHE DID NOT
GIVE HER CLIENT WHO SHE
SETTLED THE PERSONAL INJURY
CASE FOR, ANY MONEY, FROM
THE SETTLEMENT?

>> -- DESPITE THE FACT --
>>; IS THAT CORRECT?

>> THAT IS CORRECT AND THAT
IS THE DESPITE THE FACT THAT
-- REPRESENTED CLIENT --
ASKING HER FOR THE MONEY --

>> WHAT YOU ARE REALLY
SAYING CONCLUSION OF
NEGLIGENCE IS UNSUPPORTED BY
ANY OF THE FACTS THAT THE
REFEREE ALSO FOUND?

>> YES -- IT IS -- ON PAGE
77 OF THE RESPOND ENT,
KNOWLEDGE -- KNOWLEDGE, THAT
AS TO -- HER -- TAKE MONEY
OUT OF THE TRUST ACCOUNT AND
IF THAT SUPPORTS -- ATTORNEY
FEES --

>> WELL, DOESN'T SHE
ACTUALLY PLEAD -- FOR WANT
OF A BETTER WORD, OR ADMIT

THE ALLEGATIONS IN THE BAR'
COMPLAINT.

>> THAT IS CORRECT.

>> AND ONE OF THE
ALLEGATIONS, OR SEVERAL
ACTUALLY OF THE ALLEGATIONS
ACTUALLY HAVE HAVE TO DO
WITH THE FACT THAT SHE HELD
MONEY IN TRUST, AND DID NOT
DISTRIBUTE IT TO THE PEOPLE
THAT WERE INTENDEDED LIKE
THE MEDICAL PROVIDERS,
CORRECT.

>> THAT IS.

>> AND -- [INAUDIBLE]

>> SO MY QUESTION IS HOW DO
YOU NEGLIGENTLY DO THAT?
BACK TO YOU KNOW JUSTIFIES
ANSTEAD AND JUSTIFIES
PARIENTE'S QUESTION, THE
REFEREE SEEMS TO SAY THAT
WAS ALL NEGLIGENCE.

>> -- THE REFEREE, KEPT --

[INAUDIBLE]

COULD NOT -- KNOWLEDGE --
PRECEDENT, HAS BEEN -- SHE
SAYS OH, WOULD HAVE HAVE --

>> CAN I ASK -- I WANT TO
GET A PICTURE OF SOMETHING,
WE ONLY HAVE LINLTED TIME
HERE BUT IT IS TO ME VERY
IMPORTANT ABOUT HOW MUCH THE
EVENTS IN HER LIFE
INFLUENCED THE DOWNWARD
SPIRAL, SHE WAS ADMITTED IN
1997, WORKED AS ASSISTANT
PUBLIC DEFENDER UNTIL 99
COULDN'T HAVE HAD TRUST
ACCOUNT PROBLEMS THERE THEN
ASSOCIATE IN PERSONAL INJURY
FIRM LEFT DUE TO LACK OF
ORGANIZATION DID IT COME OUT
WHY SHE WHY THEY ASKED HER
TO LEAVE WAS THAT SHE --
EVEN THEN HAD A SUBSTANCE
ABUSE PROBLEM DO WE KNOW
THAT FROM THIS RECORD?

>> -- REPORT -- A SUBSTANCE
ABUSE PROBLEM AS EARLY AS
2000 --

>> OKAY SO ARE ANY OF THE
PROBLEMS SHE WORKED AND
SHARED SPACE WITH 2001 TO
2005 A A MOTHER DIED IN

2004, ARE ANY OF THE PROBLEMS THAT CAN, IN HER PRACTICE WHERE SHE WAS ALONE FOR YOU KNOW, SHARED SPACE DID IT OCCUR IN 01, 02, OR 03?

IF I HAD THE BAR ESTABLISH --

>> -- 2004.

IN TERMS OF MITIGATION WHY SHOULDN'T THE COURT CONSIDER THAT REALLY ALTHOUGH SHE DID HAVE A SUBSTANCE ABUSE PROBLEM ALL ALONG, THAT THE REAL PROBLEMS OCCURRED WHERE SHE BARELY WAS FUNCTIONING, AFTER HER MOTHER DIED, AND THEN WHERE SHE WAS DIAGNOSED WITH MELANOMA THOUGHT IT WAS GOING TO BE FATAL?

>> --

>> OR IS THAT CORRECT WHAT?

>> THAT THAT IS WHEN IT ALL STARTED?

.
>> -- THAT IS CORRECT THAT THAT IS -- SHOWED -- THERE WAS NO EVIDENCE -- PROBABLY BEFORE THEN EXCEPT ASKED TO LEAVE EARLIER OFFICE.

>> MUST -- MAKE SURE TRYING TO GET THE DATE JUSTICE PARENTS AYE IS TRYING TO DO A POSITIVING PARIENTE IS TRYING TO DO POSITION OF THE BAR THE IMPROPRIETIES THAT WERE DISCOVERED BEGAN ONLY IN 2004 AND THERE IS NO EVIDENCE OF ANY IMPROPRIETIES PRIOR TO THAT TIME?

>> EXCEPT THE FACT SHE WAS ASKED TO LEAVE --

>> OKAY THAT WAS THE QUESTION, SHE IS TRYING DETERMINE, SO EVERYTHING IS POST 2004.

>> THAT IS ABSOLUTELY --

>> WAS THE PERIOD BEFORE 2004 AUDITED?

>> NO, IT WAS NOT.

THE AUDIT BEGAN --

>> THERE IS A REASON FOR THAT?

>> THE -- IS THERE A REASON
FOR THAT?
WAS THERE A REASON THAT THE
BAR DID NOT GO BACK BEFORE
2004?

>> NO --

>> THERE WERE NO COMPLAINTS
AGAINST HER BEFORE 2004?

>> NO -- THAT IS CORRECT --

-- COMPLAINTS STARTED --
JANUARY --

>> SO THEN, WHEN SHE LEFT IN
-- 2005, SHE WAS STILL
PRACTICING AND SO THAT IS
THE ISSUE SHE JUST ABANDON
WHAT DID SHE DO LEFT HER
OFFICE.

>> --

>> INTERESTING IS THAT SHE
DID NOT -- SHE DID WENT
TO --

>> WAS HER HUSBAND AT THAT
SAME PUBLIC DEFENDERS
OFFICE.

>> --

>> AND HER HUSBAND.

>> SHE O HE MINE TO ME THAT
IS SO SHE JUST LEFT HER
PRACTICE, AND THEN CONTINUED
TO PRACTICE IN THE PUBLIC
DEFENDERS OFFICE FOR HOW
LONG UNTIL SHE GOT THIS --
WAS SUSPENDED.

>> -- SIX MONTHS, STARTED IN
-- JUNE, DECEMBER, IT WAS --
WAS --

>> WAS THERE TESTIMONY HOW
SHE FUNCTIONED IN PUBLIC
DEFENDER'S OFFICE ABLE TO
FUNCTION THERE

>> PROFESSIONALLY
INCOMPETENT -- EACH OTHER --
COUNCIL -- BUT -- DIDN'T
THINK TOTALLY COMPETENT
DURING THAT PERIOD -- ALSO
GOING TO -- TO THE INTENT,
AND TO ISSUE CULPABILITY
THAT COURT'S LANGUAGE.
MUCH LIKE, IN THAT CASE,
WHERE RESPONDENT --

[INAUDIBLE]

AS THIS COURT, FOUND IN THAT
CASE -- -- THAT IS THAT
SITUATION HERE -- PERFORM --

IN EVIDENCE -- SEE LARGE --
CHECK AFTER CHECK, AND GOES
ON THROUGH FEBRUARY THE END
OF THE --

>> WHAT WAS SHE DOING WITH
THAT MONEY?

WAS SHE DID SHE USE IT TO
SUPPORT A LAVISH LIFESTYLE
USING IT TO SUPPORT DRUG
ADDICTION WHAT WAS MONEY
BEING USE SNOORD SHE DID
TESTIFY SHE WAS -- TESTIMONY
AS WHAT IT WAS USED FOR --
AND -- [INAUDIBLE]

.
>> DOES -- MONEY IN
OPERATING ACCOUNT?

>> THERE IS NO -- OF
THAT --.

>> SPEAK A LITTLE TO THE
NONCOOPERATION, WHAT
EVIDENCE IS THERE OF
NONCOOPERATION AFTER MATTERS
SURFACE COME TO ATTENTION OF
THE --

>> -- SEVERAL TIMES THAT SHE
DID -- COOPERATED -- FAILING
TO -- [INAUDIBLE]

>> WHAT WERE THOSE?

>> TRUST ACCOUNT RECORD.

>> YES.

>> FOR FLORIDA BAR TO --
SOME OF THE -- ISSUES THAT
ARE BEFORE THE COURT.

>> ESSENTIALLY IS THAT THE
INDIVIDUAL IN THIS CASE
REALLY DIDN'T EVEN MAINTAIN
A TRUST ACCOUNT OR RECORDS
ATTRIBUTABLE TO THE TRUST
ACCOUNT.

>> THAT IS -- INTERESTING
THAT -- LIMITED RECORD --
HOWEVER SHE IS NOT -- TO THE
-- AND JUST BRIEFLY -- -- AT
THE TIME, CONSIDERED --
EXTENSION, BY HAVING ACCOUNT
-- FLORIDABA,HH.

>> WAS THERE ANY EVIDENCE IN
THIS RECORD I KNOW THAT
AFTER SHE LEFT THE PUBLIC
DEFENDER'S OFFICE, SHE WENT
TO WORK FOR PERSONALINJURY
FIRM WAS BASICALLY ASKED TO
LEAVE THAT FIRM?

>> THAT IS CORRECT -- LACK OF ORGANIZATION.

>> WAS THERE ANY RECORD EVIDENCE OF CONCERNING WHETHER OR NOT THERE WAS SOME DRUG PROBLEMS AT THAT POINT?

>> SHE WAS ASKED TO LEAVE THERE IN ABOUT 99, AND AT WHICH THEE SHE FILED THAT IS -- HER -- -- AROUND THAT TIME.

>> THANK YOU VERY MUCH.

>> MAY IT PLEASE THE COURT I'M -- I REPRESENTATIVE KRISTINE VALENTINE-MILLER, TO MY RIGHT AT COUNSEL TABLE.

>> WHY DON'T WE SORT OF START WITH THE WHOLE NOTION OF THE FINDING THAT JUSTICE ANSTEAD POINTED TO CONCERNING HER BEING NEGLIGENT, AS OPPOSED TO WILLFUL, IN THESE TRUSTS ACCOUNT MATTERS HOW DO YOU NEGLIGENTLY NOT PAY SOMEONE FROM A SETTLEMENT, WHEN THAT PERSON CONTINUES TO ASK YOU FOR THEIR MONEY?

>> -- RECORD SUPPORTS THES FINDINGS, THAT -- JUSTICE ASKED ABOUT.

>> -- FIRST COMPLAINT, IS NOT SO CLEAR AS THE BAR SUGGESTION, SUGGESTS, MONEY COMES IN SHE TAKES FEES THE REST IS HELD -- NEGOTIATION, MEDICAL PROBLEMS WINDING DOWN PRACTICE A, GOING TO WORK FOR PUBLIC DEF -- DEFENDER'S OFFICE HANDFUL O CLIENTS, NOT CLEAR ABANDONMENT SHE DOES -- EMPLOYEE -- SUPERVISION.

>> ONE OF THE THINGS, IS THAT THERE WERE TWO MEDICAL PERSONS THAT DID NOT GET PAID OFF, THOUGH, THERE WERE TWO MEDICAL PEOPLE AND THE CLIENT HIPS, WHO NEVER -- HIMSELF NEVER GOT ANY PAYMENT.

>> JUSTICE QUINCE THERE IS

58 -- ALL THAT IS LEFT IN TRUST ACCOUNT ALL CANDOR, IF THEY COMPLETE -- PROBABLY ARE MORE THAN TWO MEDICAL PROVIDERS UNPAID --

>> DID THE BAR -- ALLEGE THAT THIS WAS AN INTENTIONAL MISAPPROPRIATION?

>> THE BAR HE ALLEGED -- VIOLATION I DO I NOT RECALL IF THE WORD INTENT WAS USED THERE IS THE -- THAT CASES TURN BASICALLY TALK ABOUT INTENT THEY TALK ABOUT DELIBERATE KNOWING CALCULATION -- THE RECORD DOES NOT SUGGEST RECORD DOES NOT SUPPORT THOSE THINGS, AND THE COURT --

>> BUT THE PROBLEM IS THAT -- THE RESPONDENT CAME IN AND ADMITTED THE BAR'S ALLEGATION.

>> WOULD I LIKE TO SPEAK TO THAT -- THIS CASE IN THE FUTURE -- THE LAST FEW YEARS COURT HAS COME OUT WITH OPINIONS THAT CLARIFY THAT IF YOU ARE SLOPPY ENOUGH TRUST ACCOUNT, IT IS A -- VIOLATION, IT RISES TO LEVEL OF DISHONESTY IF YOU ARE RESPONDENT'S COUNSEL IN A BAR CASE OR IF YOU REPRESENT AN APPLICANT BEFORE THE BOARD BAR EXAMINERS THE DILEMMA YOU ARE FACING YOU FALL ON SWORD MEA CULPA TRY TO DEMONSTRATE CHARACTER OR DO YOU GO TO FIGHT ABOUT SMALL ISSUES ABOUT, WHAT I WAS.

>> BUT THE PROBLEM BUT -- THE PROBLEM I HAVE, IS THAT SINCE -- THIS COURT HAS INCREASINGLY BEEN CLEAR THAT IF THERE IS A MISAPPPROPRIATION, A TAKING OF MONEY FROM A TRUST ACCOUNT, THAT IS INTENTIONAL, THAT IS NOT SOMETHING THAT IS A BOOKKEEPING TYPE OF ERROR, THAT THE PRESUMPTION OF

DISBARMENT, WILL BE
ENFORCED?

AND SO THAT -- THAT WAS
CLEARLY OUT THERE, AT THE
TIME THAT THIS CASE WAS
COMING ALONG.

>> I STILL BELIEVE THERE IS
THIS DISTINCTION BETWEEN INTENT
AS A MATTER OF LAW AS YOU HAVE
ESTABLISHED THROUGH THE RECENT
OPINIONS AND THEN THE INTENT,
THE MEN'S RAYA NECESSARY TO
KICK IT OVER TO A DISBARMENT
CASE.

>> BUT THIS IS WHERE I HAVE --
AND I, ESPECIALLY WITH YOUR
CLIENT HERE, YOU KNOW THIS IS
A, IT'S A TRAGEDY ALL AROUND.
AND COURT IS VERY UNDERSTANDING
OF SUBSTANCE ABUSE AND WHAT IT
CAN DO TO LIVES.

BUT WE'VE GOT A RESPONSIBILITY
TO THE CITIZENS OF THIS
STATE, AND OFTEN TIMES WE RUN
INTO THIS WHEN WE'RE LOOKING AT
WHETHER WE ARE GOING TO ADMIT
PEOPLE CONDITIONALLY TO GO, YOU
KNOW, WE CANNOT, ALTHOUGH WE'RE
SYMPATHETIC TO, YOU KNOW,
SOMEONE WITH SUBSTANCE ABUSE,
WE, WE'VE GOT TO BE VERY
CAREFUL THAT THERE IS NOT ANY
TRIGGER THAT MIGHT UNDER STRESS
CAUSE THIS TO OCCUR.

MY CONCERN IS THAT I SEE
THIS AS THAT OVER A TWO-YEAR
PERIOD, FROM 2004, 2005,
ESSENTIALLY WE HAVE A PICTURE
OF SOMEBODY THAT AT SOME POINT,
ONE DAY SHOULD HAVE RECOGNIZED
WITHIN THAT TWO-YEAR PERIOD
THAT I'M GOING TO INTO A
DOWNWARD SPIRAL.

YOU KNOW, HER HUSBAND SAW IT.
AND WE'VE GOT -- I'VE GOT TO --
I'VE GOT TO STOP MYSELF.
I'VE GOT TO GET SOMEONE INTO MY
PRACTICE THAT CAN HELP ME OUT.

IT'S NOT AS IF IT HAPPENED ON
ONE DAY.
ALTHOUGH AS I -- SPEAK TO THAT.

HOW DO WE WHEN WE TAKE

SOMETHING THAT'S OVER A TWO-YEAR PERIOD AS ESSENTIALLY AS NEGLECTING CLIENTS, NOT ESSENTIALLY KEEPING A TRUST ACCOUNT AND THEN ACTUALLY TAKING CLIENTS' MONEY AND THEN ABANDONING THAT PRACTICE. I MEAN, I THINK IT WOULD --, IF SOMEHOW SHE HAD CHECKED HERSELF IN AT THE END OF THE 2005 AND THEN LEFT AND GOES TO THE PUBLIC DEFENDER'S OFFICE UNTIL THE BAR ASKED FOR IMMEDIATE SUSPENSION.

AS SYMPATHETIC AS I AM TO ALL THESE THINGS, I DON'T SEE HOW THE, YOUR, THE MITIGATION IN THIS CASE OVERCOMES THE PRESUMPTION OF DISBARMENT.

>> I'D LIKE TO ADDRESS THAT IN A COUPLE OF WAYS.

NINETY-FIRST, AND MS.^WICHROWSKI --

>> EACH COMES TO -- GIVE ME THIS CASE, WHAT'S YOUR MOST COMPELLING THING THAT THIS LOOKS LIKE SOMEBODY THAT REALLY WASN'T, YOU KNOW, THAT DIDN'T KNOW SHE WAS TAKING MONEY FROM HER CLIENTS WHEN SHE, AND, AND WHEN THE CLIENT KEEPS ON CALLING,

WHERE'S MY MONEY, WHAT IS IT THAT WE CAN -- YOU CAN GIVE ME THAT SHOWS THAT OVER A TWO-YEAR PERIOD SOMEONE DURING ONE DAY OF THAT TWO YEARS, YOU KNOW, WHO'S AN ADULT PERSON WHO'S, YOU KNOW, ISN'T DOING THESE THINGS INTENTIONALLY, NOT, SHE'S A BAD PERSON.

BUT THAT SHE UNFORTUNATELY, SHOULD'VE RECOGNIZED HER OWN FAILINGS AND DONE SOMETHING TO STOP THIS BEFORE THE BAR HAD TO STOP IT.

>> SHE DID RECOGNIZE HER OWN FAILINGS, AND THAT'S WHY SHE STARTED, SHE STOPPED TAKING NEW CLIENTS.

>> WHEN DID SHE STOP TAKING.

>> SHE STARTED TAKE TO WIND DOWN.

>> IN LATE 2005.

>> SHE DIDN'T ABANDON HER CLIENTS.

>> WE DISPUTE THAT. SHE DID NOT PROVIDE ADEQUATE SUPERVISION TO AN EMPLOYEE.

>> AND THAT WAS RIGHT. THAT'S WHERE THE 25,000 WAS TAKEN OVER WHATEVER IT WAS.

>> TWO DIFFERENT INSTANCES. >> LET'S FORGET THE AD-- ADEQUATE SUPERVISION BECAUSE I DON'T THINK THAT ONE WOULD BE DISBARMENT.

>> OBJECTIVE. OBJECTIVE MITIGATION. YOU SEE CASES WHERE IT'S JUST DEPRESSION OR AN ADDICTION, MOTHER DYING, THINKING SHE WAS GOING TO DIE FROM MELANOMA, THE EMPLOYEE THEFT DURING THE TIME SHE WAS DEALING WITH THE MELANOMA.

WE HAVE OBJECTIVE SIGNIFICANT FACTORS GOING ON, AND WHEN SHE REALIZED THAT, THAT SHE WAS NOT ABLE TO ADEQUATELY OPERATE IN PRIVATE PRACTICE, THE TESTIMONY BELOW WAS AT LEAST IF I WENT TO THE PUBLIC DEFENDER'S OFFICE, I KNEW I'D HAVE TO BE SOBER DAY IN, DAY OUT.

>> DID SHE REACH OUT TO FLYING.

>> SHE DINT IN TIME. SHE DID NOT UNTIL THE BAR CONTACTED HER.

>> THAT'S UNDENIABLE. >> AND WAS THERE SOMETHING IN THE RECORD ABOUT, ABOUT THE FLYING, REACHING OUT, WHETHER SHE IS AWARE OF FLANK OR?

>> INITIALLY SHE WAS IN DENIAL TO THE WORLD WAND THERE'S THIS LETTER IN THE RECORD THAT I WROTE WHERE AT THAT TIME, SHE DIDN'T THINK SHE HAD THAT, A BIG PROBLEM.

EITHER WITH SUBSTANCE OR ALCOHOL ABUSE, OR WITH HER TRUST ACCOUNT. AND THEN THE BAR GETS THE BANK RECORDS AND ALL THE SUDDEN, IT'S A PROBLEM.

SHE QUILTS CALLING ME.
I THREATEN TO WITHDRAW.
THAT'S IN THE RECORD.
SOMEBODY GETS HER INTO
TREATMENT.
THEY THINK SHE'S GOING INTO
30-DAY TREATMENT.
THEY KEEP HER FOR 90 DAYS.
SHE GETS IN, THINK THEY ARE
GOING TO KEEP HER FOR A MONTH.

THERE WAS AN ALLEGATION OF
NONCOOPERATION.
SHE GETS BACK OUT AND SITS FOR
HER DEPOSITION TO THE BAR
WITHIN SEVERAL DAYS OF BEING
OUT.
SHE, SHE COOPERATED TO THE MOST
OF HER ABILITY.

>> WELL LET ME -- HELP ME WITH
THE TIME FRAME.

WHEN DID THE MONEY,
WHEN WAS IT RECEIVED?

>> YOUR HONOR, I DON'T KNOW THE
ANSWER TO IT.

I'M SORRY.

THAT SPECIFIC ANSWER I DON'T
KNOW.

SOMETIME PROBABLY IN 2005 IS
THE ONLY WINDOW I CAN TELL YOU.

>> WHAT, QUESTION ON THE
REFEREES SANCTION.

WASN'T JUST A THREE YEAR
SUSPENSION.

IT IS SUSPENSION UNTIL SHE IS
REHABILITATED AND PAYS BACK ALL
THE MONEY, AND YOU HAVEN'T
FOUGHT THAT.

BUT AS THE BAR, ALTHOUGH THEY
HAVEN'T RAISED IT, WE HAVE AN
OBLIGATION TO LOOK AT IT, HOW
IS THAT A LEGAL SUSPENSION?

I MEAN, ISN'T THAT ESSENTIALLY
THAT THE, HE HAD NO CHOICE OR
SHE -- THEN IS DISBARRED THIS
PERSON.

>> IT'S REALLY A REDUNDANCY
BECAUSE AS A PRACTICAL MATTER
IF SHE'S NOT REHABILITATED,
SHE'S NOT COMING BACK AFTER
THREE YEARS BUT IF I COULD HAVE
ABOUT A MOMENT TO SUGGEST TO
THE COURT WHY IT CONTINUES TO,

TO STRUGGLE WITH THESE THINGS AS DO REFEREES, THE PROBLEM THAT THE COURT HAS IS, IS PERHAPS NOT THE RIGHT CARROT STICK BALANCE AS IT'S COMMUNICATED TO REFEREES. REFEREES MANY TIMES RECOMMEND A THREE-YEAR SUSPENSION THINKING READMISSION TO THE BAR IS GOING TO BE GOOD ENOUGH OA CARROT TO REINTRODUCE THEM TO THE BAR. THERE'S NOT A REAL STICK OUT THERE FOR PEOPLE WHO DON'T LIKE PRACTICING LAW THAT MUCH AND THEY SHOULD BE DISBARRED IF THEY ARE NOT GOING TO REHABILITATE.

THE REFEREES HAS THE ABILITY, THIS COURT HAS THE ABILITY WHEN THEY IMPOSE A THREE-YEAR SUSPENSION TO IMPOSE CONDITIONS THAT HAVE TO BE COMPLIED WITH REGARDLESS OF WHETHER YOU APPLY AND THE BAR DOES FROM TIME TO TIME BRING CONTEMPT PROCEEDINGS WHEN SOMEONE DOESN'T DO ANYTHING WHEN THEY --

>> YOU ARE TALKING ABOUT CONDITIONS DURING THE THREE-YEAR SUSPENSION.

>> ABSOLUTELY.

>> NOT AFTER.

>> SO WHERE EVERYONE IS LEFT IS TRYING TO GET INSIDE THE MIND OF A RESPONDENT.

WHERE'S THE CHARACTER.

>> ARE YOU SUGGESTING THAT BAR WOULD INVEST ITS TIME AND EFFORT TO MONITOR SOMEBODY DURING THE THREE YEARS TO MAKE SURE THEY ARE ON THE PATH TO REHABILITATION.

ISN'T THAT -- IT'S HARD ENOUGH FOR THE BAR.

>> IT'S NOT THE HARD.

THAT'S THE WAY THEY DO COMMITTEES THEY PAY A MONITORING FEE TO HELP COMPENSATE THE BAR AND IT'S NOT REALLY A BIG REACH TO SAY IF WE ARE NOT SURE GIVE THE PERSON A THREE-YEAR CARROT AND WE ARE GOING TO PUT THE STICK OUT

THERE REGARDLESS OF WHETHER YOU ARE GOING TO COME BACK.

I WOULD SUGGEST TO THE COURT THAT THAT TAKES AWAY SOME OF THE MYSTERY LIKE THE PEOPLE IN MISSOURI WOULD SAY SHOW ME, TELL ME WHAT -- DON'T JUST TELL ME WHAT YOU ARE GOING TO DO TO GET BACK IN, SHOW ME DURING THAT THREE-YEAR SUSPENSION, AND IT -- IF IT DOESN'T HAPPEN THE BAR IS RIGHT PERHAPS THE PERSON SHOULD'VE BEEN DISBARRED IN THE FIRST PLACE.

THEY HAVE A CONTEMPT PROCEEDING AND IT ENDS THE PERSON'S LICENSE IN THAT MANNER BUT WHERE WE ARE NOW IS, IS TRYING TO PUT ON CASES TO A REFEREE SAYING THIS PERSON IS REALLY A FINE PERSON, THEY HAD ALL THESE MITIGATING FACTORS GOING ON, AND, VERY SUBJECTIVE DETERMINATION WITHOUT REALLY KNOWING.

>> I DON'T KNOW IF I CAN, COULD, COULD SWALLOW THAT ONE.

I MEAN, IS IT UP ON THE SUSPENSION ARE RULES -- OUR RULES PROVIDE THAT YOU MUST SHOW REHABILITATION BEFORE BEING ADMITTED.

>> SURE.

>> AND THAT MEANS YOU CURE YOUR PROBLEMS THAT YOU HAD BEFORE, AND THEN SHOW REHABILITATION AND WE HAVE, THERE'S GUIDANCE OUT THERE ABOUT THE THINGS YOU DO IN THE COMMUNITY AND RELIGIONS AND IN SCHOOLS AND COMMUNITIES, I MEAN, ACROSS THE BOARD.

>> AND ASS A RESPONDENT'S COUNCIL, I AGREE WITH YOU 100% AND I WOULD SUGGEST THOSE LET ATTORNEYS IF THERE'S A GREAT AREA HAVE THAT THREE-YEAR SUSPENSION, BUT THE BAR IS, BEFORE THE COURT ON A REGULAR BASIS, SAYING IT NEEDS TO BE MORE THAN THAT.

>> DO YOU HAVE ANY IDEA HOW MANY BAR CASES COME THROUGH

THIS COURT?

>> A LOT.

>> WE ARE GOING TO HAVE TO ADD FOUR NEW EMPLOYEES TO DO WHAT YOU ARE ASKING TO DO.

>> AND WHAT I SUGGEST TO THE COURT IS THAT THIS TAKES THE PETITIONS WHO ARE REVIEWED TO DOWN TO A MINIMAL NUMBER BECAUSE THEY WILL PROVE THEMSELVES ON SUSPICION THEY ARE GOING TO LIVE OR DIE BASED ON --

>> BUT IF SOMEBODY AFTER THREE YEARS REPETITIONS FOR REINSTATEMENT AND THEY SAY STARTING ON THE DAY AFTER I WAS SUSPEND I'D STARTED DOING PUBLIC SERVICE, I STARTED -- THEY AIN'T GETTING IN.

AS YOU KNOW, SO IF THEY AREN'T DOING SOMETHING DURING THEIR PERIOD OF SUSPENSION, AND BAR, AND RESPONDENT'S COUNSEL AREN'T TELLING THEM THEY BETTER START ON DAY 1 IF THEY WANT TO GET BACK IN, THEN THERE'S SERIOUSLY WRONG WITH COUNSEL THAT IS ADVISING THEIR CLIENTS ABOUT HOW REINSTATEMENT WORKS BUT WHAT HERE IS THE PROBLEM, AND MAYBE I'M -- IS THAT I'M STILL ASKED YOU, CAN THEY IMPOSE WHAT THEY DID AS SHE CAN'T EVEN, AS I UNDERSTAND TO APPLY FOR REINSTATEMENT UNTIL SHE SHOWS REHABILITATION, NOW YOU ARE SAYING WELL THEY WOULD HAVE TO DO THAT ANYWAY BUT THAT SEEMED TO ME TO BE SOMETHING THAT IS BEYOND WHAT THE RULES CONTEMPLATE THAT A BAR REFEREE COULD DO.

IN A SENSE.

>> IT WAS UNUSUAL.

I SAW IT AS, AS A REDUNDANCY AS JUSTICE LEWIS SAID THAT THE YOU ARE GOING TO HAVE TO DO ALL THIS ANYWAY.

I GUESS MY POINT IS THAT THE BAR IN A CERTAIN NUMBER OF CASES IS SAYING THREE YEARS IS CERTAINLY NOT SUFFICIENT AND WE DON'T KNOW THAT SORTING THROUGH PILES

OF RECORDS AND HEARING
TESTIMONY, THIS PERSON'S GOOD,
THIS PERSON'S BAD.

IF THERE WERE AN ALTERNATIVE
MECHANISM TO SAY DO THESE
THINGS AND IF YOU DON'T DO
THEM, YOU ARE IN CONTEMPT, THE
BAR CAN SIT BACK AND SAY WE
DON'T NEED TO DISBAR YOU IF YOU
DO IT RIGHT.

>> LET ME ASK THIS LEADING
QUESTION HERE.

>> YES, SIR.

>> WOULD YOU EXPLAIN TO THE
COURT WHY BASED UPON THE
TOTALITY OF THE CIRCUMSTANCES
WITH YOUR CLIENT THAT THOSE
FACTUAL CIRCUMSTANCES
DEMONSTRATE THAT SUSPENSION IS
THE APPROPRIATE REMEDY AND NOT
A DISBARMENT AND LIST WHAT
THEY ARE AND HOW THEY IMPACTED
HER FOR THE BENEFIT OF THE
COURT.

>> THE FACTUAL CIRCUMSTANCES
WERE DUE TO HER ALCOHOLISM AND
PRESCRIPTION DRUG DEPENDENCY AS
OPPOSED TO ILLEGAL DRUGS.

>> HOW SEVERE?

HOW SEVERE?

>> HOW -- MEDIUM, MODERATELY
SEVERE, SEVERE, SHE HAD MEDICAL
ISSUES PREDATING THE MELANOMA
SURGERY.

YOU KNOW, THE MITIGATING
FACTORS AND LOOKING AT WHAT HER
RECORDS LOOKED LIKE, THE FACT
THAT IS KEY TO DISTINGUISH THE
OTHER CASES IS THE AUDITOR
TESTIFIED BELOW THERE WAS NO
EVIDENCE SHE WAS TRYING TO
COVER TRACKS.

THERE WAS NO TRYING TO PUT
MONEY BACK IN, FUDGE, ANYTHING
ELSE.

SHE JUST DIDN'T KNOW.

SHE DIDN'T HAVE THE DELIBERATE
AND KNOWING MINDSET THAT THE
COURT SEES THAT THE COURT SEEMS
TO IDENTIFY IN THE DISBARMENT
CASES.

>> THIS IS ONLY BECAUSE THERE'S
NO COVER-UP, NO ATTEMPTS TO
COVER YOUR TRACKS?

>> THERE'S JUST NO EVIDENCE THAT SHE WAS DOING IT ON PURPOSE. SHE HAD THIS PART-TIME EMPLOYEE. SHE STILL HAD SOME OVERHEAD SHE WAS TRYING TO COVER. SHE DIDN'T KNOW WHETHER SHE HAD ENOUGH MONEY, AND THE EVIDENCE WAS SHE WOULD TAKE OUT LITTLE BITS OF MONEY THINKING I'M NOT QUITE THERE YET, AND SHE ADMITTED TO THE BAR, YEAH, I KNEW NAT I WAS GETTING CLOSE TO DIPPING INTO CLIENT FUNDS. WELL, SHE HAD MISGAUGED THAT. BUT THAT'S THE CLOSEST THE EVIDENCE CAME TO SHOWING SHE KNEW THAT SHE WAS MISUSING CLIENT FUNDS. IT WAS TAKING MONEY OUT IN LITTLE PIECES. I KNEW I WAS GETTING CLOSE, AND

--

>> WE SUBMIT THAT DOESN'T CROSS THE BAR.

>> WHEN THE PI CLIENT STARTED ASKING WHERE'S MY SHARE OF THE PROCEEDS, IT SEEMS LIKE THE LIGHT SHOULD'VE COME ON VERY CLEARLY THERE WHEN SHE HAD TAKEN HER FEES, THE DOCTORS HADN'T BEEN PAID AND HER CLIENT SAID WHERE'S MY SHARE, WHY ISN'T THE LIGHT JUST BLARING?

>>> THE LIGHTS CAME ON BUT HER RECORDS WERE IN SUCH DISARRAY AT THAT POINT SHE DID NOT HAVE WHAT IT TOOK TO GET IT RIGHT AND FIGURE OUT WHO GOT WHAT.

>> SO FROM THAT POINT FORWARD, SHE TOOK NO MORE FEES?

>> TO MY BEST OF MY KNOWLEDGE SHE TOOK MORE NOR MORE FEES NO MORE CLIENTS WHEN YOU SAY TAKE MORE FEES, FOR HERSELF DID SHE TAKE MORE FEES?

>> YES.

WHEN SHE GOT NOTIFIED FROM HER CLIENT, I HAVEN'T GOTTEN MY SHARE OF THE PROCEEDS, SHE'S GOTTEN HER SHARE, ONCE SHE KNEW THAT, DID SHE TAKE ANY INCOME FROM HER PRACTICE?

>> THAT IS NOT CLEAR FROM THE RECORD.

THAT WAS NOT BROUGHT OUT, AND I WOULD SUBMIT BASED ON THE RECORD BELOW AND WHAT SHE PROVIDED, SHE DIDN'T KNOW THE ANSWER TO THAT UNTIL THE FLORIDA BAR AUDITOR MADE SOME SEMBLANCE OF ORDER OR THEY DIDN'T KNOW.

>> AND DIDN'T THE AUDIT SHOW THAT SHE CONTINUED TO TAKE MONEY OUT?

>> SHE DID OVER A PERIOD OF TIME.

>> THAT'S WHAT JUSTICE BELL IS ASKING.

>> I DON'T KNOW THE ANSWER TO THAT.

>> SO IT'S OKAY THAT YOU CAN JUST SIT THERE AND SAY WELL, I DON'T IS KNOW AND SO I'M JUST GOING TO LET IT GO AND NOT DOING ANYTHING?

THAT'S FINE?

THAT'S MITIGATION?

SO CERTAINLY IT'S NOT FINE OR OKAY WHICH IS WHY SHE HAS A THREE-YEAR SUSPENSION.

>> WITH OUR ASSISTANCE, IF YOU WANT TO JUST WRAP YOUR ARGUMENT UP, YOUR HONOR, IF NO MORE QUESTIONS, THAT IS ALL.

THANK YOU VERY MUCH FOR YOUR TIME AND CONSIDERATION THIS MORNING.

>> YOU'RE ESSENTIALLY TO THE END OF YOURS, SO I'LL GIVE YOU A MINUTE OR TWO TO JUST, TO JUST PLEASE HIT YOUR HIGH POINTS.

>> THANK YOU.

JUST BRIEFLY, THE QUESTION WAS ASKED WHEN MR.^ARDIZZONE'S INSURANCE MONEY FROM HIS SETTLEMENT WAS DEPOSITED, IT WAS DEPOSITED IN MAY 2005. SHE CONTINUED TO WRITE CHECKS FROM THE ACCOUNT, THE MAJORITY TO HERSELF UNTIL THE CONCLUSION OF THE BAR'S AUDIT FEBRUARY OF 2006.

AT HER DEPOSITION SHORTLY BEFORE THE FINAL HEARING, THE

BAR ASKED HER TO PROVIDE HER MOST RECENT BANK RECORDS SO WE COULD SEE WHAT HAPPENED UP UNTIL THE TIME OF THE EMERGENCY SUSPENSION.

SHE AGREED TO PROVIDE THEM BUT SHE HOWEVER NEVER DID.

>> SO FROM THAT ACCOUNT MORE WAS TAKEN OTHER THAN THE \$21,000 FEE AND THE COSTS THAT THERE WERE MONIES BEYOND THOSE THAT WERE TAKEN OUT OF THE THAT MONEY?

>> AS THE AUDITOR'S REPORT REFLECTS, THAT IS CORRECT. CHECK AFTER CHECK TO HERSELF, \$5,000, \$2,000, \$1,000.

>> LET ME MAKE SURE I UNDERSTAND THIS.

YOUR STATEMENT IS THAT AFTER THIS ALL OCCURRED, AND YOU TRIED TO GET THE RECORDS, THAT EVEN UP AT THE LAST DEPOSITION, JUST BEFORE THE HEARING, THERE WAS AN ACCOUNT OPEN BUT THEY REFUSED TO, TO PROVIDE THE INFORMATION FROM THOSE ACCOUNTS?

>> NO, WE ARE TALKING ABOUT THE TRUST ACCOUNT, WHAT HAD HAPPENED TO IT BEFORE IT HAD GOTTEN FROZE BY THE BAR'S EMERGENCY SUSPENSION OR THAT ONE TRUST ACCOUNT.

>> WELL NOTHING HAPPENED TO IT AFTER THAT?

>> WE -- THAT'S TRUE BUT WE JUST WANTED TO KNOW, WAS THERE STILL 50,000 -- \$58,000 IN THERE AS THERE WAS AT THE END OF THE {R} OF FEBRUARY? HAD SHE CONTINUED TO TAKE THE MONEY SOME.

>> HOW DID THE NUMBERS COME OUT AT THE END OF THE AUDIT -- THE TRUST ACCOUNT.

>> EXACTLY.

>> LET ME FINISH.

HOW DID THE NUMBERS COME OUT AS TO THE, WHAT FUNDS WERE IN THE TRUST ACCOUNT AND AVAILABLE TO BE PAID TO CLIENTS AND THEN COMPARED TO HOW MUCH THE CLIENTS WERE OWED, IN OTHER

WORDS, CAN YOU GIVE US WAS
THERE \$10,000 IN THE TRUST
ACCOUNT BUT SHE OWED \$60,000 TO
THE CLIENT?

OR WAS THERE \$60,000 IN THE
TRUST ACCOUNT AND SHE ONLY OWED
50,000 OR WHAT WAS IT?

TELL US WHAT --

>> AT THE END OF THE FEBRUARY
AUDIT PERIOD IN 2006, SHE HAD
\$58,000 IN THE TRUST ACCOUNT.

>> AND HOW MUCH --

>> HOWEVER, SHE HAD BETWEEN
80,000 AND \$110,000 OF CLIENT
OBLIGATION, SO SHE SHOULD'VE
HAD BETWEEN 88,000, \$110,000 IN
HER TRUST ACCOUNT.

>> WITH OUR ASSISTANCE, YOU
HAVE EXHAUSTED ALL OF YOUR
TIME.

WE THANK YOU VERY MUCH FOR YOUR
PRESENTATIONS, BOTH SIDES.

WE'LL TAKE THE CASE UNDER
ADVISEMENT AND THE COURT WILL
TAKE ITS MORNING RECESS.