NEXT CASE ON THE COURT'S CALENDAR IS THE FLORIDA BAR VERSUS ROBERT TRAVIS. MR. SPANGLER.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. COUNSEL. THE FLORIDA BAR COMES HERE, THIS MORNING, TO ASK THE COURT TO REVIEW THE REFEREE'S RECOMMENDED LEVEL OF DISCIPLINE BELOW, IN THE BELIEF THAT, IF THE 90-DAY SUSPENSION RECOMMENDED BY THE REFEREE IN THIS MATTER IS ADOPTED BY THE COURT, IT WILL SERIOUSLY ERODE THIS COURT'S OFTEN-ANNOUNCED PHILOSOPHY THAT MISAPPROPRIATION OF A CLIENT'S TRUST FUNDS IS ONE OF THE MOST SERIOUS OFFENSES THAT A LAWYER CAN COMMIT, AND WHERE THAT MISAPPROPRIATION IS KNOWING AND INTENTIONAL, THAT THE PRESUMPTIVE LEVEL OF DISCIPLINE IS DISBARMENT. THE REFEREE BELOW RECOMMENDED A SUSPENSION OF 90 DAYS, TO BECOME EFFECTIVE AS OF THE DATE OF THE FINAL HEARING. THAT HEARING WAS HELD ON OCTOBER 14, 1998, SLIGHTLY MORE THAN A YEAR AGO. IF THE COURT AC ACCEPTS THAT RECOMMENDATION AND THAT EFFECTIVE DATE, THE RESPONDENT IN THIS MATTER IS AUTOMATICALLY ELIGIBLE FOR REINSTATEMENT, WITHOUT PROOF OF REHABILITATION, AS OF THE ENTRY OF THIS COURT'S ORDER. THE COURT BELIEVES THAT THAT IS NOT APPROPRIATE IN THIS CASE -- I AM SORRY -- THE BARB LEAVES THAT THAT IS NOT APPROPRIATE, AND THAT DISBARMENT IS THE APPROPRIATE LEVEL OF DISCIPLINE, GIVEN THE UNDERLYING FACTS OF THIS MATTER.

BUT WOULD YOU ADDRESS FOR US DO YOU BELIEVE THAT, ONCE THE FACT OF PROCEEDS LEAVING A TRUST ACCOUNT INAPPROPRIATELY OCCURS, IT IS DISBARMENT WITHOUT EXCEPTION?

NO, YOUR HONOR, THERE HAVE BEEN SUFFICIENT CASES, SUFFICIENT OPINIONS BY THIS COURT THAT INDICATE THAT MITIGATION IS AN APPROPRIATE CONSIDERATION, WHEN IT COMES TO THE LEVEL OF DISCIPLINE.

WHAT LEVEL OF MITIGATION IS NECESSARY AND HOW DOES THIS CASE FIT WITHIN THAT CONTEXT?

YOUR HONOR, I WOULD LOOK TO THE CASE OF THE FLORIDA BAR VERSUS SCHUMANER, WHICH, I BELIEVE, IS FACTUALLY NATURAL GUST TO THE CASE THAT IS -- ANALGOUS TO THE CASE THAT IS BEFORE US TODAY, AND THAT CASE IS STRIKINGLY SIMILAR TO THE LEVEL THAT WAS INVOLVED IN THIS CASE. IN FACT, THERE ARE SOME EXCEPTIONS WHERE, IN THE SCHUMENER CASE, IT HAD FACTUAL BASIS THAT WOULD LEND THE COURT TO EVEN CONSIDER THE MITIGATION TO BE STRONGER IN SCHUMANER THAN IT IS HERE. AS OF THE TIME OF THE FINAL HEARING IN SCHUMANER, THE RESPONDENT HAD MADE A GENUINE, DILL GENERALITY EFFORT, TO -- DILIGENT EFFORT TO PROVIDE RESTITUTION FOR THE CLIENT'S FUNDS THAT WERE TAKEN, AND CERTAINLY IN THE SCHUMANER CASE, THE CLIENT, I AM SORRY, THE RESPONDENT WAS COMPARATIVELY INEXPERIENCED IN THE PRACTICE OF LAW COMPARED WITH THE PRACTICE OF LAW. ALSO THE FACTS IN MITIGATION ARE INVOLVED IN THE FACTS IN THIS CASE, AND YET IN THIS COURSE THE BAR HELD THAT THAT WAS APPROPRIATE REMEDY.

LET'S TALK ABOUT FACTUAL AS OPEN OWESED TO MITIGATION. YOU REVIEW THE FACTS, HERE, IN TERMS OF THE AMOUNTS THAT WERE INVOLVED AND WHAT ATTEMPTS AT RESTITUTION WERE MADE OR NOT MADE?

YES, SIR.

AND WHO THE VICTIMS, AND I USE THAT WORD IN ITS BROADEST SENSE, WERE?

THE -- FIRST OF ALL THE AMOUNTS. THE AUDIT EMBRACED A TWO-YEAR PERIOD OF TIME. NOW, DURING THAT PERIOD OF TIME, THE FLORIDA BAR STAFF AUDITOR DETERMINED THAT THE TOTAL SUM OF $35,000 WAS INAPPROPRIATELY CONVERTED TO THE RESPONDENT'S PERSONAL --

LET ME STOP YOU RIGHT THERE FOR JUST A MOMENT. WE HAVE ANOTHER CASE ON THE DOCKET THIS MORNING, WHICH INVOLVES AN AMOUNT WELL IN EXCESS OF $100,000. OTHER CIRCUMSTANCES. MAYBE SIMILAR OR DISSIMILAR. HOW RELEVANT IS THE FACTOR OF THE AMOUNT OF MONEY OF THE DISCREPANCY?

JUSTICE ANSTEAD --

IN YOUR VIEW.

IN MY VIEW, THE AMOUNT SHOULD NOT BE RELEVANT. BECAUSE IF WE BEGIN TO DRAW A LINE AT $35,000 OR $100,000 OR WHAT HAVE YOU, THEN IT SEEMS TO ME THAT -- IT SEEMS TO ME THAT THE INDIVIDUAL DISTINCTION ON A CASE BY CASE BASIS IS LOST.

WELL, IN STINKT I FEEL, THERE JUST -- INSTINCTIVELY, JUST IN THE CRIMINAL LAW, THE CRIMES GET SERIOUS WITH THE AMOUNT. THERE IS A NATURAL INCLINATION, IS THERE NOT, TO FEEL THAT LARGER AMOUNTS SHOULD BE TREATED MORE SEVERELY.

I WOULD AGREE.

UNLESS THERE ARE AMOUNTS SIMILAR IN SOME WAY. HOW ABOUT RESTITUTION? WERE THERE IDENTIFIED PERSONS HERE THAT WERE DEPRIVED OF FUNDS?

YES, SIR. IN THE AUDIT, WHICH IS PART OF THE RECORD, THE AUDITOR'S REPORT IDENTIFIES A LIST OF CLIENTS WHOSE FUNDS WERE MISAPPROPRIATED, THOSE BEING, PRIMARILY, PERSONAL INJURY CLIENTS, WHOSE MONEY WAS WITHHELD FOR PAYMENT OF MEDICAL BALANCES FOR MEDICAL PROVIDERS.

AND WAS THERE ANY RESTITUTION MADE?

THERE WAS NO RESTITUTION MADE AS OF THE TIME OF THE FINAL HEARING. THERE HAD BEEN A PLAN OF RESTITUTION INITIATED WITH THE FAVORED MEDICAL PROVIDERS THAT THE RESPONDENT HAD DEALT WITH HABITUALLY, ALTHOUGH, TO MY UNDERSTANDING, THAT RESTITUTION HAD NOT BEEN INITIATED YET. HE HAD WORKED OUT SOME SORT OF AN ARRANGEMENT, AS FAR AS THE INDIVIDUAL CLIENTS ARE CONCERNED, THERE HAD BEEN NO EFFORT WHATSOEVER MADE FOR RESTITUTION ON THEIR BEHALF.

WOULD YOU CONTINUE. YOU WERE TALKING ABOUT THE AGGRAVATION HERE, I BELIEVE.

THE SHORTAGES IN THE TRUST ACCOUNT, AS I MENTIONED EARLIER, THERE WAS A TOTAL OF SOME $35,000 OVER THE TWO-YEAR PERIOD THAT HAD BEEN MISAPPROPRIATED.

COULD YOU JUST, AS FAR AS THAT GOES, IT WAS NOT AN ONE-TIME SITUATION. COULD YOU JUST EXPLAIN, OVER THE TWO-YEAR PERIOD, WHETHER THIS WAS AN ONGOING PRACTICE OF CONDUCT DURING THAT PERIOD OF TIME.

YES, YOUR HONOR.

IT WAS AN ONGOING PRACTICE. IT WAS A PATTERN THAT HAD EVOLVED, ESSENTIALLY, IT HAD EVOLVED, TO BEGIN WITH, OF THE SHARING OF A TRUST ACCOUNT WITH A COLLEAGUE WHO WAS

NOT A PARTNER. HE WAS A MEMBER OF THE BAR BUT HE WAS NOT A PARTNER. HE SHARED SPACE WLT RESPONDENT, AND HE WAS -- SPACE WITH THE RESPONDENT, AND HE WAS RESPONSIBLE FOR A SHARE OF THE OVERHEAD AND THE RENT. A SHARE OF THAT PATTERN EVOLVED INTO THAT PORTION OF THE COLLEAGUES'S EXPERIENCE P. PENSIVE -- EXPENSE ACCOUNT BEING SHARED WITH THE ACCOUNT OF HIS OWN. THE COLLEAGUE HAD NO SIGNATURE TOUR ON THE TRUST ACCOUNT. THEY WOULD DEPOSIT THE DEPOSIT INTO THE TRUST ACCOUNT AND THE TRUSTEE WOULD WITHDRAW FROM THE TRUST ACCOUNT THE MONIES THAT WAS-ED BY THE COLLEAGUE FOR HIS -- WAS OWED BY THE COLLEAGUE FOR HIS SHARE OF THE RENT AND SO FORE. -- SO FORT.

HOW MUCH OF THAT CONDUCT WAS ATTRIBUTE TO CONDUCT WHERE HE WAS TAKING MONEY FROM HIS OWN CLIENTS AND SETTLEMENT IN PERSONAL INJURY CASES.

WE HAVE IDENTIFY TWO SPECIFIC INSTANCES THAT FALL IN THAT PATTERN. THERE MAY HAVE BEEN MORE, BUT ON ONE OCCASION THERE WAS A CHECK FOR $9500 THAT WAS WITHDRAWN FOR PAYMENT OF A BANK LOAN AND OF SOME $8,000, AND AN ADDITIONAL $1500 THAT THE RESPONDENT NEEDED TO MEET HIS PERSONAL OBLIGATIONS AT THE MOMENT. THE SECOND IN STABS WAS -- INSTANCE WAS A SITUATION IN WHICH THE RESPONDENT WROTE A CHECK PAYABLE TO HIS DAUGHTER, IN THE AMOUNT OF $1800, TO FINANCE A TRIP TO COSTA RICA. AS FAR AS WE KNOW AND HAVE BEEN ABLE TO IDENTIFY, THE OTHER WITHDRAWALS WERE ESSENTIALLY TO MEET THE REQUIREMENTS OF THE OVERHEAD AND SO FORTH. IN OTHER WORDS TO SUSTAIN THE OPERATION OF THE OFFICE.

WAS THERE ANY MITIGATION OFFERED HERE OF THE VARIETY OF PERSONAL STRESS OR THAT KIND OF THING, MY FAMILY IS STARVING AND I ONLY TOOK THE MONEY TO FEED, YOU KNOW, IN THAT TYPE OF CATEGORY?

THERE WAS NO MITIGATION OFFERED, AS FAR AS ECONOMIC STRESS IS CONCERNED. PERSONAL ECONOMIC STRESS. THERE WAS MITIGATION EVIDENCE IN THE FORM OF TESTIMONY FROM A PSYCHIATRIST THAT THE RESPONDENT HAD SUFFERED FROM A DEGREE OF DEPRESSION. THE PSYCHIATRIST HAD SEEN THE RESPONDENT FOR THE FIRST TIME TWO MONTHS FRYER TO THE FINAL HEARING -- PRIOR TO THE FINAL HEARING, BUT BASED ON THE HISTORY HE WAS GIVEN, HE TESTIFIED THAT, IN HIS OPINION, THERE WAS SOME DEGREE OF DEPRESSION THAT HAD EXISTED DURING THE PERIOD THAT THIS AUDIT EMBRACED. THE RESPONDENT WAS UNDER TREATMENT AT THE TIME OF THE FINAL HEARING AND APPARENTLY WAS RESPONDING TO THAT TREATMENT, BUT THE PSYCHIATRIST DID TRIBUTE SOME OF THE -- DID AT TRICK YOUTH SOME OF THE -- DID ATTRIBUTE SOME OF THE LACK OF ATTENTION AND TO THE PRACTICE AS A MATTER FOR DETERMINATION.

WAS THERE ANY ECONOMIC STRESS MENTIONED AT THAT TIME?

NOT OTHER THAN ABOUT THE BANK LOAN.

LET ME ASK ABOUT THE LACK OF ECONOMIC STRESS. IN THE REFEREE'S ORDER, ON PAGE 5, THERE IS TESTIMONY ABOUT THE RESPONDENT HAVING WON A LEXUS AND THEN SELLING THAT LEXUS FOR $30,000, ADMITTING TO EARNING APPROXIMATELY $150,000 IN 1997. IN TERMS OF LOOKING AT THAT, ONE WAY OR ANOTHER, THAT IT LOOKS LIKE THIS WAS A PERSON THAT WAS ACTUALLY EARNING SUBSTANTIAL AMOUNTS OF MONEY IN THE PERIOD OF TIME THAT WE ARE TALKING ABOUT, HOW DOES THE BAR SUGGEST THAT WE LOOK AT THAT EVIDENCE?

YOUR HONOR, WE FELT THAT, YOU ARE ABSOLUTELY CORRECT IN YOUR OBSERVATION. THERE WAS THE WINNING AND THE SALE OF THE LEXUS. IT WAS CONVERTED TO CASH. THERE WAS THE PURCHASE OF A NEW HOME DURING THAT PERIOD OF TIME, AND THERE WAS A SUBSTANTIAL EARNING RECORD DURING THAT PERIOD OF TIME, AND WE FELT THAT THAT TOTALLY OBVIATED THE MITIGATION, AS FAR AS ANY HE ECONOMIC -- AS FAR AS ANY ECONOMIC CONCERN IS INVOLVED. I NOTE THAT I HAVE MOVED INTO MY REBUTTAL TIME. IF THERE IS NO QUESTION --

IF YOU WISH TO RESERVE THAT, YOU MAY. MR. GREENBERG.

MAY IT PLEASE THE COURT. COUNSEL. MY NAME IS RICHARD GREENBERG FROM TALLAHASSEE ON BEHALF OF THE RESPONDENT. FIRST OF ALL, JUSTICE PARIENTE, I WOULD LIKE TO CORRECT RECORD. THERE WAS AN AMENDMENT TO THE REPORT OF REFEREE, WHICH SHOWED THAT THE $150,000 WAS EARNED BY THE RESPONDENT IN 1995, AS OPPOSED TO 1997.

MR. GREENBERG, LET ME ASK YOU THIS. THERE IS NO CONTENTION, HERE, THAT THIS LAWYER DID NOT KNOW THAT WHAT HE WAS DOING WAS STEALING FROM THAT TRUST ACCOUNT, IS THERE?

NO, YOUR HONOR. BUT --

WHY ISN'T IT A BETTER THING THAT WE HAVE WHAT WOULD BE PERCEIVED AS A BRIGHT LINE RULE? THAT SAYS THE LAWYERS OF THIS STATE AND TO THE PUBLIC OF THIS STATE, IF YOU STEAL FROM YOUR TRUST ACCOUNT, YOU ARE GOING TO BE DISBARRED. PERIOD. WHY ISN'T THAT THE BEST RULE?

YOUR HONOR, IT MAY BE THE BEST RULE, BUT, OF COURSE, IT IS NOT THE RULE AT THIS TIME, AND AS WITH ANY OTHER RULE OF LAW OR RULE OF PROCEDURE, THERE IS NO NOTICE GIVEN TO MEMBERS OF THE FLORIDA BAR THAT THIS IS THE RULE THAT WILL YOU MUST FOLLOW. THIS COURT HAS, THROUGHOUT THE LAST 25 OR 30 YEARS SHOWN THAT, ALTHOUGH THERE IS A PRESUMPTION FOR DISBARMENT, THAT PRESUMPTION MAY BE OVERCOME. AND WE CERTAINLY FEEL THAT, UNDER THE FACTS OF THIS CASE, THE PRESUMPTION HAS BEEN OVERCOME.

DOESN'T THE PRESUMPTION BEING OVERCOME HAVE TO DO WITH THE SIFERCK SUBSTANCES OF HOW THE -- WITH THE CIRCUMSTANCES OF HOW THE TRUST ACCOUNT VIOLATION AROSE? FOR EXAMPLE IN CASES WHERE THERE IS A SINGLE INCIDENCE SITUATIONS, WHERE THE ATTORNEY WAS NEXT, AS OPPOSE -- WAS NEGATIVE, AS OPPOSED TO INTENTIONAL CONDUCT. ISN'T THAT WHERE WE SHOULD BE LOOKING TO DETERMINE WHETHER THE PRESUMPTION HAS BEEN OVERCOME, AS PROPOSED TO THIS ATTORNEY UNDENIABLY HAD A HISTORY OF BEING A STELLAR MEMBER OF THE BAR AND ALL OF THOSE WONDERFUL THINGS, BUT ISN'T THAT KIND OF THE WAY THAT, IN THE PAST, THAT PRESUMPTIONS ARE OVERCOME, THAT IS THAT SOMEONE IS A GOOD PERSON, VERSUS THE ACTUAL FACTS OF HOW THE TRUST ACCOUNT VIOLATION OCCURRED, IF YOU COULD ADDRESS THAT.

YOUR HONOR, I THINK THE COURT HAS LOOKED AT ALL OF THE CIRCUMSTANCES, TO FIND OUT WHETHER OR NOT THE PRESUMPTION SHOULD BE OVERCOME. IT IS NOT JUST HOW THE TRUST ACCOUNT VIOLATIONS HAVE OCCURRED BUT, ALSO, THE WHOLE HISTORY OF THE PERSON, BECAUSE THE FIRST THING YOU HAVE TO ASK YOURSELF IS WHY DID THIS HAPPEN? HOW DID AN ATTORNEY WHO HAD 28 YEARS OF -- AS A REFEREE FOUND -- ENORMOUS CONTRIBUTION TO THE LEGAL PROFESSION, TO MINORITIES, TO THE ECONOMICALLY DEPRIVED, AND TO HIS COMMUNITY AS A WHOLE. HOW DID THIS HAPPEN? WHY DID IT HAPPEN? AND THE REASON, WELL, ONE OF THE REASONS THAT WAS SHOWN TO THE REFEREE WAS THE MENTAL CONDITION OF THE RESPONDENT. THE DEPRESSION THAT HE WAS SUFFERING. ANOTHER REASON, WHICH WAS SHOWN TO THE REFEREE, WAS HOW HE, UNFORTUNATELY, CAME TO THE AID OF AN ATTORNEY WHO THIS COURT HAS NOW DISBARRED.

THE DEPRESSION, AND I AM NOT MAKING LIGHT OF ANY DEPRESSION, BUT WHEN DID HE FIRST COME UNDER TREATMENT FOR THIS DEPRESSION? WASN'T IT AT THE TIME THE FLORIDA BAR STARTED TO INVESTIGATE AND AUDIT HIS TRUST ACCOUNT?

YES, YOUR HONOR, BUT AS THE PSYCHIATRIST TESTIFIED, IT IS NOT UNCOMMON FOR PEOPLE TO SUFFER FROM DEPRESSION AND NOT REALIZE THAT THEY ARE SUFFERING FROM DEPRESSION. THE RESPONDENT, MR. TRAVIS, TESTIFIED AT THE HEARING, BEFORE THE REFEREE, OF CONDUCT, THAT

HE WAS ENGAGING IN, WHICH HE DID NOT RECOGNIZE THAT IT WAS DEPRESSION, BUT HE KNEW THAT IT WASN'T THE WAY THAT HE HAD PERFORMED IN THE PAST, AND AS THE PSYCHIATRIST TESTIFIED, ONE OF THE SIGNS OF DEPRESSION IS POOR JUDGMENT. USING POOR JUDGMENT. AND THAT IS ONE OF THE REASONS THAT LED TO THE INCIDENTS HERE WITH THE TRUST ACCOUNT.

WHAT ROLE DID HIS COLLEAGUE PLAY IN ALL OF THIS, IF ANY? WAS IT A MAJOR ROLE? OR WAS IT INCIDENTAL?

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IT IS HARD TO PUT THAT INTO DEGREES, YOUR HONOR. I KNOW THE FLORIDA BAR REFERRED TO MR. SMITH AS BEING A SCAPEGOAT FOR MR. TRAVIS'S CONDUCT. WE ARE NOT, IN ANY WAY, SUGGESTING THAT MR. SMITH WAS THE SCAPEGOAT HERE. BUT EVIDENTLY WHAT HAPPENED IS THAT, ONCE MR. SMITH CAME INTO THE OFFICE WITH MR. TRAVIS, BECAUSE OF MR. TRAVIS'S FRIENDSHIP WITH MR. SMITH, HE DID THINGS THAT HE -- THAT WERE WRONG AND SHOULD NOT HAVE OCCURRED. AND, AGAIN, WE ARE NOT USING IT AS AN EXCUSE. IT IS JUST, AGAIN, A REASON. SOMETHING TO EXPLAIN WHY AN ATTORNEY WITH THE RECORD MR. TRAVIS HAS OF SERVICE TO THE POOR --

DID HIS PROBLEMS BEGIN BEFORE THIS RELATIONSHIP OR DURING THIS TIME?

IT WAS DURING THAT TIME, YOUR HONOR. THE FIRST PROBLEMS WITH THE TRUST ACCOUNT BEGAN IN 1996, I BELIEVE, OR PERHAPS LATE 1995. THAT IS WHERE THE PROBLEM AROSE, WHEN, BECAUSE MR. SMITH DID NOT HAVE A TRUST ACCOUNT, MR. TRAVIS MADE THE, AGAIN, THE MISTAKE THAT HE RECOGNIZES THAT THERE WILL BE CONSEQUENCES FOR THAT MISTAKE OF LETTING MR. SMITH -- OF USING MR. TRAVIS'S TRUST ACCOUNT FOR MR. SMITH'S TRANSACTIONS. AND THEN --

WOULD YOU NEXT ADDRESS FOR ME -- I AM VERY CONCERNED ABOUT THE FACT THAT IT APPEARS THAT THERE WAS NO ATTEMPT AT ANY KIND OF RESTITUTION HERE. SO WOULD YOU ADDRESS HOW WE SHOULD DEAL WITH THAT FACT.

FIRST OF ALL, YOUR HONOR, THE REFEREE TOOK THAT FACT INTO ACCOUNT, IN MAKING HIS RECOMMENDATION, AS HE NOTED, AS AN AGGRAVATING FACTOR, THAT THERE WAS INDIFFERENCE TO MAKING RESTITUTION. BUT FIRST OF ALL THERE HAS BEEN SOME RESTITUTION THAT HAS BEEN PAID UP TO THIS POINT. AS BAR COUNSEL NOTED, THERE WAS AN AGREEMENT REACHED WITH ONE OF THE MEDICAL PROVIDERS TO PAY THE MEDICAL PROVIDER FUNDS THAT WERE DUO-.

WHAT WAS THE EX-PLAN -- THAT WERE DUE.

WHAT WAS THE EXPLANATION, IF THERE WAS ANY EXPLANATION OFFERED, AS TO WHY THERE WAS NO ATTEMPT AT RESTITUTION?

I AM SORRY. YOU MEAN AT THE FINAL HEARING?

RIGHT.

PRIMARILY BECAUSE OF A DISPUTE ABOUT THE TOTAL AMOUNT TO BE PAID. THE BAR'S AUDITOR HAD CONDUCTED AN AUDIT WELL BEFORE THE FINAL HEARING IN THIS CASE. THERE HAD BEEN SOME MONIES PAID IN DIFFERENT CASES, AND THE ACTUAL AMOUNT OF RESTITUTION IS STILL IN DISPUTE, AND THAT WAS -- THAT IS THE REASON THAT IT WAS INCLUDED IN THE REPORT OF REFEREE THAT, AS PART OF THE PROBATION IN THIS CASE, WITHIN THE FIRST SIX MONTHS, THE RESPONDENT IS TO MEET WITH A STAFF AUDITOR FROM THE FLORIDA BAR, REACH A DETERMINATION OF THE ACTUAL AMOUNT, WHO IS OWED, HOW MUCH, AND MAKE THOSE

PAYMENTS.

WHY SHOULDN'T IT BE THE RESPONSIBILITY OF THE LAWYER TO COME UP WITH AN AMOUNT AND PUT IT BACK IN THE TRUST ACCOUNT, AND THEN, IF THAT VARIES BY SOME AMOUNT, THEN THAT CAN BE SUPPLEMENT? I MEAN, IT SEEMS TO ME THAT IT IS EVIDENCE THAT THE LAWYER DOESN'T RECOGNIZE, AND PERHAPS WHAT YOUR PERCEPTION THAT YOU FIRST GAVE AN ANSWER TO MY QUESTION, IS THAT THIS COURT IS SOMEHOW GOING TO ALLOW PEOPLE TO, BY REASON OF THEIR CONDUCT, MITIGATE OUT OF THE ABSOLUTE FACT OF THE FACT THEY STOLE FROM THEIR CLIENTS. IS THAT -- AND NOT TAKE IT SERIOUSLY, THAT ONCE THIS THING COMES TO THE ATTENTION OF THE LAWYER, THE LAWYER'S RESPONSIBILITY IS TO GET IT DONE, NOT THE FLORIDA BAR'S.

YOUR HONOR, CERTAINLY IT IS NOT OUR POSITION THAT THE ONUS IS ON THE FLORIDA BAR. BUT AS I SAID, WE WANTED TO HAVE AN OPPORTUNITY TO MEET WITH THE STAFF AUDITOR. IN FACT THIS WAS TO BE AT THE RESPONDENT'S OWN EXPENSE FOR THE TIME OF THE AUDITOR TO GO THROUGH THE RECORDS AND COME UP WITH THE EXACTTIGYOUR THAT IS TO BE -- THE EXACT FIGURE THAT IS TO BE PAID.

WASN'T THERE A SHOWING THAT THERE WAS ANY OPPORTUNITY TO DO THAT BEFORE?

NO. THERE IS NO EVIDENCE THAT THERE WAS AN OPPORTUNITY BEFORE.

AND THIS STILL HASN'T -- YOU ARE SAYING IT STILL HASN'T BEEN DONE TO THIS DAY, AND ALL YOU HAVE SAID FROM THE BEGINNING IS THAT YOUR CLIENT DOES NOT DISPUTE THE WRONGDOING, AND SO HOW CAN WE, SITTING HERE, LOOK AT A SITUATION WHERE THERE IS STILL $35,000, MORE OR LESS, OUTSTANDING, THROUGH HIS TRUST ACCOUNT VIOLATIONS, AND SAY THAT ANYTHING LESS THAN DISBARMENT IS APPROPRIATE IN THIS CASE?

FIRST OF ALL, YOUR HONOR, THE AMOUNT IS NOT $35,000. THAT WAS THE AMOUNT OF SHORTAGE, BUT THAT IS NOT THE AMOUNT THAT IS TO BE PAID IN RESTITUTION.

WHAT IS THE AMOUNT?

WELL, IT IS PROBABLY CLOSER TO $20,000. BUT, AGAIN, I RECOGNIZE THAT THE AMOUNT OF MONEY IS NOT IMPORTANT. BUT IT IS NOT UNPRECEDENTED FOR THIS COURT TO ALLOW AN ATTORNEY TO EVEN, WHO WAS SUSPENDED FOR A PERIOD OF TIME, TO EVEN BE REINSTATED, WITH A CONDITION THAT THEY MEET WITH THE FLORIDA BAR AND MAKE ARRANGEMENTS FOR RESTITUTION. AND THAT WAS IN THE CASE OF THE FLORIDA BAR VERSUS WHITLOCK. WHERE THE ATTORNEY, AND THAT WAS AT 511 SO.2D 524, THE ATTORNEY HAD BEEN SUSPENDED FOR THREE YEARS. HE APPLIED FOR REINSTATEMENT. THE REFEREE DENIED REINSTATEMENT, AND THIS COURT GRANTED REIN STARMENT -- REINSTATEMENT, WITH THE CONDITION THAT THE ATTORNEY MAKE A PAYMENT PLAN WITH THE FLORIDA BAR, TO MAKE RESTITUTION.

HOW DO WE DISTINGUISH THIS CASE FROM THE SMILEY CASE? ISN'T BOTH OF THEM BASICALLY THE SITUATIONS WHERE WE HAVE NICE, BASICALLY NICE PEOPLE, BUT THEY TOOK MONEY FROM THEIR TRUST ACCOUNTS. HOW DO WE DISTINGUISH THIS CASE AND IMPOSE THE SANCTION RECOMMENDED BY THE REFEREE, OF 90-DAYS SUSPENSION, VERSUS THE DISBARMENT THAT WAS IMPOSED IN SMILEY?

YOUR HONOR, ONE WAY YOU CAN DO IT IS JUST BY SIMPLY LOOKING AT YOUR OWN CASE LAW. THERE ARE PLENTY OF CASES FROM THIS COURT WHERE THE FIRST READING OF THE CASE WOULD LEAD TO THE ASSUMPTION THAT THIS ATTORNEY SHOULD BE DISBARRED, BUT, YET, THIS COURT HAS FOUND MITIGATION SUFFICIENT TO OVERCOME THE PRESUMPTION OF DISBARMENT.

AND WAS IT MITIGATION SUCH AS JUST HAVING BEEN A NICE PERSON AND WORKED HARD IN THE

COMMUNITY?

WELL, SOME OF THE CASES, I SUBMIT, EVEN HAVE AGGRAVATING FACTORS. FOR EXAMPLE THE CASES THAT I CITED IN MY BRIEF. THE KRAMER CASE. WHERE THE ATTORNEY HAD PLACED -- HAD PLACED MONEY IN HIS TRUST ACCOUNT, IN ORDER TO AVOID AN IRS TAX LEVY. HE HAD USED HIS TRUST ACCOUNT FOR OFFICE EXPENSES. HE HAD LACK OF PROPER RECORDKEEPINGS. HE HAD RETURNED CHECKS.

YOU SAID HE PLACED HIS MONEY IN THE TRUST ACCOUNT, TO KEEP IRS OFF OF IT AND TO PAY HIS OFFICE EXPENSES, BUT WASN'T THAT HIS OWN MONEY, I MONEY MEAN, AS OPPOSED TO WASN'T IT HIS MONEY, VERSUS THE CLIENT'S MONEY?

HE HAD NEGATIVE BALANCES IN HIS TRUST ACCOUNT, YOUR HONOR, SO THERE MUST HAVE BEEN CLIENT MONEY AT-RISK.

WASN'T THAT A SINGLE INCIDENT, WHERE, BY THE TIME OF THE FINAL HEARING, THE MONEY HAD BEEN REPAID AND THERE WAS NO HARM TO THE CLIENT. HOW IS THAT REMOTELY LIKE A SITUATION WHERE, OVER A TWO-YEAR PERIOD OF TIME, THERE IS A CONSISTENT PATTERN OF TAKING FROM ONE'S TRUST ACCOUNT FOR PERSONAL USE AND GAIN?

WELL, YOUR HONOR, THAT IS WHERE, I THINK, THE MITCHELL CASE FALLS IN. BECAUSE IN THE MITCHELL CASE, YOU HAVE SIX COUNTS AGAINST THE ATTORNEY. HE HAD TWO PRIOR DISCIPLINES FROM THIS COURT. AND YET DESPITE THOSE FACTORS AND CONTINUED TRUST ACCOUNT VIOLATIONS, THIS COURT IMP OWESED A 90 ---IMPOSED A 90-DAY SUSPENSION.

AGAIN, WE WILL LOOK CLOSELY AT THOSE CASES, BUT I THOUGHT THAT THOSE AROSE BECAUSE OF THE INADVERTENTENS AND THE NEGLIGENCE ON THE PART OF THE LAWYER.

NO, YOUR HONOR, I BELIEVE THAT THE INITIAL PRIVATE REPRIMAND THAT MR. MITCHELL RECEIVED WAS THE RESULT OF IGNORANCE RATHER THAN WILLFUL MISCONDUCT, BUT, YET, TEN YEARS LATER, HE RECEIVED A PUBLIC REPRIMAND FOR THE SAME TYPE OF MISCONDUCT, AND THEN, SIX YEARS LATER, AGAIN, HE IS BACK BEFORE THIS COURT, AND RECEIVES A 90-DAY SUSPENSION.

SO ARE YOU TELLING ME THAT, IF YOU LOOK AT ALL OF THIS COURT'S CASES ON TRUST ACCOUNT VIOLATIONS OVER A TEN-YEAR PERIOD OF TIME, IF YOU WERE, TOMORROW, TO ADVISE YOUR NEW CLIENT COMING IN ON WHAT WOULD HAPPEN TO THAT LAWYER, WHAT YOU WOULD SAY IS THERE IS NO TELLING. IT IS A ROLL OF THE DICE. THE SUPREME COURT HAS JUST BEEN REALLY INCONSISTENT IN WHAT IT HAS DONE IN THESE CASES. IS THAT WHAT YOUR POSITION WOULD BE?

NO. ABSOLUTELY NOT, YOUR HONOR. IT WOULD BE THAT THE PRESUMPTION IS DISBARMENT. UNLESS YOU CAN SHOW COMPELLING EVIDENCE OF MITIGATION OR SOME CIRCUMSTANCES THAT ARE GOING TO OVERCOME THAT PRESUMPTION, THEN YOU ARE GOING TO BE DISBARRED.

SO YOU WOULD AGREE IN THIS CASE THERE IS NO COMPELLING CIRCUMSTANCES ABOUT THE WAY THE TRUST ACCOUNT VIOLATIONS OCCURRED. THE WAY THAT THESE WERE INTENTIONAL TAKINGS FROM CLIENT'S MONEY. SO THERE IS NOTHING ABOUT THE CONDUCT, AS TO THE TRUST ACCOUNT VIOLATIONS,, THAT IS AT ALL COMPELLING. WOULD YOU AGREE WITH THAT?

NOT EXACTLY. I THINK WHAT IS DIFFERENT ABOUT THIS CASE IS THE WAY THAT MR. TRAVIS WAS USING THE TRUST ACCOUNT FOR MR. SMITH. THAT IS WHAT MAKES IT A LITTLE BIT DIFFERENT.

WELL, BUT YOU CAN'T -- THERE IS, ALSO, MONIES THAT WERE TAKEN FROM HIS OWN PERSONAL INJURY CLIENTS. CORRECT?

YES.

SO WE DON'T JUST HAVE THE MR. SMITH SITUATION.

THAT IS TRUE. THAT IS NOT COMPLETELY MR. SMITH. THAT IS CORRECT.

ONE QUESTION. YOUR LIGHT IS ON, I SEE, BUT ONE QUESTION. WHAT IS THE MOST PRONOUNCED MITIGATING FACTOR THAT YOU SEE IN THIS?

I DON'T KNOW IF I CAN SAY THAT THERE IS JUST ONE MITIGATING FACTOR, YOUR HONOR. I THINK IT IS JUST WHOLE PICTURE, ALL THE MITIGATING FACTORS TAKEN TOGETHER. AND NO PRIOR RECORD, I THINK, IS CERTAINLY COMPELLING. RECORD OF SERVICE TO THE STATE OF FLORIDA AND THE BAR. I SUBMIT IS COMPELLING. ONE THING THAT I THINK THIS COURT SHOULD CONSIDER IS THAT, ALTHOUGH ON PAPER THE DISCIPLINE WOULD BE 90 DAYS, AT THIS POINT THE SUSPENSION HAS ACTUALLY BEEN SINCE JUNE 5, 1998, WHEN THE EMERGENCY SUSPENSION TOOK EFFECT.

JUSTICE QUINCE HAD A QUESTION. DID YOU WISH TO --

I WAS JUST WONDERING HOW MUCH WEIGHT YOU THINK WE SHOULD GIVE TO THE FACT THAT MR. TRAVIS, AT LEAST IN MITIGATION, SEEMS TO HAVE COOPERATED WITH THE BAR IN THIS SITUATION, AS OPPOSED TO THE SMILEY CASE, WHERE, YOU KNOW, THERE WAS, IN FACT, LYING TO COVER UP THE SITUATION.

YOUR HONOR, THAT IS CERTAINLY A FACTOR THAT THIS COURT SHOULD CONSIDER. IT IS RECOGNIZED AS A MITIGATING FACTOR, IN THE STANDARDS FOR IMPOSING LAWYER SANCTIONS. IT WAS RECOGNIZED BY THE REFEREE, THE COOPERATIVE ATTITUDE OF MR. TRAVIS THROUGHOUT THESE PROCEEDINGS, AND, OF COURSE, WE ARE HERE, TODAY, AS A RESULT OF A HEARING, WHERE THERE WAS NO CONTESTING THE CHARGES AGAINST THE RESPONDENT. THE WHOLE HEARING, WITH THE REFEREE, DEALT STRICTLY WITH THE DISCIPLINE TO BE IMPOSED. THANK YOU.

THANK YOU. MR. SPANGLER.

IN VERY BRIEF REBUTTAL, I WOULD SIMPLY LIKE TO CITE THAT THE BRIEFS CITE 14 CASES FOR THE PROPOSITION OF THE LEVEL OF DISCIPLINE THAT SHOULD BE IMPOSED, UNDER THESE CIRCUMSTANCES, AND OF THOSE 14 CASES, 11 RESULTED IN DISBARMENT, AND THE FLORIDA BAR'S POSITION IS THAT THE COURT DOES NEED TO ADOPT A CONSISTENT PHILOSOPHY THAT, IF YOU STEAL FROM YOUR CLIENT, YOU ARE NOT GOING TO BE PERMITTED TO PRACTICE LAW IN THIS STATE ANYMORE. THE KRAMER CASE --

YOU MEAN PERMANENT DISBARMENT?

NOT NECESSARILY PERMANENT, YOUR HONOR, AND WE ARE NOT SEEKING PERMANENT DISBARMENT IN THIS CASE. WE ARE SEEKING DISBARMENT FOR A PERIOD OF FIVE YEARS, WITH LEAVE TO REAPPLY. WHETHER OR NOT THE CIRCUMSTANCES ARE SO AGGRAVATED THAT PERMANENT DISBARMENT IS WASHINGTONED, IT SHOULD BE, I BELIEVE, DECIDED ON A CASE BY CASE BASIS, BUT I THINK THAT THE MEMBERS OF THE FLORIDA BAR NEED TO BE ON NOTICE THAT, IF THEY STEAL FROM THEIR CLIENTS, THEY ARE LOOKING AT AT LEAST A FIVE-YEAR DISBARMENT, AND I DON'T MEAN TO SUGGEST THAT THERE SHOULDN'T BE MITIGATING CIRCUMSTANCES, SUCH AS THERE WERE IN THE KRAMER CASE AND THE MITCHELL CASE. IN KRAMER, AS HAS BEEN OBSERVED, I BELIEVE, BY JUSTICE PARIENTE, THE RESPONDENT IN THAT CASE DID ATTEMPT TO CONCEAL HIS PERSONAL FUNDS IN HIS TRUST ACCOUNT, TO AVOID IRS LIENS, AS I RECALL, AND IN THE MITCHELL CASE, WHILE THERE WERE SIX COUNTS, THOSE COUNTS DEALT WITH THINGS SUCH AS COMMINGLING OF PERSONAL FUNDS AND LEGAL FEES IN

THE TRUST ACCOUNT, FAILURE TO MAINTAIN ADEQUATE ACCOUNTING RECORDS, FAILURE TO FOLLOW MINIMUM TRUST ACCOUNTING PROCEDURES, AN INCORRECT CLOSING STATEMENT AND LEDGER CARD AS A RESULT OF HIS FAILURE TO UNDERSTAND THE TRUST ACCOUNT REQUIREMENTS, RATHER THAN AN INTENTIONAL MISS REPRESENTATION, AND FAILURE TO REMIT INTEREST ON THE TRUST ACCOUNT TO THE FLORIDA BAR FOUNDATION, SO THOSE CASES DID NOT INVOLVE CLIENT HARM, PER SE, AS IN THE CASE OF THE SITUATION WITH THE BAR.

SORA ROLE DID THOSE RECORDS PLAY IN THIS CASE?

THE RELATIONSHIP WITH SMITH TRIGGERED THE BAR'S AUDIT, BECAUSE THE INITIAL COMPLAINT CAME FROM ONE OF SMITH'S CLIENTS, AND WHEN THE BAR INVESTIGATED THAT COMPLAINT, IT WAS DETERMINED THAT SMITH HAD NO TRUST ACCOUNT OF HIS OWN. HE WAS USING THE RESPONDENT'S TRUST ACCOUNT, AND THAT IS WHERE THE DISCREPANCY AROSE, AND AT THAT POINT, THE BAR INITIATED THE AUDIT. THERE WERE A NUMBER OF LUTHER SMITH CLIENTS WHOSE FUNDS WERE SHORT, ACCORDING TO THE RESULT OF THE AUDIT, AND THEY WERE IDENTIFIED IN THE AUDITOR'S REPORT. THERE IS QUITE A LIST OF CLIENTS. AGAIN, THIS WAS PART OF THE RECORD BELOW. IT WAS ATTACHED TO THE COMPLAINT AND WAS ADMITTED. ITS AUTHENTICITY WAS ADMITTED AT THE FINAL HEARING, BUT THE -- I AM NOT SURE IF THE COURT CAN SEE THIS, BUT THE TOP HALF OF THIS PAGE ARE LUTHER SMITH CLIENTS. THE BOTTOM HALF AND THIS SHEET ARE TRAVIS CLIENTS. I DON'T MEAN TO IMPLY THAT THERE IS A SHORTAGE IN EVERYONE OF THEIR ACCOUNTS, BUT THAT IS THE COMPARATIVE, PROPORTIONATELY, SMITH VERSUS TRAVIS CLIENT.

IS THERE SOME DISPUTE ABOUT THE ACCOUNT? YOUR OPPONENT TALKED ABOUT $20,000, AND WE HAVE TALKED ABOUT $35,000.

THE ULTIMATE SHORTAGE, AT THE END OF THE PERIOD, YOUR HONOR, WAS $22000, ACCORDING TO THE REPORT. LET ME GET YOU THE FIGURE. $22,597.40. PAYMENTS WERE MADE TO MR. TRAVIS DURING THE TWO-YEAR PERIOD, WHICH WERE NOT AUTHORIZED BY CLIENTS. SOME OF THAT, APPARENTLY, WAS REPLACED, SO THAT ULTIMATELY, AT THE CLOSE OF THE AUDIT PERIOD, HE WAS ONLY $22000 SHORT, AND I NEED TO APOLOGIZE TO THE COURT ABOUT THE EARLIER MISTAKE I MADE, CONCERNING THE RESPONDENT'S INCOME DURING THAT $100,000-YEAR. MR. GREENBERG IS ABSOLUTELY CORRECT. THERE WAS AN AMENDMENT TO THE REPORT.

SO IN 1997, BECAUSE WE HAVE THE REFEREE'S REPORT -- I GUESS WE NEED TO FIND THE AMENDMENT, BUT, SO, WHAT WAS THE INCOME IN THE YEAR 1997?

WE DON'T KNOW, YOUR HONOR. THAT WAS NOT PART OF THE EVIDENCE THAT WAS ADDUCED.

SO THE $150,000 WAS IN 1995.

THAT IS WHAT WE UNDERSTAND. YES.

IN CLOSING, IF THERE ARE NO FURTHER QUESTIONS, WE WILL SIMPLY TAKE THE POSITION THAT THE COURT NEEDS TO ADOPT A CONSISTENT PHILOSOPHY AS -- SO THAT THE MEMBERS OF THE FLORIDA BAR KNOW WHERE THEY STAND, WHEN IT COMES TO THIS PARTICULAR RULE. THANK YOU.

THANK YOU. THANK YOU. MR. GREENBERG. NEXT CASE IS THE FLORIDA BAR