

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v.

ELIZABETH JAYNE ANDERSON,

Respondent.

Supreme Court Case
No. SC18-1646

The Florida Bar File
No. 2018-30,452 (19A) (CES)

_____ /

INITIAL BRIEF

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PRELIMINARY STATEMENT

Petitioner, The Florida Bar, is seeking review of a Report of Referee recommending suspended from the practice of law for three years and, upon reinstatement, be placed on a five-year period of probation conditioned upon completion of Trust Accounting Workshop and the filing of quarterly trust accounting reports with the bar.

Petitioner will be referred to as The Florida Bar, or as the bar. Elizabeth Jayne Anderson, respondent, will be referred to as respondent throughout this brief.

References to the Report of Referee shall be by the symbol RR followed by the appropriate page number.

References to specific pleadings will be made by title. Reference to the transcript of the final hearing held on January 10, 2019, will be by the symbol T Vol. I, followed by the appropriate page number. Reference to the transcript of the final hearing held on January 11, 2019, will be by the symbol T Vol. II, followed by the appropriate page number.

References to bar exhibits shall be by the symbol TFB Ex. followed by the appropriate exhibit number (e.g., TFB Ex. 10).

STATEMENT OF THE CASE

On October 3, 2018, The Florida Bar filed its Petition for Emergency Suspension against respondent in these proceedings. By order dated October 8, 2018, respondent was emergency suspended by the Supreme Court of Florida. Thereafter, on October 29, 2018, respondent filed her Response to Petition for Emergency Suspension. The referee was appointed on October 16, 2018, and the final hearing was held on January 10 and 11, 2019. The Report of Referee was issued on February 13, 2019, recommending respondent be found guilty of negligent, rather than intentional, misuse of client trust funds (RR 18). The referee recommended respondent be found guilty of violating the following Rules Regulating The Florida Bar: 3-4.3 (Misconduct and Minor Misconduct); 4-1.15 (Safekeeping Property); 4-1.16(d) (Declining or Terminating Representation); 4-5.3(b)(1) (2006) (Responsibilities Regarding Nonlawyer Assistants); 4-5.3(b)(2) (2006) (Responsibilities Regarding Nonlawyer Assistants); 4-5.3(b)(1) (2015) (Responsibilities Regarding Nonlawyer Assistants); 4-5.3(b)(2) (2015) (Responsibilities Regarding Nonlawyer Assistants); 4-8.4(c) (Misconduct); 5-1.1(a)(1) (2010) (Trust Accounts); 5-1.1(a)(1) (2015) (Trust Accounts); 5-1.1(b) (2010) (Trust Accounts); 5-1.1(b) (2018) (Trust Accounts); 5-1.1(e) (2010) (Trust Accounts); 5-1.1(g)(4) (2010) (Trust Accounts); 5-1.2(b)(1) (2012) (Trust

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The referee found respondent not guilty of violating the following Rules Regulating The Florida Bar: 4-1.3 (Diligence); 4-1.4(a)(2) (Communication); 4-1.1(a)(3) (Communication); 4-1.4(a)(4); and 4-8.4(a) (Misconduct).

The referee recommended respondent be suspended from the practice of law for three years and, upon reinstatement, be placed on a five-year period of probation conditioned upon completion of Trust Accounting Workshop and the filing of quarterly trust accounting reports with the bar.

The Board of Governors of The Florida Bar considered the Report of Referee at its meeting ending March 29, 2019 and voted to seek review of the referee's recommendation of a three-year suspension with conditional probation and seek immediate disbarment.

The bar filed its Notice of Intent to Seek Review of the Report of Referee on April 17, 2019.

STATEMENT OF THE FACTS

The Florida Bar received a grievance from the Director of Stoneybrook West Master Association (hereinafter referred to as “Stoneybrook”), a homeowners’ association, respondent had represented since December 2013 in various legal matters (RR 3, 5; TFB Ex. 1). Stoneybrook expressed dissatisfaction with the manner respondent tracked and recorded receipt of its “dues” (RR 5; TFB Ex. 1; T Vol. I pp. 34, 41, 42-44, 58, 59, 63-64). Stoneybrook terminated respondent’s services in or around July or August 2017 (T Vol. I pp. 17). Thereafter, respondent failed to provide Stoneybrook with an accounting of the funds belonging to Stoneybrook that respondent was holding in trust. (RR 5-6; TFB Ex. 1, Bates Number 0003; TFB Ex. 3). Respondent also failed to provide the trust funds to Stoneybrook for approximately six months (RR 6; TFB Ex. 15, Bates Number 0626). These failures resulted in Stoneybrook filing a bar grievance and the bar’s subsequent audit of respondent’s operating account and seven trust accounts for the time period of December 1, 2013 through April 30, 2018 (RR 3; TFB Ex. 1; TFB Ex. 10).

The Florida Bar’s audit revealed that in 2010, respondent formed The Anderson Legal Group, LLC and opened trust accounts at Seaside National Bank & Trust, Northern Trust Co., SunTrust Bank and Fairwinds Credit Union (RR 3-4;

TFB Ex. 9, Bates Numbers 0108-0109, 0110). Respondent was the only authorized signatory on the accounts except for a brief period when respondent was out of the country and authorized her office manager to make disbursements from the trust account maintained at Fairwinds Credit Union (RR 4; TFB Ex. 9, Bates Number 0113). Additionally, from October 2016 through December 31, 2017, respondent operated a firm with Jessica K. Hew (RR 4; TFB Ex. 9, Bates Number 0109). The firm was named Anderson Hew, PLLC which maintained three trust accounts at Florida Community Bank (RR 4; TFB Ex. 9, Bates Number 0110).

Respondent used The Anderson Legal Group trust account at Seaside Bank for all matters concerning her representation of Stoneybrook (RR 6; TFB Ex. 9, Bates Number 0111). The bar's audit of this account revealed that respondent misused client funds from the Seaside trust account (RR 7; TFB Ex. 10). As of February 23, 2018, there was a shortage of approximately \$37,000.00 in funds that respondent should have been holding for Stoneybrook in the Seaside trust account (RR 7; TFB Ex. 10, Bates Number 0387). In order to replenish the shortage, respondent obtained a loan from her parents, deposited the funds to her Seaside trust account, and wired the funds owed Stoneybrook to its new counsel after the bar commenced its investigation (RR 7; TFB Ex. 9, Bates Numbers 0129-0132, 0150; TFB Ex. 15, Bates Numbers 0624-0626). During her sworn statement on

August 1, 2018, respondent admitted to the shortage in her Seaside trust account and stated that she would not have been able to pay the balances she owed to Stoneybrook without obtaining the loan from her parents or from her retirement account (RR 7-8; TFB Ex. 9, Bates Numbers 0149-0151). Respondent testified in her sworn statement that the shortage was the result of nonlawyer employees erroneously depositing Stoneybrook funds to her operating account at Fairwinds Credit Union and failing to deposit some of the funds at all (RR 8; TFB Ex. 9, Bates Numbers 0132, 0152-0153, 0160, 0175). Respondent testified that she believed the funds deposited in error to her operating account were earned fees and that she used all the erroneously deposited trust funds for personal and/or business purposes (RR 8; TFB Ex. 9, Bates Numbers 0133-0134).

Respondent also misused client trust funds in the Seaside Bank trust account in connection to the client matter of Belle Isle Bayou, a commercial real estate closing that was unrelated to Stoneybrook's various legal matters (RR 8-9; TFB Ex. 9, Bates Numbers 0134-0138, 0184-0185). On or about January 12, 2015, respondent issued a check for \$10,000.00, with the memo line blank, from her Seaside trust account payable to the Anderson Legal Group operating account (RR 8; TFB Ex. 12, Bates Number 0580). No funds were available in respondent's Seaside trust account for the Belle Isle Bayou matter for her to use because

respondent erroneously wired the funds into respondent's trust account at Northern Trust, rather than Seaside Bank (RR 9; TFB Ex. 9, Bates Numbers 0136-0137; TFB Ex. 10, Bates Number 0388; TFB Ex. 12, Bates Numbers 0578-0579). The bank records reflected that prior to this disbursement, respondent's operating account bank balance was \$1,874.85 (RR 8; TFB Ex. 12, Bates Number 0582). Respondent then used a portion of the funds to make a payment to American Express for her business expenses, to Navient for her student loan payment and to an employee for payroll (RR 9; TFB Ex. 12, Bates Number 0581-584).

Respondent recorded this check in the Belle Isle Bayou client ledger, which had a balance of -\$5,579.84 before this payment and after the payment, the negative balance in the ledger increased to -\$15,579.84 (RR 9; TFB Ex. 12, Bates Number 0578). Respondent testified during her August 1, 2018, sworn statement that the \$10,000.00 payment was for her legal fees (RR 9; TFB Ex. 9, Bates Number 0138). Respondent knew or reasonably should have known she had no funds on deposit in her trust account for this client matter from which she could pay herself these fees. Without this \$10,000.00 deposit to her operating account, respondent would not have had sufficient funds to pay her bills and employee payroll obligations (RR 9; TFB Ex. 12, Bates Number 0584).

Respondent also misused client funds in the Seaside trust account in connection with the 13413 Fox Glove Street, a Stoneybrook client matter (RR 9; TFB Ex. 9, Bates Number 0145; TFB Ex. 10, Bates Number 0388-0389; TFB Ex. 13). On or about January 29, 2016, respondent issued a check in the amount of \$4,458.26, to which she was not entitled, from her Seaside trust account payable to her Anderson Legal Group operating account (RR 9; TFB Ex. 13, Bates Number 0589). During her sworn statement on August 1, 2018, respondent acknowledged that she was not entitled to these funds because the ledger card for the 13413 Fox Glove Street matter had a balance of only \$751.18 before the payment (RR 10; TFB Ex. 9, Bates Number 0147; TFB Ex. 13, Bates Number 0592). Respondent testified that the funds were disbursed in error (RR 10; TFB Ex. 9, Bates Number 0147). Respondent's disbursement resulted in a negative balance of -\$3,707.08 in the ledger for 13413 Fox Glove Street (RR 10; TFB Ex. 10, Bates Number 0388; TFB Ex. 13, Bates Number 0598).

At the time respondent wrote this check, her operating account balance was \$4,320.30 (RR 10; TFB Ex. 13, Bates Numbers 0595, 0598). Respondent deposited the \$4,458.26 into her Fairwinds Credit Union operating account and then used those client funds to pay her business expenses of Attorney Closing Services and

American Express (RR 10; TFB Ex. 9, Bates Numbers 0147-0148; TFB Ex. 10, Bates Numbers 0388-0389; TFB Ex. 13, Bates Number 0598).

In the 2531 Balforn Tower matter, respondent also used client funds from the Seaside trust account to which she was not entitled because there were no funds on deposit in her trust account in connection with this matter from which she could pay herself fees (RR 10; TFB Ex. 14, Bates Number 0616). On February 20, 2016, respondent issued a check for \$2,112.00 to her operating account for the Anderson Legal Group (RR 10; TFB Ex. 14, Bates Number 0603). Prior to the check being issued, the bank records reflect that respondent's Anderson Legal Group operating bank account balance was \$1,627.28 (RR 10; TFB Ex. 14, Bates Number 0613). After depositing the \$2112.00 check from trust, respondent used these client funds to pay her office rent (RR 11; TFB Ex. 14, Bates Number 0616).

The disbursement was recorded in a ledger card titled "Firm Funds" which had a balance of -\$1,617.03 before the payment and increased the negative balance to -\$3,729.03 (RR 10; TFB Ex. 14, Bates Number 0607). The ledger cards reflected that no funds were available for respondent to use either in the "Firm Funds" ledger or in the ledger card for the 2531 Balforn Tower matter (RR 10; TFB Ex. 14, Bates Numbers 0607, 0609).

In addition, the bar's audit found that respondent failed to maintain the minimum required trust account records and failed to follow the minimum required trust accounting procedures for the Seaside Bank trust account (RR 6; TFB Ex. 10, Bates Numbers 0385-0387). Respondent failed to clearly label her Seaside trust account, as a trust account, failed to maintain the backs of cancelled checks for the Seaside account, the ledger cards and journals did not consistently contain reasons for transactions, and she failed to provide monthly comparisons (RR 6; TFB Ex. 10, Bates Number 0386-0387; TFB Ex. 23; TFB Ex. 24; TFB Ex. 26).

Respondent also maintained a trust account with Fairwinds Credit Union, which she opened prior to December 2013. The Rules Regulating The Florida Bar did not permit attorneys to have trust accounts at credit unions at that time. (RR 11; TFB Ex. 10, Bates Number 0386). Respondent was unaware of this restriction (RR 11; TFB Ex. 9, Bates Number 0156). The trust account was also not registered with The Florida Bar Foundation (RR 11; TFB Ex. 9, Bates Numbers 0116, 0157). The bar's audit also revealed that shortages existed in the Fairwinds trust account due to respondent's misuse of client funds (RR 12; TFB Ex. 10, Bates Number 0389).

In the Karamchand Doobay matter, a shortage occurred in the Fairwinds Credit Union trust account on or about December 22, 2015 (RR 12; TFB Ex. 10, Bates Number 0390). Respondent pre-signed a trust account check for \$100,000.00

made payable to her client, Karamchand Doobay (RR 12; TFB Ex. 17, Bates Number 0859). At the time the check cleared on December 23, 2015, no funds were in the trust account for Mr. Doobay and as a result, a \$100,000 shortage occurred in the trust account (RR 12; TFB Ex. 10, Bates Numbers 0389-0390; TFB Ex. 17, Bates Number 0862; TFB Ex. 9, Bates Number 0143). Respondent testified that Mr. Doobay obtained the check without her permission and that she attempted to stop payment from the bank (RR 12; TFB Ex. 9, Bates Numbers 0140-0141). However, the bank erroneously negotiated the check the next day, December 23, 2015 (RR 12; T Vol. II p. 84). On December 28, 2015, respondent deposited a cashier's check from Mr. Doobay in the amount of \$100,000.00 into the Fairwinds trust account to correct the shortage (RR 12-13; TFB Ex. 17, Bates Numbers 0862, 0866). Respondent did not report this shortage to the bar (RR 12; T Vol. I p. 145).

Another shortage occurred in the Fairwinds Credit Union trust account when respondent misused client funds in connection with the Andrea Vogels matter. A \$32,000.00 settlement check for Ms. Vogels was deposited into the Fairwinds operating account rather than to the trust account (RR 13; TFB Ex. 9, Bates Number 0159; TFB Ex. 18). Respondent testified that this deposit was inadvertent (RR 13; TFB Ex. 9, Bates Number 0160). Prior to the deposit, the bank records reflected that respondent's Anderson Legal Group operating bank account balance

was \$541.29 (TFB Ex. 18, Bates Number 0869). After the deposit, respondent spent almost the entire amount of \$32,000.00 leaving a remaining balance of \$194.31 in the account (RR 13; TFB Ex. 18, Bates Number 0869, 00874).

Respondent spent Ms. Vogels' settlement funds on payments for her personal benefit, to wit: American Express, Florida Lawyers Mutual and Highwoods Realty for office rent (RR 13-14; TFB Ex. 18, Bates Number 0874).

In order to pay Ms. Vogels her settlement funds, respondent disbursed \$27,289.50 from her Fairwinds Credit Union trust account. (RR 13; TFB Ex. 9, Bates Number 0161; TFB Ex. 18, Bates Numbers 0895, 0900). Because respondent did not deposit the settlement funds into the Fairwinds trust account, she used other clients' funds to make the \$27,289.50 payment to Ms. Vogels (RR 13; TFB Ex. 10, Bates Number 0390). Respondent acknowledged the payment created a shortage in her trust account (RR 13; TFB Ex. 9, Bates Numbers 0162-0163).

In another client matter, on January 18, 2017, respondent withdrew \$5,223.00 from her Fairwinds trust account, to which she was not entitled because no funds were on deposit for this client matter in the trust account (TFB Ex. 19, Bates Number 0903). Respondent deposited the funds to her Fairwinds operating account (RR 14; TFB Ex. 10, Bates Numbers 0390-0391; TFB Ex. 19).

Respondent then issued a check to Perry Wilson from the operating account as

reimbursement of a personal loan she received from him (RR 14; TFB Ex. 9, Bates Number 0184; TFB Ex. 19, Bates Number 0906). The bank records showed that without the \$5,223.00 from the trust account, respondent would not have had enough money in her operating account to cover this check (RR 14; TFB Ex. 19).

Additionally, respondent used client trust funds, to which she had no entitlement, by wiring \$8,500.00 from her Fairwinds trust account to her Anderson Hew operating account at Florida Community Bank on February 23, 2017 (RR 14; TFB Ex. 10, Bates Number 0391). Respondent maintained that this transaction was inadvertent (RR 14; TFB Ex. 9, Bates Numbers 0164-0167; T Vol. II p. 162). The bank records showed respondent issued an Anderson Hew operating check for \$8,128.97 dated February 22, 2017, to pay her law office rent (RR 14; TFB Ex. 20). Without the transfer of the funds from her trust account to her operating account, respondent would not have had enough funds in the operating account to cover this check (RR 14; TFB Ex. 10, Bates Number 0391; TFB Ex. 20, Bates Number 0914). Respondent's operating account balance prior to the \$8,500.00 deposit was only \$2,755.67 (RR 14; TFB ex. 9, Bates Number 0166; TFB Ex. 10, Bates Numbers 0391, 0538, 0539).

At the final hearing, both the bar and respondent's expert witness agreed that a shortage of \$122,330.62 exists in respondent's Fairwinds Credit Union trust

account (RR 15; TFB Ex. 21, Bates Number 0933; T Vol. I pp. 161-164; T Vol. I p. 237). Respondent testified that, because she failed to keep the proper trust accounting records, these shortages occurred (RR 15; TFB Ex. 9, Bates Numbers 0150-0153, 0187).

Additionally, respondent failed to maintain the minimum required trust accounting records and failed to follow the minimum required trust accounting procedures for her Fairwinds trust account (RR 11; TFB Ex. 10, Bates Numbers 0386-0387). The bar's audit found that the ledger cards and journals did not consistently contain reasons for transactions and respondent did not provide all the required monthly reconciliations (RR 11-12; TFB Ex. 10, Bates Number 0385-0387; TFB Ex. 25; TFB Ex. 28).

Respondent maintained a trust account at SunTrust Bank for real estate closings and used client funds for her benefit. (RR 15; TFB Ex. 10, Bates Number 0391-0392). On September 29, 2015, respondent conducted a real estate closing for 1129 Maybrook Street. (RR 15; TFB Ex. 10, Bates Number 0391; TFB Ex. 22). Respondent issued an official check of \$5,788.22 to Bank of America, dated October 15, 2015, for the payoff of one of the mortgages (RR 15; TFB Ex. 9, Bates Number 0179-0180; TFB Ex. 22, Bates Number 0944). On January 21, 2016, the bank records reflected that this check did not clear and was instead deposited back

into respondent's SunTrust trust account, for the benefit of her client as required, due to a dispute regarding the payoff amount (RR 15; TFB Ex. 9, Bates Number 0180; TFB Ex. 10, Bates Number 0392; TFB Ex. 22, Bates Numbers 0945-0948).

While respondent resolved the dispute with the mortgage company, she failed to hold the payoff funds of \$5,788.22 in her SunTrust trust account after the original check was refused (RR 15-16; TFB Ex. 9, Bates Numbers 0180-0184; TFB Ex. 22, Bates Numbers 00949-0950). On July 18, 2016, respondent withdrew \$3,000.00 in cash from her SunTrust trust account, resulting in a balance of only \$4,938.22 (RR 16; TFB Ex. 22, Bates Numbers 0949-0950). Respondent knew or reasonably should have known she was not entitled to withdraw these funds because the mortgage payoff dispute had not been resolved and she was holding these funds pending final resolution of that dispute. This balance was \$850.00, less than what was required to satisfy the sellers' payoff (RR 16; TFB Ex. 10, Bates Number 0392). On November 15, 2016, respondent withdrew the remaining balance of \$4,938.22, from her SunTrust trust account and used it to purchase another official check made payable to Bank of America for the mortgage payoff in the amount of \$5,788.22 (RR 16; TFB Ex. 22, Bates Numbers 0951-0953). Because respondent's trust account was short, she paid an additional \$850.00 in

cash, to purchase the \$5,788.22 payoff check (RR 16; TFB Ex. 10, Bates Number 0392).

In most of the above instances, respondent commingled client trust funds from her Seaside and Fairwinds Credit Union trust accounts with her personal or law firm funds in her operating account in violation of the Rules Regulating The Florida Bar (RR 16; TFB Ex. 10, Bates Number 0391).

Between July 1, 2013 and June 30, 2016, respondent served as a member of the bar's Ninth Judicial Grievance Committee "C" (RR 16; TFB Ex. 31). During her term on the grievance committee, respondent voluntarily attended and completed The Florida Bar's Trust Accounting Workshop on March 31, 2016 (RR 16; TFB Ex. 32). Respondent certified on her annual membership fee statements for her trust accounts for each of the years from July 1, 2013 to June 30, 2017 that she maintained her trust accounts in compliance with Chapter 5 of the Rules Regulating The Florida Bar (TFB Ex. 33). Respondent admitted in her sworn statement that her records were not in full compliance. (TFB Ex. 9, Bates Number 0185-86). The referee found her failure to do so was unintentional but did lead to the misspending of client funds that the rules are designed to prevent (RR 17).

The referee found respondent not guilty of failing to diligently represent Stoneybrook and failing to adequately communicate with the Board based upon the

testimony of board members who expressed satisfaction with respondent's representation of Stoneybrook (RR 31). The referee also found respondent not guilty of violating 4-8.4(a) of the Rules Regulating The Florida Bar as it related to the actions of her nonlawyer employee with respect to the negligent trust account recordkeeping and misdirected bank deposits (RR 32). The referee found respondent's lack of proper management and oversight was negligent rather than intentional (RR 32).

SUMMARY OF ARGUMENT

Respondent intentionally and knowingly engaged in a pattern of conduct that resulted in respondent's misuse of client funds and trust account recordkeeping violations. The ongoing shortages in respondent's trust accounts, some of which were substantial in amount, not only persisted, but increased, after she completed the bar's Trust Accounting Workshop on March 31, 2016, and still exist at present (RR 15; TFB Ex. 21, Bates Numbers 0918-0933; TFB Ex. 32; T Vol. I pp. 161-164; T Vol. I p. 327). Although the referee found no intentional misappropriation, respondent's repeated transfers of trust funds to her operating account occurred in some instances when the operating account was short of money to pay respondent's personal and/or law office bills (RR 9, 10, 11, 13, 14; TFB Ex. 12 Bates Number 0584; TFB Ex. 13, Bates Number 0598; TFB Ex. 14, Bates Number 0616; TFB Ex. 15, Bates Number 0627; TFB Ex. 18, Bates Numbers 0872-0874; TFB Ex. 20, Bates Number 0914). Respondent relied on a loan from her parents to finally correct the shortage issue in one trust account, but only after the bar commenced its investigation (RR 7; TFB Ex. 9, Bates Numbers 0128-0130; TFB Ex. 3). Stoneybrook was deprived of the use of funds to which it was entitled for a period of time until respondent was able to obtain the necessary loan from her parents to repay this shortage. Respondent's trust account at Fairwinds Credit

Union remains short by at least \$122,330.62 (TFB Ex. 21, Bates Number 0933; T Vol. I, pp. 161-163, 237; T Vol. II pp. 111).

The referee in this matter found that respondent was negligent in her trust accounting and did not have the intent to misuse client funds. This Court, however, in The Florida Bar v. Alters, 260 So. 3d 72 (Fla. 2018) held that negligently engaging in sloppy bookkeeping amounted to intent and an attorney is responsible for knowing the source of funds in the attorney's possession. At best, respondent's mishandling of client funds was grossly negligent. Clearly, respondent abandoned her duty to safeguard her clients' funds during the period of time encompassed by the bar's audit. Mr. Alters failed to report trust account shortages to the bar. Alters, 260 So. 3d at 76. Respondent still has a shortage of over \$120,000.00 in her trust account.

The referee recommended that respondent be found guilty of violating all the trust accounting rules alleged by the bar in its Petition for Emergency Suspension; however, the referee recommended a three-year suspension. In light of this Court's holding in Alters, the appropriate sanction is immediate disbarment rather than a three-year suspension.

ARGUMENT

THE REFEREE’S RECOMMENDATION OF A THREE-YEAR SUSPENSION AND FIVE YEARS CONDITIONAL PROBATION IS NOT SUPPORTED BY THE CASE LAW AND STANDARDS AND THE APPROPRIATE SANCTION IS DISBARMENT.

Where the conduct of a lawyer is gross, disbarment is warranted. The Florida Bar v. Horowitz, 697 So. 2d 78, 83 (Fla. 1997). Respondent failed to maintain her seven trust accounts in compliance with the Rules Regulating The Florida Bar and had shortages and still has shortages in one of her trust accounts. Respondent repeatedly transferred money from her trust accounts to her operating accounts to pay bills when the operating account had insufficient funds to cover those expenses. Respondent was grossly negligent in her management of her law office, her finances and her client’s funds. Misuse of client funds is one of the most serious offenses an attorney can commit. In this instance, respondent’s failure to safeguard her client funds due to her gross negligence and recordkeeping warrants disbarment. The Florida Bar v. Alters, 260 So. 3d 72, 84-85 (Fla. 2018) (citing to The Florida Bar v. Rousso, 117 So. 3d 756 (Fla. 2013); The Florida Bar v. Johnson, 132 So. 3d 32, 34-35 (Fla. 2013)).

Respondent’s repeated misuse of client funds for her law office or personal benefit causing significant shortages in her trust account due to her failure to

comply with Chapter 5 warrants disbarment. From January 2015 to February 2018, respondent misused client funds in at least eight client matters. In seven of those client matters, funds were deposited into respondent's law firm operating account for Anderson Legal Group or Anderson Hew during times that respondent did not have enough funds in those operating accounts to pay her owed debts. Once those funds were deposited into her law firms' operating account, respondent paid either law firm or personal expenses with those client funds. Because respondent misused those client funds for her benefit, shortages occurred in several of respondent's trust accounts at Seaside National Bank & Trust, Fairwinds Credit Union and SunTrust Bank.

The Rules Regulating The Florida Bar are strict regarding an attorney's recordkeeping duties for trust accounts. This is appropriate due to the high duty owed when holding the property of others. Respondent ignored her duty as to these rules. In respondent's Seaside Bank trust account, numerous shortages occurred due to respondent's glaring failure to keep proper trust accounting records. When Stoneybrook terminated respondent's services, a shortage of \$37,000.00 of client funds belonging to Stoneybrook existed (TFB Ex. 15; T Vol. I p. 81-82). Respondent explained that the inadvertent deposit of trust funds to her Fairwinds Credit Union operating account caused the shortage (TFB Ex. 9, Bates Number

0133). The audit of respondent's operating account revealed its ending daily balance ranged between -\$105.00 to \$366.41 from May 2017 to February 2018 and that the erroneously deposited Stoneybrook trust funds in the operating account were conveniently and consistently used to cover shortfalls in her operating account (TFB Ex. 10, Bates Numbers 0387-0389).

On January 11, 2015, respondent's operating account balance was \$1,874.85 (TFB Ex. 12, Bates Number 0584). On January 12, 2015, respondent transferred \$10,000.00 from her Seaside trust account, claiming it as earned fees in connection with the Belle Isle Bayou matter, even though the client ledger showed no funds existed to support this payment from the trust account (TFB Ex. 12, Bates Numbers 0578-0579). Without her transfer of \$10,000.00 from her trust account at Seaside Bank, respondent would have had insufficient funds in her operating account to cover all the expenditures she made between January 13, 2015 and January 23, 2015 totaling \$11,681.70 (TFB Ex. 12, Bates Number 0584).

Respondent misused other clients' funds to make this disbursement of \$10,000.00 causing a shortage in the trust account (RR 8-9; TFB Ex. 10, Bates Number 0388).

Respondent also failed to safeguard her client funds resulting in shortages in her Seaside trust account in January and February 2016. These funds pertained to 13413 Fox Glove Street, a Stoneybrook client matter (TFB Ex. 10, Bates Number

0388). On January 29, 2016, respondent paid herself \$4,458.26 by check from her Seaside trust account with the notation that it was for “13413 Fox Glove” (TFB Ex. 13, Bates Number 0593). At the time, the client ledger balance was only \$751.18, clearly showing that there were insufficient funds on deposit for this client to cover this payment. (TFB Ex. 10, Bates Number 0388; TFB Ex. 13, Bates Number 0592). On February 15, 2016, respondent’s operating account balance was \$4,320.00. The next day, respondent deposited the \$4,458.26 check to her operating account and then immediately used the money to pay Attorney Closing Services on February 19, 2016, and American Express on February 22, 2016 (TFB Ex. 10, Bates Number 0388; TFB Ex. 13, Bates Number 0598). Without the funds from her Seaside trust account, respondent’s operating account would not have had enough funds on February 22, 2016, to cover these two payments (TFB Ex. 13, Bates Number 0594-0598). This payment by check in the amount of \$4,458.26 caused a shortage in her Seaside trust account.

A similar situation occurred in connection to 2531 Balforn Tower Way, also a Stoneybrook client matter. The ledger card for 2531 Balforn Tower Way showed only a balance of \$645.54 (TFB Ex. 14, Bates Number 0609). On February 28, 2016, respondent’s operating account balance was only \$1,627.28 which was insufficient to meet her monthly law office rent payment (TFB Ex. 14, Bates

Number 0616). On February 28, 2016, respondent paid herself \$2,112.00 as legal fees by check with the reference line of 2531 Balforn Tower Way matter from her Seaside trust account (TFB Ex. 14, Bates Number 0603). On February 29, 2016, respondent deposited the funds to her operating account and used a portion of those funds to pay her office rent (TFB Ex. 10, Bates Number 0389; TFB Ex. 14, Bates Number 0616). The payment made by respondent for \$2,112.00 from Seaside trust account caused another shortage in the account.

The Florida Bar's audit revealed that respondent's substantial failure to comply with the required trust account recordkeeping in Chapter 5 resulted in considerable shortages also in her Fairwinds Credit Union trust account. At present, the account remains short by at least \$122,330.62 of client funds (TFB Ex. 21, Bates Number 0916-0933). Because respondent failed to maintain the proper trust accounting records, the bar could not conduct a full forensic audit and the actual shortage may be even more significant (T Vol. I p. 163).

One example of a shortage in the Fairwinds trust account related to the settlement for the Andrea Vogels client matter (TFB Ex. 18). On July 15, 2016, a \$32,000.00 settlement check for Ms. Vogels was deposited to respondent's Fairwinds operating account instead of the Fairwinds trust account (TFB Ex. 10, Bates Number 0390; TFB Ex. 18, Bates Numbers 0867, 0868, 0872-0873).

Respondent failed to catch this large error. By September 19, 2016, she had spent nearly all her client's settlement funds on personal or law firm expenditures (TFB Ex. 18). Respondent testified in her sworn statement that she could not recall when she first became aware of this issue (TFB Ex. 9, Bates Numbers 0161-0162).

Before the \$32,000.00 deposit, respondent's balance in her operating account was only \$541.29 (TFB Ex. 18, Bates Number 0874). Without this deposit, respondent would not have been able to pay her office rent, American Express business credit card expense and a bill from Florida Lawyers Mutual (TFB Ex. 10, Bates Number 0390; TFB Ex. 18, Bates Number 0874). To compound the problem, respondent then paid the settlement funds owed to Ms. Vogels from her Fairwinds Credit Union trust account on August 23, 2016 (TFB Ex. 10, Bates Number 0390; TFB Ex. 18, Bates Number 0900). Because the settlement funds were never deposited into this trust account, respondent used other client trust funds to pay Ms. Vogels. This created a \$32,000.00 shortage in respondent's Fairwinds trust account.

In several other instances, respondent took client funds in the Fairwinds Credit Union Trust Account to pay personal or law firm expenses causing shortages in the trust account. On January 18, 2017, respondent withdrew \$5,223.00 from her Fairwinds trust account and deposited the funds to her operating account (TFB Ex. 10, Bates number 0390; TFB Ex. 19, Bates Number

0902-0903). Respondent then used these funds to repay Perry Wilson \$5,075.00 for a personal loan. (TFB Ex. 9, Bates Numbers 0183-0184; TFB Ex. 10, Bates Number 0391; TFB Ex. 19, Bates Number 0906). On February 23, 2017, respondent wired \$8,500.00 from her Fairwinds trust account to her Anderson Hew operating account in order to issue a check to pay rent in the amount of \$8,128.97 (TFB Ex. 10, Bates Number 0391; TFB Ex. 20, Bates Numbers 0910, 0915). Respondent's operating account for Anderson Hew had insufficient funds to pay the rent without these funds from respondent's Fairwinds trust account (TFB Ex. 10, Bates Number 0391; TFB Ex. 20, Bates Number 0914).

Respondent's trust account at SunTrust Bank suffered similar shortages due to her failure to keep proper trust accounting records and misuse of client funds. This account had a shortage of at least \$850.00 related to a real estate closing conducted by respondent for the property of 1129 Maybrook Street (TFB Ex. 10, Bates Number 0391). During the closing, respondent issued an official check in the amount of \$5,788.22 to pay off the mortgage (TFB Ex. 22, Bates Number 0944). The check was returned and the funds re-deposited to respondent's SunTrust Bank trust account. (TFB Ex. 10, Bates Number 0392; TFB Ex. 22, Bates Numbers 0945-0947). These funds should have remained in her trust account, but respondent withdrew \$3,000.00 cash on July 18, 2016, resulting in a shortage (TFB Ex. 10,

Bates Number 0392; TFB Ex. 22, Bates Numbers 0948-0949). Respondent should have been aware of the shortage when she issued a check on November 15, 2016, from her SunTrust Bank trust account to pay off the mortgage. Because respondent had only \$4,938.22 remaining in her SunTrust Bank trust account, she had to use an additional \$850.00 from an unknown source to make up the difference in order to issue the full payoff amount. (TFB Ex. 22, Bates Number 0951-52).

Respondent's actions in connection with these eight client matters demonstrated her misuse of client funds for her own benefit and the repeated shortages that occurred in her trust account as a result. Additionally, her failure to conduct proper trust account recordkeeping resulted in a shortage of at least \$122,330.62. Respondent abandoned her duty to protect those client funds and therefore, her misconduct warrants disbarment.

Further, respondent's failure to report the shortages in her trust accounts to The Florida Bar warrants disbarment. Respondent became aware of the \$37,000.00 shortage in the Seaside trust account for the Stoneybrook matters (TFB Ex. 15) and failed to report it to the bar as required by R. Regulating Fla. Bar 5-1.1(a)(1)(B). Respondent also failed to report to the bar the \$100,000.00 shortage in her Fairwinds Credit Union Trust account caused by the \$100,000.00 check issued to Karamchand Doobay (TFB Ex. 10, Bates Numbers 0389-0390; TFB Ex. 9, Bates

Number 0143, 145). Additionally, she certified on her annual fees statement for the years of 2013 through 2017 that she maintained her trust accounts in compliance with the rules (TFB Ex. 33, Bates Numbers 1103-1104). Respondent knew this was not a true statement for the years of 2015 and 2016 (TFB Ex. 9, Bates Number 0186). A truthful certification that her account was not maintained in compliance with the rules, due to the known shortages she failed to report, may have triggered a compliance audit. Consequently, these misrepresentations to the Florida Bar in conjunction with the other misconduct warrant disbarment.

Respondent abandoned her duty to protect client funds in trust as a result of her repeated pattern of making improper transfers from her various trust accounts to her operating account. The appropriate discipline in this case is disbarment. As demonstrated by the above examples, when respondent's operating account was insufficient to meet an upcoming obligation, respondent transferred client funds from her trust accounts. Respondent took funds that did not belong to her. Whether she did so as a result of grossly negligent bookkeeping or misappropriation, is of little difference to the affected clients. The result for the clients is the same.

Respondent testified at her sworn statement that she frequently had difficulty paying her law office bills and sought repeated loans from her parents (TFB Ex. 9, Bates Numbers 0150-0151). Respondent's subjective belief that she had earned

fees sitting in her various trust accounts, bolstered by her wholly inadequate recordkeeping, has led to the present situation and the current \$122,330.62 shortage in client trust funds.

This Court's scope of review of a referee's recommendation as to discipline is broader than that afforded the factual findings because the ultimate responsibility for imposing the appropriate sanction rests with the Court. The Florida Bar v. Bischoff, 212 So. 3d 312, 319 (Fla. 2017). Generally, however, this Court does not alter the referee's disciplinary recommendation if it is supported by the case law and the Florida Standards for Imposing Lawyer Sanctions. Bischoff, 212 So. 3d at 319. The case law precedent and the Florida Standards for Imposing Lawyer Sanctions support the imposition of disbarment for respondent's conduct.

The practice of law is not a right. It is a privilege that is revocable for cause. See R. Regulating Fla. Bar 3-1.1 and Petition of Wolf, 257 So. 2d 547, 548 (Fla. 1972). A three-year suspension is not appropriate given the existing case law as well as the referee's findings of fact that included multiple instances of misusing client trust funds and the significant number of serious rule violations including her dishonest conduct in failing to report the shortages to the bar, a violation of Rule 4-8.4(c) (RR 8, 9, 10, 12, 13, 14, 15). Further, a three-year suspension is not appropriate because the bar's audit established that trust funds were placed

consistently and conveniently in respondent's operating account when expenses needed to be paid in amounts that exceeded what the balance in her operating account could accommodate (TFB Ex. 10). In addition, this Court has moved toward stronger sanctions for attorney misconduct in recent years. The Florida Bar v. Adler, 126 So. 3d 244, 247 (Fla. 2013); The Florida Bar v. Herman, 8 So. 3d 1100, 1108 (Fla. 2009)(citing The Florida Bar v. Rotstein, 835 So. 2d 241, 246 (Fla. 2003)). Because respondent's misuse of client trust funds was grossly negligent and was the result of her failure to adhere to the bar's trust accounting rules, even after attending The Florida Bar's Trust Accounting Workshop in 2016, the case law supports disbarment.

Most recently, in The Florida Bar v. Garcia, 2019 WL 1769143 (Fla. April 23, 2019) (unpublished disposition), an attorney was suspended for three years for misusing client funds and misrepresenting the status of settlement funds to the respective clients to whom the monies were due. The referee's recommendation of a ninety-day suspension was disapproved, as was the finding of the mitigating factor regarding the remoteness in time of the attorney's prior offenses. The referee found that Mr. Garcia paid five clients their settlement funds in an untimely manner but that he did not intentionally convert the funds. The referee found, instead, that Mr. Garcia knew or reasonably should have known that he was

dealing improperly with his clients' funds. In another instance, the referee found Mr. Garcia's client agreed to loan him money from settlement proceeds for which Mr. Garcia provided a promissory note, which he was close to fully satisfying. The referee found there was no clear and convincing evidence that Mr. Garcia intentionally misappropriated his clients' settlement funds.

Unlike respondent, Mr. Garcia's misuse of his client's funds was limited in time and scope. The six affected clients received their settlement funds, albeit not timely. Respondent still has a large shortage in at least one of her seven trust accounts. Stoneybrook has been unable to determine whether respondent owes it more funds and has elected not to pursue the matter further (T Vol. I pp. 81, 83-84). Finally, unlike respondent, Mr. Garcia had significant mitigation. During the two-year period where the trust fund misuse occurred, Mr. Garcia was both a sole practitioner and the sole caregiver for his elderly, critically ill mother. He was in the midst of a contentious divorce and was in the process of closing his sole practice. Mr. Garcia, unlike respondent, made full restitution to four of the five affected clients prior to the commencement of the bar's investigation. Respondent has not addressed the significant shortage in her Fairwinds trust account even though she became aware of the shortage prior to this Court's Order of Suspension freezing her trust accounts (T Vol. II pp. 112, 115).

In another recent case, The Florida Bar v. Alters, 260 So. 3d 72, 81 (Fla 2018), this Court disbarred Mr. Alters because he bore the ultimate responsibility as the managing partner for the improper transfers and misappropriation of client funds due to the knowledge he possessed at the time he made those choices. This Court further stated as the person in charge of the trust account and authorizing the transfer, it was his responsibility to know the source from where the funds were coming. Id. at 81.

Like Alters, respondent was the person in charge of the trust account (T Vol. II, p. 115). Respondent was responsible to know that the client funds were either being transferred or deposited to the Anderson Legal Group operating account and then being misused for an improper purpose. Both respondent and Mr. Alters failed to report known shortages in the trust account to the bar after discovering the improper transfers or shortages and both bear the ultimate liability for the misuse of client funds. Alters, 260 So. 3d at 81.

The referee in respondent's case found that respondent was negligent in her trust account recordkeeping and procedures and did not have the intent to misuse client funds (RR 17-18). However, this Court has stated that negligently engaging in sloppy bookkeeping amounts to intent. Alters, 260 So. 3d at 80. Mr. Alters, like respondent, had a responsibility to know from where the funds were coming. Like

respondent, Mr. Alters did not implement any safeguards to prevent further improper transfers of client funds from occurring and did not institute measures to ensure compliance with the rules governing trust account management. Like respondent, Mr. Alters also misrepresented to the bar the status of his law firm's trust account by certifying that he followed the rules when, in fact, he was aware this was not true. Id. at 79. This Court noted that leniency in imposing a suspension rather than disbarment is not warranted in a case involving an attorney's systemic failure to protect client trust funds. This Court further stated that attorneys are not allowed to "abdicate their responsibility to protect clients' property and enjoy the privilege of practicing law.Therefore, Alters must be disbarred." Id. at 85. Therefore, respondent's misuse of client funds for her benefit and failure to comply with the trust accounting rules warrants disbarment.

In this case, the referee considered Alters but distinguished it from respondent's misconduct (RR 33-36). The referee found that respondent's conduct differed from that of Mr. Alters as not being of the same or similar pattern, in terms of intent, or duration while knowing of the deficiencies in the trust account and that in contrast to respondent, Mr. Alter's failed to implement corrective measures once he became aware of his trust account shortages. However, respondent reasonably knew or should have known, at least by the time she

completed Trust Accounting Workshop on March 31, 2016 (TFB Ex. 32), that she had serious issues with her various trust accounts and recordkeeping practices and, like Mr. Alters failed to rectify the issues. On or about August 17, 2017, Stoneybrook's new legal counsel notified respondent and requested from respondent the trust accounting records that she was required to maintain in order to have an accurate accounting of the funds she was holding in her trust account for Stoneybrook matters (TFB Ex. 1, Bates Numbers 0018-0019). Those requests continued, without meaningful success, until Stoneybrook filed its grievance with the bar on December 28, 2017 (TFB Ex. 1, Bates Numbers 0022-0037, 0001). Respondent knew she did not have the records, or the money, to turn over to her client's new counsel. Although the referee found that Mr. Alter's failure to hire an outside CPA to rectify his trust account issues was dissimilar to respondent, Mr. Alter's deposit of funds to his trust account for his own use and his misrepresentation to another law firm was like that of respondent (RR 35-36).

This Court found in The Florida Bar v. Rousso, 117 So. 3d 756 (Fla. 2013), that embezzlement of trust account funds by a nonlawyer bookkeeper did not relieve the attorneys of their responsibility for safeguarding client funds and disbarment was the appropriate discipline. In Rousso, the referee found that there was no evidence that either Mr. Rousso or Mr. Roth misappropriated any client

funds or received any benefit from the missing funds. Rousso, 117 So. 3d at 760. Further, Mr. Rousso and Mr. Roth did not properly comply with their duties regarding the trust account and as a result of the failure to do so, client funds were improperly taken. Id. at 766. Therefore, this Court found that disbarment was warranted for both attorneys because they abandoned their fiduciary duties to safeguard their clients' funds. Rousso, 117 So. 3d at 767.

Similar to Rousso, respondent abandoned her fiduciary duty to safeguard and account for her clients' trust funds. Respondent failed to properly comply with her duties regarding the trust account and as a result of the failure to do so, client funds were improperly taken and used to the benefit of respondent or her law firms. When Stoneybrook demanded a full accounting of its trust funds on deposit with respondent, she failed to promptly provide an accurate accounting and failed to turn over the funds upon demand in a timely manner. Respondent could not provide an accounting because she did not have sufficient records and could not turn over the trust funds because she no longer had them in her trust account. Respondent never advised her client that the funds were gone nor reported the issues to the bar. By abandoning her fiduciary duty to her clients to maintain the trust account funds, respondent's gross misconduct warrants disbarment.

The referee found in mitigation that respondent had no prior disciplinary history [Fla. Stds. Imposing Law. Sanctions. 9.32(a)], had no dishonest or selfish motive [Fla. Stds. Imposing Law. Sanctions. 9.32(b)], attempted to correct the consequences of her misconduct [Fla. Stds. Imposing Law. Sanctions. 9.32(d)], cooperated with the bar's investigation [Fla. Stds. Imposing Law. Sanctions. 9.32(e)], was inexperienced in keeping trust account records [Fla. Stds. Imposing Law. Sanctions. 9.32(f)], had a good reputation [Fla. Stds. Imposing Law. Sanctions. 9.32(g)], and was remorseful [Fla. Stds. Imposing Law. Sanctions. 9.32(l)]. However, respondent's mitigation does not rebut the presumption that disbarment is the appropriate sanction for respondent's misuse of client funds and negligent recordkeeping.

This Court disbarred the attorney in The Florida Bar v. Valentine-Miller, 974 So. 2d 333 (Fla. 2008), for grossly inadequate recordkeeping and misappropriation despite the presence of significantly more mitigation than present in respondent's case. Ms. Valentine-Miller's poor recordkeeping made it impossible to determine the exact total of client funds she converted. Valentine-Miller, 974 So. 2d at 335. Ms. Valentine-Miller presented significant mitigation in her defense of the bar's disbarment recommendation, including serious illness, severe substance abuse problems for which she voluntarily sought treatment, and

other significant personal problems. Id. at 336-38. The referee found that Ms. Valentine-Miller's limited experience as a public defender did not provide her with trust account recordkeeping experience. Ms. Valentine-Miller admitted that she owed some of her clients' money and, when she received their settlement funds, paid herself her fee and refused to remit her balance to the clients. Id. at 338. This Court held that her intentional misappropriation of client funds was dishonest conduct. Ms. Valentine-Miller's extensive and compelling mitigation failed to overcome the well-established sanction that disbarment is the appropriate sanction for misappropriation. Valentine-Miller, 974 So. 2d at 339.

Unlike Ms. Valentine-Miller, respondent had little significant mitigation. Respondent did not take full responsibility for the misconduct, instead, blaming her staff and her bookkeepers for the trust accounting errors. The referee found mitigation because of respondent's attempt to remedy her trust accounting errors by hiring a new Certified Public Accountant (RR 41). However, this attempt was only after the bar investigation began and upon Stoneybrook's demand for their trust account funds. The referee also found the mitigating factor of character and reputation. Although respondent presented many character witnesses, none had employed her as an attorney nor had practiced law with her as a partner. None had first-hand knowledge regarding respondent's handling of client funds in her trust

account. The referee's finding that respondent was inexperienced in keeping trust accounting records and those violations were the result of the ignorance of the rule is not weighty mitigation (RR 42). Although respondent claimed her own ignorance of what the rules required, she served for three years on a grievance committee reviewing allegations of attorney misconduct, including trust account violations and completed the Trust Accounting Workshop in March 2016, where she was provided with the bar's Staff Auditor's contact information in the event she had additional questions (T Vol. I pp. 185-186; T Vol. II p. 31, 92, 117). Respondent did not avail herself of that help and made no changes to her recordkeeping practices.

Respondent's mitigation arguments also center on her lack of intent to misuse or misappropriate client funds. However, this Court has held that knowingly or negligently engaging in sloppy bookkeeping also amounts to intent under Rule 4-8.4(c). See Alters, 260 So. 3d at 80. See also The Florida Bar v. Simring, 612 So. 2d 561, 566 (Fla. 1993)(holding that persistent trust account shortages, use of trust account funds to pay personal obligations and intentional and sloppy recordkeeping established an attorney's intent to misappropriate client funds). The mitigating factors found by the referee do not rebut the imposition of disbarment due to respondent's serious misconduct.

In determining the appropriate sanction, this Court considers: (1) the duties violated; (2) the lawyer's mental state; (3) the potential or actual injury caused by the lawyer's misconduct to the client, the public, the legal system or the profession; and (4) the existence of aggravating and mitigating circumstances. The Florida Standards for Imposing Lawyer Sanctions further assist in determining the appropriate discipline. In addition, the discipline must serve three purposes: it must protect the public, be fair to the respondent and be severe enough to deter other attorneys from committing similar misconduct. The Florida Bar v. Shoureas, 892 So. 2d 1002 (Fla. 2004); The Florida Bar v. Lord, 433 So. 2d 983 (Fla. 1983). Respondent's disbarment in this matter would satisfy those three purposes. It would protect the public, is fair to respondent considering her misconduct and will be a strong deterrent to other attorneys who may be tempted to hide the misuse of client funds through grossly negligent trust account recordkeeping. Additionally, the Standards for Imposing Lawyer Sanctions support disbarment as the appropriate sanction in this matter, especially due to respondent's repeated failure to protect her clients' property even after successfully completing the bar's Trust Accounting Workshop and serving a three-year term on a bar grievance committee.

Under Standard 4.1, Failure to Preserve the Client's Property, Standard 4.11 calls for disbarment when a lawyer intentionally or knowingly converts client

property regardless of injury or potential injury. The bar's audit revealed that respondent repeatedly transferred funds from her various trust accounts to her law office operating account, or in some instances directly deposited client trust funds to her operating account, in order to cover expenditures at times when her operating account was short of money. These transfers and deposits were not one-time errors or bookkeeping issues as respondent claims. This misconduct occurred repeatedly over a period of years. Respondent admitted her law firm had financial difficulties and she sometimes borrowed money from her parents to pay expenses (TFB Ex. 9, Bates Numbers 0133, 0150-0151).

Under Standard 4.6, Lack of Candor, Standard 4.61 calls for disbarment when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another regardless of injury or potential injury. Respondent misled her client, Stoneybrook, and its new counsel with respect to the missing trust funds after her services were terminated. Respondent's trust account holding Stoneybrook's funds was short by at least \$37,000.00 and respondent could not comply with new counsel's repeated requests that she turn over all the trust funds to which the client was entitled (TFB Ex. 1; TFB Ex. 2). Respondent made various excuses for the delay (TFB Ex. 2; TFB Ex. 4).

Finally, under Standard 5.1, Failure to Maintain Personal Integrity, Standard 5.11(f) calls for disbarment when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice. After she completed Trust Accounting Workshop on March 31, 2016, respondent should have known she needed to make specific changes in order to bring her trust account recordkeeping into compliance with Chapter Five of the Rules Regulating The Florida Bar. She did nothing and continued to certify her compliance with Chapter Five on her annual bar membership fee statements. Respondent cannot argue ignorance when she was provided with all the instruction and materials, she needed to fully understand the requirements of Chapter 5 of the Rules Regulating The Florida Bar. Further the referee found that respondent violated Rule 4-8.4(c) by being dishonest by misusing client funds and failing to report the shortage in the trust account in connection with Mr. Doobay's client matter.

The relevant aggravating factors outlined in Standard 9.22 further support disbarment. In aggravation, under Standard 9.22, respondent engaged in both a pattern of misconduct and multiple offenses. See Standards 9.22(b) and 9.22(c). Respondent's misconduct was not a mere isolated incident. It was an ongoing

pattern of multiple acts of misconduct over a period of many years involving multiple clients and multiple trust accounts.

Additionally, under Standard 9.22(i), respondent is an experienced practitioner. Respondent was admitted to The Florida Bar in 2003. She previously served as a member of the Ninth Judicial Circuit Grievance Committee “C” for three years (RR 16; TFB Ex. 31; T Vol. I p. 31; T Vol. II p.13). Respondent completed the bar’s Trust Accounting Workshop on March 31, 2016 (TFB Ex. 32), which was before the bar received this present grievance on December 28, 2017 (TFB Ex. 1, Bates Number 0001). With over fifteen years of experience as a practitioner, a member and chair of a grievance committee that reviews and votes probable cause for attorney misconduct including allegations of violations of trust accounting rules, and her attendance at the bar’s Trust Accounting Workshop, respondent either failed to grasp the fundamental concepts of Chapter 5 of the Rules Regulating The Florida Bar or refused to acknowledge her gross negligence in safeguarding her clients’ funds resulting in the remaining shortage of at least \$122,330.62 (TFB Ex. 21, Bates Number 0933).

Responsibility for acquiring the necessary knowledge to properly run a law office is that of the individual practitioner. Respondent voluntarily availed herself of education through the Trust Accounting Workshop but continued to demonstrate

a lack of concern for safeguarding her clients' funds entrusted to her control.

Respondent did not take her fiduciary duties seriously and relied on her parents to cover the resulting shortages. "The very nature of the practice of law requires that clients place their lives, their money, and their causes in the hands of their lawyers with a degree of blind trust that is paralleled in very few other economic relationships. Our primary purpose in the disciplinary process is to assure that the public can repose this trust with confidence." The Florida Bar v. Dancu, 490 So. 2d 40, 41-42 (Fla. 1986). "All theft and dishonest acts can be characterized as poor judgment, but that does not excuse the act, and especially so, when committed by a lawyer against a client." The Florida Bar v. Seldin, 526 So. 2d 41, 45 (Fla. 1988) (Justice Ehrlich, partially concurring and partially dissenting opinion).

Respondent has violated that trust as her trust account is short of client funds in the amount of \$122,330.62. No credible evidence exists that she can be entrusted to correctly manage a trust account in the future. Even with the knowledge provided from The Florida Bar's Trust Accounting Workshop, respondent chose to do nothing and failed to take control of the trust account in order to protect her client funds in the trust account from her own wrongdoing. Therefore, the only appropriate discipline in this matter is disbarment.

CONCLUSION

When choosing to increase discipline recommended by a referee, this Court has stated that “if the discipline does not measure up to the gravity of the offense, the whole disciplinary process becomes a sham to the attorneys who are regulated by it.” The Florida Bar v. Wilson, 425 So. 2d 2, 4 (Fla. 1983). The referee's recommendation of a three-year suspension is disproportionate to the discipline received by those who have engaged in egregious misconduct similar to that of respondent. The case law of this Court and the Standards for Imposing Lawyer Discipline support disbarment. The nature of respondent's misconduct reflects adversely on the reputation and dignity of the legal profession coupled with respondent's gross negligence in recordkeeping and repeated misuse of client's funds warrant disbarment.

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact and recommendation of a three-year suspension followed by a five-year period of probation conditioned in Trust Accounting Workshop and quarterly trust account reports and instead impose as a sanction immediate disbarment and payment of costs currently totaling \$21,150.18.



Carrie Constance Lee, Bar Counsel

CERTIFICATE OF SERVICE

I certify that this document has been E-Filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, and that a copy has been furnished by United States Mail via Certified Mail No. 7160 3901 9843 2748 6505 return receipt requested to Warren William Lindsey, Counsel for Respondent, 1150 Louisiana Avenue, Suite 2, Winter Park, Florida 32789-2354 and via email to warren@warrenlindseylaw.com; and via email to Staff Counsel, The Florida Bar, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 at aquintel@floridabar.org on this 15th day of May, 2019.



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CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN

Undersigned counsel does hereby certify that this Brief is submitted in 14 point proportionately spaced Times New Roman font, and that this brief has been E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, using the E-Filing Portal. Undersigned counsel does hereby further certify that the electronically filed version of this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

A handwritten signature in cursive script that reads "Carrie C. Lee". The signature is written in black ink and is centered on the page.

Carrie Constance Lee, Bar Counsel