

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Appellant,

v.

MICHAEL ALAN CEBALLOS,

Appellee.

Case Nos. SC01-716, SC01-1268,  
SC01-1522

TFB File Nos. 2001-00,487(4A),  
2001-00,595(4A), 2001-00,607(4A),  
2001-00,629(4A), 2001-00,695(4A),  
2001-00,781(4A), 2001-00,817(4A),  
2001-00,833(4A), 2001-00,910(4A),  
2001-01,081(4A), 2001-01,113(4A)

AMENDED CROSS ANSWER AND REPLY BRIEF

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## PRELIMINARY STATEMENT

Complainant/Appellant, **The Florida Bar**, will be referred to as “the Bar” throughout this Answer Brief. Respondent/Appellee, **Michael Alan Ceballos**, will be referred to as “Respondent” or “Mr. Ceballos.”

References to the transcript of proceedings before the Referee in The Florida Bar disciplinary hearing shall be by the symbol **TR** followed appropriate page number, i.e., “TR, pp. 131-134.”

Reference to The Florida Bar’s Exhibits shall be designated as **BARX** with the appropriate number, i.e., “BARX 1.”

## STATEMENT OF FACTS

The Bar agrees with Respondent that a typographical error exists in the Complaint, the Report of Referee, and our Initial Brief involving the year of Respondent's representation of Derrick Turner. The year should be 2000 and not 2001.

## SUMMARY OF ARGUMENT

Respondent has not overcome the presumption of disbarment for trust account misappropriations, despite evidence of his addiction to alcohol. Respondent's fraud upon the Court warrants disbarment. Respondent's abandonment of his law practice warrants disbarment. The totality of Respondent's conduct demands disbarment.

## CROSS ANSWER AND REPLY

The Florida Bar, in its Initial Brief, sought to convince this Court to reject the Referee's recommended discipline and to sanction Respondent with disbarment. The Bar's position is that the recommended discipline is not consistent with cases decided by this Court.

Since the Bar and Respondent are each contesting only the recommended discipline of the Referee, this issue will be combined into one argument.

Respondent, in his Answer Brief, casts aside the mandate of The Florida Bar v. Travis, 765 So.2d 689 (Fla. 2000), by distinguishing the nature and reason for his misappropriation of client trust funds from that of Mr. Travis. The mandate in Travis is that the weighty presumption of disbarment in misappropriation of trust fund cases may be overcome only if the attorney cooperates with the disciplinary proceedings, pays restitution, and has no disciplinary record. These factors are conditions precedent to overcoming the presumption of disbarment and have not been met. Even the presence of all three factors may not overcome the presumption. "Although these factors are necessary, they do not, in and of themselves, serve to overcome the presumption of disbarment." Travis at 691.

Respondent blames his misconduct on the disease of chronic alcoholism and asks this Court to ignore the presumption of disbarment even though he has not met the requirements needed to overcome that presumption.

In 1997, Mr. Ceballos' best friends, professional colleagues, and family members, attempted to convince Respondent that he had a serious alcohol problem and needed to obtain treatment. Respondent went to an alcohol rehabilitation program but left prematurely against medical advice and began to drink again. (TR, pp. 131-134). Inevitably, he violated the Rules of Professional Conduct and, while those violations were pending before a Referee, he fraudulently convinced the Bar, FLA, Inc., the Referee, and this Court that he had overcome his addiction to alcohol. Relying upon Respondent's false representations that he had been rehabilitated, the Bar entered into a consent judgment requiring a 30-day suspension and a continuation of his FLA., Inc., contract. This Consent Judgment was adopted by the Referee and accepted by this Court. (BARX 1). Respondent's testimony at the trial in this case, contradicted the representations that he had made in securing the above resolution. (TR, p. 135). He testified that he was still drinking during the spring of 2000. That was the same period in which he convinced the Bar and the Referee that he had stopped drinking. The Florida Bar had taken Respondent's chronic alcoholism and

professed rehabilitation into consideration and agreed to a reduced sanction in the previous disciplinary matter.

During the 30-day suspension period, Respondent continued to abuse alcohol and his clients. Immediately upon the expiration of the suspension period, Respondent continued his pattern of neglecting his clients' cases and began to misappropriate his client's trust funds.

Respondent seeks to mitigate his trust account misappropriations by emphasizing the relatively small amount of money that he converted. He asserts that where Mr. Travis misappropriated \$35,000, he only misappropriated \$5,490. Respondent fails to inform this Court that his cash withdrawals from his trust account totaled \$9,230, and that his trust account was left with a balance of \$40.38. He could not take any more money only because there was no more to take. The presumption of disbarment is not predicated upon the amount of money that is misappropriated. It is predicated upon the violation of a sacred trust that reflects on the honesty, integrity and character of all members of the Bar and, therefore, the judicial system.

Respondent cites The Florida Bar v. Tauler, 775 So.2d 94 (Fla. 2000), in support of his position that a discipline less than disbarment is appropriate for him. Ms. Tauler's three-year suspension was imposed only after she was able to meet the conditions precedent established by Travis. Ms. Tauler made restitution, cooperated

with the Bar, and there is no aggravating factor of prior discipline.<sup>1</sup> She then presented the mitigating evidence of her physician husband's back surgeries, his losing his income, his filing bankruptcy, his overbearing and abusive conduct towards her, and her *pro bono* work where she dedicated hundreds of hours assisting poor people who otherwise would have received little or no legal help.

Additionally, Ms. Tauler did not abandon her clients, or take fees without providing legal services, and did not violate a disciplinary order. The three-year suspension imposed in Tauler is based on the Referee's conclusion that she "should be given the opportunity to rehabilitate herself," Tauler, p. 947. Mr. Ceballos has had numerous opportunities to rehabilitate himself and has failed to take advantage of those opportunities.

Concerning the Bar's second reason in support of disbarment, Respondent urges this Court that his conduct is far different than that of Mr. Horowitz, see The Florida Bar v. Horowitz, 697 So.2d 78 (Fla. 1997). He claims that he did not lie to his clients and that there is no showing that he evinced a callous disregard for his clients' welfare over a period of time. The undisputed evidence in this case shows that

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<sup>1</sup> While the official records of The Florida Bar reflect a finding of minor misconduct against Ms. Tauler in 1991, there is no mention of that prior discipline in the Tauler opinion, perhaps due to the limitations provided in Standard 9.22(a) of the Florida Standards for Imposing Lawyer Sanctions.

Respondent abandoned his practice, received money from three clients based on his assurance that he would perform legal services, and that he performed absolutely no legal services for them. The undisputed evidence also shows that he failed to complete his representation of six additional clients. That conduct evinces a total disregard for his clients.

## CONCLUSION

The Florida Bar is urging disbarment of Respondent not just for trust account misappropriations, and not just for abandoning his cases, and not just for repeating conduct for which he has been previously disciplined, and not just for his violation of a disciplinary order, and not just for his fraudulent misrepresentations to the Bar and the Referee, but for the totality of his conduct.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Cross Answer and Reply Brief regarding Supreme Court Case Nos. SC01-716, SC01-1268, and SC01-1522 has been mailed by certified mail #7000 1670 0012 8614 7105, return receipt requested, to Michael Alan Ceballos, Respondent, c/o John A. Weiss, Counsel for Respondent, at his record Bar address of 2937 Kerry Forest Parkway, Suite B2, Tallahassee, Florida 32308-6825, on this 11th day of June, 2002.

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Copy provided to:  
John Anthony Boggs, Staff Counsel

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

Undersigned counsel does hereby certify that the Cross Answer and Reply Brief of The Florida Bar v. Michael Alan Ceballos is submitted in 14 point proportionately spaced Times New Roman font, and that the computer disk filed with this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

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Kenneth Lawrence Marvin, Bar Counsel