

**IN THE SUPREME COURT OF FLORIDA
(Before a Referee)**

THE FLORIDA BAR,

Complainant,

v.

KIP WILLIAM KOOTZ,

Respondent.

**Supreme Court Case
No. SC07-551**

**The Florida Bar File
No. 2006-00,005(15A)**

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

The Florida Bar filed its complaint with the Supreme Court of Florida in Supreme Court Case No. SC07-551 on March 27, 2007. On April 9, 2007, the undersigned was appointed to preside as referee in this proceeding by order of the Chief Judge of the Seventeenth Judicial Circuit. The parties have reached an agreement for a Conditional Guilty Plea for Consent Judgment, which was filed with and approved by the undersigned. The pleadings, and all other papers filed in this cause, which are forwarded to the Supreme Court of Florida with this report, constitute the entire record.

During the course of these proceedings, the respondent appeared pro se and The Florida Bar was represented by Alan Anthony Pascal.

II. FINDINGS OF FACT:

A. Jurisdictional Statement

Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary of the Case

Gwendolyn West was the personal representative of the estate of her late grandmother, Marjorie S. Childress, who had created two trusts prior to her death – a 1985 Trust and a 1996 Trust. Gwendolyn West was the remainder beneficiary of both trusts. Respondent was the trustee of the 1985 Trust and was the attorney for the trustees for the 1996 Trust. Respondent represented Frank Butler, son of the deceased, who was a named beneficiary under both trusts. By representing Butler and the trustees of the 1996 Trust, respondent engaged in an impermissible conflict of interest. Respondent failed to inform Butler or the trustees of the 1996 Trust of this conflict of interest. Respondent never obtained consent to the conflict from either party. Respondent also engaged in an impermissible conflict of interest by investing assets of the 1985 Trust in corporations where respondent was a principal, shareholder, and/or officer. By investing trust monies in corporations in

which respondent has a material interest, respondent engaged in an impermissible conflict of interest. Respondent's judgment regarding these investments was clouded by his own interest in these corporations. Gwendolyn West, as personal representative of the Estate of Marjorie Childress, requested accountings from both the 1985 Trust and the 1996 Trust in order to file the required estate tax return. Respondent continually failed and refused to produce such accountings. As a result, West was forced to file two separate suits in order to receive these accountings: *Gwendolyn West v. Anita De Vienne Tremain, et al.*, Case No. 50-2004-CP-003558 in the Circuit Court of the 15th Judicial Circuit, in and for Palm Beach County, Florida, for the 1996 Trust; and *Gwendolyn West v. Kip W. Kootz*, Case No. 50-2004-CP-003029 in the Circuit Court of the 15th Judicial Circuit, in and for Palm Beach County, Florida, for the 1985 Trust. On October 28, 2004, an agreed order was entered in both cases, stating that respondent would file accountings for both trusts. Despite the agreed order entered in both cases, respondent failed to file the accountings as required. In or about December 2004, West filed Motions for Contempt and Sanctions and on January 13, 2005, the court entered an Order on Plaintiff's Amended Motion for Contempt and for Sanction. The Court found that respondent "intentionally and willfully violated the Agreed Order entered on October 28, 2004" and required the defendants to pay attorneys fees in the amount of \$1,117.75. On June 30, 2005, Gwendolyn West filed a

complaint against respondent with The Florida Bar. On July 19, 2005, bar counsel sent a letter to respondent requiring his response to West's complaint by August 4, 2005, but respondent failed to respond. On August 25, 2005, a second letter was sent to respondent requiring his response to the pending bar complaint, respondent failed to respond. On April 19, 2006, West's complaint was sent to the Fifteenth Judicial Circuit Grievance Committee "A" for further investigation. The grievance committee received information that respondent was licensed to practice law in the State of Minnesota. On or about May 2006, Joseph Thoemke, investigating member for the grievance committee, traveled to St. Paul, Minnesota to contact respondent about the pending bar complaint. Thoemke spoke with respondent at his law office and advised him to immediately contact bar counsel and file a written response to the bar complaint. Respondent admitted to Thoemke that he had received the initial bar complaint, and further promised to file his response within 24 hours of this meeting. Respondent willfully and intentionally failed to respond to this investigative request from The Florida Bar. On September 22, 2006, a notice of hearing was sent to respondent by The Florida Bar. Respondent failed and refused to respond to the bar's notice of hearing.

III. RECOMMENDATION AS TO GUILT:

In accordance with the Conditional Guilty Plea for Consent Judgment, I find the respondent guilty of having violated R. Regulating Fla. Bar Rules 3-4.2

[Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The commission by a lawyer of an act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-1.1 [A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.]; 4-1.7(a) [A lawyer shall not represent a client if the representation of that client will be directly adverse to the interests of another client, unless (1) the lawyer reasonably believes the representation will not adversely affect the lawyer's responsibilities to and relationship with the other client; and (2) each client consents after consultation.]; 4-1.7(b) [A lawyer shall not represent a client if the lawyer's exercise of independent professional judgment in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest unless (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation.]; 4-3.4(c) [A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid

obligation exists.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice ...]; and 4-8.4(g)(1) [A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee or board of governors.].

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Pursuant to the Conditional Guilty Plea for Consent Judgment presented to me, I recommend that the respondent receive a public reprimand by personal appearance before The Florida Bar's Board of Governors, and be ordered to make payment of The Florida Bar's costs in these proceedings.

I am satisfied that the imposition of a public reprimand and payment of The Florida Bar's costs is necessary to meet the Court's criteria for appropriate sanction: attorney discipline must protect the public from unethical conduct and have a deterrent effect while still being fair to respondents. The Florida Bar v. Pahules, 233 So.2d 130,132 (Fla. 1972).

V. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1), I considered the following:

A. Personal History of Respondent:

Age: 54

Date Admitted to the Bar: January 22, 1996

B. Aggravating Factors:

1. Multiple offenses;
2. Substantial experience in the practice of law;

C. Mitigating Factors:

1. Absence of a prior disciplinary record;
2. Absence of a dishonest or selfish motive.
3. Personal or emotional problems (a protracted and difficult divorce involving 3 minor children);
4. Remorse.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

I find the following reasonable costs have been incurred by The Florida Bar:

A. Grievance Committee Level Costs:

- | | | |
|-----------------------------|----|-----|
| 1. Court Reporter Costs | \$ | -0- |
| 2. Bar Counsel Travel Costs | \$ | -0- |

B.	Referee Level Costs:	
1.	Court Reporter Costs	\$ 397.20
2.	Bar Counsel Travel Costs	\$ -0-
C.	Administrative Costs	\$ 1,250.00
D.	Miscellaneous Costs:	
1.	Investigator Costs	\$ -0-
2.	Witness Fees	\$ -0-
3.	Copy Costs	\$ -0-
4.	Telephone Charges	\$ -0-
5.	Translation Services Fees	\$ -0-
6.	Auditor Costs	\$ -0-
	TOTAL ITEMIZED COSTS:	<u>\$ 1,647.20</u>

It is apparent that other costs have or may be incurred. It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within 30 days of said judgment becoming final, respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 7th day of January, 2008.

Honorable Patti Englander Henning, Referee