

**IN THE SUPREME COURT OF FLORIDA**

**THE FLORIDA BAR,**

**Complainant,**

**v.**

**PETER H. SCHIMDT,**

**Respondent.**

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**Supreme Court Case  
No. SC08-29**

**The Florida Bar File  
Nos. 2006-50,852(15A)  
2006-50,900(15A)**

**REPORT OF REFEREE**

**I. SUMMARY OF PROCEEDINGS:**

The Florida Bar filed its formal Complaint in this cause on January 7, 2008. Thereafter, the undersigned was appointed to preside as referee, by order of the Chief Judge of the Seventeenth Judicial Circuit. The parties have presented to me a Guilty Plea and Consent to Immediate Disbarment, which has been approved by The Florida Bar Board of Governors' designated reviewer. After due deliberation, I have determined to recommend that respondent's Guilty Plea and Consent to Immediate Disbarment be approved, for the reasons set forth herein. 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, respondent was represented by Charles Wender; 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, and subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. **Narrative Summary:**

**COUNT I**

1. Respondent acted as the personal representative and the attorney for the Estate of Eddie Cantor, Probate Case No. 50-2001-CP-005521XXF01Y, in the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, and took a fee in each of these capacities for his services.

2. The estate was opened on December 7, 2001.

3. After taking initial steps to probate the estate, respondent failed to act with diligence in the administration of the Cantor Estate.

4. For a period of approximately 2 years, respondent failed to close the estate and failed to distribute funds to the beneficiaries.

5. Although respondent stopped taking action on the case, respondent failed to inform the beneficiaries that he had abandoned the case.

6. Due to respondent's complete failure to take any action or respond in any way, Mary Anne Kane-Cantor, a contingent beneficiary of the Eddie Cantor trust, was forced to retain subsequent counsel to administer the estate.

7. By failing to take any action to close the estate, respondent failed to act with reasonable diligence in administering Eddie Cantor's estate.

## **COUNT II**

8. In or about 2003, an interested party as contingent beneficiary of the Cantor trust, Mary Anne Kane-Cantor, made numerous attempts to contact respondent to ascertain the status of the probate case.

9. Respondent failed to respond.

10. Respondent failed to keep Mary Anne Kane-Cantor informed as to the status of the probate case for which she was a contingent beneficiary.

11. Respondent failed to respond to her specific inquiries regarding the proceeds from the sale of real property of the estate.

12. Further, the trustee of Eddie Cantor's trust, Citicorp Trust Bank, also made numerous attempts to contact respondent regarding the trust.

13. Respondent failed to respond to Citicorp as well.

14. By failing to answer any inquires made of him by Mary Anne Kane-Cantor or Citicorp, respondent has failed to properly communicate with interested parties regarding the estate.

## **COUNT III**

15. During the course of the investigation into respondent's conduct, respondent represented to The Florida Bar's grievance committee that any and all

communication problems which arose in the Cantor case were due to respondent's delegation of duties to his nonlawyer assistant, Ms. Warren Cooper.

16. Respondent stated that Ms. Cooper was responsible for communicating with both Ms. Cantor and Citicorp.

17. Ms. Cooper became solely responsible for the task of communicating with the contingent beneficiary and the trustee of the Cantor Estate. Respondent failed to supervise Ms. Cooper and ensure such communications were appropriately and timely responded to by him. Respondent failed to properly supervise his nonlawyer assistant.

18. Respondent also improperly delegated authority to Ms. Cooper to handle all matters related to the Cantor Estate while under his supervision.

#### **COUNT IV**

19. Throughout the period of representation, respondent failed to close the Cantor Estate, failed to distribute monies to the beneficiaries, and failed to take any other significant action in the case.

20. Respondent alleges that he became severely ill and stopped practicing law in January 2005. However, respondent refused to withdraw from his representation of the Cantor Estate.

21. In or about January 2007, Mary Anne Kane-Cantor, through counsel, filed a Motion for Contempt and Sanctions based on respondent's continued failure and refusal to respond to any and all requests made by successor counsel.

22. A hearing on such motion was held at which time respondent resigned as the personal representative.

23. The court accepted respondent's resignation by entry of a court order dated February 6, 2007.

24. Further, such order required respondent to file a final accounting in the Cantor case.

25. Respondent filed a final accounting for the period of November 2001 through February 28, 2007.

26. According to the final accounting, respondent paid himself legal fees in the amount of \$88,500, and personal representative fees of \$55,000.

27. Respondent paid these fees to himself without prior court approval and without prior notice to any beneficiaries of the estate or the trustee.

28. Respondent charged a clearly excessive fee for his services.

29. Respondent generated no itemized bills or time records to justify these legal fees.

## COUNT V

30. Respondent, as the ancillary personal representative, participated in an ancillary administration of the estate of Eddie Cantor in New York.

31. In March 2003, the proceeds from the sale of a house, valued at approximately \$203,674.17, were deposited into the Florida estate account.

32. Thereafter, respondent neglected and ignored any and all requests for an accounting of these funds or additional funds of the estate.

33. Pursuant to the court order dated February 6, 2007, respondent filed a final accounting for the period from November 2, 2001 through February 28, 2007.

34. Schedule D of the final accounting reflects that \$98,640.60 of the assets on hand are in the form of shares of a Fidelity Unit Investment Trust.

35. According to the final accounting, the check for the purchase of this investment in the amount of \$85,000 was written in June, 2003.

36. In truth and in fact, on or about June 13, 2003, respondent wrote a check in the amount of \$85,000 from the estate account to respondent's trust account.

37. Respondent has failed to produce any further information showing that those monies were actually remitted to Fidelity.

### **III. RECOMMENDATION AS TO GUILT:**

A. Having admitted the foregoing misconduct, respondent pleads guilty

to violating the following Rules Regulating The Florida Bar: By the conduct set forth above, respondent violated R. Regulating Fla. Bar 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.]; 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.]; 4-1.5(a) [An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee ...]; 4-1.15 [A lawyer shall comply with the Rules Regulating Trust Accounts]; 4-1.16(a)(1) [Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client.]; 4-1.16(d) [Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing

time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.]; 4-5.3(a) [A person who uses the title of paralegal, legal assistant or other similar term when offering or providing services to the public must work for or under the direction of or supervision of a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar.]; 4-5.3(b) [With respect to a nonlawyer employed or retained by or associated with a lawyer ... a partner in a lawyer firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer and a lawyer shall be responsible for the conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or the lawyer is a partner in the law firm in which the person is employed or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(c) [Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or

active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.]; 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.]; and 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 ...] 5-1.1(b) [Money or other property entrusted to an attorney for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of an attorney are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be deemed a conversion.]; and 5-1.1(e) [Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and upon request by the client or third person, shall promptly render a full accounting regarding such property.].

**IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:**

I recommend that respondent be found guilty of misconduct justifying bar discipline, and that he be disbarred from the practice of law with leave to reapply in 5 years. Respondent shall also pay The Florida Bar's costs in this matter. It is recommended such costs be charged to respondent and that interest at the statutory rate shall accrue. Should this cost judgment not be satisfied within 30 days of the judgment becoming final, respondent should be deemed delinquent and declared 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).

Disbarment is the presumptive sanction for misappropriation of client funds. See *The Florida Bar v. Spear*, 887 So.2d 1242 (Fla. 2004); *The Florida Bar v. Barley*, 831 So.2d 163 (Fla. 2002); and *The Florida Bar v. Potter*, 684 So.2d 810 (Fla. 1996).

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

Prior to recommending discipline, and pursuant to R. Regulating Fla. Bar 3-7.6(k)(1), I considered the following:

A. Personal History of Respondent:

Age: 62

Date admitted to The Florida Bar: April 6, 1982

B. Aggravating Factors: 9.22

9.22(b) dishonest or selfish motive;

9.22(c) a pattern of misconduct;

9.22(d) multiple offenses;

9.22(i) substantial experience in the practice of law (Respondent

has been a member of The Florida Bar since April 6, 1982.)

Prior Discipline: None

C. Mitigating Factors:

9.32(a) absence of a prior disciplinary record;

9.32(b) physical or mental disability or impairment (Respondent became severely ill in January 2005 which stopped him from practicing law.)

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

I find that The Florida Bar has incurred reasonable costs in the matter and that same should be assessed against the respondent, as follows:

A. Grievance Committee Level Costs:	
1. Court Reporter Costs	\$ 681.50
2. Bar Counsel Travel Costs	\$ -0-
B. Referee Level Costs:	
1. Court Reporter Costs	\$ -0-
2. Bar Counsel Travel Costs	\$ -0-
C. Administrative Fee	\$ 1,250.00
D. Miscellaneous Costs:	
1. Investigator Costs	\$ 34.20

2.	Witness Fees	\$ -0-
3.	Copy Costs	
	Audit report 95 pages @ 15¢	\$ 14.25
4.	Auditor Charges – 5 hours	\$ 180.00

TOTAL ITEMIZED COSTS: \$2,159.95

It is recommended such costs be charged to respondent and interest at the statutory rate shall accrue and 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 \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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HONORABLE JOSEPH A. MURPHY, III  
REFEREE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular U.S. mail to the following: STAFF COUNSEL, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; and ALAN ANTHONY PASCAL, Bar Counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 900, Fort Lauderdale, Florida 33309-2366; and CHARLES WENDER, 190 West Palmetto Park Road, Boca Raton, Florida 33432 on this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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JOSEPH A. MURPHY, III, REFEREE