

FILED
DEC 7 1977
CLIFFORD H. WARD
CLERK SUPREME COURT
BY

IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA

RICHARD S. BERRY,
Respondent.

Supreme Court
No. SB-109-2

O R D E R

IT IS ORDERED: Upon stipulation of counsel, the recommen-
dations of the State Bar of Arizona Disciplinary Board are approved;

FURTHER ORDERED: The respondent is disbarred as of the
13th day of October, 1977;

FURTHER ORDERED: That the respondent be assessed costs
incurred in the matter.

DATED this 7th day of December, 1977.



JAMES DUKE CAMERON
Chief Justice

Copies mailed this 7th day
of December, 1977, to:

Richard S. Berry
Ronald E. Warnicke, Bar Counsel
State Bar of Arizona
U.S. Supreme Court

The Foregoing Instrument Is A Full,
True And Correct Copy Of The Original
On File In This Office.

Attest December 7, 1977
Clifford H. Ward Clerk of Supreme Court,
State of Arizona

By Maureen Hopkins Deputy

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STATE BAR
OF ARIZONA

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RICHARD S. BERRY,

Respondent.

NO. SB-109-2

NOTICE

Pursuant to Rule 37, Rules of the Supreme Court,
NOTICE is hereby given that the record in the above-
entitled matter has been received and filed in this Court.

Respondent shall have thirty (30) days from the
date hereof in which to file objections to the findings and
recommendations of the Administrative Committee and the Board
of Governors of the State of Arizona.

DATED this 1st day of November, 1977.

The Foregoing Instrument is A Full,
True And Correct Copy Of The Original
On File In This Office.

CLIFFORD H. WARD, Clerk

Attest November 1, 1977
Clifford H. Ward Clerk of Supreme Court,
State of Arizona

By Maureen J. [Signature]
Chief Deputy

By Maureen J. [Signature]
Deputy

TO: Richard S. Berry, 2020 S. Mill Avenue, #3, Tempe, Arizona 85282
State Bar of Arizona, 858 Security Building, 234 North Central
Avenue, Phoenix, Arizona 85004
Ronald E. Warnicke, Esq., Bar Counsel, 919 North First Street,
Phoenix, Arizona 85004

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STATE BAR
OF ARIZONA
Discipline

1 LOCAL ADMINISTRATIVE COMMITTEE F
2 FOR DISTRICT NO. 5
3 OF THE STATE BAR OF ARIZONA

4 In the Matter of a Member of)
5 the State Bar of Arizona,) No. 76-1-5F
6)
7 RICHARD S. BERRY,) FINDINGS OF FACT,
8 Respondent.) CONCLUSIONS AND
9) RECOMMENDATION

10 On July 23, 1976, a formal Complaint was issued by
11 Local Administrative Committee 5F consisting of M. B. Moseley,
12 Chairman, Joe W. Contreras and Timothy W. Barton, members. The
13 formal Complaint together with a Notice of Disciplinary Hearing
14 was served upon the Respondent as provided by the Rules of the
15 Supreme Court. On or about September 14, 1976, the Respondent
16 filed an answer, pro per. Hearings were held at various times
17 commencing on September 14, 1976. The hearing was deemed completed
18 on May 9, 1977, at which time final post hearing memoranda was
19 received from Respondent.

20 Ronald Warnicke, a member of the State Bar of Arizona,
21 acted as State Bar counsel. The Respondent chose to represent
22 himself throughout this proceeding.

23 The Committee has considered the entire record in this
24 matter along with the memoranda filed on behalf of the State Bar
25 of Arizona and by the Respondent and after review and study of the
26 pertinent statutes, court decisions and court rules has determined
27 that there is sufficient evidence of misconduct as set forth in
28 the Complaint to warrant a recommendation of disciplinary action
29 against Respondent.

30 Pursuant to Rule 35(c) of the Rules of the Supreme Court
31 of Arizona, the Committee issues its findings of fact, conclusions
32 and adopts a recommendation as to the nature of the discipline
warranted.

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STATE BAR

FINDINGS OF FACT

1
2 1. Respondent at all times pertinent hereto was and is
3 a duly licensed and practicing attorney of the State Bar of Arizona.

4 2. On August 31, 1973, Respondent obtained a loan in
5 the amount of \$21,000 from the United Bank of Arizona Tempe Branch.
6 The loan was obtained for the purposes of (a) paying off two
7 unsecured loans previously obtained by Respondent from United Bank
8 of Arizona, (b) to discharge obligations which represented Respon-
9 dent's interests in various companies, and (c) to provide
10 Respondent with approximately \$5,000 to complete a commercial
11 building he had built in Tempe, Arizona.

12 3. In connection with the loan of \$21,000 obtained on
13 August 31, 1973, from the United Bank of Arizona-Tempe Branch,
14 Respondent executed a promissory note. The promissory note was
15 secured by an assignment of Respondent's beneficial interest (and
16 that of his wife's) in Trust #6277 with American Title Trust
17 Company (AMTITILE), Phoenix, Arizona. Payments of interest and
18 principal from Respondent's beneficial interest were to be applied
19 to repayment of the loan obtained by Respondent from United Bank
20 of Arizona-Tempe Branch.

21 4. The records of AMTITILE reflect that, in connection
22 with Respondent's assignment of his beneficial interest in AMTITILE
23 Trust #6277 to United Bank of Arizona, the mailing address for the
24 disbursement of funds was "Richard S. Berry and Jean D. Berry and
25 the United Bank of Arizona, P. O. Box 2-B, Tempe, Arizona, Atten-
26 tion Mr. Hostetler."

27 5. Although the exact dates and amounts of disbursements
28 from AMTITILE to United Bank of Arizona in connection with Respon-
29 dent's assignment of his beneficial interest in Trust #6177 cannot
30 be ascertained, the record does demonstrate that disbursements
31 were made from AMTITILE to United Bank of Arizona after August 31,
32 1973.

1 6. In December of 1974, interest due with respect to
2 the August 31, 1973, loan transaction between Respondent and United
3 Bank had not been paid and in January of 1975, the subject trans-
4 action was referred to the "Consumer Credit Loan Adjustments"
5 department of United Bank in Phoenix, Arizona. In January of 1975
6 an individual named "John J. Miller" also known as "Jack Miller"
7 was employed by United Bank and was in charge of the Consumer Loan
8 Adjustments department of United Bank. Prior to May 1975, Respon-
9 dent knew that said loan transaction had been referred to United
10 Bank's Loan Adjustment department and knew that Jack Miller was in
11 charge of said department.

12 7. In February of 1975, Wayne Hubbs was employed by
13 United Bank as an assistant to Jack Miller in the Consumer Loan
14 Adjustment Department and in such capacity spoke to a representa-
15 tive of AMTITILE with respect to a payment which was due from Trust
16 #6177 in February 1975. Mr. Hubbs was advised that payment would
17 not be forthcoming since funds had not been delivered into the
18 trust.

19 8. On May 5, 1975, AMTITILE issued its check No. 6931 in
20 the amount of \$5,480.29 made payable to the order of "Richard S.
21 Berry and Jean D. Berry and United Bank of Arizona, P. O. Box 2-B,
22 Tempe, Arizona, Attention Mr. Hostetler." (Exh. 10.) The check
23 was issued by AMTITILE in connection with Trust #6177 and in
24 accordance with instructions arising from Respondent's assignment
25 of his beneficial interest in said trust to United Bank.

26 9. Immediately prior to May 5, 1975, Respondent had
27 been checking with representatives of AMTITILE with respect to when
28 its check, in connection with his assigned beneficial interest in
29 Trust #6177, would be issued. On May 5, 1975, Respondent, after
30 ascertaining that the check had been issued, personally appeared
31 at the offices of AMTITILE and obtained AMTITILE check No. 6931 in
32 the amount of \$5,480.29.

1 10. Although the reverse side of check No. 6931 (Exh. 10
2 contains a purported endorsement of "United Bank of Arizona by Jack
3 Miller," it was conclusively established that "Jack Miller" did
4 not sign or authorize said endorsement. It was Respondent's testi-
5 money that he had a girl from his office, possibly a high school
6 girl employed part-time, go to United Bank to secure the endorse-
7 ment of the bank.

8 11. On or about May 7, 1975, Respondent endorsed said
9 check by affixing his signature to the reverse side of check No.
10 6931 (Exh. 10) and he also signed his wife's name to said check.
11 Respondent on May 7, 1975, personally deposited said check No. 6931
12 to a personal checking account carried in his name and his wife's
13 at the First National Bank of Arizona, Broadway and Hardy Branch,
14 Tempe, Arizona. Specifically the check was deposited to "Account
15 #821-07693 - Richard S. Berry and Jean D. Berry, husband and wife.

16 12. Within a period slightly in excess of one week from
17 the date Respondent deposited Exh. 10 in his personal checking
18 account, the funds represented by said deposit were exhausted by
19 Respondent drawing checks on said account for the payment of
20 personal household obligations, personal business obligations and
21 to his law firm to be used for the payment of rent.

22 13. Between the date of issuance of check No. 6931 by
23 AMTITLE and May 28, 1975, Wayne Hubbs, assistant to Jack Miller
24 in United Bank's Loan Adjustment department ascertained from
25 representatives of AMTITLE that (a) check No. 6931 had been issued
26 (b) the amount of the check, and (c) that the check had been picked
27 up personally by Respondent. On May 28, 1975, Wayne Hubbs had a
28 telephone conversation with Respondent regarding the issuance and
29 whereabouts of said check. During said telephone conversation,
30 Respondent acknowledged that he had picked up the check and stated
31 that he would mail it right away.

32 14. During the month of June 1975, Richard Kiburz,

1 an assistant vice president for United Bank at its Tempe office
2 contacted Respondent at his office in regard to the check which
3 had been issued by AMTITLE to United Bank and Respondent. At
4 that time, Respondent informed Mr. Kiburz that he was not sure
5 where the check was located, that he had not seen it recently,
6 that possibly it had been misplaced during the relocation of
7 Respondent's offices, and that he would try to locate the check.

8 15. On August 25, 1975, Harold Thompson, who was then
9 branch manager for First National Bank, Broadway and Hardy, Tempe,
10 Arizona, met with Respondent and advised him that it was necessary
11 for First National Bank to pay to United Bank the amount of check
12 No. 6931 issued by AMTITLE due to an irregularity in the endorse-
13 ment as it related to United Bank. At that time, Respondent told
14 Mr. Thompson that he had obtained the check, that it had been
15 misplaced, that apparently his secretary or a girl in his office
16 had taken it to United Bank, secured the endorsement and had
17 deposited it to his account. Respondent stated he would collect
18 some moneys owed him and would be back in a few days.

19 16. The amount of AMTITLE check No. 6931 (\$5,480.29)
20 was charged to Respondent's Account #821-07693 and after deducting
21 the amount on deposit in said account, there remained an overdraft
22 balance in said account in the amount of \$5,000.11. First
23 National Bank subsequently commenced a civil action to collect
24 the amount of the overdraft and after securing a judgment against
25 Respondent and his wife, the judgment was satisfied on or about
26 June 15, 1976.

27 CONCLUSIONS

28 1. The signature of "Jack Miller" as a part of the
29 endorsement of AMTITLE check No. 6931 (Exh. 10) is a forgery and
30 the circumstances surrounding the obtaining of possession of said
31 check together with the expedited deposit of said check into
32 Respondent's personal account and the immediate subsequent use of

