

IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

FILED

SID J. WHITE

MAY 21 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

THE FLORIDA BAR,)
Complainant,)
vs.)
GARY B. TURNER)
Respondent.)

CONFIDENTIAL

Supreme Court Case
No. 61,805

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by article XI of the Integration Rule of The Florida Bar, a final hearing was held on April 27, 1984. All of the pleadings, notices, motions, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

The following attorneys appeared as counsel for the parties:

On Behalf of The Florida Bar: Patricia S. Etkin and
A. Rodger Traynor, Jr.

On Behalf of the Respondent: No Appearance

II. FINDINGS AS TO PROCESS:

Respondent failed to appear at the final hearing held on April 27, 1984. A copy of the order scheduling the final hearing was sent by this Referee to the Complainant and Respondent at his last record address on March 29, 1984. Further, on April 11, 1984 Complainant sent Respondent a letter by both certified mail, return receipt requested, and U.S. mail, regular delivery, confirming that the final hearing would begin on April 27, 1984. Complainant forwarded this correspondence to Respondent at his last known address, as reflected in both the Change of Address filed by Respondent in the instant proceedings as well as in the Writ of Prohibition recently filed by Respondent with the Supreme Court. The signed return receipt indicates that the

correspondence was apparently forwarded by the U.S. Post Office to Respondent at another address (see The Florida Bar Exhibits 2 and 3). In addition, on April 17, 1984, Complainant sent this Referee a letter, with a copy to Respondent, reconfirming the final hearing date in view of the denial of Respondent's prohibition petition.

Neither this Referee nor Complainant has had any communication from Respondent regarding his appearance at the scheduled final hearing. When Respondent did not appear at the final hearing, Bar Counsel, in the presence of this Referee, telephoned Respondent's wife at her place of business and was told that she was on vacation that week. In addition, Bar Counsel attempted to reach Respondent at the telephone number listed in his recent pleadings and was told that Respondent was not there and they did not know either where he was or how he could be reached.

Further, in accordance with article XI, Rule 11.13(2) of the Integration Rule of The Florida Bar, Complainant provided Respondent with reasonable notice of the the disciplinary proceeding by mailing a copy of the Complaint to Respondent by certified mail, return receipt requested, at his last known address. The return receipt signed by Respondent confirms that the Complaint was received (see The Florida Bar Exhibit 1).

In view of the above, I find that Complainant did all that was required by article XI, Rules 11.01(2) and 11.13(2) of the Integration Rule of The Florida Bar to effect proper service of its Complaint as well as to provide Respondent with reasonable and sufficient notice of these proceedings, including the final hearing scheduled for April 27, 1984.

III. SPECIFIC FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT WHICH THE RESPONDENT IS CHARGED: After considering the pleadings, testimony of witnesses and evidence before me, I find that Complainant has proven, by clear and convincing evidence, the allegations set forth in the Complaint, to wit:

Findings as to Count I

1. Respondent was retained as counsel for Dadeland National Bank f/k/a Flagship National Bank of Dadeland, Dade County, Florida (hereinafter referred to as "DNB") from October 1977 to March 1979.

2. As counsel for DNB, Respondent was responsible for collection matters

3. In November 1978, DNB forwarded an outstanding obligation of Colleen Clark (herinafter referred to as "Clark") to Respondent for collection.

4. In November 1978, Respondent filed suit in Dade County Circuit Court (Case No. 78-8103) for collection of the above-mentioned obligation.

5. DNB authorized respondent to accept \$800 plus costs and attorney fees to settle the above-mentioned obligation.

6. In December 1978 while the court action referred to in Paragraph 4 was pending, Respondent accepted \$525.00 on behalf of DNB in settlement of the above-mentioned obligation from the attorney representing Clark.

7. Respondent failed to advise DNB of receipt of the above-mentioned funds in settlement of the Clark obligation.

8. Respondent failed to deposit the above-mentioned funds into his trust account.

9. Respondent failed to remit the above-mentioned funds to DNB.

Findings as to Count II

1. In July 1978, DNB referred an outstanding obligation of JoAnn and Donald Drescher (hereinafter referred to as "Drescher") to Respondent for collection.

2. On August 2, 1978 Respondent filed suit in Dade County Circuit Court (Case No. 78-12683) to foreclose on the mortgage which secured the above-mentioned obligation.

3. On or about September 11, 1978 Respondent received a check in the amount of \$7,024.80 from or on behalf of Drescher in settlement of the above-mentioned obligation.

4. The check from Drescher, referred to above, represented payment of the outstanding balance due DNB as well as \$500 for attorney's fees and \$69.50 for costs for commencing the foreclosure action which Respondent demanded of Drescher to satisfy the obligation.

5. At the time Respondent received the aforementioned check from Drescher he had already received from DNB the same \$500 for attorney's fees as well as reimbursement for court costs.

6. Respondent failed to advise DNB of the receipt of funds in settlement of the Drescher obligation.

7. Respondent failed to deposit the full amount of the above-mentioned funds into his trust account.

8. In January or February 1979, DNB learned that Respondent had received funds in settlement of the Drescher obligation.

9. Thereafter DNB made demand upon Respondent for remittance of the above-mentioned funds.

10. Respondent delivered to DNB a check made payable to DNB in the amount of \$6,524.80 drawn on Respondent's trust account maintained at Royal Trust Bank of South Dade, N.A., Dade County, Florida (hereinafter referred to as "Royal").

11. On or about March 2, 1979 the above-mentioned trust account check was returned for insufficient funds.

12. Thereafter DNB made another demand upon Respondent for remittance of the above-mentioned funds.

13. On or about March 13, 1979, Respondent delivered \$6,550.00 in cash to DNB. These monies did not reflect the full amount due DNB to satisfy the Drescher obligation. Although DNB advised Respondent of a deficit, Respondent failed to account to DNB for the deficit.

Findings as to Count III

1. During the period from November 4, 1977 through June 20, 1978 Respondent maintained a trust account with Dadeland National Bank f/k/a Flagship National Bank of Dadeland, Dade County, Florida, Account No. 05-644-5 (hereinafter referred to as "DNB").
2. During the period from September 14, 1978 through April 26, 1979 Respondent maintained a trust account with Royal Trust Bank of South Dade, N.A., Dade County, Florida Account No. 03-0100312-5 (hereinafter referred to as "Royal").
3. Respondent's trust account records for the Royal and DNB trust accounts were incomplete.
4. Respondent's trust account records for the Royal and DNB trust accounts contained unidentified deposits and withdrawals.
5. Respondent failed to maintain a file or ledger containing an accounting for each person from whom or for whom trust money was received.
6. Respondent failed to have quarterly trust account balance reconciliations for the DNB and Royal trust accounts.
7. Respondent used DNB and Royal Trust account funds to pay office and/or personal expenses.
8. Respondent commingled personal funds with trust funds in the DNB and Royal trust accounts.
9. Respondent's trust account liabilities exceeded trust accounts assets in the DNB and Royal trust accounts.
10. From February 9, 1978 through May 31, 1978 Respondent's trust account at DNB was in overdraft status on approximately thirty (30) occasions in amounts varying between \$2.32 to \$28,286.07.

11. From October 26, 1978 through March 20, 1979, Respondent's trust account at Royal was in overdraft status on approximately nine (9) occasions in amounts varying between \$6.63 to \$6,744.13.

IV. RECOMMENDATION AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY: I recommend that Respondent be found guilty as to each of the violations charged in the Bar's Complaint and, specifically, that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility and the Integration Rule of The Florida Bar:

(1) As to Count I, I recommend that Respondent be found guilty of violating Disciplinary Rules 9-102(A), (B)(1), (2), (3), & (4) of the Code of Professional Responsibility and article XI, Rule 11.02(4)(a) of the Integration Rule of The Florida Bar.

(2) As to Count II, I recommend that Respondent be found guilty of violating Disciplinary Rules 9-102(A), (B)(1), (2), (3) & (4) of the Code of Professional Responsibility and article XI, Rule 11.02(4)(a) of the Integration Rule of The Florida Bar.

(3) As to Count III, I recommend that Respondent be found guilty of violating Disciplinary Rules 9-102(B)(2) & (3) of the Code of Professional Responsibility and article XI, Rule 11.02(4)(a)(b) & (c) of the Integration Rule of The Florida Bar.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Based upon the facts as set forth in the pleadings as well as the testimony of witnesses and evidence presented at the final hearing, I recommend that respondent be disbarred for a period not less than five (5) years.

In recommending discipline, I have considered the seriousness of the offense, together with the cumulative nature of the misconduct and find that Respondent's actions evidence a pattern of failing to account for client's trust funds, misuse and misappropriation of such funds and failing to maintain the required trust account records. Under these circumstances disbarment is clearly warranted.

Further, in recommending a five (5) year disbarment I have considered the following aggravating factors:

(1) Respondent's conduct in these proceedings clearly indicates a willful disregard for the disciplinary system as well as the standards of professional conduct under which attorneys must operate. The Citation for Contempt and Petition to Show Cause issued by this Referee on April 5, 1983 illustrates Respondent's contemptuous conduct.

(2) The testimony and the evidence clearly establish that from the inception of The Florida Bar's inquiry into these matters, Respondent not only failed to cooperate with the Bar's investigation but engaged in conduct which was apparently directed at frustrating the disciplinary proceedings. Respondent's actions, including his obvious stalling tactics, have caused unnecessary delay, inconvenience and expense in processing these matters.

(3) Respondent failed to appear at the final hearing.

Considering all relevant factors, I find that Respondent has exhibited a course of conduct in these proceedings which indicates that he has as little regard for the disciplinary system as he has for his clients' interests.

VI. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED: I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs	
[Integration Rule 11.06(9)(a)]:	
Grievance Level	\$ 150.00
Referee Level	150.00
Court Reporter:	
Grievance Committee Hearings	1426.05
Hearings before the Referee	885.12
Depositions	102.10
Final Hearing	371.45
Service of Subpoenas for witnesses for final hearing	82.23
Photocopying	168.19
Investigative Costs	8701.94
Parking for Referee in attending Final Hearing	<u>6.00</u>
TOTAL	\$12,043.08

It is recommended that the foregoing costs be assessed against Respondent. It is further recommended that execution issue with interest at a rate of twelve percent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order in this cause, unless the time for such payment is extended by the Board of Governors of The Florida Bar.

Dated this 10th day of May, 1984.

George Richardson, Jr.
 GEORGE RICHARDSON, JR.
 Referee

Copies furnished to:

Patricia S. Etkin, Esq.
 A. Rodger Traynor, Jr., Esq.
 Gary B. Turner