

IN THE SUPREME COURT OF FLORIDA

(Before A Referee)

THE FLORIDA BAR,

Complainant,

vs.

J. RICHARD STALEY,

Respondent.

CONFIDENTIAL

CASE NO. 63,463

(07C83C24)

**FILED**

S'D J. WHITE

MAY 17 1984

CLERK, SUPREME COURT

By [Signature]  
~~Under Deputy Clerk~~

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of The Florida Bar, hearings were held on July 7, 1983. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: David G. McGunegle, Esquire

For The Respondent: J. Richard Staley, Esquire  
Counsel Pro Se

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find as to Count I as follows:

A. I find that the evidence is insufficient to substantiate the charge that the Respondent's conduct involved deceit in the contact with his client at the outset of the relationship regarding the loan

request. Therefore, I find that Respondent did not violate Disciplinary Rule 1-102(A)(4).

B. As to the allegation of a violation of Disciplinary Rule 5-101(A), I find that the Respondent did violate that Rule in that Respondent accepted employment in the loan transaction when his own financial and business interests were involved.

C. I further find that the Respondent is in violation of Disciplinary Rule 5-104(A) in that Respondent entered into a business transaction with his client in which they had differing interests and the client expected Respondent to exercise his professional judgment to protect her interest without full disclosure and consent.

As to Count II, I find that the Respondent violated Rule 11.02(4)(c) and the corresponding Bylaw of the Integration Rule of The Florida Bar for improper and inadequate Trust Account record keeping as well as Disciplinary Rule 9-102(B)(3) for improper and inadequate Trust Account record keeping in that:

A. Respondent did not make the minimally required quarterly reconciliations of his internal trust account with his bank trust account.

B. Respondent's internal records did not always show the source and date of all receipts of trust funds.

C. Respondent's internal records including cancelled checks and check stubs did not accurately reflect at all times the identity of the client for whom the money is being disbursed.

D. Respondent did not maintain an individual client ledger sheet or card and/or file containing an accounting for each person from whom or for whom trust money had been received.

III. Recommendations as to whether or not the Respondent should be found guilty: As to Count I of the Complaint,

I make the following recommendations as to guilt or innocence:

A. Violation of Rule 5-101(A) for accepting employment in a transaction when his own financial and business interests were involved.

B. Violation of Rule 5-104(A) for entering into a business transaction with his client where they had differing interests and the client expected Respondent to exercise his professional judgment to protect her without full disclosure and consent.

As to Count II of the Complaint, I make the following recommendations as to guilt or innocence:

Violation of Rule 11.02(4)(c) and the corresponding Bylaw of the Integration Rule of The Florida Bar for improper and inadequate Trust Account record keeping as well as Disciplinary Rule 9-102(B)(3) for improper and inadequate Trust Account record keeping.

IV. Recommendation as to Disciplinary measures to be applied: I recommend that the Respondent receive a public reprimand and be placed on Probation for a period of one

(1) year as provided in Rule 11.10(1). Probation is recommended to provide supervision over the Respondent's Trust Account as the Court may direct.

V. Personal History and Past Disciplinary Record: After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 11.06(9)(a)(4), I considered the following personal history and prior disciplinary record of the Respondent, to-wit:

Age: 40

Date admitted to Bar: May 10, 1974

Prior disciplinary convictions and disciplinary measures imposed therein: None

VI. Statement of costs and manner in which costs should be taxed. I find the following costs were reasonably incurred by The Florida Bar.

A. Grievance Committee Level Costs	
1. Administrative Costs	\$ 150.00
2. Depositions of Richard and Karen Staley taken on October 18, 1982	193.26
B. Referee Level Costs	
1. Administrative Costs	150.00
2. Transcript Costs, Hearing held July 7, 1983	121.20
3. In-house Court Reporter's Travel Expenses	20.24
4. Witness Expenses	36.78
5. Bar Counsel/Branch Staff Counsel Travel Costs	9.90
C. Miscellaneous Costs	
1. Telephone Charges	3.71
2. Staff Investigators' Time and Expenses:	
a. Walter Granger	128.75
b. Charles R. Lee	<u>260.87</u>
TOTAL ITEMIZED COSTS:	\$1,074.71

It is apparent that other costs may be incurred. It is recommended that all such costs and expenses, together with the foregoing itemized costs be charged to the Respondent, and that interest at the statutory rate shall accrue and be payable beginning thirty (30) days after the Judgment in this case becomes final unless a waiver is granted by The Board of Governors of The Florida Bar.

Dated this 30th day of April, 1984.

  
C. VERNON MIZE, JR.  
Referee

Copies to:

David G. McGunegle, Esquire  
Bar Counsel  
The Florida Bar  
Suite 102  
880 North Orange Avenue  
Orlando, Florida 32801

J. Richard Staley, Esquire  
Counsel Pro Se  
700 South Volusia Avenue  
Orange City, Florida 32763

John Berry, Esquire  
Staff Counsel  
The Florida Bar  
Tallahassee, Florida 32301