

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

VIRLYN B. WILLIS, JR.,
Respondent.

Case No. 64,778

(TFB File No.'s 03-83N04
and 03-83N13)

REPORT OF REFEREE

FILED

SID J. WHITE

SEP 24 1984

CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

I. SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned 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 May 1, 1984, and June 14, 1984. 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: Ms. Mary Ellen Bateman
Ms. Susan V. Bloemendaal

For the Respondent: Pro se

II. FINDINGS OF FACT:

After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

AS TO COUNT I

Respondent represented Mr. Robert Few in connection with a criminal offense in Hamilton County in early 1980. In March of 1980, Mr. Few pleaded guilty to criminal charges and was sentenced to five years probation with the condition he pay a \$5,000.00 fine on or before May 28, 1980. Shortly thereafter, Few's counsel in Chattanooga, Tennessee, sent Respondent a \$5,000.00 check to pay the fine, and the \$5,000.00 check was deposited into Respondent's trust account.

On April 25, 1980, a check was drawn on Respondent's trust account in the amount of \$1,000.00 payable to cash. The check was identified on the check stub as "transfer Few money to office." On May 13, 1980, a second withdrawal of the Few funds from the trust account was made in the amount of \$2,500.00, payable to cash. On May 23, 1980, a third withdrawal of the Few funds from the trust account was made in the amount of \$1,300.00 made payable to cash. At the time the third withdrawal was made there was only \$1,225.74 on deposit at the bank, and the check was accordingly stamped "insufficient funds." On May 28, 1980, the \$1,300.00 check cleared the bank.

In December of 1981, violation of probation proceedings were initiated against Mr. Few as the \$5,000.00 fine had not yet been paid by Respondent. An order to appear was issued on Mr. Few for February 16, 1982. Mr. Few's \$5,000.00 fine was ultimately paid by Respondent by a check drawn on his trust account and dated February 16, 1983. On February 19, 1982, the check was stamped "insufficient funds" as the trust account had only \$2,159.40 on deposit on the day it was presented. On February 1, 1982, the date appearing on the check, only

\$432.40 was on deposit in the trust account. The \$5,000.00 check representing the fine was eventually paid after two separate deposits of \$2,000.00 and \$3,500.00 were made by the Respondent to his trust account to cover the draft.

AS TO COUNT II

On or about June 11, 1981, Mr. Mack C. Hale, a client of Respondent's, gave to Respondent \$426.00 to be disbursed by the Respondent in the following manner: \$30.00 to the Clerk of Court for cost of supervision; \$175.73 for restitution; and \$40.00 to the State of Florida for monthly supervision fees and \$279.97 for restitution. Subsequently, Mr. Hale was informed by the Probation and Parole Services of Escambia County that a warrant for Violation of Probation had been issued against Mr. Hale for nonpayment of the required costs and restitution. On October 1, 1982, after Mr. Hale filed a grievance with The Florida Bar against Respondent, the funds were paid out by Respondent to the appropriate parties.

AS TO COUNT III

From December 1979 through December 1982, Respondent did not maintain trust account ledger cards, make monthly reconciliations of his trust account, or maintain complete records of deposits to his trust account. During that same time period, Respondent had five checks drawn on his trust account stamped "insufficient funds" although none of them were returned by the bank unpaid.

II. RECOMMENDATIONS AS TO WHETHER OR NOT RESPONDENT SHOULD BE FOUND GUILTY

As to each count of the complaint, I make the following recommendations:

As to Count I: I recommend that the Respondent be found guilty and specifically, that he be found guilty of the following Disciplinary Rules of the Code of Professional Responsibility, and Integration Rules of The Florida Bar, to wit:

Article XI, Rule 11.02(4) of the Integration Rule of The Florida Bar (applying money entrusted to him by a client to a purpose other than the one intended).

Florida Code of Professional Responsibility, Disciplinary Rule 9-102(A) (commingling funds).

As to Count II: I recommend that the Respondent be found guilty and specifically, that he be found guilty of the following Disciplinary Rules of the Code of Professional Responsibility, and Integration Rules of The Florida Bar, to wit:

Florida Code of Professional Responsibility, Disciplinary Rule 6-101(A)(3) (neglect of a legal matter entrusted to him).

As to Count III: I recommend that the Respondent be found guilty and specifically, that he be found guilty of the following Disciplinary Rules of the Code of Professional Responsibility, and Integration Rules of The Florida Bar, to wit:

Article XI, Rule 11.02(4) and its Bylaw under the Integration Rule of The Florida Bar (failure to comply with minimum trust accounting records and procedures).

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that Respondent be suspended from the practice of law for three (3) years and thereafter until proof of rehabilitation.

I further recommend that as conditions precedent to Respondent's petitioning for reinstatement, the following requirements be met:

(1) That Respondent submit to examination by a psychiatrist designated by The Florida Bar, and that Respondent be certified by such psychiatrist to be free from psychiatric problems which would substantially impair his ability to practice law;

(2) That Respondent attain a passing score on the Multistate Professional Responsibility Examination.

(3) That Respondent pay in full all costs of disciplinary proceedings and repay any claims paid by The Florida Bar Client Security Fund.

Upon reinstatement, I recommend that Respondent be placed on probation for a period of not less than two (2) years, with the following terms and conditions:

(1) That Respondent submit quarterly reports to The Florida Bar from a psychiatrist certifying Respondent to be free from psychiatric problems which would impair his ability to practice law.

(2) That a failure by Respondent to comply with the terms and conditions of his probation shall terminate the probation as provided in Article XI, Rule 11.10(1) of the Integration Rule of The Florida Bar.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

After finding Respondent guilty and prior to recommending discipline pursuant to Article XI, Rule 11.06(9)(a)(4), I

considered the following personal history of the Respondent,
to wit:

Age: 41

Date Admitted to Bar: 1967

Prior Discipline: None

Other Personal Data: During the time in which Respondent
committed the conduct for which I have recommended discipline,
he was experiencing emotional problems and was under the
care of a psychiatrist.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COST 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. Bar Counsel Travel	4.49
3. Court Reporter	517.76

B. Referee Level Costs

1. Administrative Costs	150.00
2. Bar Counsel Travel	178.00
3. Service of Subpoenaes	40.00
4. Court Reporter	<u>84.00</u>

TOTAL ITEMIZED COSTS \$ 1124.25

It is recommended that such costs be charged to the
Respondent, and that interest at the statutory rate shall
accrue and be payable beginning 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 22 day of August 1984.


Referee

Copies to:

Susan V. Bloemendaal and Mary Ellen Bateman, Bar Counsel

Virlyn B. Willis, Jr.

Staff Counsel of The Florida Bar