

**FILED**

SID J. WHITE

FEB 18 1985

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

RONALD L. DYKES,

Respondent.

CASE NOS. 65,072

(07A83C30)

(Martha Beach)

(07A83C37)

(Marie Hayward)

(07A83C47)

(Mrs. Bill Vogenitz)

(07A84C07)

(Barbara Eubank)

65,409

(07A84C55)

(Mr. and Mrs. David Kelly)

REPORT OF REFEREE

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 December 11, 1984 and January 14, 1985. 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 which is now public.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: David G. McGunegle

For The Respondent: Ronald L. Dykes, In pro se, at the evidentiary hearing on December 11, 1984 and Joseph A. Scarlett at the discipline hearing on January 14, 1985.

II. Findings of Fact as to Each Item of Misconduct of which the

Respondent is Charged: After considering all of the pleadings and evidence before me, pertinent portions of which are commented on below, I find that as to all counts:

The respondent is and at all times material was, a member of The Florida Bar and subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida. He resided in and practiced law in Volusia County, Florida.

As to Case 65,072  
Count I:  
(07A83C30)  
(Martha Beach)

1. Mrs. Beach hired the respondent on November 3, 1980 to represent her interest in the Estate of Stanley J. Wolf, then in probate in Volusia County, Florida, Case No. 80-321-CA-01. She paid him \$2,500.00 for representing her in a dispute with another beneficiary. In October, 1980, the personal representative had filed a complaint for declaratory relief styled as, Howard L. Cauvel, Etc. v. Martha Beach, et.al, Case No. 90-4205-CA-01, Division K, Volusia County Circuit Court. The matter proceeded to a nonjury trial on August 24, 1981.

2. At the conclusion of that trial, the judge called for both sides to submit proposed judgments and final argument

granting the plaintiff 20 days and the defendant 15 more days subsequent to receiving the plaintiff's argument. Additionally, a third party had five more days to submit his version. The plaintiff submitted his argument dated September 15, 1981, and promptly delivered same to the respondent.

3. However, respondent failed to file a proposed judgment memorandum of law in behalf of his client despite at least one telephone request and a letter dated October 19, 1981 from respondent's counsel. On October 21, 1981, the respondent filed a motion for extension of time which was over a month after having received plaintiff's proposed judgment and final argument and well beyond respondent's due date. Respondent's motion set out apparent extenuating circumstances caused by emergency matters that consumed his time and that he lacked experienced clerical staff. The motion was denied.

4. On October 23, 1981, the final judgment based on plaintiff's final argument was entered and filed of record on October 27, 1981 the same day in which respondent filed a motion for continuance. Respondent's subsequent motion to set aside the final judgment was denied on November 16, 1981 after response by plaintiff's counsel.

5. While there was discussion between respondent and his client, no appeal or any further action was taken by respondent. Respondent's failure to file the proposed final judgment and final argument precluded his client's version from being

considered by the court and permitted a judgment to be entered adverse to her interest. Respondent knowingly failed to complete that which he had been paid to do.

As to Count II:  
(07A83C37)  
(Marie Hayward)

1. In March, 1982, Marie Hayward retained the respondent to handle two problems. One involved the exchange of real estate for personal property which ultimately resulted in litigation. The second involved handling the Estate of John K. Callahan wherein she was the named personal representative.

2. Due to problems in the real estate transaction, respondent had to file suit in behalf of his client. The purchaser had expended \$2,500.00 of funds put up by Ms. Hayward and had refused to turn over the motor home or title to it due to apparent problems with the property. Ms. Hayward paid the respondent approximately \$1,400.00 in fees and costs by early September, 1982.

3. Respondent did not file suit until December 30, 1982. Thereafter, depositions and motions carried over into April, 1983. Throughout this period, the respondent was difficult to contact. The respondent further did little to press the suit forward after April, 1983, and it was dismissed for lack of prosecution after motion on June 7, 1984.

4. The Callahan Estate was opened May 27, 1982. Little or no action had been taken by the respondent to close the estate since June, 1982, other than securing a check payable to the estate in February, 1983 for some \$17,000.00 along with the personal representative.

5. Conflicts developed between the respondent and the personal representative in 1983. On July 8, 1983, he wrote the personal representative indicating he would file a motion to have her relieved as personal representative due to her lack of cooperation and alleged removal of certain assets from the estate. Thereafter, Ms. Hayward retained a different attorney who filed a motion for substitution to remove respondent as attorney for the personal representative on July 15, 1983. On July 22, 1983, respondent filed a petition for removal of the personal representative and on July 25, 1983, the second attorney filed his notice of appearance. The successor attorney was unable to secure respondent's file and determined that matters were in such a state of disarray that he could not interject himself into the situation. Thereafter, he was allowed to withdraw on January 19, 1984. The respondent remains as attorney for the personal representative and the estate remains open. No activity appears in the court record since January of 1984.

6. Respondent has grossly neglected the civil action and allowed it to be dismissed for want of prosecution through his inaction. He has also neglected to press forward or to withdraw

from his representation of the personal representative in the estate allowing it to have no record activity for the last year.

As to Count III:  
(07A84C07)  
(Barbara Eubank)

1. In August, 1982, respondent was retained by Ms. Eubank who is a bond person. Her office was then across the hall from respondent's office. He was to represent her in five potential lawsuits against certain of her clients. She paid him \$300.00 on August 26, 1982 as a partial fee and costs. Their understanding was thereafter reduced to writing and dated the same day but only signed by Ms. Eubank on October 27, 1982.

2. He wrote demand letters dated August 30, 1982 and had two statements of claim drafted for his client's signature. He failed to secure his client's signature, to otherwise file the actions as directed and undertook little if any further action on behalf of his client.

3. Ms. Eubank then asked the respondent to drop one case and for a partial refund which he indicated he would provide. After a refund was not forthcoming, she wrote to him at least five times from early December, 1982 to July 5, 1983 requesting the partial refund without success. She also testified she personally talked to him several times without results.

4. After she complained to The Florida Bar, a grievance hearing was held on February 17, 1984. On the eve of that

hearing, the respondent supplied Ms. Eubank with a letter dated September 7, 1983 referencing a purported September 2, 1983 conversation indicating he had a check for her which was attached to the letter for \$75.00 as a partial refund. The check was dated September 9, 1983. He also showed her a bill totalling \$693.25 for nine-and-a-quarter hours work. Respondent asserted that Ms. Eubank would not accept the partial refund and the documents became lost in his office.

5. Respondent agreed early on to refund some portion of the monies paid to him but failed to carry through and failed to pursue the one open case. Moreover, he did not respond to her letters or timely deliver the September 7, 1983 letter to Mrs. Eubank whose office was next door. Once he determined to offer her a partial refund, he simply failed to follow through on it until confronted with the imminent grievance committee hearing in February, 1984.

As to Count IV:  
(07A83C47)  
(Mrs. Bill Vogenitz)

1. Respondent maintained a trust account at the Florida Bank of Volusia County, No. 11-2035-2. The account was audited by The Florida Bar for the period January 1, 1981 through July 31, 1983. The auditor also reviewed the 1980 trust bank statements and noted two checks were returned for insufficient funds in 1980, both of which were made good. One was for \$3,788.39 and the other for \$2,250.00.

2. For the period of the audit, the respondent failed to maintain individual ledger cards or accountings as required. No quarterly trust account reconciliations were available. None were made nor maintained. The auditor made a reconstruction of the account which showed actual shortages in the respondent's trust account beginning with \$205.43 at the end of March, 1981 and ending with a shortage of \$3,831.21 as July 21, 1983. The reconciliation indicates that \$2,050.65 was due to disbursements to the respondent and \$1,780.64 due to disbursements to other clients.

3. Respondent also utilized a separate "Court Costs and Expense Account" at the same bank during the same period of time. In that account, shortages were \$238.47 at the end of March, 1981 and \$1,051.31 at the end of June, 1983. The account was actually closed sometime after April, 1983, with proceeds transferred to the trust account. The auditor also noted there were five nonsufficient funds checks drawn against this account during the period. These were mainly payable to the clerk of the court for filing fees or the sheriff for service of process.

4. As of July 31, 1983, the respondent had actual shortages of approximately \$4,882.60. Respondent has replaced \$2,476.55 which he did not dispute. Possible records on the additional shortages either were not available or were not made available.

5. For over a year, service charges were made against the trust account as well as charges for check orders without any



bank corrections or replacement of funds. The error was only discovered when statements for 12 to 14 months were located and reviewed in early 1982 by his secretary in an attempt to find out the current trust account balance. Although some service charges were refunded, the charges for additional checks were not replaced under the account. Additionally, respondent's "Court Costs and Expense Account" encountered similar problems with bank charges for checks and insufficient funds checks never being replaced in the account. Neither account had been reconciled or balanced to that point in time. The additional charges totalled approximately \$135.90.

6. Respondent received a \$1,000.00 deposit from Roger Tiffany for a real estate transaction. He thereafter utilized this money with the apparent permission of his client. However, when the client later requested return of the money, it was done by check written on the trust account without any corresponding deposit which increased the shortage by \$1,000.000 in early, 1982.

7. In August, 1982, a judgment was entered against respondent's client, Doris Wiseman, for \$1,500.00 plus interest and costs. The respondent thereafter told his secretary to write a check on the trust account to cover satisfaction of the judgment when there was no money in the account at that time for that purpose. The respondent told his secretary the client had been paying him on a periodic basis and advised him he could utilize the money until it was needed. The secretary would not

write a check until respondent secured \$1,500.00 to be placed in the trust account. Thereafter, he instructed his secretary to write a separate check on the trust account for approximately \$300.00 to cover costs and interest although no corresponding deposit was made for that purpose then or later.

8. In September, 1982, the bank placed a freeze hold on both of respondent's accounts which was later released.

9. In the estate of James T. Baird, an order to sell real property was obtained in early 1982. When the transaction closed, \$2,000.00 was retained in respondent's trust account for payment of possible bills emanating from the transaction. After paying those bills, approximately \$1,700.00 was left in the trust account. At the time of the freeze hold mentioned above, the balance in that account was less than \$700.00 and the "Court Costs and Expense Account" contained insufficient funds to make up the difference.

10. Respondent had not paid his withholding and social security taxes for his employees to the I.R.S. for the year 1982 at the time of the audit.

11. Throughout the period of the audit, respondent returned his annual dues certificate with the required certification that he was familiar with the trust account rules and in substantial minimum compliance. When respondent was reminded by his secretary relative to problems within the account and the trust

accounting requirements on several occasions, he indicated he had more important matters to attend to at that time. It is patently clear the respondent has handled his trust account recordkeeping in a totally inadequate manner. Moreover, he has utilized trust funds for improper purposes including his own personal use on at least three occasions. His excuse that he has historically had trouble with mathematics and that he left this up to his secretary and/or bookkeeper is without merit and inexcusable. The total lack of recordkeeping as well as the improper use of the money demonstrate an attitude wholly inconsistent with the rules governing attorneys relative to trust accounts. Inadequate or sloppy recordkeeping can never excuse the use of trust funds for improper purposes in any event. Fortunately, it appears no clients were deprived of trust funds by respondent's actions.

As to Case 65,409  
(07A84C55)  
(Mr. and Mrs. David L. Kelly)

1. In August, 1980, Mr. and Mrs. Douglas Wilson sold their residence to Mr. and Mrs. Kelly. Respondent drew the contract for the purchase and sale and handled the closing in behalf of the Wilsons. He did not represent the Kellys in the closing, but was the only attorney involved. It is somewhat disputed as to whether he was to complete the transaction by recording the deed. However, he was to secure a title policy for the buyers. They paid him a total of \$529.80 which included all fees and costs with the transaction closing the same month. Respondent's net fee was less than \$200.00.

2. Respondent thereafter drew a deed dated August 20, 1980 which was not filed. Respondent avers he sent the original of the deed at the request of the Veterans' Administration to that institution when queried in December, 1980. In December, 1980, Mrs. Kelly also received a copy of a letter from the Veterans' Administration addressed to the respondent relative to the sale questioning whether there had been a transfer since their file failed to reflect one and noting they had received a check from Mrs. Kelly. Thereafter, Mrs. Kelly contacted respondent about it and a tax bill in the Wilsons' name. He indicated the Veterans' Administration was slow and that they would process the matter soon. He also took his file copy to the property appraiser's office thinking it was an administrative oversight. Apparently, staff turnover during that time contributed to problems. Further, the title insurance company cancelled the Kellys' policy order since their records incorrectly indicated they had not been paid.

3. In October, 1983, Mrs. Kelly checked the records in Volusia County and discovered title was still vested in the sellers' names and the deed had never been recorded. She thereafter contacted respondent who had forgotten about the transaction. He then searched the record and found no title. He also discussed the possible reasons with the department supervisor who advised of a staff turnover problem during the period.

4. Mr. and Mrs. Kelly soon sought other local counsel who contacted respondent and secured a recording of the original deed on December 29, 1983 along with the new deed and affidavit from respondent. Respondent thereafter did repurchase the title insurance policy at the insistence of the other attorney but did not remit any portion of his fee.

5. I find respondent's handling of the original closing was somewhat haphazard in that he may have led the Kellys to believe he represented both sides in the transaction. However, the subsequent failures regarding the deed recordation and the title policy were not his alone. Since he did not represent them, at most he should have made plain that status by letter at the time of the closing and after being contacted by the Veterans' Administration about the transfer.

III. Recommendations as to Whether or not the Respondent Should be Found Guilty: As to each count of the complaints in both cases, I make the following recommendations as to guilt or innocence of violating the following rules to Article XI of the Integration Rule of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility:

Case 65,072

As to Count I  
(07A83C30)  
(Martha Beach)

I recommend the respondent be found guilty and specifically he be found guilty of violating Disciplinary Rules:

6-101(A) (3) for neglecting a legal matter entrusted to him,  
7-101(A) (1) for intentionally failing to seek the lawful  
objectives of his client and 7-101(A) (2) for intentionally  
faling to carry out a contract of employment.

As to Count II  
(07A83C37)  
(Marie Hayward)

I recommend the respondent be found guilty and specifically that  
he be found guilty of violating Disciplinary Rule 6-101(A) (3) for  
neglecting a legal matter entrusted to him.

I further recommend he be found not guilty of violating  
Disciplinary Rules 1-102(A) (6) for other misconduct reflecting  
adversely on his fitness to practice law, 7-101(A) (1) for  
intentionally failing to seek the lawful objectives of his client  
and 7-101(A) (2) for intentionally failing to carry out a contract  
of employment.

As to Count III  
(07A84C07)  
(Barbara W. Eubank)

I recommend the respondent be found guilty and specifically he be  
found guilty of violating Disciplinary Rule 6-101(A) (3) for  
neglecting a legal matter entrusted to him.

I further recommend he be found not guilty of violating  
Disciplinary Rules 1-102(A) (6) for other misconduct reflecting  
adversely on his fitness law, 7-101(A) (1) for intentionally  
failing to seek the lawful objectives of his client and

7-101(A)(2) for intentionally failing to carry out a contract of employment.

As to Count IV  
(07A83C47)  
(Mrs. Bill Vogenitz)

I recommend the respondent be found guilty and specifically he be found guilty of violating Integration Rules 11.02(3)(a) for engaging in conduct contrary to honesty, justice or good morals in the misuse of trust funds; 11.02(4) for misusing trust funds; 11.02(4)(c) and the corresponding Bylaw for failing to maintain his trust account recordkeeping in substantial minimum compliance with the trust account requirements as well as Disciplinary Rules 1-102(A)(4) for conduct involving misrepresentation, 1-102(A)(6) for other misconduct adversely reflecting on his fitness to practice law, 9-102(B)(3) for failure to maintain complete records in the trust account and 9-102(B)(4) for misuse of trust funds.

Case 65,409  
(07A84C55)  
(Mr. and Mrs. David L. Kelly)

I recommend the respondent be found not guilty of violating the following Disciplinary Rules: 1-102(A)(6) for engaging in other misconduct that adversely reflects on his fitness to practice law, 6-101(A)(3) for neglecting a legal matter entrusted to him, 7-101(A)(1) for intentionally failing to seek the lawful objectives of his clients, 7-101(A)(2) for intentionally failing to carry out a contract of employment. I note that the Bar's

complaint erroneously lists the latter rule as 7-102(A)(2). This appears to be an error.

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend the respondent be suspended for a period of six months and thereafter until he shall prove his rehabilitation as provided in Rule 11.10(4) of The Florida Bar's Integration Rule. This recommendation is predicated on a joint recommendation made by The Florida Bar and respondent at the disciplinary hearing on January 14, 1985.

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: 50

Date Admitted to The Florida Bar: 12/2/68

Prior Disciplinary Convictions and Disciplinary Measures Imposed Therein: Not applicable.

Other Personal Data: Respondent is married and has minor dependents. He practices law as a sole practitioner in Deland, Florida.

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. Case Nos. 07A83C30, 07A83C37  
07A83C47 & 07A84C07

a. Administrative Costs	150.00
b. Transcript Costs	473.40
c. Bar Counsel/Branch Staff Counsel	



Travel Costs	6.31
2. Case No. 07A84C55	
a. Administrative Costs	150.00
b. Transcript Costs	102.14
c. Bar Counsel/Branch Staff Counsel Travel Costs	6.31
B. Referee Level Costs	
1. Case Nos. 07A83C30, 07A83C37, 07A83C47, 07A83C07 and 07A84C55	
a. Administrative Costs	150.00
b. Transcript Costs ( <del>To be furnished later by supplemental affidavit</del> )	<u>444.90</u> <i>Done</i>
c. Bar Counsel/Branch Staff Counsel Travel Costs	7.00
d. Audit Costs Pursuant to Rule 11.02(4)(c)	2,939.95
e. Witness Subpoena Fees	12.52
C. Miscellaneous Costs	
1. Case Nos. 07A83C30, 07A83C37, 07A83C47, 07A83C07 and 07A84C55	
a. Telephone Charges	17.01
b. Staff Investigator Charles R. Lee's Expenses (Case Nos. 07A83C30, 07A83C37, 07A83C07 and 07A84C55 Only)	<u>69.34</u>

TOTAL ITEMIZED COSTS ~~\$4,083.98~~ 4,528.88 *Done*

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to 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 12<sup>th</sup> day of February, 1985.

*[Signature]*  
Referee  
B.C. MUSZYNSKI

Copies to:

Bar Counsel

Respondent

Counsel for Respondent

Staff Counsel, The Florida Bar, Tallahassee, Florida 32301