

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

RALPH S. STERLING,
Respondent.

CONFIDENTIAL

Supreme Court Case Nos.
65,564 and 66,887

FILED

SUPREME COURT

JUL 8 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

1. On July 10, 1984, The Florida Bar filed its Complaint in Case No. 65,564, and on April 18, 1985, it filed its Complaint in Case No. 66,887 with the Supreme Court of Florida. The undersigned was duly appointed as Referee by order of the Chief Justice, dated July 16, 1984, for Case No. 65,564 and on May 6, 1985, for Case No. 66,887. A final hearing concerning this matter was held on June 11, 1985 at the Broward County Courthouse, Ft. Lauderdale, Florida. On June 6, 1985 the Supreme Court granted Complainant's Motion to Change the Venue in these cases from Dade to Broward County. The Complainant's Motion to Consolidate Cases 65,564 and 66,887 was granted [Record, Page 4].

The following attorneys appeared for the parties:

On behalf of The Florida Bar: Paul A. Gross, of Miami
On behalf of Respondent: No appearance

II. FINDINGS OF FACTS AS TO EACH ITEM OF MISCONDUCT OF WHICH
RESPONDENT IS CHARGED:

After considering all the pleadings, documentary evidence, and testimony, the undersigned referee finds:

IN GENERAL

1. That the Respondent Ralph S. Sterling, is and at all times hereinafter mentioned, was a member of The Florida Bar, subject to the Jurisdiction and Disciplinary Rules of the Supreme Court of Florida, (article V, Section 15 of the Florida Constitution and Florida Bar Integration Rule, article XI).

2. That copies of the Complaints and Requests for Admissions were mailed to the Respondent, by certified mail to his official Bar address, and to other known addresses as shown on the Certificate of Service located in the Complaints and Requests for Admissions.

3. That Florida Bar Integration Rule, article II, Section 6, states: "It should be the duty of each member of The Florida Bar immediately to advise the executive director of any change of mailing address or military status." Also, Florida Bar Integration Rule, article XI, Rule 11.01(2), states:

mailing by registered or certified mail of papers or notices prescribed by these rules to the last mailing address of an attorney as shown by the official records in the office of the executive director of The Florida Bar shall be sufficient notice and service unless this court shall direct otherwise.

4. That at all times material to the investigation and prosecution of the various allegations giving rise to the complaint sub judice, The Florida Bar has diligently pursued its obligations and ethical responsibility to contact the Respondent and to provide him with notice of all proceedings, pleadings, hearings, and the like [Record, Pages 8-11 and Exhibits 2 and 3].

5. That at all times material to the hearing of this cause, both The Florida Bar and Respondent have been afforded ample opportunity to file pleadings, to personally appear before this Referee, and to present witnesses, testimony, and all other matters of evidence material and relevant to this cause.

III. AS TO ALLEGATIONS IN COMPLAINT:

The questions in the Complainant's Requests for Admissions were taken as being admitted, as the Respondent failed to respond to them (Florida Rules of Civil Procedure, Rule 1.370) [Record, Pages 4-6]. In addition, the records of the grievance committee hearings were introduced and accepted in evidence. [Exhibits 4,

5 and 6] See The Florida Bar v. Junkin, 89 So.2d 481 (Fla. 1956), and The Florida Bar v. Schneiderman, 285 So.2d 392 (Fla. 1973).

Based upon the above, the undersigned finds that all allegations in the Complaints have been proven by clear and convincing evidence. See The Florida Bar v. Travelstead, 435 So.2d 832 (Fla. 1983), where an attorney was disbarred, even though said attorney did not respond to the Bar's complaint.

IV. THE FACTS IN THIS CASE ARE AS FOLLOWS:

The details concerning these cases are set forth in the Complaints and in the transcripts of proceedings of the grievance committee hearings. (Exhibits 4, 5 and 6). However, in concise form, the facts are as follows:

CASE NO. 65,564
COUNT I

On or about April 23, 1982, Respondent received \$2,594.50 from a real estate transaction, to be held in trust for the Ed Schlitt Agency, Inc. Respondent issued his trust account check in that amount to the Ed Schlitt Agency, Inc., but said check was returned for insufficient funds. After repeated attempts to contact the Respondent failed, the Ed Schlitt Agency retained an attorney.

On May 25, 1982, the attorney for Ed Schlitt Agency received a wire transfer of \$1,000 in its trust account from the Respondent. On the same date, the attorney received a cashiers check in the amount of \$1,000, with a letter saying the balance due would soon follow. The balance of \$594.50 was not paid.

Between January 1982 and August 1983, the Respondent repeatedly overdrew funds from his trust account. On August 8, 1983, respondent's trust account was closed with a balance due the bank of \$467.

CASE NO. 66,564
COUNT II

On December 16, 1982, the Respondent was paid \$285 by Dr. Steven Rindley to file a lawsuit on his behalf. The respondent never filed the lawsuit, never returned the money or documents and had no contact with the client since the date the client retained him.

CASE NO. 66,887

On September 29, 1982, the Respondent was named to represent the Surety in a guardianship case, for the purpose of co-signing checks issued on the guardianship account. The check book remained in possession and control of the Respondent. The Respondent mishandled the funds in the guardianship account, and it became overdrawn in the amount of \$968.33.

Between April 15, 1983, and September 28, 1983, the Respondent issued 15 checks, made payable to himself, amounting to \$4,725 and forged or caused to be forged the signatures of the guardian on said checks.

On December 31, 1983, the guardian's attorney talked with the Respondent about the missing money, and on December 14, 1983, the Respondent made an unexplained deposit of \$4,000 to the guardianship account. The Respondent moved from the area and had no further contact with the guardian or her attorney. The guardian received \$725 less than was due her.

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

As to all allegations, the undersigned recommends that the Respondent be found guilty. Specifically, it is recommended that Ralph S. Sterling be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, and The Florida Bar Integration Rule, to wit:

DR 6-101(A)(3) neglect of a legal matter entrusted to him.

DR 1-102(A)(3) (a lawyer shall not engage in illegal conduct involving moral turpitude).

DR 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

DR 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law).

The Florida Bar Integration Rule, article XI, Rule 11.02(4), the trust accounting rule.

VI. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:

The undersigned recommends that the Respondent be disbarred. Although this referee realizes that disbarment should be reserved only for extremely serious cases, it is my view that stealing money from a trust account warrants disbarment. See The Florida Bar v. Breed, 387 So.2d 783 (Fla. 1979). Also, see The Florida Bar v. Vernell, 374 So.2d 473, at 476 (Fla. 1979), where the Supreme Court has stated:

This court dealt more severely with cumulative misconduct than with isolated misconduct.

Accordingly, in view of the cumulative misconduct of the Respondent, and the serious nature of the offenses, disbarment is warranted in this case.

VII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

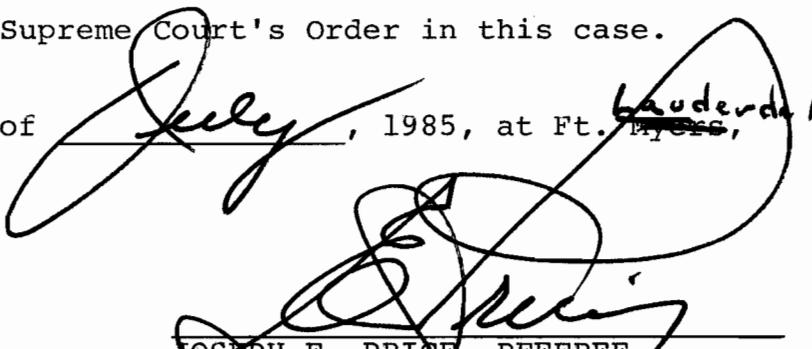
The undersigned referee finds the following costs were reasonably incurred by The Florida Bar:

Court Reporter for Grievance Committee hearings 2/29/84 and 1/8/85.	304.35
Court Reporter for Referee hearing 6/11/85.	96.95
Administrative Cost (Florida Bar Integration Rule 11.06(9)(a)(5):	
At Grievance Committee Level	150.00
At Referee Level	150.00
Travel expenses for Bar Counsel from Miami to Ft. Lauderdale, 6/11/85	<u>21.05</u>
TOTAL COSTS	722.35

It is recommended that \$722.35 in costs and expenses be charged to the Respondent and said costs and expenses be payable

within thirty days of the Supreme Court's Order in this case.

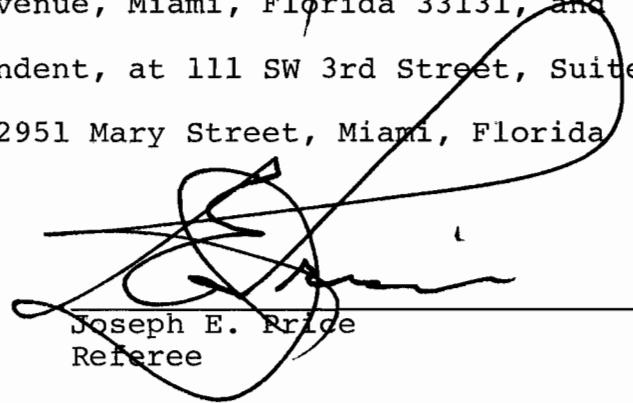
Dated this 1st day of July, 1985, at Ft. ~~Miami~~, Lauderdale
Florida.



JOSEPH E. PRICE, REFEREE
966 Broward County Courthouse
Ft. Lauderdale, Florida 33301
(305) 765-4709

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Report of Referee were mailed this 1st day of July, 1985, to the following persons, to wit: Paul A. Cross, Bar Counsel, 211 Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131, and to Ralph S. Sterling, the Respondent, at 111 SW 3rd Street, Suite 102, Miami, Florida 33130, and 2951 Mary Street, Miami, Florida 33131.



Joseph E. Price
Referee