

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
SID J. WHITE
JUL 17 1985
CLERK, SUPREME COURT
By [Signature]
Chief Deputy Clerk

THE FLORIDA BAR,

Complainant,

v.

ROGER E. WHIGHAM,

Respondent.

CONFIDENTIAL

Case No. 65,939
(TFB No. 13C83H05)

REPORT OF REFEREE

- I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the article XI of the Integration Rule of The Florida Bar, a hearing was held on May 15, 1985. The enclosed pleadings, orders, transcripts and exhibits 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 Steve Rushing

For The Respondent Harry M. Hobbs

- 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, I accept the tendered Conditional Guilty Plea for Public Reprimand, payment of The Florida Bar Audit, a one year period of probation with special conditions, and payment of costs which admits to each act of misconduct alleged in the complaint attached hereto.
- III. Recommendation as to Whether or not the Respondent Should Be Found Guilty: I recommend that the respondent be found guilty of the following violations of the Code of Professional Responsibility: That Roger E. Whigham has violated Florida Bar Integration Rule, article XI, Rule 11.02(4) (money entrusted to an attorney for a specific purpose must be applied only to that purpose); Rule 11.02(4) (b) (all trust account records must be preserved for at least six (6) years); Rule 11.02(4) (c) (minimum trust accounting procedures require reconciliation of trust account balances periodically and an annual filing of a certificate reflecting compliance); Florida Bar Integration Rule Bylaws 11.02(4) (c) paragraph 2(a) (trust accounts must be clearly labeled and designated as such); Bylaws 11.02(4) (c) paragraph 2(d) (a file or ledger containing an accounting for each person from whom or for whom trust money has been received must be kept); Bylaws 11.02(4) (c) paragraph 4(a) (minimum trust accounting procedures require that a reconciliation of trust accounts be prepared quarterly and copies of same retained for at least six (6) years); and The Florida Bar's Code of Professional Responsibility, Disciplinary Rule 9-101(A) (commingling attorney's funds with clients' trust funds).

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the respondent receive a public reprimand, payment of The Florida Bar Audit, a one year period of probation with special conditions of submission of quarterly trust account reconciliations to The Florida Bar and submission of ~~two~~ ^{one} semi-annual audits to The Florida Bar during the period of probation, and payment of costs.

V. Personal History and Past Disciplinary Record: After finding of guilt 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:

- (1) Age: 53
- (2) Dated Admitted to Bar: October 21, 1960
- (3) Aggravating Factors: Failure to adequately supervise and monitor incompetent bookkeeper.
- (4) Mitigating Factors: Respondent has replaced all shortages and has hired a new bookkeeper and instituted new bookkeeping and audit procedures which are in compliance with trust account mandates. Upon learning of the bookkeeping errors, respondent replaced most of the shortage prior to involvement by The Florida Bar; attorney for client investment group to which the funds belonged submitted letter indicating that the clients were satisfied with respondents' restitution and that respondent's conduct was not willful and that the intervention by The Florida Bar was not necessary to protect the interests of the investment partnership.
- (5) Respondent has no prior disciplinary record.

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
B. Referee Level Costs	
1. Administrative Costs	150.00
2. Court Reporter Costs	79.60
3. Bar Counsel Expenses	5.20
4. Audit expenses	6,426.41
TOTAL AMOUNT DUE:	<u>\$6,811.21</u>

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 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 28 day of June, 1985.


HONORABLE GERARD O'BRIEN

Copies furnished to:

Harry M. Hobbs, Attorney for Respondent
Steve Rushing, Branch Staff Counsel
John T. Berry, Staff Counsel

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STATEMENT OF COSTS

I. Grievance Committee Level

Administrative costs at the Grievance
Committee Level, Florida Bar Integration
Rule, article XI, Rule 11.06(9) (a) \$ 150.00

II. Referee Level

Administrative costs at the Referee Level,
Florida Bar Integration Rule, article XI,
Rule 11.06(9) (a) 150.00

Court Reporter costs for 5/15/85 79.60

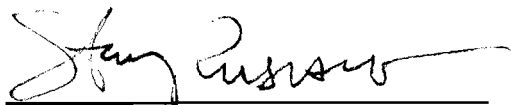
Bar Counsel Travel Expense for 4/26/85 -
Deposition attendance 5.20

Audit Expenses 6,426.41

TOTAL AMOUNT DUE \$ 6,811.21

The above costs were incurred at the Grievance Committee and
Referee Level by The Florida Bar in the above-referenced matter.

Respectfully submitted,



STEVE RUSHING
Branch Staff Counsel
The Florida Bar
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Tampa, Florida 33607
(813) 875-9821

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
has been furnished to HARRY M. HOBBS, Attorney for Respondent, at
his record Bar address, 725 East Kennedy Boulevard, Tampa,
Florida 33602, by Certified Mail #P 436 009 015, on this 13th
day of June, 1985.



STEVE RUSHING