

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

FILED

SID J. VANCE

FEB 13 1986

CONFIDENTIAL

v.

Supreme Court Case
No. 66,253

ERIC A. RODRIGUEZ,
Respondent.

CLERK, SUPREME COURT

By _____

Chief Deputy Clerk

Florida Bar Case No. 11E84103

FILED

SID J. VANCE

FEB 13 1986

CLERK, SUPREME COURT

By _____

Chief Deputy Clerk

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS.

I was appointed as referee by the Chief Justice of the Supreme Court of Florida on December 11, 1984. There was a delay in conducting these proceedings because the Bar could not locate Mr. Rodriguez. However, a few days before the trial by referee, which was conducted on January 2, 1986, the Respondent was located and he did make a personal appearance, with counsel.

Although Venue in these proceedings is in Dade County, the Respondent agreed to Venue being in Broward County. Record, Page 3. Therefore, these proceedings were at the Broward County Courthouse, Ft. Lauderdale, Florida.

The following attorneys appeared as Counsel for the parties:

For The Florida Bar: Paul A. Gross of Miami
For the Respondent: Aladar E. Paczner of Miami

II. FINDINGS OF FACT.

After considering all the pleadings and evidence and considering the Respondent's guilty plea (Record, Page 5), I find the allegations in the Complaint, as amended, to be correct.

In concise form, the facts are as follows:

During January 1982, Mr. Oscar Rivero retained the Respondent to represent him in a personal injury case. During March 1983, the Respondent received a draft for \$3,250, payable to Oscar Rivero and Eric Rodriguez, his attorney. Although Mr.

Rivero requested the funds, the Respondent did not give the money to him, as Respondent had converted said funds without authority, to his own use. Record, Page 4, 6 and 14. After my finding the Respondent guilty, he testified as follows:

I have used money previously, clients' money previously for living expenses. I have co-mingled their funds with mine, but I have paid these other people back. Record, Page 21.

* * *

When I was short I would take money from a client for my own use, and then when I would make some money I would pay them.

Based upon the testimony in this case, it is apparant the Respondent had financial, alcohol and matrimonial problems. He abandoned his practice and moved to California, where he worked as a short order cook. He later worked as a truck driver in Texas. He stopped drinking, "and he started to rehabilitate himself." Record, Pages 7 and 8.

III. RECOMMENDATION AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY.

I recommend the Respondent be found guilty of all allegations in the Complaint, as amended, and specifically, that he be found guilty of the following violations of the Disciplinary Rules of the Code of Professional Responsibility:

DR 1-102(A)(4), conduct involving dishonesty, fraud, deceit or misrepresentation.

DR 1-102(A)(6), engaging in other conduct that adversely reflects upon his fitness to practice law.

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

DR 9-102(B)(1), not promptly notifying a client of the receipt of his funds.

DR 9-102(B)(4), not promptly paying or delivering to a client, as requested, funds in his possession which the client is entitled to receive.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED.

I recommend that Eric A. Rodriguez, the Respondent, be disbarred.

In The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1979), when an attorney misused and misappropriated client's funds, the Supreme Court of Florida stated:

We give notice, however, to the legal profession of the state that henceforth we will not be reluctant to disbar an attorney for this type of offense even though no client is injured. Breed, at 785.

In the case at hand, the client was injured because the Respondent misappropriated his funds. Although the Respondent's father testified that he was ready, willing and able to pay the victim the funds due him, plus interest, this does not excuse the Respondent's misconduct.

There are numerous cases where this Court has disbarred attorneys because they misappropriated funds of their clients, to wit: The Florida Bar v. Wolbert, 446 So.2d 1071 (Fla. 1984); The Florida Bar v. Nagel, 440 So.2d 1287 (Fla. 1983), and The Florida Bar v. Rodman, 474 So.2d 1177 (Fla. 1985).

While I am sympathetic with Respondent's drinking, financial and matrimonial problems, I don't believe these problems excuse the serious offense he committed. Also, many of the Respondent's problems did not occur, or reach their height, until after the defalcation of his client's funds.

V. PERSONAL HISTORY.

The Respondent is 33 years of age, has a five year old son and is divorced. He was admitted to practice law in Florida during April 1980. Also, Mr. Rodriguez was a sole practitioner, who did his own typing, filing, and bookkeeping, as well as research. He has never had any prior disciplinary problems with The Florida Bar.

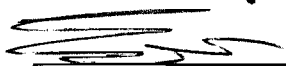
VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED.

I find the following costs were reasonably incurred by The Florida Bar:

Court Reporter Costs for Grievance Committee hearing on 8/16/84	\$ 135.35
Court Reporter Costs for Referee trial 1/2/86	\$ 124.65
Administrative Costs, Florida Bar Integration Rule 11.06(9)(a)(5).	\$ 300.00
Travel Costs for Bar Counsel	\$ 16.00
	<u>\$ 576.00</u>

I recommend this Court's Order contain a statement saying that costs in the amount of \$576.00 are assessed against the Respondent, payable within 30 days; for which sum let execution issue.

Dated this 7 day of February, 1986.


ESTELLA MAY MORIARTY, REFEREE
Broward County Courthouse
Room 427
201 S.E. 6th Street
Ft. Lauderdale, Florida 33301
(305)765-8687

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that conformed copies of the foregoing Report of Referee were mailed this 7 day of February, 1986 to the following attorneys: Paul A. Gross, Bar Counsel, The Florida Bar, 444 Brickell Avenue, Suite 211, Miami, Florida 33131; Aladar E. Paczier, Counsel for Respondent, 8603 South Dixie Highway, Suite 300, Miami, Florida 33143 and John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301-8226.


Estella May Moriarty, Referee