

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

File No. 06A85H21

v.

Supreme Court No.
66,462

MICHAEL H. FARVER,

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings:

By Order of this Court dated February 27, 1986, this matter was referred back to the undersigned Referee for further disciplinary proceedings on the merits. In furtherance of that directive, hearings were held before me on September 5 and September 18, 1986.

Attorneys: David R. Ristoff, Esq. for The Florida Bar
James R. Nieset, Esq. for Respondent.

II. Findings of Fact:

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

1. Respondent is and at all times material herein was a member of The Florida Bar and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. On or about November, 1980, Respondent became associated with the law firm of Pope & Henninger for the purpose of representing clients seeking legal services at the downtown legal clinic of that firm. The arrangement was not reduced to writing but rested on parol, with Respondent being entitled to receive a salary and a commission based upon production of legal fees at that office. According to the evidence, the handling of funds coming into the clinic, consisting of fees and costs, was initially undertaken by the office secretary. She then turned over the funds to the firm's bookkeeper who deposited them in the firm's bank account or accounts.

3. Between November 1980 and November 1981, Respondent knowingly obtained or used funds received from clientele of the clinic in the instances hereinafter described, which funds rightfully belonged to the law firm which employed Respondent, and which were diverted to his own use with the

intent to deprive the said law firm of the funds or benefit therefrom. Respondent's association with said law firm was terminated after such diversion became known.

4. An independent audit by a CPA, whose services were paid for by Respondent, was undertaken to reconcile the amount shown as fees received on client ledger cards and the amounts actually remitted by the client. (Bar Exhibit 9). In the following instances, Respondent was shown to have personally received funds from persons represented by him during his tenure with Pope & Henninger which funds were in excess of those amounts reflected by the firm's fee records. Respondent either denied knowledge of the source of such unreflected fees or asserted that the fees received were earned by him separately and independently from his obligation to Pope & Henninger:

(a) In response to the audit questionnaire, a client, Antonia Kliore, confirmed payment of legal fees to Respondent in the amount of \$250.00. The ledger card for her in the clinic reflected she had paid a total of \$100.00. (Bar Exhibit 3).

(b) On or about November 13, 1981, a client, Philip R. Liedlich paid \$1,000.00 to Respondent on account of services to be rendered the client's son. None of that fee was credited to the firm's account but the entire fee was deposited in the Respondent's bank account.

(c) During August, 1981, a client, Marjorie Lutkenhouse paid \$900.00 in legal fees to Respondent and subsequently paid an additional \$1,000.00 as the balance of Respondent's legal fees for services connected with the administration of an estate. The Lutkenhouse ledger card indicated only a payment of \$90.00 into the trust account of the law firm. (Bar Exhibit 4).

(d) On or about August 3, 1981, a client, Florence Phillips, paid respondent \$136.00 in legal fees. The Phillips ledger card revealed credits in the amount of \$44.00. (Bar Exhibit 5).

(e) On or about November 30, 1981, a client, Barbara J. Feeley (f/k/a Swartout) paid Respondent legal fees of \$100.00, but there was no record in the firm which revealed a deposit which could be credited to that client. (Bar Exhibit 1).

5. On or about January 25, 1983, Respondent was arrested and subsequently charged with grand theft. In July, 1983, Respondent entered into a pre-trial intervention agreement whereby he agreed to and did make restitution to Pope & Henninger in the amount of \$6,671.00. (Bar Exhibit 10).

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 his oath as an attorney, the Integration Rule of The Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to-wit: DR 1-102(A)(3) (Engaging in illegal conduct involving moral turpitude): DR 1-102(A)(4) (Conduct involving dishonesty, fraud, deceit or misrepresentation); DR 1-102-(A)(6) (Conduct that adversely reflects on his fitness to practice law), and Integration Rule 11.02(3)(a) (Conduct contrary to honesty, justice or good morals).

IV. Recommendation as to Disciplinary Measures:

I recommend that the Respondent be suspended from the practice of law in this state for a period of one (1) year, with proof of rehabilitation prior to any subsequent reinstatement, and that he pay the costs heretofore or later incurred in these proceedings. In the recommendation of this discipline I have considered the fact that there was no previous disciplinary history. Respondent's date of birth was June 6, 1952. He was admitted to The Florida Bar in 1977.

V. 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

Administrative Costs at the Grievance Committee Level, Florida Bar Integration Rule, Article XI, Rule 11.06(9)(a)	\$ 150.00
Court Reporter Costs	70.60
Bar Counsel Expenses	14.30
Staff Investigator Expenses (Ernest J. Kirstein, Jr.)	210.35

B. Referee Level

Administrative Costs at the Referee Level, Florida Bar Integration Rule, Article XI, Rule 11.06(9)(a)	150.00
Staff Investigator Expenses (Ernest J. Kirstein, Jr.)	134.20
Staff Investigator Expenses (Walter B. Granger)	349.97

Court Reporter Costs	\$87.60
Court Reporter Costs (9/5/86) (Betty M. Lauria)	434.25
Staff Counsel Expenses (David R. Ristoff)	9.40
Witness Fees (Edward O'Brien)	<u>8.00</u>
ESTIMATED TOTAL AMOUNT TO DATE:	\$1,618.67

Dated this 17th day of October, 1986.

Merison Buck
REFEREE

Copies furnished to:

Michael H. Farver
James R. Nieset, Esq.
David R. Ristoff, Esq.