

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CLERK, SUPREME COURT OF FLORIDA
By _____
CHIEF CLERK

THE FLORIDA BAR,

Complainant,

v.

THOMAS B. CALHOUN,

Respondent.

CONFIDENTIAL

Case No. 67,098

(TFB Nos. 0283N16;

0283N18; 0283N27)

REPORT OF REFEREE

I. Summary of Proceedings

Pursant 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, the following proceedings occurred:

On May 31, 1985, The Florida Bar filed its Complaint against Respondent with the Supreme Court of Florida. The Bar filed its Request for Admissions on July 16, 1985. As a result of Respondent's failure to file an answer to the complaint or response to the request for admissions, The Florida Bar filed its Motion to Deem Matters Admitted and Motion for Summary Judgment on August 20, 1985. The aforementioned pleadings, all of which are forwarded to Supreme Court of Florida with this Report, constitute the record in this case.

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged

After considering all the pleadings, I find:

Regarding TFB Case No. 0283N16, I find:

1. At all times mentioned herein, Respondent was a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. On or about September 22, 1981, Respondent was retained by one Marie Mitchell of Quincy, Florida, for five-hundred dollars to quiet title on a piece of real property upon which Marie Mitchell resided.

3. The object of the quiet title action was the exercise of certain actions by a Mr. Hardin Smith who was utilizing the property of Marie Mitchell for his own use.

4. On January 22, 1982, Thomas Calhoun wrote a letter to Hardin Smith placing him on notice of Marie Mitchell's complaint and the intent to file suit to quiet title.

5. On March 30, 1982, Respondent wrote a letter to Marie Mitchell informing her he was leaving the private practice of law and that another attorney, John Griffin, had agreed to complete the quiet title action.

6. It was subsequently determined that John R. Griffin, Esquire, had not agreed to proceed with the matter of Marie Mitchell and nothing more was done on Marie Mitchell's quiet title action by Respondent.

7. Respondent abandoned his practice and failed to provide for representation for Marie Mitchell.

Regarding TFB Case No. 0283N18, I find:

1. Sometime prior to September 22, 1982, Respondent agreed to represent a client named Bernard Tytell in negotiating the sale of a drainage and utility easement on property of Mr. Tytell to the City of Tallahassee.

2. Respondent negotiated the sale of said easement for \$1,000 from which he was to receive \$262.50 as an attorney fee.

3. The proceeds were in the form of a draft made payable to Mr. and Mrs. Tytell and to Respondent. Respondent signed or endorsed said check for all parties and left Tallahassee after closing his practice without forwarding to the Tytells their balance of \$737.50.

Regarding TFB Case No. 0283N27, I find:

1. Sometime in late 1973 or early 1974, Respondent was retained by Rebecca Bryant to probate the estate of her father-in-law, Matthew Bryant, Sr.

2. As part of Matthew Bryant's estate, a mortgage was left to Rebecca Bryant and her mother-in-law with each to receive half of the funds from the mortgage.

3. Respondent arranged to have said mortgage payments paid directly into his trust account. After receiving said mortgage payments, Respondent was to disburse the proceeds to Rebecca Bryant and her mother-in-law.

4. Rebecca Bryant and her mother-in-law were to begin receiving principal and interest payments from the mortgage in 1975.

5. From 1975 until Respondent closed his private practice in Tallahassee, Florida, sometime in 1982, he failed to remit principal

and interest payments on said mortgage to Rebecca Bryant in the amount of \$39,575.50.

6. The mortgage payments in this amount have been verified as having been paid to Respondent by the mortgagor.

7. After leaving Florida, the Respondent was contacted by Rebecca Bryant and her present attorney in an effort to recover the mortgage proceeds. Said efforts were unsuccessful.

8. Respondent misappropriated trust accounts proceeds belonging to Rebecca Bryant.

III. Recommendations as to Whether the Respondent Should Be Found Guilty

I recommend that Respondent be found guilty of the following violations of the Code of Professional Responsibility:

In TFB Case no. 02-83N16:

DR 1-102(A)(1) violation of a disciplinary rule

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

DR 1-102(A)(5) conduct prejudicial to administration of justice

DR 1-102(A)(6) neglect of a legal matter

In TFB Case No. 02-83N18:

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

DR 9-102(B)(4) failure to promptly deliver the client funds, securities, or other properties in lawyers possession which the client is entitled to receive

In TFB Case No. 02-83N27:

DR 1-102(A)(1) violation of a disciplinary rule

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

DR 1-102(A)(5) conduct prejudicial to administration of
justice

DR 1-102(A)(6) conduct that adversely reflects an
attorney's fitness to practice law

DR 6-101(A)(3) neglect of a legal matter

DR 9-102(B)(1) failure to promptly notify client of
receipt of his funds or other properties

DR 9-102(B)(4) failure to promptly deliver to client
funds or other properties in lawyer's possession which
the client is entitled to receive

IV. Recommendation as to Disciplinary Measures to be Applied

I recommend that Respondent be disciplined by:

A. Payment of costs in these proceedings

B. Disbarment.

V. Personal History and Past Disciplinary Record

Prior to recommending discipline pursuant to article XI, Rule 11.06(9)(a)(4), I considered the following personal history of Respondent, to wit:

Age: 44

Date admitted to Bar: June 10, 1968

Prior Discipline: None

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

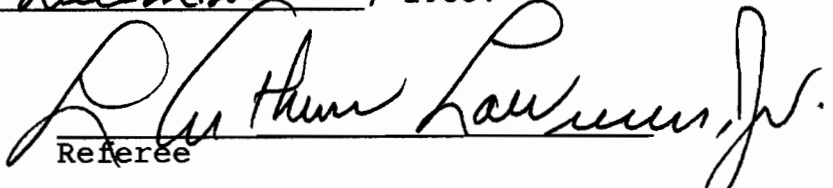
1. Administrative costs	\$150.00
2. Court reporter costs	\$ 82.00
3. Investigator costs	\$ 52.50

B. Referee Level Costs

1. Administrative costs	<u>\$150.00</u>
Total	\$434.00

It is recommended that such 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 19th day of December, 1985.


Referee

Copies to:
James N. Watson, Jr., Staff Counsel of The Florida Bar
Thomas B. Calhoun, Respondent