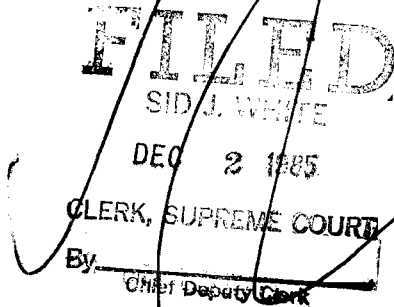


IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar,
Complainant,
v.
Gary H. Neely,
Respondent.



CONFIDENTIAL

CASE NO. 66,914
(07A85C18)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant 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, hearings were held on October 11, 1985 and November 15, 1985. The Pleadings, Notices, Motions, Orders, Transcript and Exhibits all of which 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: David G. McGunegle
Jan A. Wichrowski

For The Respondent: Horace Smith, Jr.

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, pertinent portions of which are commented upon below, I find:

A. That on June 9, 1983, the respondent while representing Silas E. Connor, entered into an agreement with the attorney for Ford Motor Credit Company. Ford Motor Credit Company had earlier obtained a judgment against Silas E. Connor. The agreement entered into between the respondent and Ford Motor Credit Company called for Mr. Connor to pay \$100.00 per month toward the satisfaction of the judgment. These payments were to be mailed by the respondent. (Transcript p. 11)

- B. That the respondent told Mr. Connor he should make the payments due Ford Motor Credit Company to the respondent; the respondent further explained that he would deposit the payments in an escrow account and then send checks written on the escrow account to Ford Motor Credit Company. (Transcript p. 24)
- C. That Mr. Connor entrusted to the respondent sums (checks) to be paid Ford Motor Credit Company in order to satisfy the judgment against Mr. Connor and in favor of Ford Motor Credit Company. All but one of said checks bore the notation "vs. Ford" or "Ford" (Transcript p. 24, Fla. Bar Exhibit No. 4). Said checks were specifically intended by Mr. Connor to be applied toward the amount due on the judgment in favor of Ford Motor Credit Company, and delivered in trust for that purpose (Transcript p. 37).
- D. That approximately one year after June 9, 1983, Mr. Connor learned that sums he gave respondent to be forwarded to Ford Motor Credit Company had not been received by counsel for Ford Motor Credit Company (Transcript p. 15, 16, 37).
- E. That upon learning that the payments had not been received by counsel for Ford Motor Credit Company, Mr. Connor called the respondent who advised him that he had sent the payments directly to Ford Motor Credit Company (Transcript p. 38); Mr. Connor then contacted Ford Motor Credit Company which advised him that payments had not been received by Ford Motor Credit Company (Transcript p. 38).
- F. That after Mr. Connor complained to The Florida Bar, respondent prepared a letter dated September 25, 1984, to The Florida Bar for the signature of Mr. Connor (Transcript p. 38 and Fla. Bar Exhibit No. 5). The letter contained falsehoods and Mr. Connor refused to sign the letter (Transcript p. 38-44).
- G. That the respondent wished Mr. Connor to sign the letter (Fla. Bar Exhibit No. 5) prior to his returning \$1,350.00;

Mr. Connor refused to sign the letter, and until October 2, 1984, the respondent failed to refund the \$1,350.00 (Transcript 42, 70, 93 and Resp. Exhibit No. 3).

- H. That the respondent's trust account records are inadequate and incomplete; the checks received from Mr. Connor were deposited in an account described by the respondent as an "attorney account", and never were deposited in an escrow or trust account (Transcript p. 77, 78, 79, 86, 96-98).
- I. That respondent did not provide Mr. Connor with an accounting of funds received from Mr. Connor (Transcript p. 79, 96-98).
- J. That the course of conduct of the respondent described above, adversely reflects on his fitness to practice law.
- K. That there was no evidence that the respondent had a valid lien upon the sums collected and retained by the respondent.
- L. That the respondent did not exercise a high standard of care in supervision of his bookkeeper as required in Disciplinary Rule 3-104(C) of the Code of Professional Responsibility (Transcript 86, 87, Respondent's Exhibit No. 4).
- M. That the respondent failed to promptly refund the sum which Mr. Connor had delivered to the respondent to be forwarded to Ford Motor Credit Company although Mr. Connor was entitled to the same; Mr. Connor made inquiry of the respondent regarding said sum in the summer of 1984 and \$1,350.00 was refunded to Mr. Connor by the respondent in October, 1984 (Transcript p. 38, Respondent's Exhibit No. 3).

III. Recommendations as to Whether or Not the Respondent Should Be Found Guilty: It is my recommendation that the respondent, Gary H. Neely, be found guilty of violating Integration Rules of the Florida Bar, to wit: 11.02(3)(a) and 11.02(4). It is also my recommendation that Mr. Neely be found guilty of having violated Disciplinary Rules of the Code of Professional Responsibility, to wit: 1-102(A)(6), 3-104(C), 3-104(D), 9-102(B)(3) and 9-102(B)(4).

IV. Recommendation as to Disciplinary Measure to be Applied: I recommend that the respondent be suspended for a period of six months and thereafter until he shall prove his rehabilitation as provided in Rule 11.10(4).

V. Personal History and Past Disciplinary Record: After finding of guilty and prior to recommending discipline pursuant to Rule 11.06(9)(a)(4), I considered the following personal history and prior disciplinary record of respondent, to wit:

Age: 43

Date admitted to Bar: 1972

Prior disciplinary convictions and disciplinary measures imposed therein: 90 day suspension from 7/9/79 to 10/7/79 by Order of the Supreme Court dated 6/7/79, (The Florida Bar v. Neely, 372 So.2d 89 (Fla. 1979)); public reprimand and a one year probation by Order of the Supreme Court date 5/13/82, (The Florida Bar v. Neely, 417 So.2nd 957 (Fla. 1982)).

Other Personal Data: Married, two dependents.

Education: Daytona Beach Community College, University of Florida, Stetson Law School. Sole practitioner with offices at 547 North Ridgewood, Daytona Beach. He has designations in areas of real property, personal injury and wrongful death, corporations.

VI. Statement of Costs and Manner in Which Cost 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. Transcript Costs		336.65
3. Bar Counsel/Branch Staff Counsel Travel Costs		33.83
4. Investigator's Expenses		12.73

B. Referee Level Costs

1. Administrative Costs	\$	150.00
2. Transcript Costs		335.55
3. Bar Counsel/Branch Staff Counsel Travel Costs		52.63
4. Investigator's Expenses		17.01


C. Miscellaneous Costs

1. Telephone Charges 14.54

TOTAL ITEMIZED COSTS: \$ 1,102.94

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 26th day of November, 1985.


JOHN ANTOON II, Referee

Copies furnished to:

Bar Counsel-David G. McGunegle, The Florida Bar, Orlando, Florida
Jan A. Wichrowski, The Florida Bar, Orlando, Florida
Respondent's Counsel-Horace Smith, Jr., Daytona Beach, Florida
Staff Counsel-John T. Berry, The Florida Bar, Tallahassee, Florida