

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.
GEORGE E. OLLINGER III,
Respondent.

CONFIDENTIAL

Supreme Court Case
No. 68,381

The Florida Bar Case
No. 17885-15

FILED

SID J. WHITE

APR 14 1986

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Respondent submitted a Consent Judgment on February 3, 1986 whereby he waived a probable cause finding by a duly constituted grievance committee of The Florida Bar; unconditionally pled guilty to certain enumerated provisions of the Integration Rule of The Florida Bar, Bylaws under the Integration Rule and the Code of Professional Responsibility; and agreed to the disciplinary sanction specified therein upon condition that its acceptance be recommended by The Florida Bar. On February 13, 1986 The Florida Bar filed a Petition for Approval of Consent Judgment with the Supreme Court of Florida recommending acceptance of the Consent Judgment in all particulars. The undersigned was thereafter appointed as Referee in this cause by the Chief Justice of the Supreme Court of Florida by order entered February 28, 1986. Upon due deliberation and being satisfied that the discipline set forth in the Consent Judgment is appropriate, the undersigned Referee has determined to approve Respondent's Consent Judgment and recommend its ultimate acceptance by the Supreme Court of Florida.

The following attorneys appeared for the respective parties:

On behalf of The Florida Bar: Richard B. Liss, Esq.

On behalf of Respondent: Lance J. Thibideau, Esq.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH RESPONDENT IS CHARGED:

1. Respondent was the subject of a prior disciplinary proceeding, assigned Supreme Court Case No. 66,824, over which the undersigned presided as Referee.

2. The allegations set forth in The Florida Bar's complaint (see the Court file in Supreme Court Case No. 66,824) were the basis upon which a grievance committee of The Florida Bar directed that an audit be conducted of Respondent's trust account.

3. The Court, in issuing its disciplinary order in Supreme Court Case No. 66,824, adopted the undersigned Referee's report which contained a specific proviso that The Florida Bar would not be estopped from seeking further disciplinary sanctions against Respondent should a grievance committee of The Florida Bar make a finding of probable cause based upon the results of the audit of Respondent's trust account.

4. Respondent waived a finding of probable cause in his Consent Judgment as to the results of said audit.

5. The audit revealed and the undersigned Referee finds that Respondent was not in substantial compliance with the following trust accounting requirements as set forth in the Integration Rule of The Florida Bar and Bylaws under the Integration Rule:

a. costs deducted from client settlement proceeds were so inadequately documented that it could not be ascertained with certainty that they were used for that purpose thereby technically violating the specific purpose doctrine;

b. failure to adequately identify all trust deposits and checks;

c. failure to maintain some individual client ledger cards properly reflecting all individual receipts, disbursements and unexpended balance; and

d. failure to issue written authorization to permit Respondent's bank to notify The Florida Bar in the event any trust account check was returned due to insufficient funds or uncollected funds, absent bank error.

6. The audit revealed and the undersigned Referee finds that Respondent violated the following provisions of the Code of Professional Responsibility:

a. charging an excessive attorney's fee in some instances for collection of personal injury protection benefits by basing said fee upon a contingent fee contract;

b. failure to prepare and maintain some executed closing statements; and

c. costs deducted from client settlement proceeds were so inadequately documented that they constructively constituted client funds in possession of Respondent which the clients were entitled to receive.

7. Consistent with the undersigned Referee's findings in Supreme Court Case No. 66,824, Respondent totally relied on non-lawyer employees to maintain all records pertaining to his trust account.

8. Respondent is ultimately responsible for properly maintaining his trust account and is subject to discipline for any rule violations related thereto.

9. No client of Respondent considered in the audit has complained about the manner in which their settlement proceeds were distributed.

10. There was no willful and intentional diversion of funds from client settlement proceeds which inured to Respondent's direct benefit but rather a failure to maintain adequate records on cost disbursements and executed closing statements which would establish client acquiescence to said disbursements.

III. RECOMMENDATIONS AS TO WHETHER RESPONDENT SHOULD BE FOUND GUILTY:

Respondent should be found guilty of violating Disciplinary Rules 2-106(A) [A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee], 2-106(E) [Preparation, execution and retention for six (6) years of closing statements in certain enumerated cases], 3-104(C) [A lawyer who employs nonlawyer personnel shall exercise a high standard of care to assure compliance by the nonlawyer personnel with the applicable provisions of the Code of Professional Responsibility], 3-104(D) [The delegated work of nonlawyer personnel shall be such that it will assist only the employing attorney and will be merged into the lawyer's completed product. The lawyer shall examine and be responsible for all work delegated to nonlawyer personnel] and 9-102(B) (4) [A lawyer shall promptly pay to the client as requested by the client all funds in the possession of the lawyer which the client is entitled to receive] of the Code of Professional Responsibility; article XI, Rule 11.02(4) [Money entrusted to an

attorney for a specific purpose is held in trust and must be applied only to that purpose] of the Integration Rule of The Florida Bar; and Bylaws under the Integration Rule, article XI, Sections 11.02(4) (c), paragraphs 2.b., 2.c., and 2.e. [Maintaining adequate identification of trust deposits and checks], 11.02(4) (c), paragraph 2.f. [Maintaining individual client ledger cards properly reflecting all individual receipts, disbursements and unexpended balance] and 11.02(4) (c), paragraph 3.d. [The lawyer shall authorize and request any bank or savings and loan association where he is a signatory on a trust account to notify Staff Counsel in the event any trust check is returned due to insufficient funds or uncollected funds, absent bank error].

IV. STATEMENT AS TO PAST DISCIPLINE AND PERSONAL HISTORY:

Respondent was admitted to The Florida Bar on November 11, 1977 and is 35 years of age. He has previously received a public reprimand. The Florida Bar v. Ollinger, 478 So.2d 1068 (Fla. 1985).

V. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED:

The undersigned finds the following costs were reasonably incurred by The Florida Bar and should be taxed against Respondent:

Cost of Audit (article XI, Rule 11.02(4) (c) of the Integration Rule of The Florida Bar)	\$ 3,937.82
Administrative Costs at Referee Level (article XI, Rule 11.06(9) (a) of the Integration Rule of The Florida Bar)	\$ 150.00
<u>TOTAL</u>	\$ 4,087.82

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

The undersigned recommends that Respondent's Consent Judgment be accepted by the Supreme Court of Florida and that Respondent be suspended from the practice of law in this jurisdiction for a period of sixty (60) days with automatic reinstatement at the end of said suspension. At the conclusion of the period of suspension, Respondent should be placed on probation for a period of three (3) years, pursuant to article XI, Rule 11.10(1) of the Integration Rule of The Florida Bar, during which time he will be required to retain, at his own expense, the services of a certified public accountant who will review Respondent's

trust account. Said certified public accountant will render monthly statements to The Florida Bar addressing whether Respondent is in compliance with the trust accounting requirements set forth in the then applicable provisions of the Integration Rule and Bylaws under the Integration Rule of The Florida Bar and provide reconciliations of all of Respondent's trust accounts in the manner required by the then applicable provisions of the Bylaws under the Integration Rule of The Florida Bar. In addition to the foregoing, the certified public accountant will review the files on those contingent fee cases (as more particularly described in Disciplinary Rule 2-106(E) of the Code of Professional Responsibility) concluded by Respondent and ascertain whether closing statements have been prepared on said cases and executed in compliance with any applicable provisions of the Integration Rule and Code of Professional Responsibility. The certified public accountant will also confirm that all disbursements reflected on said closing statements are adequately documented and that all disbursements have actually been made prior to or contemporaneously with client execution of closing statements. The results of the review of the aforesaid files will be included in the monthly statements submitted by the certified public accountant to The Florida Bar as set forth above.

Respondent has agreed to and should be required to make restitution to the following clients in the stated amounts by virtue of the failure to maintain adequate records regarding disbursements made from their settlement proceedings and/or charging of excessive fees in some instances for collection of personal injury protection benefits:

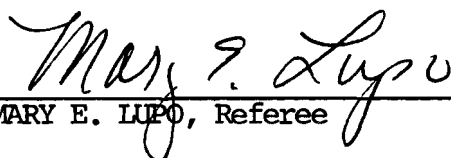
1. Daumec George - \$3,590.28
2. Alexander Francois - \$757.02
3. Irma and Gary Sylvain - \$850.00
4. Altagrace Sylvain - \$491.00

It is recommended that any restitution ordered by the Court should be made within thirty (30) days of the Court's final order in this cause unless extended by the Board of Governor's of The Florida Bar.

Costs of these proceedings should be taxed against Respondent in the amount of Four Thousand Eighty Seven Dollars and Eighty Two Cents

(\$4,087.82) with execution to issue and with interest at a rate of twelve per cent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final Order in this cause, unless time for payment is extended by the Board of Governors of The Florida Bar.

DATED this 7th day of April, 1986 at West Palm Beach, Palm Beach County, Florida.



MARY E. LUPU, Referee

Copies furnished to:

Lance J. Thibideau, Attorney for Respondent
Richard B. Liss, Attorney for Complainant