

IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE

THE FLORIDA BAR,

Complainant,

v.

WARREN H. JOHNSON,

Respondent.

TFB File No. 85-15,370 (20B)
(Formerly 20B85F31)

Case No. 68,596

FILED

SID J. WHITE

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REPORT OF REFEREE

CLERK, SUPREME COURT

By

Deputy Clerk

I. SUMMARY OF PROCEEDINGS:

The undersigned was appointed as the referee to preside in the above disciplinary action by order of this court dated April 22, 1986. The pleadings, notices, motions, orders and transcript, all of which are forwarded to the Court with this report, constitute the entire record in this case.

The respondent represented himself and the bar was represented by David M. Barnovitz, Esquire.

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

After considering all of the pleadings and evidence before me, I find as follows:

A. With respect to each and every count I find that respondent is and at all times hereinafter mentioned, was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

With respect to count I of the bar's complaint, I find:

B. On November 2, 1983, respondent was retained by [REDACTED] [REDACTED] for the purpose of administration of the estate of his deceased wife, [REDACTED] [REDACTED].

C. Respondent initially received from [REDACTED] a check in the amount of \$1,200.00 for legal fees and a check for \$60.00 for costs.

D. On February 14, 1984 respondent received \$7,231.78 in satisfaction of a mortgage held by the [REDACTED] estate. This money was received for the specific purpose of paying estate debts, expenses, claims and bequests.

E. Respondent deposited the \$7,231.78 in his trust account on February 27, 1984. Subsequently, without notice to or consent by [REDACTED] or leave of court, respondent paid to himself funds totalling \$4,115.00.

With respect to count II of the bar's complaint, I find:

A. Respondent admitted that he failed to maintain a separate file or ledger with an individual card or page for the estate of [REDACTED] setting forth the information required by Fla. Bar Integr. Rule, article XI, Rule 11.02(4) (c) and the Bylaws promulgated thereunder, specifically Bylaws Under the Integration Rule, article XI, Section 11.02(4) (c) (2) (f).

With respect to count III of the bar's complaint, I find:

A. The only records maintained by respondent pertaining to the [REDACTED] estate were his checkbook and certain handwritten notations regarding disbursement appearing on the jacket of the file.

With respect to count IV of the bar's complaint, I find:

A. [REDACTED] requested that respondent advise of the disbursement of the \$7,231.78, but Johnson failed to render any accounting to [REDACTED].

With respect to count V of the bar's complaint, I find:

A. A dispute arose between [REDACTED] and respondent regarding the disbursement of the \$7,231.78. Thereafter respondent failed to maintain the disputed funds in his trust account.

With respect to count VI of the bar's complaint, I find:

A. The correspondence of respondent received in evidence as the bar's exhibit number 6 accurately represented the disbursement of the \$7,231.78 received on behalf of the estate.

With respect to count VII of the bar's complaint, I find:

A. Respondent received \$4,716.78 as legal fees for his representation of the [REDACTED] estate. A reasonable fee for his representation of the [REDACTED] estate would be \$2,500.00.

With respect to count VIII of the bar's complaint, I find:

A. Respondent's actions and omissions as hereinabove recited constitute conduct that adversely reflects on his fitness to practice law.

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

GUILTY:

I make the following recommendations with respect to the violations charged by the bar:

With respect to count I of the bar's complaint, I recommend that the respondent be found guilty of violating Fla. Bar Integr. Rule, article XI, Rule 11.02(4).

With respect to count II of the bar's complaint, I recommend that the respondent be found guilty of violating Fla. Bar Integr. Rule, article XI, Rule 11.02(4)(c) and Bylaws Under the Integration Rule, article XI, Section 11.02(4)(c)(2)(f).

With respect to count III of the bar's complaint, I recommend that the respondent be found guilty of violating Fla. Bar Integr. Rule, article XI, Rule 11.02(4)(c) and Bylaws Under the Integration Rule, article XI, Section 11.02(4)(c)(3)(i) and Section 11.02(4)(c)(3)(ii).

With respect to count IV of the bar's complaint, I recommend that the respondent be found guilty of violating Disciplinary Rule 9-102(B)(3) of the Code of Professional Responsibility.

With respect to count V of the bar's complaint, I recommend that the respondent be found guilty of violating Disciplinary Rules 9-102(A)(2) and 9-102(B)(4) of the Code of Professional Responsibility.

* With respect to count VI of the bar's complaint, I recommend that the respondent be found not guilty of violating Disciplinary Rule 1-102(A)(4) of the Code of Professional Responsibility and not guilty of violating Fla. Bar Integr. Rule, article XI, Rule 11.02(3).

With respect to count VII of the bar's complaint, I recommend that respondent be found guilty of violating Disciplinary Rule 2-106 of the Code of Professional Responsibility.

With respect to count VIII of the bar's complaint, I recommend that the respondent be found guilty of violating Disciplinary Rule 1-102(A)(6) of the Code of Professional Responsibility.

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that as discipline for the violations hereinabove enumerated respondent be: See attached Exhibit "A".

V. PERSONAL HISTORY:

Respondent was admitted to The Florida Bar on July 6, 1976 and is 62 years of age.

VI. STATEMENT AS TO PAST DISCIPLINE:

Respondent has no prior discipline record with The Florida Bar.

VII. STATEMENT OF COSTS OF THE PROCEEDING AND RECOMMENDATIONS:

The costs of these proceedings were as follows:

Administrative Costs:

Grievance Committee Level ----- \$ 150.00

Referee Level ----- 150.00

Court Reporter Costs:

Grievance Committee Level ----- 738.85

Referee Level ----- 544.05

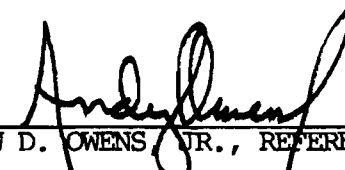
Copies ----- 34.97

Witness Fees ----- 50.60

TOTAL ----- \$1,668.47

I recommend that such costs be taxed against the respondent.

RENDERED this 28th day of ~~November~~ ^{Dec.}, 1987 at Sarasota, FL.

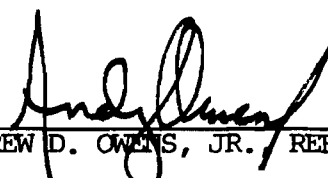


ANDREW D. OWENS, JR., REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing report of referee was furnished to Warren H. Johnson, respondent, at his official record bar address of 945 Central Avenue, Naples, FL 33903 and to David M. Barnovitz, assistant staff counsel, The Florida Bar, 915 Middle River Drive, Suite 602, Ft. Lauderdale, FL 33304 by regular mail on this 28th day of ~~November~~, 1987.

^{Dec.}



ANDREW D. OWENS, JR., REFEREE

EXHIBIT "A"

RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend the following disciplinary measures for the violations enumerated:

1. Public reprimand to be published in the Southern Reporter upon entry of the Final Order of Discipline by the Supreme Court of Florida;

2. Four (4) years probation during which time Respondent is required to submit quarterly reports from a Certified Public Accountant reflecting that his trust account is being maintained in compliance with former Rule 11.02(4)(C) of Integration Rule of The Florida Bar;

3. Reimburse [REDACTED] the sum of \$2,268.78, with execution to issue with interest at a rate of twelve percent (12%) to accrue on all sums not paid within thirty (30) days of entry of the Supreme Court's final order unless the time for payment is extended by the Board of Governors.

4. Taxation of cost against the Respondent in the amount of \$1,668.48, with execution to issue with interest at a rate of twelve percent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order unless the time for payment is extended by the Board of Governors.