

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,)
Complainant,) Supreme Court
vs.) Case No. 68,644
JAMES E. TRAPP, JR.,)
Respondent.)

FILED
SID J. WHITE
SEP 8 1986
CLERK, SUPREME COURT
By Deputy Clerk

FILED
CLERK, SUPREME COURT
By Deputy Clerk

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by article XI of the Integration Rule of The Florida Bar, a final hearing was held on July 21, 1986. All of the pleadings, notices, motions, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

The following attorneys appeared as counsel for the parties:

On Behalf of The Florida Bar: Patricia S. Etkin
On Behalf of the Respondent: No Appearance

COMMENTS AS TO PROCESS:

Respondent's official record Bar address is reflected in The Florida Bar's Exhibit 1. All correspondence, including pleadings, motions and notices, were mailed by Complainant to Respondent at his official record Bar address and to Michael Knowles, an attorney Complainant believed to be representing Respondent. In addition, Complainant forwarded several items to Respondent at a second address which became known to Complainant during the course of other proceedings. Correspondence forwarded to Respondent was returned to Complainant by the Post Office with a notation reflecting that Respondent had moved and left no forwarding address (see The Florida Bar Exhibit 2).

In view of the above, I find that Complainant did all that was required by article XI, Rules 11.01(2) and 11.13.(2) of the Integration Rule of The Florida Bar to effect proper service of its Complaint and to provide Respondent and his counsel with reasonable and sufficient notice of the proceedings.

Neither Respondent nor his counsel, Michael Knowles, filed any responsive pleading, motion or any other written communication in this cause. Moreover, although neither Respondent nor counsel appeared at the final hearing held on July 21, 1986, Bar Counsel reported to the undersigned Referee at final hearing that one-hour prior to the scheduled hearing, she reached Michael Knowles, Respondent's counsel, by telephone and counsel confirmed his intention to appear before the undersigned referee at the final hearing. Based upon this information, the commencement of the final hearing was delayed to allow time for Respondent or his counsel to appear. After the hearing had begun, Michael Knowles or someone calling on his behalf, telephoned the office of the undersigned referee to advise that Michael Knowles was on his way to the hearing. However, no appearance was made and the proceedings were conducted through conclusion in the absence of Respondent and his counsel. (Mr. Knowles did appear at the office of the undersigned after the hearing had concluded.) Based upon the foregoing, I find that Respondent, through counsel, had actual notice of these proceedings.

II. GENERAL FINDINGS OF FACT:

1. Respondent, JAMES E. TRAPP, JR., is, and at all times hereinafter mentioned was, a member of The Florida Bar, albeit suspended from the practice of law by order of the Supreme Court dated September 20, 1985, and subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

2. That at all times material to these proceedings The Florida Bar has diligently attempted to provide Respondent with notice of all proceedings, hearings, and pleadings.

3. That the matters contained in the Request for Admissions have been deemed admitted due to Respondent's failure to respond to Complainant's Request for Admissions.

4. That by failing to reply to the Bar's Request for Admissions, Respondent has admitted the charges against him.

III. SPECIFIC FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED. After considering the transcripts, pleadings, and evidence before me, I hereby render the following findings:

Findings As To Count I

1. In 1983 KITTY LOUISE LEE (hereinafter referred to as "Lee") retained Respondent to represent her in a personal injury matter arising from an automobile accident.

2. In November 1983, Respondent filed a lawsuit on behalf of Lee against Monroe Walton, Jr. and his insurance company, International Bankers Insurance Company (hereinafter referred to as "insurance company"), Defendants, in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Case No, 83-38973.

3. During or about December 1984, Respondent met Lee at her home to present a settlement offer he had received from the insurance company in the amount of Three Thousand Dollars (\$3,000) (hereinafter referred to as "settlement offer").

4. At the meeting referred to above, Lee advised Respondent that she would not accept the settlement offer.

5. Notwithstanding Lee's rejection of the settlement offer, Respondent represented to the insurance company that Lee would accept the offer.

6. In an effort to effectuate the settlement Respondent forged, or caused to be forged, Lee's signature on the release.

7. Respondent notarized Lee's signature on the release and transmitted it to the insurance company to finalize the settlement.

Findings As To Count II

1. In December 1984 Respondent received a check from the insurance company made payable to Lee and Respondent, jointly, in the amount of Three Thousand Dollars (\$3,000) (hereinafter referred to as "settlement check") which represented the settlement proceeds.

2. The insurance company entrusted Respondent with the settlement check for the purpose of settling Lee's claim.

3. By his actions, described above, Respondent misled Lee into believing that her claim was settled for Three Thousand Five Hundred Dollars (\$3,500).

Findings As To Count V

1. In February 1985, Lee, believing that her claim had been settled for Three Thousand Five Hundred Dollars (\$3,500), requested that Respondent deliver to her the portion of settlement proceeds she was entitled to receive.

2. On February 25, 1985 Respondent issued his check No. 170, drawn on his trust account, made payable to Lee, in the amount of Two Thousand Three Hundred Thirty Three Dollars and Thirty Four Cents (\$2,333.34) (hereinafter referred to as "Check No. 170").

3. Respondent delivered Check No. 170 to Lee with the representation that it reflected her net settlement proceeds.

4. In presenting Check No. 170 to her bank for deposit into her account, Lee learned that Respondent did not have sufficient funds in his trust account to cover the check.

5. Lee returned Check No. 170 to Respondent and advised him of the insufficiency.

6. Respondent voided Check No. 170 and issued to Lee a second trust account check, Check No. 172, in the same amount (hereinafter referred to as "Check No. 172").

7. Lee learned that Respondent did not have sufficient funds in his trust account to cover Check No. 172 and returned the check to Respondent.

8. On February 28, 1985, Respondent issued to Lee a third trust account check, Check No. 177, in the same amount (hereinafter referred to as "Check No. 177").

9. Lee deposited Check No. 177 into her bank account.

10. Check No. 177 was dishonored by Respondent's bank due to insufficient funds.

11. Respondent issued trust account checks, nos. 170, 172 and 177, to Lee after he had misappropriated the funds entrusted to him by the insurance company in settlement of Lee's claim.

12. At the time Respondent issued checks, nos. 170, 172 and 177, he knew or should have known that he did not have sufficient funds in his account to cover the checks.

13. Respondent's checks, nos. 170, 172 and 177, were worthless checks.

14. Despite repeated requests from Lee or others on her behalf, Respondent failed to redeem the worthless checks or provide Lee with any portion of the funds which had been entrusted to him in settlement of Lee's claim.

IV. RECOMMENDATION AS TO WHETHER RESPONDENT SHOULD BE FOUND GUILTY:

I recommend that Respondent be found guilty of all the violations of the Code of Professional Responsibility and Integration Rule of The Florida Bar charged in the Bar's Complaint and specifically, that he be found guilty of violating the following:

1. As to Count I, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(4) (conduct involving fraud, dishonesty, deceit or misrepresentation) and 1-102(A)(6) (conduct which adversely reflects on fitness to practice law) of the Code of Professional Responsibility.

2. As to Count II, I recommend that Respondent be found guilty of violating article XI, Rule 11.02(4), Integration Rule of The Florida Bar.

3. As to Count III, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(4) (conduct involving fraud, dishonesty, deceit or misrepresentation) and 1-102(A)(6) (conduct which adversely reflects on fitness to practice law) of the Code of Professional Responsibility.

4. As to Count IV, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(4) (conduct involving fraud, dishonesty, deceit or misrepresentation) and 1-102(A)(6) (conduct which adversely reflects on fitness to practice laws) of the Code of Professional Responsibility and article XI, Rule 11.03(a), Integration Rule of The Florida Bar.

5. As to Count V, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(6) (conduct which adversely reflects on fitness to practice law) and 9-102(B)(4) (promptly pay or deliver to the client as requested by a client the funds, in the possession of the lawyer which the client is entitled to receive) of the Code of Professional Responsibility.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Based upon the facts as set forth in the pleadings and the evidence presented at the final hearing, I recommend that Respondent be disbarred and shall not be permitted to tender an application for admission to the Bar for three (3) years from the date of entry of the disbarment order.

In recommending Respondent's disbarment, I have considered the serious nature of Respondent's misconduct which involves settling a claim on behalf of his client without the client's consent, participating in the creation and notarization of a forged document to effectuate the settlement, conversion of settlement proceeds which constitutes misappropriation of trust funds, misrepresentation to his client concerning the date and terms of settlement of her claim, creation of written documentation to support his misrepresentation, issuing worthless checks to his client and failing to pay funds to the client which the client was entitled to receive:

Further, as aggravating factors I have considered the following:

(1) Respondent's Bar membership status which includes his temporary suspension from the practice of law by Supreme Court Order dated September 20, 1985.

(2) Respondent's suspension from the practice of law for nonpayment of dues. (Respondent last paid Bar dues on October 31, 1983.)

(3) Respondent's suspension from the practice of law for contempt of court by Supreme Court Order dated January 23, 1986.

(4) Respondent's failure to appear in these disciplinary proceedings, including the final hearing.

VI. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED: I find the following costs were reasonably


incurred by The Florida Bar:

Administrative Costs	
[Integration Rule 11.06(9) (a)]:	
Grievance Level	\$ 150.00
Referee Level	150.00

Court Reporter:	
Grievance Committee Hearing (2/19/86)	258.30
Final Hearing (7/21/86)	156.55
Audit Costs:	
(per affidavit of staff auditor, attached as Exhibit "A")	282.52
Production of records (Bank of Miami)	24.80
Witness Costs:	
Witness Fees and cost for service of subpoenas for Grievance Committee Hearing:	34.80
Ileana Fuentes; Records Custodian, International Bankers Insurance Company	
Out-of-town witness travel and expenses for Grievance Committee Hearing:	242.40
Kitty Louise Lee	
	TOTAL
	<u>\$1,299.37</u>

It is recommended that the foregoing costs of these proceedings be taxed in the amount of ONE THOUSAND TWO HUNDRED NINETY-NINE DOLLARS AND THIRTY-SEVEN CENTS (\$1,299.37) against Respondent. It is further recommended that execution issue with interest at the 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 in this cause, unless time for payment is extended by the Board of Governors of The Florida Bar.

Dated this 26 day of August, 1986 at Ft. Lauderdale, Broward County, Florida.



 ALFRED J. SKIFF
 Referee

Copies furnished to:

Patricia S. Etkin, Attorney for Complainant
 Michael Knowles, Attorney for Respondent