

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
vs
JOE G. HOSNER,
Respondent.

CASE NO. 68,953
(TFB No. 01-84N85)

FILED
SID J. WHITE
DEC 17 1986
CLERK, SUPREME COURT
By
Deputy Clerk

REPORT OF REFEREE

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings according to Article XI of the Integration Rule of The Florida Bar, a guilty plea was entered on November 10, 1986. The pleadings, transcripts 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: Susan Bloemendaal, Attorney at Law, The Florida Bar, Tallahassee, Florida, 32301

For The Respondent: John A. Weiss, Attorney at Law, Post Office Box 1167, Tallahassee, Florida, 32302

After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

In October 1983 and March 1984, an audit was conducted by The Florida Bar of Respondent's trust account, labeled "Joe G. Hosner, P.A., Trust Account (Account Number 752-888-1) at the West Florida Bank in Pensacola, Florida, and monthly trust reconciliations were prepared for the period of March of 1983 through February of 1984.

The final monthly trust reconciliations revealed shortages as follows:

June 1983	\$ 5,818.94
July 1983	\$ 7,943.25
September 1983	\$ 1,968.93

Reconciliations for the remaining months of the audit period revealed overages as follows:

March 1983	\$10,512.37
April 1983	\$28,549.52
October 1983	\$ 187.29
November 1983	\$ 328.60
December 1983	\$ 348.60
January 1984	\$ 348.60
February 1984	\$ 348.60

Finding of Guilt

I recommend that the Respondent be found guilty of violating the Code of Professional Responsibility, particularly Disciplinary Rule 9-102(A) (commingling trust funds); and article XI, Rule 11.02(4) (trust accounting procedures) of the Integration Rule and article XI, Section 11.02(4)(c) paragraph 4.a (failure to prepare quarterly trust accounting reconciliations) of the Bylaws under the Integration Rule of The Florida Bar.

On at least thirty-four separate ledger cards of clients there were overdrawn accounts (see report of Clark Pearson, CPA, auditor, page 3 and Attachment 5), as well as seven instances of overages on accounts labeled "Joe G. Hosner/Hosner Enterprises" (auditor's report, page 3).

The commingling of personal and clients' funds was not an isolated situation but was either done for convenience or neglect of the attorney's duty to comply with the trust accounting rules, which are designed to assure clients of strict accountability for all funds entrusted to an attorney.

The Respondent argues in mitigation that no clients were harmed, that he took prompt corrective action and that he enjoyed no benefits from any shortages.

Recommended Discipline

After finding the Respondent guilty and prior to recommending discipline, I considered the Memoranda of Discipline submitted by The Florida Bar and the Respondent. The Respondent is age forty-five and was admitted to The Florida Bar on November 10, 1969.

The Referee finds that the potential for client harm was great and in keeping with the philosophy that trust accounting violations should be punished not only when direct financial harm is shown but also to deter willful noncompliance with the rules by adequately punishing wrongdoers, I recommend a suspension from the practice of law for a period of ninety(90) days. I further recommend that the Respondent be placed on probation for a period of three(3) years, with the following conditions:

(1) That Respondent's clients' trust accounts be open for inspection and/or audit by The Florida Bar at anytime without notice;

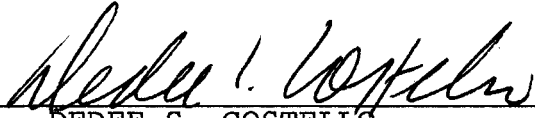
(2) That Respondent be automatically suspended upon discovery of any shortages by The Florida Bar, pursuant to Article XI, Rule 11.10(1) of the Integration Rule of The Florida Bar; and

(3) That Respondent attend and complete a seminar on trust accounting approved by The Florida Bar, sometime during the ordered period of probation.

Costs

I recommend that the costs in The Florida Bar's Statement of Costs be imposed against the Respondent and that interest shall accrue at the statutory rate thirty(30) days after the judgment becomes final, unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 15th day of December, 1986.



DEDEE S. COSTELLO
REFEREE

Copies furnished to:

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