

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

1986
SUPREME COURT
CLERK

THE FLORIDA BAR,
Complainant,
v.
FRANK J. HESTON,
Respondent.

CONFIDENTIAL

Supreme Court Case
No. 68,983

The Florida Bar Case
No. 17A85F69

REPORT OF REFEREE

I. Summary of Proceedings: The undersigned was duly appointed as referee to conduct disciplinary proceedings herein according to article XI of the Integration Rule of The Florida Bar. The Respondent has submitted a Conditional Guilty Plea. The Designated Reviewer of The Florida Bar has approved the Respondent's Guilty Plea. I approved the Guilty Plea at a hearing held on October 16, 1986.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Jacquelyn Plasner Needelman
For The Respondent: Harris K. Solomon

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is Charged: After considering all pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

1. An audit was performed of Respondent's trust account. Said audit began in March 1985.
2. In March of 1985, it was determined that:
 - A) Respondent had commingled personal and trust funds.
 - B) There was poor maintenance of books and records and poor policies and procedures regarding the trust account.
 - C) No bank or client trust account reconciliation had been made.
 - D) Respondent had not given written authorization to his bank permitting said bank to notify The Florida Bar of the occurrence of any trust account check dishonored (absent of bank error) due to insufficient funds or uncollected funds.

E) At the beginning of March 1985, the trust account had a shortage of \$7,305.18. Said amount was deposited to the account as soon as the shortage was determined.

3. The majority of the problems in the trust account resulted from poor supervision and poor record-keeping. A new bookkeeper was hired in April of 1985 and an outside accountant was retained to assist in the process of reconciling the bank and client trust records.

4. Respondent fully cooperated with The Florida Bar regarding the audit.

III. Recommendations as to Whether or not the Respondent Should Be Found Guilty: As to the complaint, I make the following recommendations as to guilt or innocence:

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to wit: Florida Bar Integration Rule, article XI, Rule 11.02(4) and the Bylaws thereto and Disciplinary Rule 9-102(A) of the Code of Professional Responsibility.

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the Respondent receive a public reprimand to be administered by his personal appearance before the Board of Governors of The Florida Bar and publication in the Southern Reporter and probation for a term of two (2) years. During the period of probation, Respondent shall submit an affidavit quarterly from a certified public accountant stating that he or she has reviewed Respondent's trust account records and that said records are in compliance with the Integration Rule and Code of Professional Responsibility of The Florida Bar.

V. Personal History and Past Disciplinary Records:

Age: 38

Date Admitted to Bar: December, 1973

Prior Disciplinary Convictions: None

VI. Statement of Costs and Manner in Which Costs Should Be Taxed: I

find the following costs were reasonable incurred by The Florida Bar:

Administrative Costs:
(Grievance and Referee Levels)\$ 300.00
Costs of Audit\$1,128.15
Respondent's Deposition\$ 88.75
Court Reporter's 10/16/86 Appearance ..\$ 40.00
TOTAL\$1,556.90

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 thirty (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 23 day of Oct, 1986


Honorable Tom Johnson, Referee

Copies furnished to:

Jacquelyn Plasner Needelman, Bar Counsel
John T. Berry, Staff Counsel
Harris K. Solomon, Attorney for Respondent