

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

v.

JUSTIN R. LUMLEY,  
Respondent.

CONFIDENTIAL

CASE NO. 69,539

REPORT OF REFEREE

I. Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of The Florida Bar, hearings were held on December 23, 1986, and February 10, 1987. The Pleadings, Notices, Motions, Orders and Exhibits, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record of this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Thomas E. DeBerg, Esquire

For The Respondent: John A. Weiss, Esquire

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

Single Count Complaint

The Respondent admitted, under oath, the Trust accounting discrepancies reported by The Florida Bar Auditor, (The Florida Bar Composite Exhibit No. 1). Although the commingling of the Respondent's personal funds resulted in deficits to the clients' funds, there appeared to be no intent to deprive the clients of the funds. The deficits were brought about by extreme personal financial hardship.

The commingling and deficits occurred while the Respondent was winding down his law practice. No clients suffered any losses and there was no evidence that any clients were even aware of the commingling and deficits which occurred.

III. As to this Single Count 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:

The Florida Bar Integration Rule 11.02(4); and  
Disciplinary Rule 9-102(A).

IV. I recommend that the Respondent be privately reprimanded by the Board of Governors as provided in Rule 11.10(2) and that he be placed on probation for 3 years. Further, that in the event the Respondent returns to the private practice of law, that he immediately notify The Florida Bar and that his Trust Account be audited quarterly by a Certified Public Accountant, at Respondent's expense, for 2 years. Also, that Respondent pay all costs incurred by The Florida Bar.

V. After finding of guilty and prior to recommending discipline, I considered the following personal history of the Respondent, to wit:

The Respondent is 50 years of age and was admitted to the Ohio Bar in 1963 and the Florida Bar in 1969. The Respondent had an active civil trial practice in Ohio before coming to Florida. He practiced briefly in Orlando after his admission to The Florida Bar, returned to Ohio for several years and then settled in the St. Petersburg area.

Respondent has never had a prior disciplinary conviction in either Ohio or Florida. In Ohio he was an assistant prosecutor, municipal judge, and taught evidence in a local law enforcement program.

He testified that he initially opened a separate bank account for his office but the printed checks furnished to

him by the bank contained errors and, therefore, he began commingling his office funds with the Trust Account for convenience.

The Respondent discontinued the practice of law in October, 1985, and began working on an assembly line for a public corporation; and has worked himself up to a key employee status position with the company (Corporate Counsel) and is a salaried employee. A public disciplinary action could result in a loss of his employment.

The less severe punishment is recommended because of the Respondent's disciplinary free record of over 22 years in private practice, his public and professional service, and overall good character.

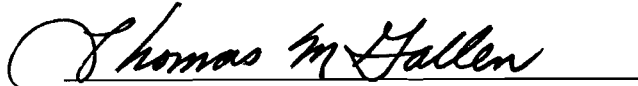
VI. I find the following costs were reasonably incurred by The Florida Bar:

A. Grievance Committee Level Costs	
1. Administrative Costs .....	\$ 150.00
2. Staff Auditor Expenses: (12/19/85)	
a. Time Expended - 20 9/10 hours ..	514.14
b. Mileage .....	35.94
3. Official Court Reporters:	
a. Appearance Fee .....	25.00
b. Transcript Fee .....	62.50
B. Referee Level	
1. Administrative Costs .....	150.00
2. Staff Auditor Expenses: (02/10/87)	
a. Time Expended - 5 hours .....	133.20
b. Mileage .....	30.96
3. Official Court Reporters: (02/10/87)	
a. Appearance Fee .....	40.00
b. Transcript Fee .....	
4. Staff Counsel Expenses: (02/10/87)	
a. Transportation Costs .....	19.88
b. Meals .....	5.40
c. Tolls and Parking .....	2.50
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TOTAL ITEMIZED COSTS TO DATE:	\$ <u>1169.52</u>

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 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 17th day of February, 1987.

  
THOMAS M. GALLEN, Referee

Copies to:

Thomas E. DeBerg, Esq., Asst. Staff Counsel  
John A. Weiss, Esq., Attorney for Respondent  
John T. Berry, Esq., Staff Counsel