

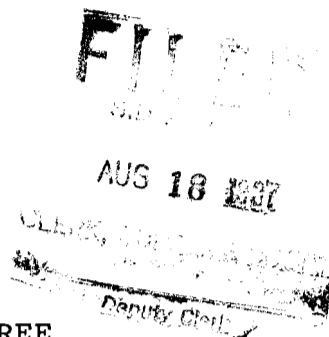
IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

Case No. 70,042  
(TFB No. 13D87H52)

v.

ROGER E. WHIGHAM,  
Respondent.



REPORT OF REFEREE

I. Summary of Proceedings: 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, and Rule 3-7.5, Rules of Discipline, a final hearing was held on July 17, 1987. The enclosed pleadings, orders, transcripts and exhibits are forwarded to the Supreme Court of Florida with this report, and constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: DAVID R. RISTOFF

For the Respondent: HARRY M. HOBBS

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged: After considering all the pleadings and evidence before me, I find the following: At the July 17, 1987, final hearing, the respondent admitted each and every allegation of the Complaint. Accordingly, the facts of the Complaint are incorporated herein to this Report of Referee. It was also stipulated by the parties that no one had ever complained to The Florida Bar concerning the matters herein.

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty: I find that the respondent be found guilty of the following violations of the Code of Professional Responsibility: That ROGER E. WHIGHAM has violated the following Disciplinary Rules:

- (1) Florida Bar Integration Rule, article XI, Rule 11.02(4) money or property entrusted to an attorney for a specific purpose, is held in trust and must be applied only to that purpose);
- (2) DR 9-102(A) (commingling lawyer's funds in trust account);
- (3) Bylaws Section 11.02(4)(c)2.d. (no documentary support was provided for certain disbursements from the trust account as required);
- (4) Bylaws Section 11.02(4)(c)2.e. (cash receipts and disbursement journal in many instances did not contain the identification of the client and/or the reason for which the funds were received or disbursed, as required);
- (5) Bylaws Section 11.02(4)(c)2.f. (information ledger cards not in compliance);
- (6) Bylaws Section 11.02(4)c.3.(i) (bank reconciliations not in compliance with the requirements);
- (7) Bylaws Section 11.02(4)(c)3.a.(ii) (monthly comparisons not prepared);
- (8) Bylaws Section 11.02(4)(c)(3.b) (annual listings were not prepared and/or produced for inspection); and

(9) Rule 11.02 (4) (b) (certain ledger cards were not preserved for six years and/or produced for inspection).

IV. Recommendation as to disciplinary measures to be Applied: I recommend that ROGER E. WHIGHAM be disciplined by suspension from the practice of law for three (3) years and upon reinstatement be barred from having a Trust Account in the practice of law, and restitution, if any, to clients.

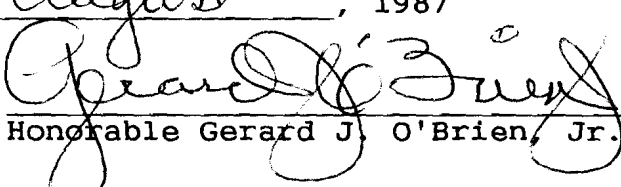
V. Personal History and Past Disciplinary Record: After a finding of guilt and prior to recommending discipline pursuant to Rule 11.06 (9) (a) (4), and Rule 3-7.5 (k) (4), Rules of Discipline, I considered the following personal history and prior disciplinary record of the respondent to wit:

- (1) Age: 55
- (2) Date Admitted to Bar: October 21, 1960
- (3) Prior Disciplinary Record: Public Reprimand and one year probation. See The Florida Bar v. Roger E. Whigham, 476 So.2d 666 (Fla.1985).
- (4) Mitigating Factors:
  - (a) No client has made any complaint.
  - (b) There has been no claim, either by the Florida Bar or by any client; that any client has suffered any loss of any money.

VI. Statement of Costs and Manner in Which Costs Should Be Taxed: I find the following costs were reasonably incurred by the Florida Bar:

A. Grievance Committee Level	
(1) Administrative Costs	\$ 150.00
(2) Audit Expenses	\$2,607.86
B. Referee Level	
(1) Administrative Costs	\$ 150.00
(2) Court Reporting Costs	\$ 272.40
(3) Bar Counsel Expenses	\$ 7.00
(4) Staff Investigator Expenses	\$ 389.71
(5) Audit Expenses	\$ 117.09
Estimated Costs to Date	<u>\$3,693.96</u>

Dated this 14 day of August, 1987

  
Honorable Gerard J. O'Brien, Jr.

Copies furnished to:  
Harry M. Hobbs, Attorney for Respondent  
John T. Berry, Staff Counsel, The Florida Bar  
David R. Ristoff, Branch Staff Counsel

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Respondent.

STATEMENT OF COSTS

COMES NOW, The Florida Bar, by and through the undersigned counsel and states that the costs in this proceeding are as follows:

1. Grievance Committee Level	
a. Administrative Costs .....	\$150.00
b. Audit Costs (Pedro J. Pizarro)	
Time Expended: 101 9/10 hrs ..	2,600.02
Mileage .....	7.84
2. Referee Level	
a. Administrative Costs.....	150.00
b. Court Reporter Expenses	
(Betty M. Lauria) 7/17/87	
Appearance Fee .....	45.00
Transcript Costs (60pgs @ 3.75)	225.00
Postage .....	2.40
c. Branch Staff Counsel Expenses	
(David R. Ristoff) 7/17/87	
Mileage: (20 miles @ .29)....	5.80
Parking .....	1.20
d. Staff Investigator Expenses	
(Martin S. Egan)	
Mileage: (40 miles @ .29) ...	11.60
Time Expended: (25.2 @ \$15.00)	378.01
e. Audit Costs	
(Pedro J. Pizarro)	
Mileage .....	7.87
Time Expended .....	109.22
AMOUNT DUE TO DATE:	<u>\$3,693.96</u>

Dated this 14 day of August, 1987.

David R. Ristoff  
DAVID R. RISTOFF  
Branch Staff Counsel  
The Florida Bar  
Suite C-49  
Tampa Airport Marriott Hotel  
Tampa, Florida 33607  
(813) 875-9821

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Statement of Costs has been furnished by Certified Mail, return receipt requested, No. P436 008 962 to Harry M. Hobbs, Attorney for Roger E. Whigham, Respondent, at his record Bar address of 725 East Kennedy Boulevard, Tampa, Florida 33602; and a copy to John T. Berry, Staff Counsel, The Florida Bar, Ethics and Discipline Department, 600 Apalachee Parkway, Tallahassee, Florida 32301-8226, this 6th day of August, 1987.

  
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DAVID R. RISTOFF