

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

RONALD L. DYKES,

Respondent.

Case No. 70,190

(TFB No. 07A86C59)

07A87C15

07A87C16

07A87C42

FILED
JUN 25 1987
CLERK OF THE COURT
By _____
Clerk

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, a hearing was held on May 21, 1987. The pleadings, Notices, Orders, 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 David G. McGunegle

For the Respondent: No appearance

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, pertinent portions of which are commented on below, I find:

As to all Matters

1. Respondent, Ronald L. Dykes, is and at all times hereinafter mentioned, was a member of The Florida Bar subject to the jurisdiction and Rules of Discipline of the Supreme Court of Florida. He resided in Volusia County during the time of these complaints.

2. By supreme court order dated May 9, 1985, respondent was suspended for six months and thereafter until he proves rehabilitation. The suspension became effective June 10,

1985. See, The Florida Bar v. Dykes, 469 So.2d 741 (Fla. 1985). The respondent remains suspended as of this date.

As to Count One
07A86C59 - Ronald H. Valle

3. Several months prior to his suspension, respondent was retained by Ronald H. Valle who resided out of state relative to a property problem being probated in Volusia County.

4. Article XI, Rule 11.07 of The Florida Bar's Integration Rule then in effect required a suspended attorney to furnish his clients with matters pending in his practice with a copy of the order suspending him and to furnish an affidavit to The Florida Bar listing those clients so contacted. Respondent failed to furnish Mr. Valle with a copy of the suspension order as required although the matter was still pending and needed additional legal work.

5. From the time of the suspension until a complaint was filed with The Florida Bar in April 1986, respondent corresponded several times with Mr. Valle or his New Jersey Attorney relative to the problem. At no time did he indicate his status as a suspended member of The Florida Bar in this correspondence wherein he dispatched various legal documents which he had completed in an attempt to close out the matter. He also failed to include this matter in affidavit he furnished to The Florida Bar dated July 22, 1985.

As to Count II
07A87C15 - The Florida Bar

6. Prior to the suspension, respondent became involved in the estate of Johanna McCool which was being probated in the Circuit Court in Orange County, Florida, Case No. 84-634. He filed his notice of appearance as an attorney on September 12, 1984. He later filed a petition to discharge the original personal representative and to substitute himself as personal representative on December 21, 1984 which was granted the following month. Bond in the amount of \$50,000.00 was required and accomplished in February 1985.

7. Subsequent to respondent's suspension, he continued to perform as the personal representative without an attorney although he signed a Petition to Extend Time for Filing

Final Accounting and Petition for Discharge on July 29, 1986 as attorney for the petitioner and as power of attorney.

8. Respondent failed to apprise Circuit Judge, George N. Diamantis of his suspension status. He also failed to notify his client and/or the heirs of the estate of his status and failed to list this case on the affidavit as required. Further, he failed to furnish a copy of the suspension order as required.

As to Count III
07A87C16 - George Vostal

9. Prior to his suspension, respondent represented Mr. George Vostal in regard to a property problem emanating from an estate being probated in Volusia County. He failed to list this case on the affidavit he submitted to The Florida Bar although legal work remained to be done to complete the matter. Additionally, the respondent had several contacts with Mr. Vostal subsequent to his suspension regarding completion of the case. Although Mr. Vostal was aware of the suspension through the local news media, respondent never provided him with a copy of the order as required.

At to Count IV
07A87C42 - The Florida Bar

10. As set forth in the findings on count II above, respondent continued to act as personal representative in the McCool estate without an attorney. This violated Fla. R. P. G. & P. 5030(b). Subsequent to respondent's appointment as personal representative, his predecessor filed a final interim accounting on February 8, 1985 listing total assets on hand of \$49,754.02 including a cashier's check which was delivered to the respondent in the amount of \$41,954.02.

11. Respondent requested until January 5, 1987 to file a final accounting and petition for discharge on July 29, 1986 and advised the judge by letter that he had completely marshalled the Florida assets of the estate which approximated \$53,000.00. The Judge then entered an order on August 1, 1986 after hearing on an order to close the estate and noted the sworn testimony of the respondent indicated that the assets were \$62,000.00. Respondent was ordered to increase his bond from \$50,000.00 to \$65,000.00 and to refrain from expending or distributing any funds of the estate except for the additional bond premium of \$15,000.00. The judge also extended the period to close the estate forty-five days subject to further court order.

12. Upon respondent's failure to comply with the provisions of the order, an order to show cause was entered on August 22, 1986. On September 3, 1986, a petition was filed for respondent's removal as successor personal representative. By order dated October 3, 1986, respondent was ordered to file a petition for discharge and final accounting on or before October 17, 1986 and to make a final distribution of the residuary estate to the attorney for the heirs. Failure to comply with the order would constitute automatic removal. Respondent filed a petition for discharge dated October 20, 1986 along with a final accounting listing assets to be distributed in the amount of \$53,568.80. He failed to perform as ordered and an additional order compelling delivery of the records and property of the estate was entered after hearing on December 19, 1986 directing the respondent to turn over the records and property to the second successor personal representative on or before January 5, 1987. Respondent refused to comply with the order. He also refused to account for or turn over the property and the records of the McCool Estate. In late January 1987, the \$50,000.00 bond posted in his behalf was forfeited by the insurance company.

13. Respondent had placed the bulk of the liquid assets of the McCool Estate into a money market account at the Florida National Bank in Deland. He also maintained a checking account at that bank. On June 26, 1985, sixteen days after he was suspended by the Supreme Court, respondent closed out both accounts. He utilized over \$50,000.00 to purchase a residence located at 1608 Gaudrey Street in Glenwood, Florida for himself and his wife. \$51,100.35 was paid over to the seller on June 27, 1985. Of that amount, at least \$48,863.74 came directly from the McCool estate. It would appear that the remaining amount did as well. Respondent illegally and unethically utilized estate funds to purchase his own personal residence shortly after his suspension.

III. Recommendation as to whether or not the respondent should be found guilty: As to each count of the complaint I make the following recommendations as to guilt or innocence:

Count I

I recommend the respondent be found guilty of violating the following rules to Article XI of The Florida Bar's Integration Rule: 11.02(3)(a) for conduct contrary to honesty, justice or good morals for misrepresenting his status and 11.10(7) for failing to comply with the notice provisions regarding his suspension by failing to send a copy of the

order to his client and failing to put the matter in the affidavit. I recommend the respondent also be found guilty of violating the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility: 1-102(A)(4) for deceiving his client about his status by failing to advise the client of same and providing him with a copy of the order and 1-102(A)(6) for other misconduct reflecting adversely on his fitness to practice law by failing to comply with the notice requirement.

Count II

I recommend the respondent be found guilty of violating the following rules to Article XI of The Florida Bar's Integration Rule: 11.02(3)(a) for deceiving a judge, client and/or heirs to the estate by failing to advise them of the suspension and furnish a copy of the order and 11.10(7) for failing to list the estate on the affidavit as required. I recommend the respondent also be found guilty of violating the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility: 1-102(A)(4) for deceiving a judge about his status, his client and/or the heirs of the estate in the probate case by failing to to notify them of same and send a copy of the order and 1-102(A)(6) for failing to comply with the notice requirement.

Count III

I recommend the respondent be found guilty of violating Rule 11.10(7) to Article XI of The Florida Bar's Integration Rule for failing to list this matter on the affidavits submitted to The Florida Bar although legal work was still pending. I also recommend he be found guilty of violating Disciplinary Rule 1-102(A)(6) of the Florida Bar's Code of Professional Responsibility for engaging in other misconduct which reflects adversely on his fitness to practice law for failing to comply with the notice requirement regarding his suspension.

Count IV

I recommend the respondent be found guilty of violating Rule 11.02(3)(a) to Article XI of The Florida Bar's Integration Rule for engaging in conduct contrary to honesty, justice or good morals. I also recommend he be found guilty of violating the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility: 1-102(A)(3) for engaging in illegal conduct involving moral turpitude and 1-102(A)(4) for engaging in conduct involving

misrepresentation, fraud, deceit or dishonesty. I also find the respondent's willful refusal to account and turn over the assets and records as ordered following January 1, 1987 violates Rule 3-4.3 of the Rules of Discipline and the following Rules of Professional Conduct: 4-8.4(b) for engaging in a criminal act which reflects adversely on his honesty, trustworthiness or fitness and 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. These recommendations are specifically directed at the respondent's activities in purchasing his residence with estate funds and his subsequent refusal to account throughout 1986 and into 1987.

IV. Recommendation as to Disciplinary measures to be applied:

I recommend that the respondent be disbarred from the practice of law pursuant to 3-5.1(f) for a minimal period of ten years. In making my recommendation, I specifically note the severity of respondent's misdeeds namely misusing estate assets for his own personal purposes. Further, I note the respondent elected to take no part in these proceedings although he had ample notice under the rules. He filed no response to the Requests for Admission which were admitted into evidence and made no appearance at the final hearing. He has offered nothing by way of mitigation. He owed the estate funds the same fiduciary duty of care that any attorney owes client funds which are entrusted to him. His misuse of these monies is amongst the most egregious breaches of the rules that can occur. Accordingly, his status as a member of The Florida Bar should be terminated forthwith. The period of disbarment should be double that set in the rule inasmuch as he has offered nothing in defense of his misconduct.

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

Age: 52

Date admitted to Bar: December 2, 1968

Prior Disciplinary convictions and disciplinary measures imposed therein: As set forth at the outset of this report, the respondent was suspended for six months with proof of rehabilitation required effective June 10, 1985. He remains suspended.

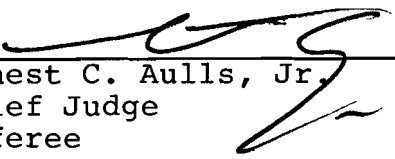
Respondent is married.

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 Costs	
1. Administrative Costs	\$300.00
2. Transcript Costs	\$614.35
3. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 30.64
4. Investigator's Expenses	\$419.82
B. Referee Level Costs	
1. Administrative Costs	\$150.00
2. Transcript Costs	\$ --
3. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 7.00
4. Investigator's Expenses	\$614.29
TOTAL ITEMIZED COSTS	\$2,136.10

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 June, 1987.


Ernest C. Aulls, Jr.
Chief Judge
Referee

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