

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Case No. 71,018
TFB #86-19,236(12B)
(formerly 12B86H76)

v.

R. JUSTIN MARSHALL,
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 February 24, 1988. 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: Richard T. Earle, Jr.

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 respondent has violated The Florida Bar Code of Professional Responsibility as to the following:

The Respondent in his answer admitted all of the allegations of fact in the Complaint. However, he pled, as an affirmative defense and in mitigation, that at the time of the misconduct alleged he was an alcoholic. As a result thereof, he became incompetent to engage in the practice of law and his ability to evaluate his duties as a lawyer in his relationships to his clients and to society diminished drastically. Said alcoholism and lack of judgment was the cause of the conduct alleged. Since August 1986 he has been engaged in a program of rehabilitation, as a result of which he had abstained from the use of alcohol. As a result of his abstention, his judgment has been restored and he is capable of practicing law.

Inasmuch as Respondent admitted the allegations of fact in the Complaint, the court finds that:

1. In early 1985 Respondent began assisting Mrs. Rose Reynolds, a 94-year old woman, in the handling of her financial affairs and providing for her physical needs. Mrs. Reynolds was an alcoholic. Respondent visited with her on numerous occasions on some of which he took alcoholic beverages for both his and her consumption.

2. On or about June 14, 1985, Respondent assisted Mrs. Reynolds in cashing two certificates of deposit totalling approximately \$100,000.00. Said monies were then deposited in a market line account at the Palmetto Bank and Trust Company in the name of Mrs. Reynolds.

3. Mrs. Reynolds delivered to Respondent various checks in substantial sums drawn on said market line account made payable to Respondent. Some of said checks were deposited in Respondent's trust account and some in his firm account. Said checks were designated as "gratuities". Some of said funds were used for the benefit of Mrs. Reynolds and some were used by the Respondent for his personal benefits.

4. In April or May, 1986, Mrs. Reynolds was adjudged incompetent and a guardian was appointed to handle her financial affairs, said guardian being appointed by the Circuit Court of Manatee County in a matter styled, In Re: Guardianship of Rose Reynolds, Incompetent, File No. PH6-509. An accounting by the guardian reflected that the "gratuities" received by the Respondent from Mrs. Reynolds and not used for her benefit amounted to the total sum of \$18,977.93.

5. On or about May 23, 1986, the guardian made a formal demand upon the Respondent to transfer to the guardian within ten days the total sum of \$18,977.93. On or about June 9, 1986, Respondent delivered said sum to the guardian of the property of Mrs. Reynolds.

6. Because of the foregoing, the Florida Bar performed an audit of Respondent's trust account. This audit revealed that:

A. Respondent used client's trust funds for purposes other than the specific purpose for which they were entrusted.

B. Respondent commingled client's funds.

C. Respondent failed to maintain ledger cards.

D. Respondent failed to maintain cash receipts and disbursements.

E. Respondent failed to maintain trust account reconciliations.

Relative to the "affirmative defenses" of the Respondent, the court, based upon the evidence, finds the following facts:

1. Prior to the early 1980s the Respondent was a reasonably skillful lawyer practicing law in Manatee County, Florida, and was respected by the people in his community.

2. At that time and for a long time prior thereto, Respondent had been an alcoholic but had been able to control his use of alcohol so that the same did not affect his practice of law.

3. In the early 1980s the Respondent became progressively less able to control his use of alcohol and he became progressively less competent to engage in the practice of law, while at the same time his ability to evaluate his duties as a lawyer and his relationships to his clients and to society progressively diminished. Respondent knew the difference between right and wrong but his consumption of alcohol so clouded his reasoning and judgment that he did not comprehend the almost certain effect his use of alcohol would have on his clients and himself.

4. While so addicted to the consumption of alcohol and so affected thereby, he became friendly with Mrs. Reynolds, and found visiting with her and assisting her more desirable than practicing law, as a result of which he further neglected his law practice. He allowed Mrs. Reynolds to deliver to him substantial sums of

money which, because of his confused reasoning, he treated as gifts, while at the same time recognizing that said monies should be used for Mrs. Reynolds' benefit.

5. When demand was made upon Respondent for an accounting as to Mrs. Reynolds' monies, Respondent began analyzing his conduct in relation thereto and realized that in accepting said monies and using the same for his own benefit, he had behaved in an entirely inappropriate manner. He furnished Judge Logan an accounting reflecting that he held \$18,977.93 of Mrs. Reynolds' money and promptly paid the same to the guardian of her property. As a further result, he promptly advised the Florida Bar of the problem and requested an audit of his accounts so as to ascertain the full nature and extent of his transgressions.

6. As a further result of the demand for an accounting, Respondent formed a firm resolution to desist from the consumption of alcoholic beverages. He promptly sought the assistance of Florida Lawyers Assistance, Inc. and on August 15, 1986, entered into a rehabilitation contract with said corporation. He immediately thereafter underwent an abuse rehabilitation program at the Veterans Hospital in Tampa, Florida. Upon completion of that program, he joined Alcoholics Anonymous. He has since been monitored by Florida Lawyers Assistance, Inc. and has generally followed the rehabilitation program and has regularly followed the AA program.

7. He reported to Florida Lawyers Assistance Inc that in August and December, 1987 and early in February, 1988 for relatively short periods of time, he failed to abstain from the use of alcoholic beverages contrary to the tenets of Alcoholics Anonymous and the rehabilitation contract with Florida Lawyers Assistance, Inc.

8. The Referee finds that Respondent's misconduct was due to alcohol and resulting excessive use of alcohol over a long period of time which affected his reason and judgment.

9. The court further finds that the Respondent recognizes the nature of his misconduct, he is remorseful therefore and fully intends to abstain from the use of alcohol in the future. However, the referee recognizes that he has on three occasions between August 1987 and February 1988 failed in his efforts to so abstain and that for the safety of the Bench, the Bar and the public, he should be suspended from the practice of law for a period of 18 months and until he can demonstrate that he is rehabilitated by demonstrating that he has abstained from the use of alcohol during said period. Such a suspension is not in the nature of punishment but the referee finds that it is necessary for the protection of the Bench, the Bar and the public.

10. The Referee further finds that the Respondent is not resentful toward the Florida Bar but instead is grateful for all actions taken by it and that he has fully cooperated with the Bar in its endeavors.

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 R. Justin Marshall has violated the following Disciplinary Rules:

Integration Rule 11.02(4) (client's trust funds used for purposes other than the specific purpose of which entrusted); DR 9-102(A) (commingling of client's funds); Bylaws Section 11.02(4) (c) 2.f. (11.02(4) (c) 2.d. before June 30, 1984) (failure to maintain ledger cards); Bylaws Section 11.02(4) (c) 2.e. (failure to maintain cash receipts and disbursements); Bylaws Section

11.02(4)(c) 4.a and Bylaws Section 11.02(4)(c) 3 (failure to maintain trust account reconciliations); and DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-102(A)(5) (conduct prejudicial to the administration of justice) and DR 1-102(A)(6) (conduct that adversely reflects on his fitness to practice law).

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that R. Justin Marshall be disciplined by an eighteen (18) month suspension from the practice of law and placed on probation during the eighteen (18) month suspension. Respondent shall also be responsible for the costs incurred by The Florida Bar. The terms of the probation shall include the following:

Respondent shall continue his contract with Florida Lawyers Assistance, Inc. (FLA). Respondent shall continue to attend and participate in Alcoholics Anonymous (AA) and obtain a sponsor therein. Further, respondent shall be required to attend a twenty-eight (28) day in-house alcoholic treatment program, as recommended by (FLA).

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

(1) Age: 64

(2) Date Admitted to Bar: Feb. 7, 1950

(3) Prior Disciplinary Record:

Supreme Court Case #66,539, TFB #84-08,350; July 1, 1983 Private Reprimand.

TFB #85-13,333; July 11, 1984 Private Reprimand at grievance committee level.

(4) Mitigating Factors:

Respondent made restitution of moneys in question. Respondent suffered from alcoholism during this time period.

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

See attached Statement of Costs

Dated this 23rd day of March, 1988.



Vincent E. Giglio
Referee

Copies furnished to:

Richard T. Earle, Jr.
Counsel for Respondent

David R. Ristoff
Branch Staff Counsel
The Florida Bar

John T. Berry
Staff Counsel
The Florida Bar

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

CASE NO. 71,018
(TFB NO. 86-19,236 (12B))
(FORMERLY 12B86H76)

v.

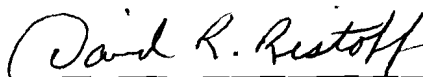
R. JUSTIN MARSHALL,
Respondent.

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. Staff Investigator Expenses:		
48.1 hrs. @ \$15.00		721.50
254 miles @ \$.28		71.12
c. Branch Auditor Expenses:		
Time Expended (32.8 hrs) ...		852.11
Travel Expenses		59.67
d. Branch Staff Counsel Expenses:		
90 miles @ \$.28		25.20
Tolls		2.00
2. Referee Level		
a. Administrative Costs.....		150.00
b. Court Reporter Expenses:		
Betty M. Lauria (10/15/87)		
Appearance Fee		30.00
c. Court Reporter Expenses:		
Betty M. Lauria (2/24/88)		
Appearance Fee		60.00
Transcript		329.00
Postage		2.40
d. Branch Staff Counsel Expenses:		
20 miles @ \$.29		5.80
Parking		3.40
		<u>\$2,462.20</u>

DATED this 12th day of March, 1988.



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 the foregoing Statement of Costs has been furnished by regular U. S. Mail to Richard T. Earle, Jr., Attorney for R. Justin Marshall at 150 Second Avenue North, Suite 1220, Bank of Florida Building, St. Petersburg, Florida 33701, and a copy to John T. Berry, Staff Counsel, The Florida Bar, 600 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 22nd day of March, 1988.



DAVID R. RISTOFF