

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

CASE NO. 71,830
TFB NO. 88-10,198 (20A)

v.

JOHN J. SCHILLER,
Respondent.

FILED
SID. I. WHITE

JUL 5 1988

REPORT OF REFEREE

CLERK, SUPREME COURT
Deputy Clerk

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.5, Rules of Discipline, a final hearing was held on April 8, 1988. A disciplinary hearing was held on June 1, 1988. The enclosed pleadings, notices, motions, or orders 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: Thomas E. DeBerg

For The Respondent: John J. Schiller

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

Following notification that a grievance had been filed against him and that a trust account audit might be sought, respondent voluntarily went to The Florida Bar Association and disclosed that there was a deficit in his trust account which he estimated to be approximately \$10,000.00. Prior to meeting with The Florida Bar, respondent had deposited \$9,000.00 of his personal funds towards that deficit.

An audit of respondent's trust account, for the period from June 1982 through October 30, 1987, disclosed deficits throughout the period audited. In 1983 and until approximately January 6, 1986 the shortage was less than \$1,000.00. From January 6, 1986 through September 21, 1987 the deficit increased steadily to a high of \$29,292.23 on September 21, 1987. Following a determination by The Florida Bar auditor of the exact amount of deficit, respondent borrowed the money to cover the entire shortage.

Respondent testified that he had been aware since approximately January 1986 that he was writing checks on the trust account without authorization to do so, and that he was using his clients' trust monies for his own purposes. Testimony suggests that this money was used primarily for respondent's office expenses.

With respect to the source of the monies misappropriated, respondent testified that he represented clients in personal injury actions, then with client authorization withheld monies to pay medical providers. Rather than disbursing to all the doctors or hospitals, he converted some of the money withheld to his own use. He rationalized to himself that since he had agreed to protect the bills, he alone was personally responsible to the providers if they made a claim for the funds.

He convinced himself that clients would not be harmed. On a few occasions he deposited a nominal amount towards the deficit, an amount which he felt he could afford at the time.

I find that respondent knowingly converted to his own use an amount in excess of \$29,000.00. Although he was aware of his use of client trust money and the deficit in his trust account, in 1986 and 1987 he signed and submitted to The Florida Bar a statement that his trust accounts were in substantial compliance with rules governing attorneys' trust accounts.

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty: I make the following recommendation as to guilt or innocence:

By reason of the foregoing, respondent John J. Schiller violated the following Rules of Discipline: Rule 5-1.1 (Integration Rule 11.02(4) before January 1, 1987) (Utilization of client trust funds for purposes other than those for which they were entrusted); Rule 5-1.2(b)(5)a. (Bylaws Section 11.02(4)(c)2.e.(i) Before January 1, 1987 and Integration Rule 11.02(4)(c)2.c. before July 1, 1984) (Failure to adequately identify all disbursements from trust accounts); Rule 5-1.2(b)(5) (Bylaws Section 11.02(4)(c)2.e. before January 1, 1987) (Failure to maintain and/or produce for inspection cash receipts and disbursements journal); Rule 5-1.2(b)(6) (Bylaws Section 11.02(4)(c)2.f. before January 1, 1987 and Integration Rule 11.02(4)(c)2.d. before July 1, 1984) (Failure to maintain separate ledger cards for all clients); Rule 5-1.2(c)(1), (2), and (3). (Bylaws Section 11.02(4)(c)3.a., b., and c. before January 1, 1987 and Integration Rule 11.02(4)(c)4.a. before July 1, 1984) (Failure to prepare trust account reconciliations and/or produce said reconciliations for inspection); Rule 4-1.15(a) (DR 9-102(A) before January 1, 1987) (Commingling); Rule 4-1.15(b) (DR 9-102(B)(4) before January 1, 1987) (Failure to promptly pay or deliver to a client trust funds which the client is entitled to receive); DR 1-102(A)(3) (Engaging in illegal conduct involving moral turpitude); DR 1-102(A)(6) (Engaging in conduct adversely reflecting on his fitness to practice law) (Rule 4-8.4(b)(c)).

IV. Recommendation as to Disciplinary Measure to Be Applied: I recommend that respondent be suspended from the practice of law for a period of twenty-four (24) months and thereafter until he proves rehabilitation; that prior to reinstatement respondent retake and successfully pass the portion of The Florida Bar examination on legal ethics and in addition successfully complete a CLE or Bar trust accounting course; that upon readmission to the Bar he be placed upon one (1) year probation, with quarterly reports of his trust account being completed by a CPA and submitted to The Florida Bar. In addition, prior to readmission respondent should be required to account for all trust funds currently in his possession and show that they have been disbursed to the appropriate parties. It is further recommended that the respondent pay all costs incurred by The Florida Bar in these disciplinary proceedings.

V. Personal History and Past Disciplinary Record: After finding of guilt and prior to recommending discipline, 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: 41
- (2) Date Admitted to Bar: 11/26/80
- (3) Respondent is a sole practitioner in Ft. Myers, Florida.

(4) The following factors were considered to be mitigating: Respondent has no prior history of discipline. Once aware that The Florida Bar was seeking to audit his trust account, he immediately disclosed what he felt to be the amount of misappropriation, and prior to meeting with the Bar Association he undertook to replace the estimated deficit. By the time of the final hearing, he had replaced in his trust account all those monies misappropriated. Respondent seems genuinely remorseful, and appears to be a good candidate for rehabilitation. There is no indication that any clients were directly damaged by the misappropriations, nor were any complaints filed by clients against the respondent. Respondent has undertaken to pay trust funds to those providers who are entitled to receive them.

(5) Aggravating: Respondent knowingly misappropriated monies withheld from settlement checks and due to providers to whom, at least in some cases, he had provided letters of protection. Respondent on two (2) occasions signed statements to The Florida Bar Association says that he was in substantial compliance with rules governing trust accounts when in fact he knew that there were deficits within his accounts.

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		3,198.79
B. Referee Level		
(1) Administrative Costs		150.00
(2) Staff Counsel Expenses		235.53
(3) Audit Expenses		1,249.84
(4) Court Reporting Costs		418.70
(5) Judge's Time and Expense		87.20
ESTIMATED COSTS TO DATE	\$	<u>5,490.06</u>

Dated this 28th day of June, 1988.


THE HONORABLE WILLIAM L. HENDRY
Referee

Copies furnished to:

John J. Schiller, Respondent
John T. Berry, Staff Counsel, The Florida Bar
Thomas E. DeBerg, Assistant Staff Counsel