

FILED

SID J. WHITE

APR 9 1992

CLERK SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar,
Complainant,

vs.

Richard M. McIver,
Respondent.

Supreme Court Case
No. 76,903

The Florida Bar File
No. 87-24,411(11D)

AMENDED REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings pursuant to Rules 3-7.2 and 3-7.9 of the Rules Regulating The Florida Bar, a Final Hearing was held on September 23, 1991 in Fort Lauderdale, Broward County, Florida. All of the pleadings, notices, motions, orders, transcripts and exhibits are forwarded with this Report and constitutes the Records of this Case.

The following attorneys acted as counsel for the parties:

For The Florida Bar: Warren Jay Stamm

For the Respondent: David Popper

Respondent was temporarily suspended from the practice of law by Order of the Supreme Court effective June 3, 1989. Respondent has stood suspended since that date.

After finding of probable cause by Grievance Committee "11D", The Florida Bar filed a formal Complaint with the Supreme Court of Florida on November 5, 1990 wherein it was alleged that Respondent, Richard McIver, misappropriated client monies and engaged in

multiple trust accounting violations evidenced by shortages in Respondent's trust account and improper allocation of client funds.

This Referee was appointed to hear this matter and Final Hearing was scheduled for September 23, 1991.

At hearing, both sides presented testimony and evidence in support of their respective positions and argued appropriate discipline to be imposed.

Having reviewed the record of these proceedings, I find the Respondent guilty and the position of The Florida Bar as to the term of discipline for a five (5) year disbarment is supported by the evidence and in the best interest of the public.

11. Specific Findings of Fact as to Each Item of Misconduct of which the Respondent is charged:

1. That Respondent is and at all times hereinafter mentioned was, a member of The Florida Bar albeit suspended from the practice of law by Order of the Supreme Court effective June 4, 1989. Subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. That during the period of November 1982 through November 1983, Respondent maintained a trust account, trust account number 0100629000, at First American Bank, Miami, Florida.

3. That during the period of November 1982 through November 1983, Respondent maintained an account on behalf of the Estate of Achilles Spalla, account number 10101048400, at First American Bank, Miami, Florida.

4. That The Florida Bar's Staff Auditor, Carlos J. Ruga

conducted an audit of Respondent's bank accounts, based upon records obtained from Respondent's bank.

5. That Mr. Ruga's audit revealed trust accounting violations, evidence of shortages in Respondent's trust account and improper allocation of client funds.

6. That there still exists deficiencies and inadequacies in Respondent's trust accounts to cover all client liabilities.

11. **Recommendation as to guilt.**

I hereby find Respondent guilty of all violations charged by The Florida Bar. I specifically find that Respondent has violated Rule 5-1.1 (trust accounts); 5-1.2(b) (minimum trust accounting records); 5-1.2(c) (minimum trust accounting procedures) of the Rules Regulating trust accounts and Rule 4-1.15(b) (safekeeping of property) of the Rules of Professional Conduct; Rule 9-102 (a) and (b) (preserving identity of funds and property of the client) of the Code of Professional Responsibility; and Rule 11.02(4) (trust funds and fees) of the Integration Rules of The Florida Bar.

IV. **Recommendation as to Disciplinary measures to be imposed:**

I recommend the imposition of the following disciplinary terms:

That Respondent be disbarred from The Florida Bar for a period of five (5) years nunc pro tunc from May 4, 1989. Further, Respondent shall meet all of the requirements for rehabilitation **and** readmission **as** set out in the Rules Regulating The Florida Bar.

V. Statement of costs and manner in which costs should be taxed:

I find that **the** following costs **were** reasonably incurred by The Florida Bar and should be assessed against Respondent to be payable within thirty (30) days after the Supreme Court's acceptance of this Report:

Investigator's Time:	\$ 658.80
Investigator's Cost:	\$ 14.40
Staff Auditor:	\$4,177.52
Bar Counsel Traveling	\$ 758.70
Transcripts:	\$ 370.53
Deposition of Frank Sulligan	
Final Hearing	
Hearing - Special Setting	
Duplicating Casts of Bank	
Records:	\$ 664.75
Ocean Bank	
First American Bank	
TOTAL:	\$6,643.90

It is recommended **that the** foregoing **costs be** assessed **against** Respondent. It is further recommended that execution issue with interest at a rate of 12% to accrue on all **costs** not **paid within** thirty (30) days of the entry of **the** Supreme Court's final order, unless the time for payment is extended by the Board of Governors of The Florida Bar.

Dated this 16 day of March 1992.


JUNE LARAN JOHNSON, REFEREE

Copies furnished to:

Warren Jay Stamm, Esquire
David Popper, Esquire

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The following attorneys **acted** as counsel for the parties:

For The Florida Bar: **Warren Jay Stamm**

For the Respondent: David Popper

Respondent was temporarily suspended from the practice of law by **Order** of the Supreme Court effective June 3, 1989. Respondent has stood suspended since that date.

After finding of probable **cause** by Grievance Committee "11D", The Florida Bar filed a formal Complaint with the Supreme Court of Florida on November 5, 1990 wherein it was alleged that Respondent,

Richard McIver, misappropriated client monies and engaged in multiple trust accounting violations evidenced by shortages in Respondent's trust account and improper allocation of client funds.

This Referee was appointed to hear this matter and Final Hearing was scheduled for September 23, 1991.

At hearing, both sides presented testimony and evidence in support of their respective positions and argued appropriate discipline to be imposed.

Having reviewed the **record** of these proceedings, I find the Respondent guilty and the position of The Florida Bar as to the term of discipline for a five (5) year disbarment is supported by the evidence **and** in the best interest of the public.

II. Specific Findings of Fact as to Each Item of Misconduct of which the Respondent is charged:

1. That Respondent is and at all times hereinafter mentioned was, a member of **The** Florida Bar albeit suspended from the practice of law by Order of the Supreme Court effective June 4, 1989. Subject to the jurisdiction and disciplinary **rules** of the Supreme Court of Florida.

2. That during the period of November 1982 through November 1983, Respondent maintained **a** trust account, trust account number 0100629000, at First American Bank, Miami, Florida,

3. That during **the** period of November 1982 through November 1983, Respondent maintained an account on behalf of the Estate of Achilles Spalla, account number 10101048400, at First American Bank, Miami, Florida.

4. That The Florida Bar's Staff Auditor, Carlos J. Ruga conducted an audit of Respondent's bank accounts, based upon records obtained from Respondent's bank.

5. That Mr. Ruga's audit revealed numerous trust accounting violations, evidence of shortages in Respondent's trust account and improper allocation of client funds.

6. That as a result of Respondent's commingling of various estate assets, Respondent was able to make payments to the beneficiaries of the estate of Achilles Spalla due to inappropriately allocated funds being used from two other estates, the Estate of Simon Blasek and the Estate of Dominic DeFrancesco.

7. That **as** a result of tracing payments out of Respondent's trust account, it **was** determined that Respondent knowingly used a substantial sum of client monies to fund a venture known as the Copa Night Club.

8. That the Copa Night Club is **also** known as Tymac Enterprises, Inc., a corporation of which Respondent is the president and treasurer.

9. That Respondent has failed to provide trust accounting records, information or sufficient explanation regarding the Estates of Clinton Bowen Agee, Kathleen Pavlor, Joseph F. Grass and the Guardianships of Simon Blasek and Ronald Hassell,

10. That there still exists deficiencies and inadequacies in Respondent's trust accounts to cover all client liabilities.

11. Recommendation as to guilt.

I hereby find Respondent guilty of all violations charged by The Florida Bar. I specifically find that Respondent has violated Rule 5-1.1 (trust accounts); 5-1,2(b) (minimum trust accounting records); 5-1,2(c) (minimum trust accounting procedures) of the Rules Regulating trust accounts and Rule 4-1,15(b) (safekeeping of property) of the Rules of Professional Conduct; Rule 9-102 (a) and (b) (preserving identity of funds and property of the client) of the Code of Professional Responsibility; and **Rule 11.02(4)** (trust funds and fees) of the Integration Rules of The Florida Bar.

IV. Recommendation as to Disciplinary measures to be imposed:

I recommend the imposition of the following disciplinary terms:

That Respondent be disbarred from The Florida Bar for a period of five (5) years. Further, Respondent shall meet all of the requirements for rehabilitation and readmission as set out in the Rules Regulating The Florida Bar.

V. Statement of costs and manner in which costs should be taxed:

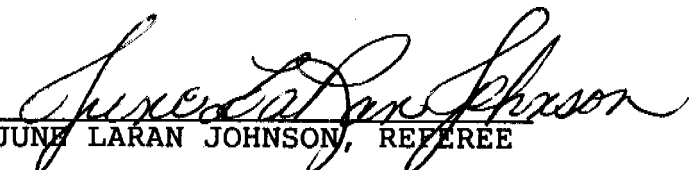
I find that the following costs were reasonably incurred by The Florida Bar and should be assessed against Respondent to be payable within thirty (30) days after the Supreme Court's acceptance of this Report:

Investigator's Time:	\$ 658.80
Investigator's Cost:	\$ 14.40
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Transcripts:	\$ 265.68
Deposition of Frank Sulligan	
Final Hearing	
Duplicating Costs of Bank	
Records:	\$ 664.75
Ocean Bank	
First American Bank	_____
TOTAL :	\$6,539.05

It is recommended that the foregoing costs be assessed against Respondent. It is further recommended that execution issue with interest at a **rate** of 12% to accrue on all costs not paid within thirty (30) days of the entry of the Supreme Court's final order, unless the **time** for payment is extended by the Board of Governors of The Florida **Bar**.

Dated this 7 day of November, 1991.


 JUNE LARAN JOHNSON, REFEREE

Copies furnished to:

Warren Jay Stamm, Esquire
 David Popper, Esquire

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