

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED

SID J. WHITE

OCT 9 1991

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

THE FLORIDA BAR,
Complainant,

Case No. 77,325
TFB No. 87-25,534 (12B)

v.

KEVIN RULE,
Respondent.

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 Regulating The Florida Bar, a Final Hearing was held on August 27, 1991. Any pleadings, notices, motions, 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: Pro se

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 the following:

1. Respondent is, and at all times mentioned herein was, subject to the jurisdiction of The Supreme Court of Florida.
2. In or about August, 1985, Respondent drafted a Will for Walter Klugge.
3. Respondent was named a beneficiary in the Will. Respondent's sister was also named a beneficiary in the Will.
4. Mr. Klugge died on or about April 26, 1986.
5. Pursuant to the Last Will And Testament of Mr. Klugge, Respondent took possession of a Concorde wristwatch valued at \$2500.00, a gold coin valued at \$500.00, a gold ring valued at \$900.00 and a pen and pencil set valued at \$100.00.
6. A major asset of the estate was a warehouse in Sarasota.
7. In or about April, 1989, Respondent negotiated a sale of the warehouse. Respondent paid himself a \$15,000.00 fee from the proceeds of the sale of this property. Respondent had previously taken a fee of \$5,000.00. Respondent did not petition the court for any portion of the \$20,000.00 in fees.

8. On or about February 6, 1990, The Florida Bar initiated an audit of Respondent's trust account records. The audit covered the period from October, 1987 through February, 1990.

9. The examination of Respondent's trust account revealed the following:

- a) Funds belonging to Sarasota Warehouse, Highland Apartments, and Thomas-Blough-Fogarty were handled through Respondent's trust account. Respondent informed The Florida Bar that these were business ventures which he managed and/or in which he had an ownership interest, and constitutes commingling.
- b) A shortage existed in Respondent's trust account which indicated a use of clients' funds for purposes other than the specific purpose for which they were entrusted to Respondent.
- c) A cash receipts and disbursements journal was not available for inspection.
- d) Ledger cards were not available for inspection.
- e) Monthly comparisons and annual listings were not available for inspection.
- f) The bank had not been authorized to notify The Florida Bar in the event that any trust check was returned due to insufficient funds or uncollected funds, absent bank error.

10. Respondent was not in compliance with the minimum trust accounting requirements regulating The Florida Bar.

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

I find Respondent guilty as to the following violations of the Rules of Professional Responsibility (Conduct Prior to January 1, 1987):

Disciplinary Rule 5-101(A) (a lawyer shall not accept employment if the exercise of his professional judgment will be or reasonably may be affected by his own financial, business, property or personal interests); Disciplinary Rule 6-101(A) (a lawyer shall not handle a legal matter he knows or should know that he is not competent to handle); Disciplinary Rule 6-101(A)(2) (a lawyer shall not handle a legal matter without preparation adequate in the circumstances); Disciplinary Rule 6-101(A)(3) (a lawyer shall not neglect a legal matter); and the

following Rules of Professional Conduct, (conduct after January 1, 1987) Rule 4-1.1 (a lawyer shall provide competent representation to a client); Rule 4-1.15(a) (Disciplinary Rule 9-102(A) (conduct prior to January 1, 1987) (Commingling); Rule 5-1.1 (Integration Rule 11.02(4)), (conduct prior to January 1, 1987) (The use of clients' funds for purposes other than the specific purpose for which they were entrusted to the lawyer); Rule 5-1.2(b)(5) (Bylaws Section 11.02(4)(c)2.e., (conduct prior to January 1, 1987) (A cash receipts and disbursements journal not available for inspection); Rule 5-1.2(b)(6) (Bylaws Section 11.02(4)(c)2.f., (conduct prior to January 1, 1987) (Ledger cards not available for inspection); Rule 5-1.2(c)(1) b. and (2) (Bylaws Section 11.02(4)(c)3.a.ii and (b) (conduct prior to January 1, 1987) (Monthly comparisons and annual listings not available for inspection); Rule 5-1.2(c)(4) (Bylaws Section 11.02(4)(c)3.d., (conduct prior to January 1, 1987) (The bank was not authorized to notify The Florida Bar in the event that any trust check was returned due to insufficient funds or uncollected funds).

IV. Recommendation as to Disciplinary Measures to Be Applied:

I recommend that Respondent be disciplined by a six (6) month suspension from the practice of law in the State of Florida and assessed the costs of the disciplinary proceedings as set forth in paragraph VI, herein.

V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Year of Birth: 1955

Date Admitted to Bar: 5-13-82

Prior Disciplinary convictions and Disciplinary Measures Imposed Therein: None

Aggravating Factors: None

Mitigating Factors: Absence of a prior disciplinary record; full and free disclosure to disciplinary board and cooperative attitude; remorse.

IV. 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. Court Reporter Appearance Fee	\$ 35.00
2. Transcript Costs 8/29/89	\$ 91.45
3. Bar Counsel/Branch Staff Counsel Travel Costs 8/29/89	\$ 29.00
4. Auditor Time: 119 5/10 hours	\$3,832.37
5. Auditor Travel Expense	\$ 233.12
B. Referee Level Costs	
1. Court Reporter Appearance Fee	\$ 37.50

2. Transcript Costs	\$ 48.75
3. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 90.00
C. Administrative Costs (Rule 3-7.6(k)(1))	\$ 500.00
TOTAL ITEMIZED COSTS:	\$4,897.19

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 4th day of October, 1991.

Robert T. Shafer, Jr.
Referee

Copies:

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