

IN THE SUPREME COURT OF FLORIDA  
(Before A Referee)

**FILED**

SID J. WHITE

JUN 1 1993

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

The Florida Bar,  
Complainant,  
v.  
Richard Paul Condon  
Respondent.

CASE NO. 77,463  
78,723

**AMENDED 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, hearings were held on the following dates: January 27, February 6, February 7, March 6, March 13, April 10, July 13, and November 23, 1992 and January 8, 1993.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Thomas E. DeBerg ✓  
For The Respondent: Donald A. Smith, Jr. ✓

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

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This case involved an incident in January, 1990 when Respondent, on behalf of his client, Olga Austin, negotiated a settlement with Waste Aid System to accept \$600.00 for a property claim. When this settlement was received, Mr. Condon deposited the check into his general account. Even though \$400.00 was ultimately paid to Ms. Austin (July, 1990) the fact that these funds were not placed in a trust (escrow) account is per se a violation of Rule 4-1.15(a). The facts also show that Mr. Condon also used this \$600.00 while in his general account for purposes not related to his clients interest, thus violating Rule 5-1.1. As a result of this complaint (and others) a very thorough audit was performed of Mr. Condon's bank accounts. It is my opinion that Rule 4-8.4(c) was violated by Mr. Condon as a result of his misuse of these funds. The audit reveals and I also find that the following Rules were violated by Mr. Condon: Rule 5-1.1(d) - No IOTA Program; Rule 5-1.2(b)(4) - trust account support documents; Rule 5-1.2(b)(5) - trust account disbursement journal; Rule 5-1.2(b)(b) - trust account ledgers; Rule 5-1.2(c)(1)(2) and (3) - 6 years of bank reconciliations, money and listings; Rule 5-1.2(c)(4) - trust account insufficient fund notice.

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**Count 1**

The evidence shows that Mr. Condon received a check from Woolf Printing for the purpose of trying to settle or partially pay certain Hillsborough County personal property taxes.

It is uncontroverted that these funds were placed in Respondent's general account and used for other purposes. Respondent also stated in writing that these funds were being held in escrow, when, in fact, it was known to Mr. Condon that this was not true. Therefore, Mr. Condon's actions violated Rule 5-1.1 and 4-8.4(c).

### Count II

This count deals with Mr. Condon's actions at a deposition. While his actions were unprofessional, they were not criminal. They were, however, prejudicial to the administration of justice and he thus violated Rule 4-8.4(d).

### Count III

This count refers to an estate the Respondent was handling, the Estate of Edna Sherlock. Mr. Condon was retained by the daughters of the deceased, who were co-personal representatives. Mr. Condon acknowledged that he could not adequately administer this estate and he retained co-counsel to assist him in this regard. However, Mr. Condon opened the estate and was responsible to the co-personal representatives for his actions. The evidence was uncontroverted that the estate was open from July, 1986 until well into 1989. Based on all testimony including Mr. Condon's admissions I find that Rule 4-1.3 was violated by Mr. Condon's lack of diligence in administering this estate. The audit of Respondent's general and trust accounts indicated that estate funds were deposited in Respondent's general account when the trust account should have been used. This act violated Rule 5-1.1 as it relates to the conversion and use of funds that should have been placed in trust but were not.

### III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty:

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I recommend that the respondent be found guilty and specifically that he be found guilty of the following violations:

- A. Rule 4-1.15(a)
- B. Rule 5-1.1
- C. Rule 4-8.4(c)
- D. Rule 5-1.1(d)
- E. Rule 5-1.2(b)(4)
- F. Rule 5-1.2(b)(5)
- G. Rule 5-1.2(b)(6)
- H. Rule 5-1.2(c)(1)(2) and (3)
- I. Rule 5-1.2(c)(4)

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Count I

I recommend that the respondent be found guilty and specifically that he be found guilty of the violation of Rule 4-8.4(c) and 5-1.1.

Count II

I recommend that the respondent be found guilty and specifically that he be found guilty of the violation of Rule 4-8.4(d).

Count III

I recommend that the respondent be found guilty and specifically that he be found guilty of the violation of Rule 4-1.3 and 5-1.1.

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the Respondent be suspended for a fixed period of six (6) months and then thereafter until Respondent shall prove rehabilitation and for an indefinite period until Respondent shall: (1) pay the costs of these proceedings; (2) receive medical clearance from his treating physician that he is competent to practice law in this state, said report to include any medications Respondent is required to take on a regular basis and any on-going/continuing treatment/therapy Respondent is required to undergo and (3) complete a Florida Bar Course in law office management and trust accounting, all as provided in Rule 3-5.1(e). Upon re-commencing the practice of law Respondent shall, for an indefinite period of time, be required to submit quarterly reports indicating compliance with all rules involving trust accounts and informal summary audits of said accounts.

V. Personal History and Past Disciplinary Record: After a finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 49

Date admitted to Bar: November 13, 1970

Prior disciplinary convictions  
and disciplinary measures

imposed therein: None

Other personal data: It would appear that Respondent has been and is being treated by Dr. Rawlings for depression and anxiety and this is recognized as a mitigating factors in this case. But for this factor, the recommendation would have been much more severe. These impairments caused Respondent personal, emotion and marital problems.

Additional mitigating factors present in this case: 1) Absence of prior disciplinary action  
2) Remorse 3) Continuing medical treatment.

Additional aggravating factors found include: 1) Respondent's lengthy time of practice i.e. 22 years, and therefore he should know what funds belong in trust. 2) He should be able to better manage a limited case load. 3) Apparent lack of cooperation with Bar auditors.

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

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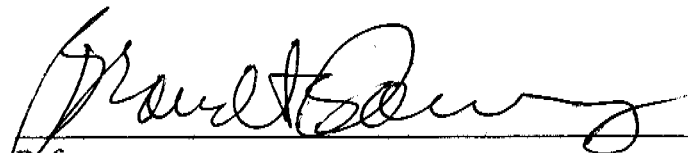
Administrative Cost	500.00
Staff Auditor Expenses	2,000.00
Travel	78.10
Court Reporter Costs (includes appearance, transcript and postage)	2,664.34
Witness Fees (includes travel & meal)	75.75
Staff Counsel Transportation Costs	<u>90.32</u>
Total Itemized Costs	\$5,408.51

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Administrative Costs	500.00
Staff Auditor Expenses	3,000.00
Travel	40.06
Court Reporter Costs (includes appearance, transcript and postage)	3,794.01
Staff Counsel Transportation Costs	104.32
Misc. Expenses (Bank Charges)	<u>993.70</u>
Total Itemized Costs	8,432.09

Total Costs - Both Cases \$13,840.60

Dated this 4th day of May, 1993.

  
Referee

**Certificate of Service**

I hereby certify that a copy of the above report of referee has been served on Thomas E. DeBerg, Assistant Staff Counsel, at The Florida Bar, Suite C-49, Tampa Airport Marriott Hotel, Tampa, Florida, 33607 Donald A. Smith, Jr., Counsel for Respondent, at 109 Brush Street, Suite 150, Tampa, Florida, 33602 John T. Berry, Staff Counsel, at The Florida Bar, Legal Division, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 4<sup>th</sup> day of May, 1993.

A handwritten signature in cursive script, appearing to read "Paul H. DeBerg", is written over a horizontal line.