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MAY 11 1994

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a referee)

THE FLORIDA BAR,

Complainant,

Case No. 82,114
[TFB Case No.93-30,140(09B)]

v.

RAYMOND E. CRAMER,

Respondent,

*Resp. initial
Brf.*

APPELLATE ARGUMENT

I have asked for review of the referee's report because all the report did was rubber-stamp the recommendations of the Bar. The facts are not disputed in this case as they were stipulated to by the parties involved, however; the application of those facts are disputed. I am not treating this as the typical appellate brief and hope I am not penalized for it, but the findings of the referee regarding my honesty disturb me greatly and are not based on any facts

First and foremost, I would like to stress that no client lost one penny of money nor was any rights of any clients affected by any of my actions. I would also point out that all the facts were obtained from me voluntarily and had it not been for my candor and co-operation, many of the alleged violations would not have been known by the Bar.

The first issue that concerns me is the violation of rule 3-4.3 for engaging in conduct that is contrary to honesty and justice

and rule 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. The only basis for this conclusion will have to be concluded from the findings of facts of the referee's report. Since the referee has chosen not to attach specific facts to specific violations, I will therefore assume that the facts to sustain these violations are contained in paragraphs (2), (3), and (5), of the report. Paragraphs (2) and (3) were stipulated and are not disputed, but paragraph (5) is a conclusion wrongfully reached by the referee. I might also add that counsel for the Bar drafted the report for the referee the way they wanted it.

Paragraph (5) states that I intentionally tried to deceive the IRS, which is blatantly wrong, for I was at all times talking with the agent and trying to work out some agreement. I had not given the IRS any false information or any information regarding my financial condition at that time nor had they asked for any. My only concern was that they might garnish my operating account without my knowledge and would leave checks unpaid. I could have easily put the cash in my desk for the same result and would this have been a violation? I think not. Let me point out that no garnishment was issued by the IRS at that time or any other time. There was NO intent to deceive the IRS. Paragraph (5) also states that that I "intended to protect funds from any lien" which is inaccurate as a matter of law, as the filing of a tax lien with the clerk of the circuit court, as was done, does not create a lien on personal property, therefore this conclusion is erroneous.

I would like for the sake of reality to offer the following

hypothetical. If a client came into your office and told you that he had just recieved a intention to levy from IRS on his business, that he had funds in his accounts, that he had been discussing arrangement for payment with the agent, that a garnishment on those funds would put him out of business, that no levy or garnishment had been commenced, but might be and asked for your legal advise, what advise would you give him? I dare say that if you asked 100 attornys, 90 of them would advise him to first and foremost, to secure those bank accounts in any manner possible and then negotiate with the IRS. Is it not anymore plausible for an attorney to be able to utilize the same method?

I am not arguing the issue of comingling of funds because I have stipulated to that fact, however, I would point out that my interpretation of comingling is somewhat diferent. It was my belief that funds were not comingled when accurate records were kept distinguishing the diferent accounts, as was done in this case. Again, I would reiterate that the so called comingling was done with my funds and not client's funds.

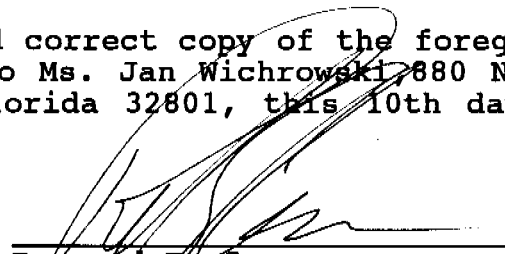
The only other findings which might pertain to the above violations could be paragraphs (7) and (8). These paragraphs show that a check in the amount of \$13,743.42 was mistakenly deposited into the operating account. The record does not show whether the deposit was made by an employee, but could have been, however; this was purely by mistake or accident and upon the discovery of the mistake, the proper methods were taken to correct the mistake, as evidenced by paragraph (8) of the report. Again, I state that no clients lost any funds.

Paragraph (11) recites that numerous checks were returned for insufficient funds. This was due to the disarray of the office caused by my long absence relating to my heart surgery. All checks which were returned were redeposited and were good at that time and nothing indicates to the contrary.

In summary, I am not contesting the disciplinary action recommended although I believe it to be a bit harsh, but I in no way acted in a dishonest manner. I did make some mistakes but I am not dishonest.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Ms. Jan Wichrowski, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801, this 10th day of May, 1994.



Raymond E. Cramer
2200 E. Arlo Bronson, Suite 106
Kissimmee, Fla 34744
407-870-9889
Fla Bar No. 172753

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

Case No. 82,114
[TFB Case No. 93-30,140(09B)]

RAYMOND E. CRAMER,

Respondent.

REPORT OF REFEREE

1. 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 hearing was held on November 18, 1993. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to the 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 Jan Wichrowski

For The Respondent In pro se

II. Rule Violations Charged: 3-4.3 for engaging in conduct that is contrary to honesty and justice; 4-1.15(a) for commingling; 4-1.15(b) for failing to promptly notify a third person upon receipt of funds which that person is entitled to receive; 4-1.15(d) for failing to comply with The Florida Bar rules regulating trust accounts; 4-8.4(a) for violating the Rules of Professional Conduct; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; 5-1.1(a) for utilizing trust funds for purposes other than those for which they were entrusted to him; 5-1.1(d) for failing to maintain the minimum required trust accounting records; and 5-1.2(b) for failing to maintain the minimum required trust accounting records, namely a cash receipts book and yearly reconciliations.

III. Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged: Pursuant to the Stipulation of Facts entered into by the parties on November 15, 1993, I find:

1. Beginning in or around February or March 1990, the respondent became unable to work full time due to serious health problems. From April, 1990, through

September 1990, he was out of the office completely due to open heart surgery. Thereafter, he returned to work on a restricted basis which continues to this day.

2. Between March, 1991, and March, 1992, the respondent became delinquent in paying to the Internal Revenue Service (IRS) certain employee taxes in the approximate total amount of \$43,635.71. On July 8, 1992, the IRS sent the respondent a notice of intention to levy advising him that he needed to reply within thirty (30) days to avoid enforcement of the action.

3. The respondent feared the IRS would garnish his operating account for his law office so he decided to leave in his trust account legal fees earned on behalf of Aarbor Realty, a company owned by the respondent. On or about April 28, 1992, he deposited to his trust account \$14,023.56 under Aarbor Realty's name.

4. The respondent made disbursements in the approximate amount of \$16,318.78 against the funds on deposit in his trust account under the name of Aarbor Realty to pay operating and personal expenses.

5. The respondent intentionally sought to deceive the IRS and protect funds from any lien by maintaining his funds in the trust account under the name of Aarbor Realty.

6. Although the respondent hoped to acquire additional time to negotiate a payment plan with the IRS, negotiations were not successful and a tax lien was imposed against him.

7. The respondent represented Olan Fore as the defendant in a civil case brought by Macasphalt. The parties entered into a settlement agreement whereby Mr. Fore was to pay the plaintiff a certain amount of money. For this purpose, Mr. Fore gave the respondent approximately \$13,743.42 to be deposited to the trust account. Instead, the respondent deposited these funds to his operating account and then used them for office purposes.

8. On or about April 28, 1992, the respondent deposited to his trust account \$27,425.00 of his personal funds, a portion of which was used to pay \$14,023.56 to Macasphalt's attorney. This payment represented the settlement funds given to the respondent by Mr. Fore and which were never deposited to the trust account.

9. A review of the respondent's trust account by The Florida Bar for the period of March, 1991, through August, 1992, showed he did not maintain it in substantial minimum compliance with the Rules Regulating The Florida Bar. The

respondent failed to maintain a cash receipts book despite receiving cash for deposit and made no yearly reconciliations.

10. Despite failing to properly maintain his trust account, the respondent certified on his 1991 and 1992 bar dues statement that he maintained his trust account in substantial minimum compliance with the rules.

11. The bar also reviewed the respondent's office account for the period of February, 1992, through May, 1992. The audit revealed that numerous checks were returned due to insufficient funds and negative balances existed in the account on approximately nine occasions.

IV. Recommendations as to Whether or Not the Respondent Should Be Found Guilty: I recommend the respondent be found guilty or not guilty of the following rule violations, as noted:

3-4.3	guilty
4-1.15(a)	guilty
4-1.15(b)	guilty
4-1.15(d)	guilty
4-8.4(a)	guilty
4-8.4(c)	guilty
5-1.1(a)	guilty
5-1.1(d)	guilty
5-1.2(b)	guilty

V. Recommendation as to Disciplinary Measures to Be Applied:

Ninety (90) days suspension.

VI. 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)(D), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 55

Date admitted to bar: May 10, 1974

Prior disciplinary convictions and disciplinary measures imposed therein: The Florida Bar v. Cramer, Case No. 09A83C79, private reprimand administered by an appearance before the board of governors for engaging in an improper business transaction with a client wherein they had differing interests.

VII. 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. Transcript Costs	\$ 0
	2. Bar Counsel Travel Costs	\$ 0
B.	Referee Level Costs	
	1. Transcript Costs	\$ 91.65
	2. Bar Counsel Travel Costs	\$ 49.84
C.	Administrative Costs	\$500.00
D.	Miscellaneous Costs	
	1. Investigator Expenses	\$495.63
	2. Witness Fees	\$ 0
	3. Copy Costs	\$150.00
	TOTAL ITEMIZED COSTS:	\$1,287.12

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 21st day of December, 1993.

/s/ Oliver L. Green Jr.
OLIVER L. GREEN, JR., Referee

Original to Supreme Court with Referee's original file.

Copies to:

Ms. Jan Wichrowski, Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801

Mr. Raymond E. Cramer, Respondent, 231 E. Ruby Avenue, Suite E, Building 6, Waterfront Square, Kissimmee, Florida 34741

Mr. John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300