

FILED

SID J. WHITE

DEC 27 1993

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

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.

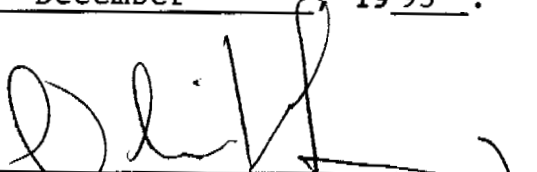
VII. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably

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.


OLIVER L. GREEN, JR., Referee

Original to Supreme Court with Referee's original file.

Copies to:

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