

IN THE SUPREME COURT OF FLORIDA

FILED
OCT 10 1997
CLERK SUPREME COURT
By _____
Chief Deputy Clerk
097
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THE FLORIDA BAR,

Complainant,

vs.

CASE NO. 89, 006
[TFB CASE NO. 96-30,802 (09E) (OSC)]

ROYCE DERRELL PIPKINS,

Respondent.

ROYCE DERRELL PIPKINS' ANSWER BRIEF

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TABLE OF AUTHORITIES

CASES

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R. REGULATING FLA. BAR

3-6.1(c) 1

4-1.15(a) 1

SYMBOLS AND REFERENCES

In this Answer Brief, the Complainant, The Florida Bar, shall be referred to as "The Florida Bar" or "The Bar."

In this Answer Brief, the Respondent, Royce Derrell Pipkins, shall be referred to as "Pipkins" or "Respondent".

The transcript of the final hearing held on March 25, 1997, shall be referred to as "T", followed by the cited page number.

The Report of Referee dated June 3, 1997, will be referred to as "ROR", followed by the referenced page number(s) of the Appendix, attached. (ROR-A--)

The Bar's exhibits will be referred to as Bar Ex. _____ followed by the exhibit number.

The Respondent's exhibits will be referred to as Respondent Ex. _____ followed by the exhibit number.

STATEMENT OF THE CASE AND THE FACTS

The Florida Bar filed a Petition for Order to Show Cause on September 20, 1996. This Court issued its Order to Show Cause on September 30, 1996. Pipkins served his response on October 18, 1996. The Bar served its reply to Pipkins' response on October 23, 1996. The final hearing was held on March 25, 1997. The Referee entered his report on June 3, 1997, finding that Pipkins admitted utilizing the trust account to collect previously earned fees from clients, which should have been appropriately placed in an office account. This resulted in the Respondent commingling his clients' funds with his own in violation of Rule **4-1.15(a)**.

Respondent, while attempting to collect fees admitted utilizing the trust account on behalf of a corporate client, Infinity General, because it did not maintain its own banking account. The Respondent was also Secretary/Treasurer of that corporation.

The Referee recommended the Respondent be found in contempt of court for receiving, disbursing, or otherwise handling trust funds or property while suspended in violation of **R. Regulating Fla. Bar 3-6.1(c)**. The Referee recommended the Respondent pay the costs of the proceeding and that no further discipline be imposed, stating:

"Recommendation as to Disciplinary
Measures to be Applied: I recommend
the Respondent pay costs of the

proceeding. The Respondent was placed on probation for 18 months and it does not appear any other violations occurred during his probationary period. No further discipline is recommended." (Emphasis added).

ARGUMENT

THE REFEREE'S FINDINGS COME TO THE COURT
WITH THE PRESUMPTION OF CORRECTNESS AND,
UNLESS CLEARLY ERRONEOUS OR LACKING IN
EVIDENTIARY SUPPORT, SHOULD BE UPHELD.

This Court in the case of The Florida Bar v. Hugh MacMillan, Jr., 600 So. 2nd 457 (Fla. 1992), at page 459 states:

"A referee's findings of fact come to the court with a presumption of correctness and will be upheld unless clearly erroneous or lacking in evidentiary support. (Citation omitted) If findings of the referee are supported by competent, substantial evidence, this court is precluded from reweighing the evidence and substituting its judgment for that of the referee."
(Citation omitted)

This Court further found in the case of The Florida Bar v. Jack E. Grigsby, 641 So. 2nd 1341 (Fla. 1994), at page 1343 that:

"As to the appropriate discipline, The Bar is correct that as a general rule a suspension is appropriate when an attorney is found guilty of misconduct that causes injury or potential injury to the legal system or to the profession and that misconduct is similar to that for which the attorney has been disciplined in the past. (Citation omitted) However, under the circumstances, we do not believe that a suspension is warranted."

Respondent has practiced law for over thirty (30) years. As noted by the Referee, there were two (2) violations of this Court's January 12, 1995 Order. None were deemed willful.

The Bar states that the discipline meted out in this matter in light of the violations

"is in conflict with other discipline cases involving operating trust accounts while suspended and commingling personal and client funds," (Brief, page 6-7).

yet none of their cases cited are analogous.

The Bar's perception of an appropriate discipline is not in any way commensurate with the violations found in the case at bar. There is a void in the record that Pipkins intentionally violated this Court's Order. Pipkins admitted what he had done and is required to pay The Bar's costs of **\$1,739.84**.

Based upon the Referee's uncontradicted finding that:

"The Respondent was placed on probation for 18 months, and it does not appear any other violations occurred during his probationary period."

No further discipline should be meted out in this matter.

CONCLUSION

Respondent respectfully submits the Referee's recommendations should be adopted by this Court to the case at bar.

The Bar would have the Court believe that Pipkins "refused to abide by an Order of this Court", yet this is **not** in the record.

~~Respectfully submitted,~~

ROYCE D. PIPRINS
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CERTIFICATE OF SERVICE;

I HEREBY CERTIFY that the original and seven (7) copies of Royce Derrell **Pipkins'** Answer Brief have been furnished by **U. S.** mail to the Supreme Court of Florida, Supreme Court Building, **500 S. Duval** Street, Tallahassee, Florida 32399-1927, and a copy of the Answer Brief was furnished by **U. S.** mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 and Eric M. Turner, Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801-1035, this 17th day of September, 1997.

Respectfully submitted,



Royce D. Pipkins, Respondent