

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

ROBERT K. HAYDEN,
Respondent.

CONFIDENTIAL

CASE NO. 66,011
(TFB #06A84H65)
CASE NO. 68,331
(TFB #06A85103)

FILED

CLERK OF THE COURT

By _____
Clerk of the Court

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to article XI of the Integration Rule of The Florida Bar, a final hearing was held on January 7, 1986. The enclosed pleadings, 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: STEPHEN O. RUSHING

For The Respondent: JOHN M. ELIAS

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged: After considering all the pleadings and evidence before me, I accept the tendered Guilty Plea for Consent Judgment which admits to violations of The Florida Bar Code of Professional Responsibility in the following cases:

(A) Supreme Court No. 66,011; (TFB #06A84H65):

DR 9-102(B)(2) (failure to identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable).

(B) Supreme Court No. 68,331; (TFB #06A85103):

DR 9-102(A) (all funds of client shall be deposited in identifiable bank account maintained in the State of Florida and no funds belonging to the lawyer shall be improperly deposited therein).

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty: I recommend that the respondent be found guilty of the following violations of the Code of Professional Responsibility: That Robert K. Hayden has violated Disciplinary Rules, DR 9-102(A) (all funds of client shall be deposited in identifiable bank account maintained in the State of Florida and no funds belonging to the lawyer shall be improperly deposited therein); and DR 9-102(B)(2) (failure to identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable).

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that Robert K. Hayden be disciplined by a thirty (30) day suspension, and payment of costs. I recommend that the 30-day suspension period become effective on August 1, 1986 and begin to run at that time.

V. Personal History and Past Disciplinary Record: After finding of guilt and prior to recommending discipline to be recommended pursuant to Rule 11.06(9)(a)(4), I considered the following personal history and prior disciplinary record of the respondent to wit:

- (1) Age: 42
- (2) Date Admitted to Bar: 1973
- (3) Prior Disciplinary Record: Received a Private Reprimand in Consolidated TFB Nos. 06A78H06, 06A78011, 06A78H39, 06A78H43, and 06A78H31.
- (4) Mitigating Factors: Respondent waived probable cause hearing in both matters, the trust account problems arose from poor recordkeeping and a series of at least three incompetent C.P.A.'s which respondent hired, and the civil case was settled regarding restitution of the coin necklace and wear of the watch.

VI. 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:		
Administrative Costs	\$	300.00 <i>150.00 with</i>
Bar Auditor Costs		7,012.02
Staff Investigator Costs		114.30
B. Referee Level:		
Administrative Costs		300.00
Court Reporter Costs		111.06
Staff Investigator Costs		144.60
Bar Counsel Costs		31.88
		40,813.86
		<i>7,863.86 with</i>

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 24 day of April, 1986.

Walter N. Burnside, Jr.
HONORABLE WALTER N. BURNSIDE, JR.

Copies furnished to:

- John M. Elias, Respondent
- Stephen O. Rushing, Branch Staff Counsel
- John T. Berry, Staff Counsel

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STATEMENT OF COSTS

A. Grievance Committee Level:

1. Administrative costs at the Grievance Committee level, Florida Bar Integration Rule, article XI, Rule 11.06(9)(a)

~~(a) TFB No. 06A84H65 \$150.00~~
(b) TFB No. 06A85103 150.00

*with
my
S.O.R.*
150.00
~~300.00~~

2. Bar Auditor Expenses:
(Pedro J. Pizarro, C.P.A.)

(a) Time Expended:
(302 2/10 hours) \$6,956.64
(b) Travel Expenses: 55.38 \$7,012.02

3. Staff Investigator Costs: (06A85103)
(Ernest J. Kirstein, Jr.)

(a) Time Expended:
(7.1 hrs. @ 15.00) 106.50
(b) Mileage:
(30 miles @ .26) 7.80 114.30

B. Referee Level:

1. Administrative costs at the Referee level, Florida Bar Integration Rule, article XI, Rule 11.06(9)(a)

(a) Case No. 66,011
(TFB No. 06A84H65) \$150.00
(b) Case No. 68,331
(TFB No. 06A85103) \$150.00 300.00

2. Court Reporter Expenses:
(Final Hearing of January 7, 1986)

(a) Appearance Fee \$55.00
(b) Transcript Cost 47.00
(c) Mileage 8.50
(d) Postage .56 111.06

3. Staff Investigator Expenses: 06A84H65 (66,011)
(Ernest J. Kirstein, Jr.)

(a) Time Expended:			
(2 hrs. @ \$14.00)	\$ 28.00		
(5.5 hrs. @ \$15.00)	82.50		110.50
(b) Mileage:			
(30 miles @ .25)	\$ 7.50		
(40 miles @ .26)	10.40		
(60 miles @ .27)	16.20		34.10

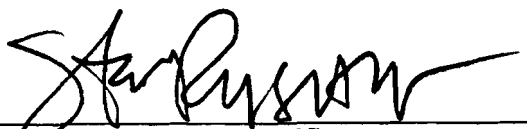
4. Branch Staff Counsel Expenses:
(Stephen O. Rushing)

(a) Meeting with Designated Reviewer (4/16/85)			
Mileage: (48 miles @ .26)	12.48		
Meals: \$6.25			
(b) Meeting with Designated Reviewer (12/30/85)			
Mileage: (05 miles at .27)	\$1.35		
(c) Final Hearing of January 7, 1986			
Mileage: (40 miles @ .27)	\$10.80		
Meals: \$1.00			31.88

TOTAL COST TO DATE: \$8,013.86

The above costs were incurred at the Grievance Committee and Referee level by The Florida Bar in the above-referenced matter.

Respectfully submitted,


STEPHEN O. RUSHING
Branch Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport Marriott Hotel
Tampa, Florida 33607
(813) 875-9821

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Statement of Costs has been furnished to JOHN M. ELIAS, Attorney for Robert K. Hayden, at Suite 107, 611 Druid Road, East, Clearwater, Florida 33516; and a copy to JOHN T. BERRY, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301-8226; on this 18th day of March, 1986.


STEPHEN O. RUSHING