

IN THE SUPREME COURT OF FLORIDA
(BEFORE A REFEREE)

THE FLORIDA BAR,
Complainant

CONFIDENTIAL

TFB NO. 13A85H40

vs.

H. EUGENE JOHNSON,
Respondent

FILED
S.D. WHITE
FEB 6 1987
CLERK, SUPREME COURT
By _____
Deputy Clerk

A M E N D M E N T

TO

REPORT OF REFEREE

THIS MATTER having come on to be considered by me on the Motion for Rehearing and Clarification filed by the Complainant, THE FLORIDA BAR, and the Response thereto filed by the Respondent and the Court having carefully considered the matter and it appearing to the Court that the Motion of The Florida Bar is well taken and the Respondent having consented thereto, the Report of the Referee be and the same is hereby modified and amended in the following particulars:

1. The words, "but I am unable to find that it constitutes any violation of the Code of Professional Responsibility," appearing on Line 21 from the top of Page 3, be and the same is hereby stricken.

2. Item III. RECOMMENDATION AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY, be and the same is hereby stricken in its entirety.

3. The following be and the same is hereby substituted for Item III which was stricken as above provided:

III. RECOMMENDATION AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:

The Referee recommends that the Respondent be found Guilty of violating the Integration Rule, Article XI, Rule 11.02(3)(a) (commission by a lawyer of any act contrary to good morals), and Code of Professional Responsibility, DR 1-102(A)(6) (conduct that adversely reflects on his fitness to practice law) as a result of:

a) Executing and causing to be filed the Limited Partnership Agreement when he had no intent whatsoever of contributing \$5,000.00 to said Limited Partnership;

b) The writing of the three letters to Hines heretofore referred to;

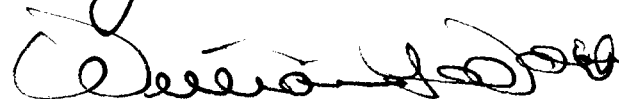
for the reason that said conduct constitutes conduct unbecoming a lawyer.

This Referee further recommends that the Respondent be found Not Guilty of all other charges in the Complaint.

Said Referee's Report be and is further amended by adding at the end of Paragraph IV on Page 4, the following language: "To be administered by the Board of Governors of The Florida Bar."

4. The Referee's Report, except as specifically amended hereby, shall remain as originally entered.

Dated this 4th day of February, 1987.



WILLIAM L. WALKER
Referee

Copies Furnished To:

David Ristoff, Esquire
The Florida Bar

Richard T. Earle, Jr., Esquire
Attorney for Respondent

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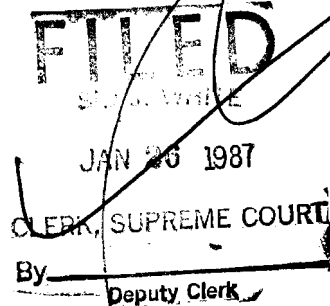
Complainant

TFB NO. 13A85H40

vs.

H. EUGENE JOHNSON,

Respondent



REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: A Final Hearing was held in this matter, pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings according to Article XI of the Integration Rule of The Florida Bar. The enclosed pleadings, orders, transcripts and exhibits are forwarded to 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

David Ristoff
Thomas E. DeBerg

For the Respondent

Richard T. Earle, Jr.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED:

The issues of fact in this case are so unusual that they might even be termed "bizarre". A recital of the factual situation would constitute an inordinate waste of time and said situation would better be used as the basis of a novel.

On or about March 1, 1983, the Complainant, Hines, employed the Respondent as his attorney to represent him. Prior to and at that time, Hines was engaged in a venture to locate and recover sunken treasure and artifacts in the Bahama Islands. Prior to March 1, 1983, he had formed an association with a Mr. Anderson and a Mr. Glantz whereunder Anderson and Glantz furnished the necessary capital and Hines furnished the boat and crew to engage in the venture. Although Anderson and Glantz had put up substantial capital and the venture had engaged in recovering treasure, the legal form of the venture had never been agreed upon and there were no formal partnership agreements or limited partnership agreements entered into, nor had the corporation been formed. Notwithstanding the foregoing, United States of America Income Tax Returns were prepared and filed in the name of a purported limited partnership known as Salvage Enterprises, Limited. At the time of Respondent's employment, he concluded that a limited partnership should be formally formed and filed as required by law and he prepared a Limited Partnership Agreement wherein Hines was a General Partner and Respondent was a Limited Partner which Limited Partnership Agreement provided that

Respondent would contribute \$5,000.00 to the Partnership. Said Limited Partnership Agreement was duly filed in the Office of the Secretary of State of the State of Florida.

This Referee finds that it was never the intent of Respondent to contribute said \$5,000.00, nor did Hines intend for him to do so - - the contribution of Respondent was to be by way of legal services and not cash. Further, I find that the purpose of said Limited Partnership Agreement was not to mislead or defraud anyone and no one was misled or defrauded thereby. On the other hand, the execution and filing of said document could have misled the public or members thereof into believing that \$5,000.00 had been contributed by the Respondent to the Limited Partnership. The Referee further finds that the execution and filing of said document, with no intent whatsoever of contributing the \$5,000.00 to the Limited Partnership, was conduct, in effect, unbecoming a lawyer.

Most of the testimony in this case was directed toward conduct of the Respondent and Hines subsequent to the execution and filing of the Limited Partnership Agreement heretofore referred to and prior to August 6, 1984. I find specifically that there is no clear and convincing evidence that the Respondent violated any provisions of the Code of Professional Responsibility subsequent to the execution and filing of the Limited Partnership Agreement and prior to August 6, 1984.

In the Spring of 1984, the Respondent advanced to Hines, the Complainant, a substantial amount of money to repair a boat owned by Hines so that the same could be taken to the Bahamas to search for treasure. At that time, Hines executed and delivered to Respondent a Bill of Sale transferring title to said boat to Respondent and gave Respondent the original Coast Guard documents relative to said boat with the request that Respondent not transfer the title to the boat without first affording Hines an opportunity to sell the same.

Subsequently, an unsuccessful trip was made by Hines to the Bahamas in search of treasure. After the trip was concluded, Hines advised Respondent that he had a sale for the boat for \$20,000 and requested that Respondent deliver to him the unrecorded Bill of Sale above mentioned and the Coast Guard documents for the vessel so that he could consummate the sale. Respondent so delivered said documents to Hines upon Hines promise that the \$20,000 sale price for the boat would be paid to Respondent for the sums advanced by him and for legal services furnished by him. Hines sold the boat for \$20,000 and deposited the check in Independent Bank of Florida located in Tampa.

Hines failed to pay said \$20,000 or any part thereof to Respondent or to give him security for the payment of the same. As a result of this, a controversy arose between Respondent and Hines.

This Referee is uncertain as to whether the Bill of Sale to the boat and the Coast Guard documents were delivered to Respondent with the intention of transferring title thereto or whether the same was delivered as security for monies owed by Hines to Respondent. In either event, Respondent was entitled to the proceeds of said sale and Hines failed to pay the same to him. It was at this point that any attorney/client relationship between Hines and Respondent was terminated.

As a result of Hines failure to pay said monies to the Respondent, Respondent did the following:

1. He wrote a letter to Mr. A. Gerald Divers, President, Independent Bank of Florida, on August 6, 1984, which reflected that Hines had stolen the \$20,000 from Johnson, which \$20,000 was on deposit in the above mentioned bank. Said letter advised Mr. Divers that Respondent was going to bring legal action against Hines and requested that he be advised as to the exact amount of the check that was deposited or be given a photocopy of it. (Exhibit A attached to Complaint)

2. He wrote a letter dated August 6, 1984, to Mr. Hines. (Exhibit B attached to the Complaint)

3. He wrote a letter to the Complainant dated November 18, 1984. (Exhibit C attached to the Complaint)

4. He wrote a letter to the Complainant dated November 26, 1984. (Exhibit D attached to the Complaint)

5. He filed an affidavit with the office of the State Attorney of the Nineteenth Judicial Circuit alleging Grand Theft of the salvage vessel.

As to Item "1" above (the letter to Divers), Respondent believed that he was entitled to the \$20,000 in Independent Bank of Florida. The wording in said letter might well be ill-advised ~~but I am unable to find that it constitutes any violation of the Code of Professional Responsibility.~~

As to Items "2", "3" and "4" above (the letters from Respondent to Hines), this Referee finds that said letters, when read carefully, do not constitute any threat that Respondent would in any way harm or injure Mr. Hines. The Respondent is an ordained Minister of the Church of Christ and has been such for a long period of time. Said letters express the Respondent's beliefs as to what The Lord would do to Mr. Hines as a result of his conduct not only toward Respondent but to other persons. Although the Referee does not understand said views, they might well be in conformance with the Respondent's religious beliefs. These letters are not the type of correspondence ordinarily written by a lawyer in a controversy with an ex-client over an existing indebtedness. On the other hand, neither the Respondent nor Hines were ordinary people and the controversy between them was not an ordinary fee controversy.

I find that the writing of said letters constitute conduct unbecoming a lawyer.

III. RECOMMENDATION AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY

This Referee recommends that the Respondent be found Guilty of misconduct as the result of:

a) Executing and causing to be filed the Limited Partnership Agreement when he had no intent whatsoever of contributing \$5,000.00 to said Limited Partnership;

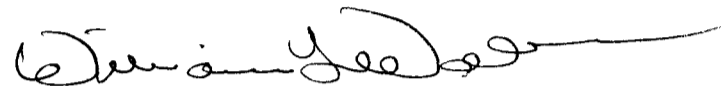
b) The writing of the three letters to Hines heretofore referred to.

It is further the recommendation of this Referee that Respondent be found Not Guilty of all other charges in the Complaint.

IV. Inasmuch as the misconduct upon which I recommend the finding of Guilt is so technical in nature and so trivial, this Referee recommends that Respondent receive a private reprimand.

I further recommend that costs be assessed against the Respondent.

Dated this 22nd day of January, 1987.



William Walker, Referee

Copies Furnished To:

David Ristoff, Esquire
The Florida Bar

Richard T. Earle, Jr.