

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR,

Complainant,

CASE NO. 67,803

(TFB NO. 08-84N78)

v.

DAVID M. ANDERSON,

Respondent.

REPORT OF REFEREE

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of the Floirda Bar, hearings were held on July 2 & 8, 1986. The Pleadings, Notices, Motions, Orders, Transcript and Exhibits all of which 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 Floirda Bar, James M. Watson, Jr., Esquire
For the Respondent, James A. Weiss, Esquire.

After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

As to Disciplinary Rule 1-102(A)(1):

I find that Respondent violated Disciplinary Rule 1-102(A)(1) as set forth in the violations stated below.

As to Disciplinary Rule 1-102(A)(4):

I find that Respondent violated Disciplinary Rule 1-102(A)(4). Respondent misrepresented to the Honorable Circuit Judge John Crews through Respondents request to be appointed guardian for A. E. Copeland, (T-32) without disclosing to the Court the existance of a fully executed trust agreement. (Respondent's Ex. A-9) (T-34) (T2-20) (T2-72).

Further, Respondent violated the aforementioned Disciplinary Rule in failing to return A. E. Copeland's money when requested. (T-55).

Respondent further engaged in deceitful and dishonest conduct in the preparation and back dating of the alleged "second note". (Bar's Ex. #1).

As to Disciplinary Rule 1-102(A)(6):

I find that Respondent violated Disciplinary Rule 1-102-(A)(6) as evidenced by the foregoing and by preparation of transfer documents signed individually by A. E. Copeland without the signature of the trustee and/or Guardian (Bar's Ex. 3A & 3B) (T2-79-81), and further as set forth below.

As to Disciplinary Rule 5-101(A):

I find that Respondent violated Disciplinary Rule 5-101(A). Upon A. E. Copeland coming to Respondent for the express purpose of defending an incompetency proceeding, Respondent induced Copeland to part with his entire cash holdings with no security for those funds whatsoever. (T-50) (Bar Ex. #2, P. 11) (Respondent's Ex. #A-3) (T2-85-86) (T2-8).

As to Disciplinary Rule 5-104(A):

I find that Respondent violated Disciplinary Rule 5-104(A) by his actions described above and by the fact Copeland had to sue to obtain a return of his money. (Bar's Ex. #3 L).

As to Disciplinary Rule 7-101(A)(3):

I find that Respondent violated Disciplinary Rule 7-101(A)(3) by failing to have the guardian and trustee sign the transfer documents (Bar's Ex. #3A & 3B) (T2-79-81), and by having the client resort to litigation to recover his property. (Bar's Ex. #3 L).

As to Disciplinary Rule 7-102(A)(3):

I find that Respondent violated Disciplinary Rule 7-102(A)(3) by failing to disclose the Trust Agreement (T-32-34). Further, Respondent violated said Rule by failing to file a full accounting of the Trust by 19 April, 1984, as required by Order of Judge Crews. (T-79).

As to Disciplinary Rule 7-102(A)(8):

I find that Respondent violated Disciplinary Rule 7-102(A)(8) as evidenced by the foregoing and violation of Disciplinary Rule 9-102(B)(3). (T2-29) (T2-41) (T2-109).

I recommend that Respondent be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, to-wit: Disciplinary Rule 1-102(A)(1), Disciplinary Rule 1-102(A)(4), Disciplinary Rule 5-101(A), Disciplinary Rule 5-104(A), Disciplinary Rule 7-101(A)(3), Disciplinary Rule 7-102(A)(3) and Disciplinary Rule 7-102(A)(8).

RECOMMENDATION AS TO DISCIPLINE

I recommend that Respondent be suspended from the practice of law for a period of six months, thereafter until he passes the Ethics portion of the Florida Bar Exam

until he shall prove his rehabilitation and for an indefinite period until he shall pay the cost of this proceeding and make full restitution to his client in the amount of \$116,177.43 as provided in Rule 11.10(4).

PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

After finding of guilty 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:

Age: 51 Years
Date Admitted to Bar: 1960
Prior disciplinary convictions and disciplinary measures imposed therein: None Noted

STATEMENT OF COSTS AND MANNER IN WHICH COST SHOULD BE TAXED:

I find the following costs were reasonable incurred by the Florida Bar.

A. Grievance Committee Level Costs
1. Administrative Cost \$150.00
2. Transcript Cost

B. Referee Level Cost
1. Administrative Cost \$150.00
2. Transcript Cost \$1082.00

TOTAL ITEMIZED COSTS: \$1382.00

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 25th Day of July, 1986.


REFeree

Copies to: Bar Counsel
Counsel for Respondent
Staff Counsel, The Florida Bar, Tallahassee,
Florida 32301