

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
CLERK, SUPREME COURT
By _____
Deputy Clerk

THE FLORIDA BAR,
Complainant,
v.
JAMES M. ANDERSON,
Respondent.

CONFIDENTIAL

CASE NO. 68,027
TFB #06A85127
#06A85128

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 March 14, 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: Pro Se

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:

06A85127
06A85128

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 James M. Anderson has violated Disciplinary Rules, DR 1-102(A)(3) (engaging in illegal conduct involving moral turpitude); DR 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(5) (engaging in conduct that is prejudicial to the administration of justice); DR 7-102(A)(6) (participate in the creation of evidence when he knows the evidence is false); DR 7-102(A)(7) (counseling or assisting a client in conduct the lawyer knows to be illegal or fraudulent); DR 7-102(B)(1) (failing to reveal fraud by a client to the affected person); DR 9-102(B)(4) (failing to promptly pay or deliver to a client, as requested, funds in the possession of the lawyer which the client is entitled to receive); Integration Rule 11.02(3)(a) (commission of an act contrary to honesty, justice or good morals); and Integration Rule 11.02(4) (monies entrusted to an attorney for a specific purpose must be applied only to that purpose).

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that James M. Anderson be disciplined by a one year suspension, restitution to the State of Florida for the estate of Edna Mae Banner of \$3,000.00, consultation with Florida lawyers assistance clinics alcoholism counselors, continuation of medication and psychiatric counseling with quarterly reports to The Florida Bar from treating physician and payment of costs.

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 36
- (2) Date Admitted to Bar: November, 1977
- (3) Prior Disciplinary Record: None

(4) Mitigating Factors: Respondent voluntarily came forward and informed authorities of his involvement in the Banner estate misappropriation and has cooperated completely with both the State Attorney's office and The Florida Bar. Respondent voluntarily left the practice of law in October, 1984, and has not practiced law since that time. Respondent has been married fourteen (14) years and is the father of two (2) children. Respondent's conduct in the instant matters was influenced by a combination of factors: suffering from the Vietnam Stress Syndrome, a manic depressive disorder and substance abuse. Additionally, Respondent is currently taking corrective medication, engaging in ongoing private psychiatric counseling and attends bi-monthly Veteran Administration stress management counseling with his wife.

VI. Statement of Costs and Manner in Which Costs Should Be Taxed: I find the following costs were reasonably incurred by The Florida Bar:

GRIEVANCE COMMITTEE LEVEL

(TFB Nos. 06A85127 and 06A85128
formerly HMO85036)

Administrative Costs \$150.00

REFEREE LEVEL

(TFB Nos. 06A85127 and 06A85128)


Administrative Costs \$150.00
Branch Staff Counsel Expenses: 7.40

Staff Investigator Expenses:
(Ernest J. Kirkstein, Jr.)
Time Expended: 23.6 hrs. @ \$14.00 \$354.00
Mileage: 31 miles @ \$.27 \$83.70

Total Amount Due to Date \$745.10

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing Statement of 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 16 day of May, 1986.



PAUL SIDNEY ELLIOTT
Referee

Copies furnished to:
James M. Anderson, Respondent
Stephen O. Rushing, Branch Staff Counsel
John T. Berry, Staff Counsel