

IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

THE FLORIDA BAR,
Complainant,
v.
J. B. HOOPER,
Respondent.

CONFIDENTIAL

CASE NO. 68,954
TFB #13D86H17

FILED

SID J. WHITE

DEC 18 1986

CLERK, SUPREME COURT

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the article XI of the Integration Rule of The Florida Bar, a final hearing was held on October 10, 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 DAVID R. RISTOFF

For The Respondent B. ROBERT MITCHAM

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged: After a hearing on the matter before me, I find the following:

Dr. S. Victor Kassels retained respondent in September 1983 to represent him in a partition of property proceeding against Dr. Kassels' ex-wife. Dr. Kassels paid the respondent \$400.00 as a retainer fee. A deposition was scheduled in February 1985, and evolved into a settlement conference. At that conference, Dr. Kassels and respondent had a serious dispute about the reasonableness of respondent's fee. A fee statement reflecting \$1,900.00 was sent to Dr. Kassels a few days prior to this meeting. Dr. Kassels was to be issued a check for \$8,500.00 for taxes he had paid on the disputed property. Respondent advised the opposing counsel to send the check directly to him for deposit into his trust account. Respondent intended to take his \$1,900.00 fee from the \$8,500.00 check. To accomplish this procedure, Dr. Kassels would have had to endorse the check, and put it into the respondent's trust account, so as to allow respondent to remit his fee. Dr. Kassels did not refuse to pay any additional attorney fees, however, questioned the reasonableness of those charged.

Respondent then left the settlement conference, and according to his client, abandoned him over whether respondent was going to have the \$8,500 check deposited to his trust account. The \$8,500 owed Dr. Kassels had nothing to do with the pending partition proceeding. Respondent then withdrew from representation of Dr. Kassels. Respondent did not seek attorney fees from the presiding judge prior to his withdrawal. Respondent filed a Mechanics Lien on the disputed property and placed a lien on the property. The respondent chose the Mechanics Lien to force Dr. Kassels to pay his attorney fees. Respondent made no attempt to seek a retaining or charging lien in reference to his fee. The respondent chose a Mechanics Lien to force the payment of attorney fees, when such statutory provision clearly does not apply to attorneys.

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 J. B. Hooper has violated Disciplinary Rules 1-102(A)(4) (engage in conduct involving dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(5) (conduct prejudicial to the administration of justice); DR 1-102(A)(6) (conduct adversely reflecting on his fitness to practice law).

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the respondent receive a suspension for one year and be assessed the costs of these proceedings.

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: 47

(2) Date Admitted to Bar: September 17, 1980

(3) Mitigating Factors: None

(4) Respondent has a prior disciplinary case record currently pending before the Supreme Court of Florida. Case No. 67,875, TFB #13B85H92.

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 Costs | |
| Administrative Costs | \$ 150.00 |
| Transcript Costs | 207.70 |
| Transcript Costs | 17.50 |
| Court Reporter Appearance | 35.00 |
| Referee Level Costs | |
| Administrative Costs | 150.00 |
| Law Clerk/Paralegal Research Fees | 13.64 |
| Certification Costs of Court File | 3.00 |
| Witness Fees of Dr. Kassels | 55.00 |
| Bar Staff Costs | 5.60 |
| Transcript Costs | 740.25 |
| Court Reporter Appearance | <u>120.00</u> |
| TOTAL AMOUNT DUE TO DATE: | \$1,497.69 |

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 November, 1986.


HONORABLE GERALD J. O'BRIEN

Copies furnished to:

Robert Mitcham, Counsel for Respondent
David R. Ristoff, Bar Counsel
John T. Berry, Staff Counsel