

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.

CASE NUMBERS: 70,494 ✓
70,643

(TFB No. 18CB6C18, 18C87C09)

FRANK CLARK, III,
Respondent.

FILED
SID J. WHITE

AUG 10 1987

CLERK, SUPREME COURT
By the undersigned
Deputy Clerk

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 hearing was held on July 20, 1987, in Orlando, Florida. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to The Supreme Court of Florida, with this report, constitute the record in this case.

The following persons appeared at the hearing:

For The Florida Bar: John B. Root, Jr., Esquire

No one appeared for the Respondent, Frank Clark, III.

II. Findings of Fact as to the Items of Misconduct with which the Respondent is Charged: After considering all of the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

AS TO BOTH CASES

1. The Respondent, FRANK CLARK, III, is and at all times hereinafter mentioned, was a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of The Supreme Court of Florida.

2. Although this Referee is uncertain as to the Respondent's residence or business address, the last address registered with The Florida Bar was 216 Emerald Drive, North, Indian Harbor Beach, Florida 32917.

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3. On or about July 16, 1985, Nancy T. McGurk retained the services of the Respondent to represent her on a charge

of driving while under the influence of alcohol. She was arrested on or about July 4, 1985, in Cocoa Beach, Brevard County, Florida.

4. Mrs. McGurk paid Respondent an initial retainer in the amount of \$500.00. The terms of her agreement were that Respondent was to bill her at the hourly rate of \$100.00, with the maximum fee not to exceed the sum of \$1,500.00.

5. The Respondent obtained a continuance of Mrs. McGurk's first trial date, resulting in a hearing being scheduled on October 7, 1985.

6. On October 7, Mrs. McGurk and her Navy commanding officer appeared in court, prepared to proceed with her trial. The Respondent did not appear. Neither the Court nor Mrs. McGurk had granted him permission not to appear.

7. As a result of the Respondent's failure to appear, the judge granted another continuance until October 21, 1985.

8. Prior to the scheduled hearing on October 7, 1985, the Respondent requested that Mrs. McGurk meet him at the scene of the offense. He did appear at that time and Mrs. McGurk paid him an additional retainer in the amount of \$250.00.

9. Also prior to the hearing scheduled for October 7, 1985, Mrs. McGurk called Respondent's office on numerous occasions, seeking information about her case. All of her calls were taken by an answering service and no calls were ever returned.

10. Although Mrs. McGurk made several personal visits to the Respondent's office during this same period, she never succeeded in seeing him.

11. Mrs. McGurk appeared at the hearing scheduled for October 25, 1985, but the Respondent again failed to appear. At that time Mrs. McGurk requested that the Court appoint a Public Defender to represent her because she lacked sufficient funds to retain another attorney.

12. The Respondent has not been in touch with Mrs. McGurk since his meeting with her prior to the trial scheduled to be held on October 7, 1985.

13. By reason of the foregoing conduct the Respondent

has violated the following disciplinary rules:

(a) 6.101 (A) (3) by neglecting a legal matter entrusted to him by a client;

(b) 7-101 (A) (3) by intentionally failing to carry out a contract of employment entered into with the client for professional services.

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14. In April or May, 1984, Jimmy L. Turner retained the Respondent to represent him in an employment controversy with the United States Civil Service.

15. The Respondent agreed to represent Mr. Turner upon payment of a retainer of \$2,500.00 which was to be billed against at the rate of \$100.00 per hour. If Mr. Turner prevailed in the matter the Respondent was to petition for reimbursement of attorney's fees and would repay Mr. Turner the \$2,500.00. Mr. Turner agreed and paid the Respondent \$2,500.00.

16. The Respondent was successful in his efforts to have Mr. Turner reinstated in his civil service employment with the Air Force.

17. As the prevailing party in the settlement of the matter, Mr. Turner was eligible to petition to have the Air Force to pay attorney's fees in the matter.

18. The Respondent filed a petition for reimbursement and, on March 11, 1985, was awarded \$4,475.00 and an additional \$86.00 in costs.

19. Although he collected the awarded attorney's fees and costs, the Respondent never repaid any of Mr. Turner's \$2,500.00 retainer.

20. When another attorney made an inquiry on behalf of Mr. Turner about the repayment of the retainer fee, the Respondent replied on July 29, 1985. He stated that Mr. Turner owed him for several hours of work subsequent to the fee award and that he had repaid Mr. Turner the \$1,550.00 balance. A copy of a letter to Mr. Turner, dated July 3, 1985, and a copy of the front only of an unnumbered check in the amount of \$1,550.00, appearing to have been issued on July 3, 1985, was enclosed. The letter of July 3,

1985, to Mr. Turner recited that " a check for the above amount is enclosed."

21. No check in any amount was enclosed with that letter.

22. Bank records of the Respondent's account at The First Banker's Bank in Melbourne, revealed that no check in that amount was ever issued by the Respondent during the months of July through December, 1985, and Mr. Turner has never received any portion of his \$2,500.00 retainer fee.

23. By reason of the foregoing conduct, the Respondent has violated the following Disciplinary Rules of The Code of Professional Responsibility and Integration Rule of The Florida Bar:

(a) 1-102(A) (4) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation by failing to return the retainer to his client as promised, and by manufacturing and using a sham check to falsely indicate repayment of his client's fee.

(b) 1-102 (A) (6) for engaging in conduct that adversely reflects on his fitness to practice law; and

(c) Integration Rule 11.02 (3) (a) by commission of an act contrary to honesty, justice, or good morals, by stealing the retainer fee of his client and by manufacturing and using a sham check which would falsely indicate that he has repaid the fee to his client.

III. Personal History and Past Disciplinary Record: Upon finding the Respondent to be guilty of violation of the indicated Disciplinary Rules and Integration Rules and prior to recommending a discipline to be imposed I took into consideration that the Respondent was admitted to The Florida Bar in 1959. He subsequently received at least two private reprimands arising out of his conduct as a member of The Bar. In 1975, he was suspended from the practice of law following his conviction of a felony offense of unlawfully, wilfully, and knowingly transporting in interstate commerce a diamond ring, knowing that the ring had been stolen, converted or taken by fraud in violation of The United States Code. On June 10, 1987, this Referee found that the Respondent violated four of the Disciplinary Rules for accepting employment when it would

be likely to adversely affect his representation of another client, continuing multiple employment when his independent professional judgment on behalf of a client was likely to be affected, handling a matter without adequate preparation, and neglecting a legal matter entrusted to him. It was recommended at that time that the Respondent be disbarred from the practice of law in Florida.

The physical whereabouts of the Respondent are presently unknown and he has not appeared in these proceedings either personally or by counsel.

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the Respondent be disbarred from the practice of law in this State.

V. Statement of Costs and Manner in which Costs Should be Taxed: The costs incurred in this case to date are as follows:

A. Grievance Committee Level Costs:

1. Administrative Costs	\$300.00
2. Transcript Costs	183.40
3. Bar Counsel/Branch Staff Counsel Travel Costs	90.40
4. Investigator's Expenses	172.05

B. Referee Level Costs

1. Administrative Costs	\$150.00
2. Transcript Costs	73.25

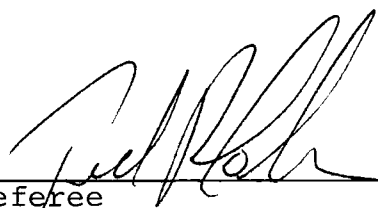
C. Miscellaneous Costs

1. Bank Search	22.00
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TOTAL ITEMIZED COSTS: \$991.10

Other costs might be incurred before this case is concluded. It is recommended that all such costs be charged to the Respondent and that interest at the statutory rate accrue and be payable beginning thirty days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated at Orlando, Orange County, Florida, this 6th day of August, 1987.



Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Report of Referee was furnished by mail to Staff Counsel, The Florida Bar, Tallahassee, Florida 32301; John B. Root, Esquire, Staff Counsel, The Florida Bar, 605 E. Robinson St., Suite 610, Orlando, Florida 32801; Frank Clark, III, 696 Eau Gallie Boulevard, Indian Harbor Beach, Florida 32937; Frank Clark, III, Unit 26, 325 East University Boulevard, Melbourne, Florida 32935; Frank Clark, III, P. O. Box EG 1487, Melbourne, Florida 32935; Frank Clark, III, 216 Emerald Drive North, Indian Harbor Beach, Florida 32937, this 7th day of August, 1987.


Judicial Assistant