

FILED

SID J. WHITE

OCT 10 1991

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

CASE NO. 77,967
TFB FILE NOS. 89-00323-01A and
90-01274-01A

JAMES R. MCATEE,

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, a hearing was held on the following date:

August 19, 1991

The following attorneys appeared as counsel for the parties:

For The Florida Bar--Mimi Daigle
For The Respondent---James R. McAtee

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 find:

As to Count I

Respondent has violated Rules 4-1.15(a), 4-1.15(c), and 4-5.3(b) of the Rules of Professional Conduct of The Florida Bar, and Rules 5-1.1(d), 5-1.1(f), and 5-1.2(c) of the Rules Regulating Trust Accounts of The Florida Bar.

As to Count II

Respondent has violated Rules 4-1.4(b), 4-1.5(A), 4-1.5(F)(1), 4-1.5(F)(2), 4-1.5(F)(5), 4-1.7(a), 4-1.7(b), 4-1.7(c), 4-1.8(f)(1) and 4-8.4(c) of the Rules of Professional Conduct of The Florida Bar; and Rule 2-106(E), of the Code of Professional Responsibility of The Florida Bar.

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty: As to each count of the complaint I make the following recommendations as to guilt or innocence:

As to Count I

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of the Rules of Professional Conduct of The Florida Bar, to-wit:

1. Rule 4-1.15(a), Rule 4-1.15(c) and Rule 4-5.3(b)

and Rules Regulating Trust Accounts of The Florida Bar, to-wit:

1. Rule 5-1.1(d), Rule 5-1.1(f), and Rule 5-1.2(c)

As to Count II

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of the Rules of Professional Conduct of The Florida Bar, to-wit:

1. Rule 4-1.4(b), Rule 4-1.5(A), Rule 4-1.5(F)(1), Rule 4-1.5(F)(2), Rule 4-1.5(F)(5), Rule 4-1.7(a), Rule 4-1.7(b), Rule 4-1.7(c), Rule 4-1.8(f)(1) and Rule 4-8.4(c)

and the Code of Professional Responsibility of The Florida Bar, to-wit:

1. Rule 2-106(E)

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the Respondent receive a public reprimand and be placed on probation for a period of three (3) years as provided in Rules 3-5.1(c) and 3-5.1(d), Rules of Discipline. The terms of probation recommended are as follows:

1. Respondent shall submit himself for examination of the ethics portion of the Florida Bar Examination and successfully complete said examination.
2. Respondent shall forthwith repay to David Page the excessive portion of the fee collected in the amount of \$9,135.76, plus interest at the rate of 12% per annum from March 14, 1989.

V. Personal History and Past Disciplinary Record: After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(4), I considered the following personal history and prior disciplinary record of the Respondent, to-wit:

Age: 55
Date admitted to Bar: 1964
Prior disciplinary convictions and disciplinary measures imposed therein: CASE NO. 74-745, TFB FILE NO. 88-00913-01A
Other personal data: All information contained in Personal History response of James R. McAtee, Respondent.

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

Grievance Committee Level

| | |
|-------------------------------------|-----------------|
| Court Reporter Fees and Transcripts | \$ 226.79 |
| Bar Counsel Travel Expenses | 212.56 |
| Auditor Costs and Expenses | <u>4,100.87</u> |
| Subtotal | \$ 4,540.22 |

Referee Level

| | |
|---|---------------|
| Administrative Costs, pursuant to Rule 307.6(k)(1), Rules of Discipline | \$ 500.00 |
| Court Reporter Fees and Costs | 376.50 |
| Witness Travel Expenses | <u>201.87</u> |
| Subtotal | \$ 1,078.37 |

TOTAL \$ 5,618.59

Dated this 2nd day of October, 1991.

John E. Roberts
REFeree

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above report of referee has been served on Mimi Daigle, Counsel for The Florida Bar, at 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, James R. McAtee, Respondent, at 1501 North 9th Avenue, Pensacola, Florida 32503-5519, and John T. Berry, Staff Counsel, The Florida Bar, at 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 2nd day of October, 1991.

John E. Roberts
REFeree