



Florida v. Alters

260 So.3d 72 (2018), 43 Fla. L. Weekly

S582



Judicial History

The Court approved the Florida Bar's Petition for Emergency Suspension and Alters was prohibited from practicing law. Finding the basis for the suspension invalid, the Court granted Alters' Motion for Dissolution and reinstated his license to practice law. The Bar later initiated another complaint against Alters, alleging mirroring misconduct from the previous cause resulting in Emergency Suspension. Finding that the Respondent violated two of the rules regulating the Florida bar, another Motion for Emergency Suspension was granted. A review of the referee's findings was ordered.



Facts

Between September 2009 and December 2010, forty-nine transfers totaling \$2,051,474.32 held in a trust account supervised by Alters were transferred to an operating account. Alters did not report the transfers to the Bar or the firm's partners after he became aware of them, did not take action to prevent further transfers, and did not implement procedures to ensure that they were complying with the rules of procedures governing the management of trust accounts. Alters authorized improper transfers and attempted to replenish the trust account with his own funds.



Issues

1. Did the referee abuse her discretion by excluding evidence about Alters' personal tax status relevant and admissible?
2. Did the Respondent engage in conduct involving dishonesty, fraud, deceit, or misrepresentation?
3. Did the replenishment of the trust account with funds from Alters' personal account constitute the commingling of funds?
4. Did the Respondent act dishonestly and maintain a selfish motive?
5. Was there an unreasonable delay in the disciplinary proceeding?
6. Should Alters be disciplined for violating the rules regulating the Florida bar?
7. Should Alters be charged with reimbursing the state for administrative costs?
8. Should the state be charged with reimbursing alters for defense costs against the charges concerning his authorization and knowledge of the improper transfers?



Rules

Rule Regulating the Florida Bar 3-4.3: Misconduct and Minor Misconduct

Rule Regulating the Florida Bar 3-5.1(h): Notice to Clients

Rule Regulating the Florida Bar 3-7.6(m)(1)(a): A finding of fact of each item of misconduct of which the respondent is charged

Rule Regulating the Florida Bar 3-7.6(q): Costs

Rule Regulating the Florida Bar 4-1.15: Safekeeping Property

Rule Regulating the Florida Bar 4-8.4(c): A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation

Rule Regulating the Florida Bar 5-1.1(a): Nature of Money or Property Entrusted to an Attorney

Rule Regulating the Florida Bar 5-1.1(b): Application of Trust Funds or Property to Specific Purpose



Rules

FLA. BAR V. HOLLANDER, 607 SO.2D 412, 414 (1992)

FLA. BAR V. RENDINA, 583 SO.2D 314, 315 (1991)

FLA. BAR V. ROTSTEIN, 835 SO.2D 241, 244 (2002)

FLA. BAR V. TOBKIN, 944 SO.2D 219, 224 (2006)

FLA. BAR V. SHOUREAS, 913 SO.2D 554, 557-58 (2005)

FLA. BAR V. SPEAR, 887 SO.2D 1242, 1245 (2004)

FLA. BAR V. SWEENEY, 730 SO.2D 1269, 1271 (1998)

FLA. BAR V. ROUSSO, 117 SO.3D 756 (2013)

FLA. BAR V. RIGGS, 944 SO.2D 167, 171 (2006)

STANDARD 9.32(B)

STANDARD 9.32(I)



Rules

FLA. BAR V. TAULER, SO.2D 944 (2000)

FLA. BAR V. LEHRMAN, 485 SO.2D 1276, 1278 (1986)

FLA. BAR V. SCHILLER, 537 SO.2D 992, 993 (1989)

FLA. BAR V. NEWMAN, 513 SO.2D 656 (1987)

FLA. BAR V. BREED, 378 SO.2D 783 (1979)

FLA. BAR V. VALENTINE-MILLER, 974 SO.2D 333, 338 (2008)

FLA. BAR V. BROWNSTEIN, 953 SO.2D 511 (2007)

FLA. BAR V. DUNNAGAN, 775 SO.2D 959, 962 (2000)

FLA. BAR V. LECHTNER, 666 SO.2D 892, 894 (1996)



Analysis

The Court reviews claims of a referee's abuse of discretion as it pertains to the admissibility of evidence in disciplinary actions and the referees in such proceedings are not bound by the technical rules of evidence. See *Fla. Bar v. Hollander*, 607 So.2d 412, 414 (1992); *Fla. Bar v. Rendina*, 583 So.2d 314, 315 (1991), *Fla. Bar v. Rotstein*, 835 So.2d 241, 244 (2002) (quoting *Rendina*, 583 So.2d at 315), *Fla. Bar v. Tobkin*, 944 So.2d 219, 224 (2006). The Court finds that the referee abused her discretion in finding that the Respondent's tax records were inadmissible.

The Court has stated that the referee's report must be sufficient enough to support a guilty finding under the Rules. *Fla. Bar v. Shoureas*, 913 So.2d 554, 557-58 (2005); *Fla. Bar v. Spear*, 887 So.2d 1242, 1245 (2004). The Court found the referee's report to be insufficient and incomplete under Rule 3-7.6(m)(1)(a) and shall make it's own finding as supported by *Fla. Bar v. Sweeney*, 730 So.2d 1269, 1271 (1998).



Analysis

Evidence produced of Alters' knowledgeable and negligent engagement in the improper transfer of funds, the use of one client's funds to pay amounts owed by another client, deposits from his personal account to client trust accounts, and his failure to notify the Bar and the firm's partners of the improper transfers showed potential violation of Rule 4-8.4(c) (fraud, dishonesty, misrepresentation, etc.) And Rule 5-1.1(a) (nature of money or property entrusted to an attorney) and the Court found the evidence presented to be supportive of a guilty finding under the Rules. See *Fla. Bar v. Rousso*, 117 So.3d at 764 (2013), *Fla. Bar v. Riggs*, 944 So.2d 167, 171 (2006).

The Respondent has been found guilty of violating Rules 4-1.15, 4-8.4(c), 5-1.1(a), and 5-1.1(b) and the Court can make a determination pertaining to aggravation and mitigation. We approve of the referee's findings in aggravation but because the respondent received trust money into his personal account, signed checks to improperly transfer funds, and did not present evidence supporting prejudice from the eight-month delay in disciplinary proceedings, the court found no absence in motive pursuant to Standard 9.32(b) and no reasonable delay in disciplinary proceedings pursuant to Standard 9.32(i). See *Fla. Bar v. Tauler*, 775 So.2d 944 (2000), *Fla. Bar v. Lehrman*, 485 So.2d 1276, 1278 (1986).



Analysis

Contrary to the referee's finding that no further discipline is necessary, the Court finds that the Respondent's conduct warrants his disbarment. See *Fla. Bar v. Schiller*, 537 so.2d 992, 993 (1989), *Fla. Bar v. Newman*, 513 so.2d 656 (1987), and *Fla. Bar v. Breed*, 378 so.2d 783 (1979), *Fla. Bar v. Valentine-miller*, 974 so.2d 333, 338 (2008); *Fla. Bar v Brownstein*, 953 so.2d at 511 (2007).

The Court maintains discretion regarding costs in disciplinary actions and does not agree with the referee's recommendations. See *Fla. Bar Re Dunagan*, 775 so.2d 959, 962 (2000), *Fla. Bar v. Lechtner*, 666 so.2d 892, 894 (1996).

A row of classical marble columns in a courtroom setting, receding into the distance. The columns are fluted and have papyrus capitals. The lighting is dramatic, with strong shadows and highlights.

Conclusion

The Supreme Court concludes that the referee was abusive in her discretion when finding the respondent's tax records were inadmissible and erred in her judgment when claiming that he did not misuse client funds. The Court agrees with the referee's recommendations regarding the respondent's guilt in violating Rules 4-1.15, 5-1.1(b), 3-4.3, and 4-8.1(a) but the Court does not approve of the referee's opinion that the Respondent was not in violation of Rules 4-8.4(c) and 5-1.1(a). The Court found that the Respondent is guilty of violating Rules 4-8.4(c) and 5-1.1(a).

The Court approved of the referee's findings regarding aggravation but found that the Respondent's conduct was dishonest and that he had a selfish motive pursuant to Standard 9.32(b), and that there was no unreasonable delay to the disciplinary proceedings pursuant to Standard 9.32(i).

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Conclusion

The Court found the Respondent's actions in violation of Rules 4-8.4(c) and 5-1.1(a) to be severe enough to warrant his disbarment and therefore require him to comply with Rule 3-5.1(h). The Court further finds that Standards 9.32(b) and 9.32(i) are inapplicable in this case.

As permitted by Rule 3-7.6(q), the court requires the Respondent to remit payment of \$305,360.03 to the State for administrative expenses with no reimbursement being awarded to him for attorney costs.