

AUG 6 1984

THE FLORIDA BAR,

Complainant,

vs.

IRWIN COHEN,

Respondent.

CASE NO. CLERK, SUPREME COURT
By _____
(Florida Bar Case ^{Chief Deputy Clerk}
No. 11D82M13)

PETITION FOR APPROVAL OF CONDITIONAL GUILTY PLEA
FOR CONSENT JUDGMENT AND ENTRY OF FINAL ORDER OF DISCIPLINE

The Florida Bar respectfully requests this honorable Court to approve the attached Respondent's Conditional Guilty Plea for Consent Judgment for Public Reprimand in accordance with the terms of the Plea and says:

1. On April 12, 1984, The Florida Bar received the attached Conditional Guilty Plea, which is attached as Exhibit A.

2. By signing the attached Conditional Guilty Plea the Respondent agreed to be discipline by a Public Reprimand and to pay costs in the amount of \$1,284.54 within thirty (30) days of this Court's order approving the Conditional Plea, in return for a guilty plea to the following violations:

Florida Bar Integration Rule, Art. XI, Rule 11.02

(4)(c) (failure to perform quarterly reconciliations of his trust account and failure to maintain a ledger containing an accounting for each person from whom trust funds had been received).

Disciplinary Rule 2-106(E) of the Code of Professional Responsibility (failure to obtain the client's signature on the closing statement and failure to retain a copy of the closing statement for six years). These violations also constitute violations of Disciplinary Rules 1-102(A)(1) (a lawyer shall not violate a disciplinary rule).

3. On July 20, 1984, the Board of Governors of The Florida Bar voted to accept and approve the Respondent's Conditional Guilty Plea for Consent Judgment for Public Reprimand, attached as Exhibit A.

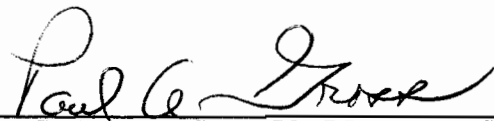
4. The Respondent is 41 years of age, has been a member of The Florida Bar since June 10, 1968, and has no prior disciplinary record.

WHEREFORE, The Florida Bar respectfully requests this Court approve the attached Respondent's Conditional Guilty Plea for Consent Judgment for Public Reprimand and enter a final order of discipline consistent with the terms of the Plea, whereby the following discipline be imposed:

A. That the Respondent, IRWIN COHEN shall receive a Public Reprimand from this Court to be published in the Southern Reporter.

B. That the Respondent be ordered to pay costs in the amount of One Thousand Two Hundred Eighty-Four Dollars and Fifty-Four Cents (\$1,284.54) within thirty days of this Court's final order.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Approval of Conditional Guilty Plea for Consent Judgment and Entry of Final Order of Discipline was mailed this 3rd day of August, 1984, to the following attorneys, who are counsel for the Respondent: Louis M. Jepeway, Sr., Dade Federal Building, Suite 619, 101 E. Flagler Street, Miami, Florida 33131, and Hugo L. Black, Jr., 1400 Alfred I. duPont Building, Miami, Florida 33131.



Paul A. Gross, Co Bar Counsel
The Florida Bar

65,709

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

AUG 6 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

THE FLORIDA BAR,)

Complainant,)

CONFIDENTIAL

v.)

The Florida Bar Case No. 11D82M13

IRWIN COHEN,)

Respondent.)

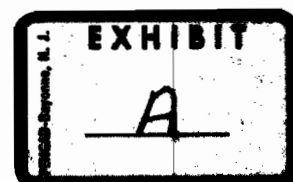
RESPONDENT'S CONDITIONAL GUILTY PLEA
FOR CONSENT JUDGMENT FOR PUBLIC REPRIMAND

COMES NOW, IRWIN COHEN, pursuant to Article XI, Rule 11.13(6) of the Integration Rule of The Florida Bar, and hereby tenders this Conditional Guilty Plea for Consent Judgment for Public Reprimand to be issued by the Supreme Court of Florida, and states as follows:

1. That Irwin Cohen, hereinafter referred to as Respondent, 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. That Respondent hereby agrees to accept, as a disciplinary sanction, a public reprimand to be issued by the Supreme Court of Florida.

3. That this Conditional Guilty Plea for Consent Judgment emanates from the grievance filed by Mark Michelson, Esq., bearing The Florida Bar Case No. 11D82M13.



4. That Respondent acknowledges that on or about June 16, 1983, Grievance Committee "D" of the Eleventh Judicial Circuit entered a finding of Probable Cause to pursue further disciplinary proceedings based upon perceived violations of Article XI, Rules 11.02(4)(b) and (c) of the Integration Rule of The Florida Bar, and all applicable Bylaws relative thereto, and Disciplinary Rules 1-102(A)(1), and (6), and 2-106(E) of the Code of Professional Responsibility.

5. That on or about September 23, 1981, Mark Michelson, Esq., by and through counsel, filed a written grievance against Respondent. That the matter was subsequently duly assigned for investigation to Grievance Committee "D" of the Eleventh Judicial Circuit.

6. That in furtherance of its investigatory functions, the Grievance Committee determined that a subpoena duces tecum should be issued compelling Respondent to produce certain records; that pursuant to the sense of the Grievance Committee and by virtue of the authority granted by Article XI, Rule 11.03(6) and 11.13(3)(b) of the Integration Rule of The Florida Bar, the Grievance Committee Chairman executed a subpoena duces tecum on or about September 30, 1981; that on or about December 11, 1981, Respondent's counsel was presented with a letter detailing the allegations made against Respondent; and that on or about December 21, 1981, the aforementioned subpoena duces tecum was served upon the Respondent.

7. That notwithstanding the continued efforts of Staff Counsel and the Grievance Committee, during the period December 21, 1981 to November 18, 1982, Respondent failed to comply with the requirements of the subpoena; that there existed no legal basis to support his non-compliance. Therewith; that although on or about November 18, 1982, the Grievance Committee's Investigating

Member met with Respondent's counsel for purposes of seeking Respondent's compliance with the subpoena, the Investigating Member was permitted only to view certain documents and was refused the permission to make copies of same.

8. That on or about November 18, 1982, Respondent retained the services of new counsel.

9. That on or about January 20, 1983, a revised subpoena duces tecum was served upon Respondent, through his counsel; that the revised subpoena duces tecum required production of all records and documents demanded by the original subpoena and further required that said records and documents be produced before Grievance Committee "D" of the Eleventh Judicial Circuit on or before January 26, 1983.

10. That on or about January 26, 1983, Respondent's counsel submitted a Motion to Quash Witness Subpoena Duces Tecum; that on or about February 1, 1983, the Grievance Committee Chairman entered an Order granting in part and denying in part said Motion; and that on or about February 28, 1983, a new subpoena duces tecum was executed requiring the production of certain records to the Grievance Committee on or before March 30, 1983.

11. That on or about March 9, 1983, said subpoena duces tecum was served on and accepted by Respondent's counsel, and that on March 10, 1983, said subpoena was individually served on Respondent.

12. That on or about March 30, 1983, Respondent, accompanied by counsel, appeared before Grievance Committee "D" of the Eleventh Judicial Circuit; that Respondent failed to produce any of the records required by the subpoena duces tecum; that Respondent's counsel requested additional time to consult with Respondent; and that Respondent's counsel expressed the hope that Respondent would comply with the subpoena duces tecum in the near future.

13. That Grievance Committee "D" of the Eleventh Judicial Circuit considered Respondent's non-compliance with the subpoena and determined that there existed no legal or other basis for Respondent's non-compliance therewith, and as a result thereof, the Committee entered a finding of Probable Cause based upon Respondent's failure to comply. In arriving at its Probable Cause finding, the Grievance Committee determined that Respondent's conduct and non-compliance was violative of Disciplinary Rules 1-102(A)(1), and (6), and 2-106(E) of the Code of Professional Responsibility, and Article XI, Rule 11.02(4)(b) of the Integration Rule of The Florida Bar.

14. That on or about April 4, 1983, at the direction of the Grievance Committee, a Petition for Order to Show Cause was filed in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida; that on or about April 5, 1983, the Circuit Court entered an Order to Show Cause commanding Respondent to appear on or about April 11, 1983 to show cause why he should not be held in contempt for failure to comply with the subpoena duces tecum; and that on or about April 11, 1983, a hearing was convened, at which time an agreement was reached whereby Respondent would comply with the outstanding Grievance Committee's subpoena duces tecum and that absent Respondent's future compliance, the Court would then consider the imposition of appropriate sanctions.

15. That subsequent to the aforementioned hearing, Respondent, by and through counsel, turned over certain documents and records demanded by the subpoena duces tecum.

16. That on or about April 13, 1983, Grievance Committee "D" of the Eleventh Judicial Circuit convened an additional hearing at which time the documents and records produced by Respondent were reviewed.

17. That on or about May 31, 1983, Grievance Committee "D" of the Eleventh Judicial Circuit reconvened, at which time Respondent voluntarily produced certain trust account records for review by the Grievance Committee.

18. That on or about June 16, 1983, Grievance Committee "D" of the Eleventh Judicial Circuit reconvened for the purpose of considering and deliberating upon all matters then before the Committee, to include all records and testimony adduced during all past Grievance Committee hearings.

19. That subsequent to its executive deliberations, Grievance Committee "D" of the Eleventh Judicial Circuit entered a finding of Probable Cause to pursue further disciplinary proceedings based upon Respondent's failure to be in substantial compliance with Article XI, Rule 11.02(4)(c) of the Integration Rule of The Florida Bar, and all applicable Bylaws thereto, in that Respondent failed to perform quarterly reconciliations of his trust account and failed to maintain a file or ledger containing an accounting for each person from whom trust funds had been received. The Grievance Committee further found Probable Cause to pursue further disciplinary proceedings based upon Respondent's failure to maintain closing statements as required by Disciplinary Rule 2-106(E) of the Code of Professional Responsibility. Finally, the Grievance Committee reconsidered its prior finding of Probable Cause to pursue further disciplinary proceedings as it related to Respondent's earlier non-compliance with its subpoenas duces tecum and voted to reaffirm that prior finding of Probable Cause.

20. That Respondent, having availed himself for the benefit of counsel, has considered the findings of Grievance Committee "D"

of the Eleventh Judicial Circuit and hereby admits to violations of Article XI, Rule 11.02(4)(c) of the Integration Rule of The Florida Bar, and all applicable Bylaws relative thereto, for his failure to adhere to minimum trust accounting standards; to violations of Disciplinary Rule 2-106(E) of the Code of Professional Responsibility, for his failure to maintain closing statements for the time period specified in said Rules; and violations of Disciplinary Rules 1-102(A)(1), and (6), and 2-106(E) of the Code of Professional Responsibility, and Article XI, Rule 11.02(4)(b) of the Integration Rule of The Florida Bar, and all applicable Bylaws relative thereto, for his failure to timely comply with the Grievance Committee's subpoenas duces tecum.

21. That Respondent voluntarily admits and recognizes that his failure to timely comply and honor the Grievance Committee's subpoena powers has operated to thwart the orderly processes of The Florida Bar grievance framework. Respondent further admits and acknowledges that his non-compliance resulted in an inordinate delay, was not founded upon legal basis, and reflected adversely upon both himself and the profession. In retrospect, Respondent freely admits and acknowledges that these violations of the above-cited provisions of the Code of Professional Responsibility and the Integration Rule of The Florida Bar was inimicable to his responsibilities as an attorney and reflected disdain toward the profession.

22. That at all times material to the Grievance Committee's investigation, Respondent has been afforded the competent assistance of counsel.

23. That Respondent acknowledges that this Conditional Guilty Plea for Consent Judgment for Public Reprimand is tendered freely, voluntarily, and without fear or threat of coercion.

24. That Respondent acknowledges that he has been afforded all procedural and substantive due process guarantees regarding these disciplinary proceedings, and that for the purpose of tendering this Conditional Guilty Plea for Consent Judgment for Public Reprimand, the Respondent hereby waives any objections relative to the denial of same.

25. That should this Conditional Guilty Plea for Consent Judgment for Public Reprimand not be finally approved by both the Board of Governors of the Florida Bar and the Supreme Court of Florida, said Plea will be of no force and effect.

26. That should the Conditional Guilty Plea for Consent Judgment for Public Reprimand be approved by both the Board of Governors of The Florida Bar and the Supreme Court of Florida, the Respondent hereby agrees to pay costs in the amount of \$1,284.54 within thirty (30) days of the Supreme Court's final Order approving same.

27. That should the Supreme Court of Florida approve this Conditional Guilty Plea for Consent Judgment for Public Reprimand, the Respondent hereby agrees and acknowledges that same will not be the subject of future modification.

28. That Respondent acknowledges and agrees that the Supreme Court of Florida can publish such facts and violations relating to this Conditional Guilty Plea for Consent Judgment for Public Reprimand in any Order it may issue approving same.

29. That Respondent acknowledges and understands that the Board of Governors of the Florida Bar and the Supreme Court of

Florida may require his personal appearance before the Board of Governors for imposition of the Public Reprimand and that Respondent hereby agrees to appear before the Board of Governors should the Supreme Court of Florida order his appearance.

RESPECTIVELY SUBMITTED BY & THROUGH COUNSEL:

LOUIS M. JEPEWAY, SR., ESQUIRE
Counsel for Respondent
Dade Federal Building, Suite 619
101 E. Flagler Street
Miami, Florida 33131
(305) 377-2356

APPROVED BY:

IRWIN COHEN, ESQUIRE
Respondent
407 Lincoln Road, Penthouse
Miami Beach, Florida 33139
(305) 532-1771

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and all dispatched executed copies of this Conditional Guilty Plea for Consent Judgment for Public Reprimand were hand delivered to Branch Staff Counsel (or his designee), this ____ day of February, 1984, for forwarding to the Board of Governors of The Florida Bar and the Supreme Court of Florida.

LOUIS M. JEPEWAY, SR., ESQUIRE
Counsel for Respondent