

IN THE SUPREME COURT OF FLORIDA

JUN 8 1987

SUPREME COURT

THE FLORIDA BAR,
Complainant,

Supreme Court
Case No. 69,526

vs.

The Florida Bar
File No. 11J85M31

MARVIN C. NORTON,
Respondent.

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.5, Rules of Discipline, review of a consent judgment for discipline was undertaken. All of the pleadings, notices, motions, orders, transcripts, and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

The following attorneys appeared as counsel for the parties:

On Behalf of The Florida Bar: Patricia S. Etkin

On Behalf of the Respondent: pro se

Respondent submitted a Stipulation as to Probable Cause, Unconditional Guilty Plea, and a Consent Judgment for Discipline ("consent judgment") which provides for a public reprimand with two (2) years' probation during which time Respondent would submit quarterly reports from a Certified Public Accountant reflecting that his trust account was being maintained in compliance with the trust accounting

provisions, now set forth in the Rules Regulating Trust Accounts. In addition, Respondent agrees to pay costs of the proceedings and audit.

In response, Complainant filed a Petition for Approval of Consent Judgment for Discipline which reflects the position of The Florida Bar, as approved by the Designated Reviewer of the Eleventh Judicial Circuit Grievance Committee "J", that Respondent's plea be accepted based upon the imposition of the following disciplinary terms:

- (a) public reprimand to be published in the Southern Reporter upon entry of the final order of discipline by the Supreme Court of Florida;
- (b) two (2) years' probation during which time Respondent is required to submit quarterly reports from a Certified Public Accountant reflecting that his trust account is being maintained in compliance with Rule 11.02(4)(c) of the Integration Rule of The Florida Bar (now set forth in the Rules Regulating Trust Accounts);
- (c) taxation of costs of the audit/investigation in the disciplinary proceedings assessed against Respondent, with execution to issue with interest at a rate of twelve per cent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order, unless the time for payment is extended by the Board of Governors.

Having reviewed the record of this proceeding, I find that Respondent's plea and the recommendation of The Florida Bar as to terms of discipline are both fair to the Respondent and in the best interests of the public. Accordingly, Respondent's Conditional Guilty Plea for Consent Judgment and the terms of discipline recommended by The Florida Bar are accepted and hereby adopted as the recommendations of this Referee in this matter.

II. FINDINGS OF FACT: In his consent judgment, Respondent admits certain factual matters, which I hereby accept and adopt as the findings of fact in this case, to wit:

- (a) On June 12, 1984 Respondent issued a check from his trust account payable to Clerk, County Court, in the amount of \$21.00 which was dishonored by the bank because of insufficient funds.
- (b) As a result of the foregoing, an examination and analysis of Respondent's trust accounts were conducted for the period June 1983 through February 1986 (hereinafter referred to as "audit".)
- (c) The audit revealed that Respondent's handling of his trust account was not in compliance with the minimum trust accounting procedures required pursuant to Rule 11.02(4), Integration Rule of The Florida Bar and its Bylaws, as described below.
- (d) Respondent deposited client funds entrusted to him in the trust account of another attorney.
- (e) Respondent issued checks against uncollected funds.
- (f) Respondent failed to make quarterly and/or monthly trust account reconciliations.
- (g) Respondent failed to keep an accurate running balance in his check-stub book.
- (h) Respondent failed to maintain proper ledger cards or similar equivalent records clearly reflecting the date, amount, source, and reason for all receipts and disbursement of trust funds.
- (i) Respondent's poor recordkeeping resulted in the return of Respondent's check referred to in Paragraph (a) above by the bank.

III. RECOMMENDATION AS TO GUILT: In his consent judgment, Respondent admits that his trust accounting recordkeeping procedures were not in accordance with the minimum requirements. Based upon Respondent's admissions, I recommend that Respondent be found guilty of violating Article XI, Rule 11.02(4) of the Integration Rule of The Florida Bar and its Bylaws, and Disciplinary Rule 9-102(A) of the Code of Professional Responsibility.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED: In recommending discipline, I considered the following facts offered by Respondent in mitigation:

- (a) Following the Bar audit, Respondent took action to correct the deficiencies in his trust accounting procedures.
- (b) Respondent has no record of any prior disciplinary action.

Accordingly, I accept Respondent's Conditional Guilty Plea for Consent Judgment and recommend the imposition of the following disciplinary terms:

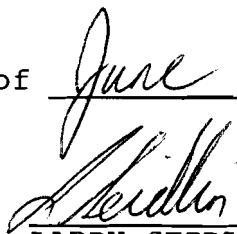
- (a) public reprimand to be published in the Southern Reporter upon entry of the final order of discipline by the Supreme Court of Florida;
- (b) two (2) years' probation during which time Respondent is required to submit quarterly reports from a Certified Public Accountant reflecting that his trust account is being maintained in compliance with the Rules Regulating Trust Accounts.

V. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED: I find that the following were reasonably incurred by The Florida Bar as costs in these proceedings and should be assessed against Respondent:

	<u>Amount</u>
Administrative Costs:	
Rule 3-7.5(K) (5),	
Rules of Discipline	
Referee Level	\$ 150.00
Cost of Audit/Investigation	<u>1,322.86</u>
TOTAL	<u>\$1,472.86</u>

It is recommended that the foregoing costs be assessed against Respondent. It is further recommended that execution issue with interest at a rate of twelve per cent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order, unless the time for payment is extended by the Board of Governors of The Florida Bar.

Dated this 3 day of June, 1987.



 LARRY SEIDLIN, Referee

Copies furnished to:
 Patricia S. Etkin, Esq.
 Marvin C. Norton, Esq.