IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

THE FLORIDA BAR,

Complainant,

vs.

JAMES W. AARON,

Respondent.
_____/

Case No. 70,538
TFB No. 87-23,842 (10A)
(Formerly 10A87C20)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Integration Rule and the Rules Regulating The Florida Bar, a hearing on the respondent's Motion To Dismiss was held on June 22, 1987, and thereafter denied. A pre-trial hearing was held on September 17, 1987, and the final hearing was held on September 25, 1987. Respondent waived venue so the evidentiary hearing could be held in Manatee County, Florida. The pleadings, Notices, Motions, Orders, Transcripts and Exhibits, all of which have been or are being forwarded to the Supreme Court with this report, constitute the record in this case.

The following attorneys appeared as counsel for the Parties:

For The Florida Bar:	David G. McGunegle
For the Respondent:	In pro se and David Wilson, III as co-counsel

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, pertinent portions of which are commented on below, I find:

1. Respondent, James W. Aaron, 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. Respondent resided and practiced law in Highland County, Florida, at all times material.

3. That the respondent testified at a hearing before Circuit Judge Richard G. Bailey, sitting as a referee, on December 10, 1985, under oath. He testified that on Page 11, Lines 20 through 25, and Page 12, Line 1 of the Official Transcript of Proceedings, as follows:

Q Now, Charlie Lee, I think, and Colleen Rook of my office came down and went through your records in August of 1984?

A I believe so.

Q And you did then bring those current and in conformance with the rules, subsequent to that visit?

A Correct.

I find that there is no competent evidence that respondent fully understood the question and clearly answered that his trust account record keeping was in substantial minimal compliance on December 10, 1985. I, therefore, find no misconduct in regards to this allegation.

4. After the Court's order became final, Staff Investigator Charles Lee met with the respondent to review his trust records for the period July 1985 to July 1986. The review disclosed the respondent had no records to indicate that any monthly or annual bank reconciliations had been done. There was no letter to the bank requesting it to notify the Bar in the event of a returned check absent bank error. In addition, the respondent could not tell the undersigned at the final hearing whether or not he had notified the bank. There was neither a separate receipt disbursement journal nor a cash receipt book. Each client did not have a separate client ledger card. Available client ledgers reflected both trust and non-trust activity without distinction. The checks were not identified by numbers nor whether trust or non-trust nor the reason for the disbursement. The respondent failed to deposit funds belonging in part to himself and in part to trust to the trust account as in at least sixty-five instances. This constitutes co-mingling per se. Further, the bank records did not reflect deposits and cost expenditures relative to the clients. Checks were written out of the trust account to Publix, cash, the respondent, and Chester Taylor without any adequate documentation on the check or check stub to reflect the client matter involved. The check payable to Mr. Taylor was a business transaction wherein the respondent paid money for the harvest of fruit from a grove in which he had an interest. The evidence presented showed that respondent did reconcile some but not all of his monthly bank statements. Respondent's cash receipt book consisted of his regular office receipt book. Respondent's records revealed bank deposit slips but no duplicate office receipt. Further, it should be noted that there was very little check activity during this entire year and that many of the monthly reconciliations would have consisted only of reconciling a service charge for that particular month.

5. Although Exhibit 6 shows money due from the settlement to James B. Kearney, the respondent testified the funds were consumed in owed fees for other work done for Mr. Kearney's benefit over the years.

6. The respondent certified on his dues statement submitted on or about July 17, 1986, that he had read the rules and was in substantial minimal compliance with same. He admitted at the final hearing that checking paragraph four on his dues statement for 1986 as he did regarding monthly bank reconciliations was a misleading statement to The Bar. The respondent did not maintain all written trust records nor did he follow all procedures required, although he did partially comply with Integration Rule 11.02(4)(c) and Disciplinary Rule 2-106 and 9-102. Respondent told complainant's investigator Charles Lee that he thought that complainant would assist him in bringing his record keeping in compliance during the one-year probation period.

III. Recommendation As To Whether Or Not The Respondent Should Be Found Guilty: I recommend the respondent be found guilty and specifically that he be found guilty of violation of the following rules of Article XI of The Florida Bar's Integration Rule:

11.02(3)(a) for conduct contrary to honesty, justice or good morals, and
11.02(4)(c) and the accompanying bylaw for improper trust account record keeping.

Respondent's conduct also violated the following disciplinary rules of The Florida Bar's Code of Professional Responsibility:

9-102(B)(3) for improper trust account record keeping.

IV. Recommendation As To Disciplinary Measures To Be Applied: I recommend the respondent be given a private reprimand and that the respondent be placed on probation for a period of one (1) year. The terms of probation recommended to be as follows:

1. The Florida Bar, through the Orlando Branch Office, shall review respondent's trust account records on a quarterly basis.

V. Personal History And Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 38
Date admitted to Bar: May 10, 1974
Prior disciplinary convictions and disciplinary measures imposed therein:

The respondent received a public reprimand in The Florida Bar v. Aaron, 490 So.2d 941 (Fla. 1986) for trust accounting violations and other misconduct.

Other personal data: Respondent is married and has two minor children.

VI. Statement Of Costs And Manner In Which Costs Should Be Taxed: I find the following costs were reasonably incurred by The Florida Bar:

A.	Grievance Committee Level Costs	
	1. Administrative Costs	$ 150.00
	2. Transcript Costs	$ 137.75
	3. Bar Counsel/Branch Staff Counsel Travel Costs	$ 72.40
	4. Investigator's Expenses	$ 308.45
B.	Referee Level Costs	
	1. Administrative Costs	$ 150.00
	2. Transcript Costs	$
	3. Bar Counsel/Branch Staff Counsel Travel Costs	$ 152.00
	4. Investigator Expenses	$
C.	Miscellaneous Costs	
	1. Telephone Costs	$ 1.66
	TOTAL ITEMIZED COSTS	$ 972.26

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 16th day of October, 1987.

George K. Brown, Jr.
Referee

Copies to:

David G. McGunegle, Bar Counsel
James W. Aaron, Respondent
David Wilson III, Co-Counsel for Respondent
Staff Counsel, The Florida Bar, Tallahassee, Florida 32301