

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR
Complainant,

vs.

RICHARD G. NEWHOUSE
Respondent.

Case No.: 71,888
(Florida Bar Case
Nos.: 88-50,174
87-26,688, 87-26,714, 87-26,727,
87-26,726, 87-26,676)

FILED
SID J. WHITE

JUN 16 1988

REPORT OF REFEREE

CLERK, SUPREME COURT

By undersigned being
Deputy Clerk

- I. Summary of Proceedings. Pursuant to the By undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of The Florida Bar, a final hearing was held on May 6, 1988 at the Ft. Lauderdale office of The Florida Bar. Notices, Motions, Orders and Exhibits all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel:

For The Florida Bar: **Jacqueline Needelman**
Bar Counsel, The Florida Bar
5900 N. Andrews Ave., Ste. 835
Ft. Lauderdale, FL 33309

and

John T. Berry
Staff Counsel
The Florida Bar
Tallahassee, FL 32301
(904)222-5286

For The Respondent: **Richard B. Newhouse (Pro Se)**
Post Office Box 1259
Venice, California 90294-1259

Abbreviations used: "TR" for transcript of proceedings
before the referee on May 6, 1988.

"BE" for numbered exhibit of The
Florida Bar.

- II. Findings of Fact: After considering the pleadings and evidence before me, I find:

1. Notice of Final Hearing was served by certified mail, return receipt requested, upon Respondent March 31, 1988, at his current address of record, P.O. Box 1259, Venice, California 90294-1259 and the card acknowledging receipt April 7, 1988, is attached to the notice. (BE-1)(TR-3). No one appeared for the Respondent at the final hearing.

2. Affidavit of Carlos J. Ruga, Certified Public Accountant and Branch Auditor for the The Florida Bar's Miami and Ft. Lauderdale offices dated July 6, 1987, was received into evidence. (BE-2)(TR-4). The audit reflected in the affidavit and its attachments was conducted pursuant to request of Grievance Committee "B" of the Seventeenth Judicial Circuit and covered the following bank accounts:

- 1) Richard G. Newhouse Trust Account,
maintained at Sun Bank, Account No.
402-4503201;

- 2) Richard G. Newhouse or Carolyn J. Newhouse, an interest bearing account maintained at Sun Bank, Account No. 402-024627865; and
- 3) Richard G. Newhouse ITF, an interest bearing account maintained at California Federal, Account No. 01-215-0550661-1. (BE-2)

3. The audit conducted by Mr. Ruga covered trust account transactions for the period September 1, 1983, through February 28, 1987, and included Newhouse's client files that were closed through December 31, 1986, and all closing statements related to these files to see if the funds received by Respondent were properly disbursed. (TR-19,20) (BE-2, pars. 5 and 6).

4. During the period audited Respondent withheld from from the settlement proceeds of seven clients the sum of \$8,403.23, to pay for medical services, did not pay the same and misappropriated those funds in the following amounts:

<u>Client</u>	<u>Amount withheld</u>
Moazam Peshimen	\$1,500.00 (par. 8 of BE-2)
Dolores Payne	\$1,170.00 (par. 9 of BE-2)
Grady Wimberly	\$1,168.90 (par. 10 of BE-2)
Ernie LaGree	\$1,798.13 (par. 11 of BE-2)
Kristinya Merriman	\$1,950.00 (par. 12 of BE-2)
Albert Muscari	\$ 387.20 (Par. 13 of BE-2)
Elliott Scott	\$ 429.00 (par. 14 of BE-2)
	<u>\$8,403.23</u>

5. In the case of Luis Chavez, a personal injury case, State Farm Fire & Casualty Co., on Feb. 14, 1984, sent Respondent, as Chavez' attorney, three drafts for the purpose of paying the following outstanding medical bills:

- a) #519-063915Q - \$158.00 for the remaining Broward General Medical Center bill
- b) #519-063916Q - \$1,973.00 for Dr. Pinella and North Beach EKG Consultants; and
- c) #519-063917Q - \$1,628.19 for the remaining North Beach Community Hospital bill.

The drafts in the sums of \$158.00 and \$1,628.19 were endorsed by Mr. Chavez and Respondent and delivered by Respondent to the medical care providers. (par. 15 of BE-2) The check in the amount of \$1,973 given to Respondent by State Farm for the specific purpose of paying Dr. Pinella and North Beach EKG Consultants was deposited into Respondent's trust account on March 24, 1984. (TR-23,24) Dr. Pinella's office demanded payment in the amount of \$1,525 for services rendered to Mr. Chavez. (TR-24) On April 13, 1984, Respondent forwarded his check in the amount of \$150.00 as partial payment. (exh. 10 to BE-2) The remaining sum of \$1,375 due Dr. Pinella has not been paid (par. 15 of BE-2) and I therefore find that Respondent has misappropriated the sum of \$1,375 from State Farm Fire & Casualty Co. check #519-063916Q.

6. During the period audited eight (8) clients were overcharged a total of \$15,505.43 in costs which cannot be validated as either incurred or paid even though they were charged against the client's net recovery on the closing statement in each case. The following is a schedule of the clients who were overcharged and the amounts charged for costs not incurred:

<u>Client</u>	<u>Amount Charged in closing stmt</u>	<u>Costs Validated</u>	<u>Amount Overcharged</u>
Lawrence Rothbard	\$1,824.12	\$70.50	\$1,753.62
Thelma Robinson	3,422.10	-0-	3,422.10
Grady Wimberly	1,125.81	-0-	1,125.81
Elliott Scott	243.00	27.24	215.76
Mario Gulinello	1,138.77	426.23	712.54
Angela Simmons	2,055.57	-0-	2,055.57
Nathan Spaulding	2,135.83	474.25	1,661.58
Kristinya Merriman	<u>6,558.45</u>	<u>2,000.00</u>	<u>4,558.45</u>
	\$18,503.65	\$2,998.22	\$15,505.43

Mr. Ruga wrote the Respondent on May 7, 1987, expressing his concern over the lack of cancelled checks or receipts to account for the various medical payments and other costs debited against the respective recoveries of these eight clients. (Item #12 attached to BE-2). In some cases he produced partial records covering a small portion of the costs. (TR-24,25) For example, in the Rothbard matter an altogether strange and incomplete "statement" was signed by the client "under duress" on 11-19-86 reflecting total costs expended through January 1984 (34 months earlier!) of \$1,824.12 (Item #13 attached to BE-2) Respondent could only produce receipts for the amount of \$70.50 (TR-26), most of which was the circuit court filing fee (Item #14 attached to BE-2). I have gone through the other seven cost-overcharged matters in the above schedule and find that the total sum of \$15,505.43 is unsubstantiated by checks, receipts, or otherwise and therefore conclude that Respondent has misappropriated the said sum of \$15,505.43.

7. During the period examined by Mr. Ruga, Mr. Newhouse failed to produce an accurate closing statement to account for all receipts and disbursements. (page 4 of Item 15 of BE-2)

The closing statement for Rothbard mentioned earlier (Item #13 attached to BE-2) shows "Net to client" of \$366.28 and there is no cancelled check or receipt showing Rothbard every received this sum.

In his analysis of the Chavez matter (See Tab marked "Chavez" attached to BE-2) Mr. Ruga points out that the client received only \$3,000 but was entitled to to \$4209.52 utilizing assumptions favorable to Respondent thus producing an underpayment to the client of \$1,209.52.

Mr. Ruga's analysis of the Lagree matter (Tab marked "Lagree, Ernie" a attached to BE-2) shows total receipts of \$31,500 (p.2), receipts for expenses of only \$269.90, fees which should have totalled \$13,750 and payments to medical providers of \$2,000. Mr. Lagree should have received \$15,480.10 but actually received only \$11,555.03 so the total shortfall is \$3,925.09 plus interest during the time it remained in Respondent's interest-bearing account. Part of the \$3,925.07 consists of \$1,798.13 withheld to pay medical care providers (see finding in par. 4 of this report) leaving the sum of \$2,126.94 which Mr. Lagree should have received but has not.

In auditing the account of client Dianne Schneider, Mr. Ruga was confronted by the as now usual deficiencies in Mr. Newhouse's records keeping. (See analysis under tab marked "Schneider, D" attached to BE-2) There was a client ledger card nor a closing statement pertaining to this personal injury case. In his excellent account-reconstruction on page 3, Mr. Ruga establishes and I so find that from the documentation available, Mrs. Schneider was entitled to receive \$22,033.50. Distribution to the client only documents the sum of \$18,576.96 as having been paid leaving a shortfall to Mrs. Schneider of \$3,461.54 plus interest from May, 1985, when \$8,736 in funds undistributed from the Schneider case were trans-

ferred with other monies from respondent's trust account to his Sun Bank interest-bearing account no. 402-24627865.

In summary I find that the above four clients did not receive shares of settlement proceeds to which they were entitled according to the following schedule:

<u>Client</u>	<u>Amount</u>
Lawrence Rothbard	\$ 366.28
Luis Chavez	1,209.52
Ernest Lagree	2,126.94
Diane Schneider	3,461.54
	<u>\$7,164.28</u>

8. We must revisit the Rothbard matter for yet another problem. (see tab labeled "Rothbard, L." attached to BE-2). The retainer agreement provides for a fee a 40% of every payment received. The agreement does not specifically refer to the Personal Inquiry Protection (PIP) on Rothbard's own policy. Since Mr. Newhouse was paid by the insurance company for his attorney's fees (\$750) and costs (\$124.50) separately it was excessive for him to charge the client 40% of the \$10,000 received for Mr. Rothbard's lost wages and 40% of the \$874.50.

As pointed out in the opinion in the The Florida Bar v. Gentry, 475 So2d 678,679 (Fla. 1985), it is unfair or excessive to charge an attorney's fee for PIP benefits because the Statute itself, Fla. Stat. 627.736(8), provides for reasonable attorney's fees for the insured if there is a dispute. In my opinion, absent a showing of significant labor on Respondent's part, Mr. Rothbard should have received the entire \$10,000 from the insurance company. The client received only \$6,454.60 (\$4,334.70 + \$2,119.90). I therefore find that Mr. Rothbard was overcharged the sum of \$3,545.40. (See Mr. Ruga's analysis under tab "Rothbard, L." as part of BE-2).

9. From Mr. Ruga's affidavit (BE-2, par. 23) I find that Respondent used his trust account in conjunction with an interest-bearing account in which the trust account was kept at a minimum and clients' funds were deposited into the interest-bearing accounts. During the audit period Respondent earned a total of \$2,751.64 in interest from clients' funds. (TR-33) There is no evidence that Respondent paid any interest to his clients on their funds except the Martin Woods guardianship matter which was the subject of Case No.: 70,792 against respondent reported in 520 So2d 25 (Fla. 1988).

10. Mr. Ruga further audited the account of Greg Anderson and found that Respondent received settlement funds totalling \$26,523.25. I find that Respondent has failed to deliver to Mr. Anderson \$2,505.94. (TR-33)(Item #16 of BE-2). Also, Mr. Anderson's funds were deposited in an interest-bearing account and Respondent failed to keep minimum trust account records. (pp. 8,9 of Item #16 of BE-2). Since there is no documentation showing the payment of this sum to Mr. Anderson I must find that Respondent has misappropriated \$2,505.94 belonging to Mr. Anderson. Incidentally, there is a typographical error in par. 11 of the Bar's Complaint wherein it is alleged that Respondent failed to distribute \$21,505.94 where the correct figure is \$2,505.94 and Petitioner's motion to amend to reflect that \$2,505.94 is the sum which was withheld is granted.

11. I have previously found that Respondent has violated rules respecting regulations of interest-bearing accounts [Integration Rule 11.02(4)(d) and Rule 5-1.1(d)(3)(a),(b) and (c)].

12. By not remitting interest and reports on deposits of clients' monies in an interest-bearing account Respondent has

violated Rule 11.02(4)(c) now Rule 5-1.2(b) of the Rules Regulating Trust Accounts. (TR-35)

13. By not maintaining minimum procedures providing monthly reconciliations, reconciliations of bank accounts, client ledger cards and run of balance of his liability to clients as compared to the bank balance (TR-35,26) Mr. Newhouse has violated Bylaw Section 11.02(4)(c)(3) now found in Rule 5-1.2(c) of the Rules Regulating Trust Accounts.

14. By not keeping journals, client ledger cards, checks, bank statements, etc. Mr. Newhouse has violated Bylaw Sec. 11.02(4)(c), now found in Rule 5-1.2(b) of the Rules Regulating Trust Accounts.

15. Mr. Ruga's audit of client Rosie King's account is in evidence. (BE-3) Based upon a complaint by the client Mr. Ruga found that \$5,500 in settlement monies pertaining to Mrs. King were deposited by Respondent in his California Federal interest-bearing account on May 28, 1986, and they remained in this account until June 27, 1986, when Respondent transferred \$4,629 to his Sun Bank Trust Account identifying \$3,829 of this deposit as pertaining to Mrs. King and \$800 as pertaining to Thelma Robinson. The \$3,829 was paid to Mrs. King on June 29, 1986, by a trust account check payable to her. Mrs. King executed a statement on April 3, 1986, prepared by Respondent. Respondent did not itemize \$236 in costs nor did he pay any part of the interest earned to Mrs. King. I find that this violates Rule 11.02(4)(a) [now Rules Regulating Trust Accounts 5-1.1(a), Intergration Rule 11.02(4)(d) [Now Rules Regulating Trust Accounts 5-1.1(d)(3)(a)(b)(c)], By failing to pay entrusted funds promptly upon request I find respondent has violated Disciplinary Rule 9-102(B)(4) (now Rule 4-1.15(b) of the Rules of Professional Conduct) By commingling his funds and that of clients in the interest-bearing account I find Respondent has violated Disciplinary Rule 9-102(A) [now Rules of Professional Conduct 4-1.15(a)]. By failing to maintain minimum trust accounting records keeping requirements I find that respondent has further violated Bylaws Sec. 11.02(4)(c) [now Rules Regulating Trust Accounts 5-1.2 (b)].

III. Recommendations as to whether the Respondent should be found guilty: as to each charge made in the complaint I make the following recommendations as to guilt or innocence:

a. I recommend that Respondent be found guilty with respect to the Violation of Disciplinary Rules 1-102(A)(3) (engaging in illegal conduct involving moral turpitude), 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation), 2-106(A) (a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee), and The Florida Bar Integration Rule, Article XI, Rule 11.02(3)(a) and (b) (commission of an act contrary to honesty, justice and good morals, and commission of a crime).

b. I recommend that Respondent be found guilty with respect to the violation of Rule 11.02(4) of the Integration Rule (Rule 5-1.1, Rules Regulating Trust Accounts after December 31, 1986) which requires that funds entrusted to an attorney for a specific purpose be applied only to that purpose.

c. I recommend that Respondent be found guilty with respect to the violation of Disciplinary Rule 9-102(B)(4) of the Code of Professional Responsibility (Rule 4.1.15(b) of the Rules of Professional Conduct after December 31, 1986) which requires an attorney to promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

d. I recommend that Respondent be found guilty with respect to the violation of Disciplinary Rule 9-102(A) of the Code

of Professional Responsibility, and Rule 11.02(4)(a) of the Integration Rule of The Florida Bar (After 12/31/86, Rules Regulating Trust Accounts 5-1.1(a) and Rule 4-1.15, Rules of Professional Conduct), which requires that clients' trust funds be deposited in a bank or savings and loan association account clearly labeled and designated as a trust account.

e. I recommend that Respondent be found guilty with respect to the violation of Integration Rule 11.02(4)(d) (after 12/31/86, Rules 5-1.1(d)(3)(a)(b), and (c), Rules Regulating Trust Accounts) which requires that attorneys maintaining an interest-bearing account for clients' funds shall direct the depositing institution as follows:

a) Quarterly remittance. To remit interest or dividends, as the case may be, on the average monthly balance in the account or as otherwise computed in accordance with the institution's standard account practice, at least quarterly, to The Florida Bar Foundation, Inc.;

b) Remit to Bar Foundation. To transmit with each remittance to the foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of interest applied; and

c) Report to law firm. To transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the foundation, the rate of interest applied, and the average account balance of the period for which the report is made.

f. I recommend that Respondent be found guilty with respect to the violation of Disciplinary Rule 9-102(A) (After 12/31/86 Rule 4-1.15(a), Rules of Professional Conduct), which requires that no funds belonging to the lawyer or law firm shall be deposited with clients' funds except as follows:

- a) Funds reasonably sufficient to pay bank;
- b) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

g. I recommend that Respondent be found guilty with respect to the violation of Rule 11.02(4)(b) of the Integration Rule and failed to follow minimum trust accounting procedures in violation of Rule 11.02(4)(c) of the Integration Rule and Section 11.02(4)(c), Bylaws under the Integration Rule, paragraphs 2 and 3 and further Rule 5-1.2(b) and (c) of the Rules Regulating Trust Accounts which require as follows:

2. The minimum trust accounting records which shall be maintained are:

- a) A separate bank account or accounts, and if utilized a separate savings and loan association account or accounts, located in Florida, in the name of the lawyer or law firm and clearly labeled and designated as a "trust account."

b) Original or duplicate deposit slips and, in the case of currency or coin, an additional cash receipts book, clearly identifying:

- i) The date and source of all funds received;
- ii) The client or matter for which the funds were received;

c) Original cancelled checks all of which must be numbered consecutively;

d) Other documentary support for all disbursements and transfers from the trust account;

e) A separate cash receipts and disbursement journal, including columns for receipts, disbursements, transfers, and the account balance, and containing at least:

- i) The identification of the client or matter for which the funds were received, disbursed or transferred;
- ii) The date in which all trust funds were received, disbursed or transferred;
- iii) The check number for all disbursements;
- iv) The reason for which all funds were received, disbursed or transferred.

f) A separate file or ledger with an individual card or page for each client or matter, showing all individual receipts, disbursements or transfers and any unexpended balance, and containing:

- i) The identification of the client or matter for which trust funds were received, disbursed or transferred.
- ii) The date on which all trust funds were received, disbursed or transferred.
- iii) The check number for all disbursements.
- iv) The reason for which all trust funds were received, disbursed or transferred.

g) All bank or savings and loan association statements for all trust accounts.

3. The minimum trust accounting procedures which shall be followed are:

a) The lawyer shall cause to be made monthly:

- i) Reconciliation of all trust bank or savings and loan association accounts, disclosing the balance per bank, deposited in transit, outstanding checks identified

by date and check number, and any other items necessary to reconcile the balance per bank with the balance per checkbook and the cash receipts and disbursements journal.

ii) A comparison between the total of the reconciled balances of all trust accounts and the total of the trust ledger cards or pages, together with specific descriptions of any differences between the two totals and reasons therefore.

b) At least annually, a detailed listing identifying the balance of the unexpended trust money held for each client or matter.

c) The above reconciliations, comparisons and listing shall be retained for at least six (6) years.

d) The lawyer or law firm shall authorize and request any bank or savings and loan association where he is a signatory on a trust account to notify Staff Counsel, The Florida Bar, Tallahassee, Florida 32301, in the event any trust check is returned due to insufficient funds or uncollected funds, absent bank error.

IV. Recommendations as to Disciplinary Measures:

1. Referring to Sanction 4.11 of Florida's Standards for Imposing Lawyer Sanctions approved by the Board of Governors in November, 1986, it is stated that:

"Disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury."

I have found that Respondent misappropriated \$8,403.23 in par. 4 of Findings of Fact, that he converted \$1,375 from an insurance company check in par. 5, that he overcharged and misappropriated from eight (8) different clients in par. 6 the sum of \$15,505.43, and that he withheld \$7,164.28 from the settlement proceeds from four (4) clients in par. 7 and has thereby misappropriated the same.

Bar Sanction 4.61 (knowingly or intentionally deceiving a client with intent to benefit the lawyer) obviously applies and this Sanction also provides that disbarment is the appropriate remedy.

2. Sanction 3.0 directs our attentions generally to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and whether aggravating or mitigating factors are present.

The aggravating factors present (Factor 9.22) are numerous and include:

a. He has previously been disciplined by public reprimand reported in 498 So2d 935 (Fla. 1986) in Case #66,642 before this Court. In case no. 70,115 and in case no. 70,792, which are reported in 520 So2d 25 (Fla. 1988) Respondent was disbarred for a total of ten years. Bar Factor 9.22(d) is therefore applicable.

b. His motive in enriching himself at the expense of his clients and numerous health care providers is dishonest and selfish.

3. Because of the blatant and continuing nature of the misconduct it obviously merits disbarment. The Bar has called to my attention two cases in which the sanction of disbarment without leave to apply for reinstatement for 20 years was imposed. See *The Florida Bar v. Shana Simons*, Case \$70,802 (March 10, 1988) involving several thefts and an attempt to defraud an insurance company. See Also *The Florida Bar v. Cooper*, 429 So2d 1 (Fla. 1983) involving several fraud schemes.

I therefore recommend that Respondent be disbarred without opportunity to apply for readmission to the Florida Bar for a period of twenty years.

V. Personal History:

I considered the following personal history which was elicited by me at a hearing in prior disciplinary proceeding #66,642, on November 15, 1985. The references are of course to the transcript of that hearing.

"Age: Not in evidence but birth year given as 1947 in 2 Martindale-Hubbell 288 (1985 ed.) so age is 38.

"Date admitted to bar: 1975 (TR-90)

"Prior disciplinary convictions and disciplinary measures imposed therein: No evidence was offered by the Florida Bar.

"Other Personal Data: Following graduation from law school respondent worked for a firm in Pompano Beach for a short period of time, then worked with a Ft. Lauderdale firm for six months. He went with a Miami firm for a short time then went with another Broward County firm for six months. He then associated himself with Mitchell Pasin, P.A., and specialized in commercial litigation (50%) and personal injury litigation (50%). (TR-91)

"After three years with Mitchell Pasin he went on his own for the past four years specializing mostly in personal injury litigation (90%). He is a believer in continuing legal education, has attended approximately 100 days of seminars in ten years of practice, and belongs to the American Trial Lawyers Association (TR-II-92).

"He has been married to Carolyn Joyce Newhouse for 17 years, who is employed as a legal secretary to another Ft. Lauderdale law firm. (TR II-83,84).

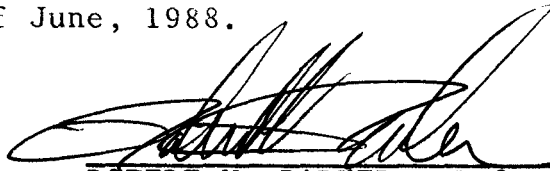
VI. Prior Disciplinary Record:

I considered the disciplinary proceeding in prior Case No. 66,642 reported in 498 So2d 935 (Fla. 1986), in which respondent was administered a public reprimand and in prior proceedings, Nos. 70,115 and 70,792, reported in 520 So2d 25 (Fla. 1988), in which Respondent was disbarred without leave to apply for readmission for a period of ten years.

VII. Statement of Costs.

A statement of costs will be forwarded when it is available.

DATED this 10th day of June, 1988.



ROBERT V. PARKER - Referee

Original to Supreme Court Clerk

Copies furnished to:

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