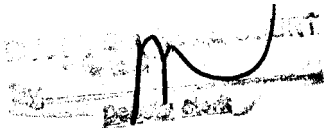


IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,


Case No. 73,214
(TFB No. 86-19,522(13C))

v.

T. CARLTON RICHARDSON,
Respondent.

-----/

COMPLAINANT'S ANSWER BRIEF

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SYMBOLS AND REFERENCES

In this Brief, the Appellant, T. Carlton Richardson, will be referred to as "the Respondent." The Appellee, The Florida Bar, will be referred to as "The Florida Bar" or "The Bar". "R" will refer to the record in this case. "AC" will refer to the amended complaint filed by The Florida Bar on December 28, 1988. "RR" will refer to the Report of Referee dated August 29, 1989. "TR1" will refer to volume I of the transcript of the Final Hearing held on July 20 and 21, 1989. "TR2" will refer to volume II of the transcript of the Final Hearing held on July 20 and July 21, 1989. "TR3" will refer to volume III of the transcript of the Final Hearing held on July 20 and 21, 1989. "TR4" will refer to the transcript of the Disciplinary Hearing held in this cause on August 24, and 25, 1989. "TR5" will refer to the transcript of the Hearing on the Respondent's Motion to Dismiss held in this cause on February 22, 1989. "TR6" will refer to the transcript of the Pre-Trial Conference held in this cause on July 7, 1989.

STATEMENT OF THE FACTS AND OF THE CASE

The Respondent's rendition of the facts in his Initial Brief are distorted and contain matters that are irrelevant and/or matters that are unsupported by the record. In addition, the Respondent in his statement of the case fails to properly cite to the record in this cause, and therefore this Court should not consider the same. In the interest of clarity, The Bar sets forth the following facts:

On March 31, 1983, Roosevelt Jones retained the Respondent to Probate the Estate of Lula King. Mr. Jones executed a Legal Services Agreement dated March 31, 1983 in regard to the matter of: The Estate of Lula King (Real Estate Title Clearing). The Legal Services Agreement provided that Mr. Jones would pay the Respondent an origination fee of \$500.00 to commence services and a commission of ten percent (10%) of the gross value of the Estate. (R. Bar Exhibit 1). The \$500.00 origination fee was to be applied toward the ten percent (10%) commission. (TR3,p.378,L.4-10). The Legal Services Contract did not provide for an hourly rate nor did it state that the commission was a minimum fee. (R. Bar Exhibit 1;TR3,p.379,L.13-15,p.384,L.12-16).

During the initial consultation, the Respondent informed Mr. Jones and his wife, Perry Jones, that they would be entitled to reimbursement from the Estate for the fees they paid the Respondent for administering the Estate. (TR2,p.227,L.1-5).

On March 31, 1983, Roosevelt and Perry Jones retained the Respondent to revise their Wills. (TR3,p.341,L.2-3). Mr. and Mrs. Jones executed a Legal Services Agreement dated March 31, 1983 in regard to the matter of: Estate Planning. The Legal Services Agreement provided for a service fee of \$85.00 for the initial consultation, an origination fee of \$750.00 to commence services and a minimum fee of \$1,250.00. (R. Bar Exhibit 2). The Legal Services Agreement did not set forth an hourly rate. In fact, the portion of the Agreement following the minimum fee of \$1,250.00 which stated "or prevailing hourly rates, whichever is GREATER", was crossed out on the Agreement. (R. Bar Exhibit 2; TR3,p.384,L.2-4).

On March 31, 1983, the Joneses paid the Respondent \$1,335.00 representing the origination fees of \$500.00 and \$750.00 on both of the aforementioned Legal Services Agreements and the service fee of \$85.00 on the Legal Services Agreement regarding Estate Planning. (R. Bar Exhibit 8(a)).

In March of 1983, Mr. Jones was 74 years old and Mrs. Jones was 73 years old. (TR2,p.187,L.22,p.199,L.15). In addition, Mr. Jones had retired from employment as a longshoreman and Mrs. Jones was employed as a music instructor. (TR2,p.187,L.15-16, p.199,L.8-9). Further, during the time of the Respondent's representation, the Jones' income was less than \$14,000.00 per year. (TR2,p.218,L.2-7).

In regard to the Estate Planning matter, the Respondent drafted the Joint Will and Trust of Perry Jones and Roosevelt Jones, Husband and Wife; a Quitclaim Deed; and a Durable Power of Attorney for each of the Joneses. The aforementioned documents were executed by the Joneses on February 24, 1984. (R. Bar Exhibits 10, 11, and 24).

By invoice dated February 23, 1984, the Respondent charged the Joneses \$609.93 for Estate Planning. (R. Bar Exhibit 3). The Jones' partially paid the aforementioned invoice on March 24, 1984 and paid the balance on April 20, 1984. (R. Bar Exhibit 8(b) and 8(c)). The total fee charged to the Joneses for Estate Planning was \$1,444.93. (R. Bar Exhibit 2 and 3). (See Appendix Exhibit 1). John Arthur Jones, the Bar's expert witness in this case, testified that in his opinion, a \$400.00 attorney fee for the Jones' Estate Planning would be generous. (TR1, p.104, L.1).

The administration of the Estate of Lula King was not a complicated matter. The decedent's assets at death consisted of a single piece of property valued at \$22,000.00. There were no creditors claims or debts, since the decedent had been dead for over fifty (50) years. (R. Bar Exhibits 9(a), 9(i); and TR1, p.105, L.10-23, p.106, L.12-13).

The Respondent prepared a Petition for Administration (After Formal Notice - Intestate Decedent) and the same was executed by Roosevelt Jones, as petitioner, on February 24, 1984 and filed March 20, 1984. (R. Bar Exhibit 9(g)). The Petition for Administration set forth a request that Roosevelt Jones, a nephew

of the decedent, be appointed as the Personal Representative of the Estate. (R. Bar Exhibit 9(g)). Roosevelt Jones was appointed Personal Representative of the Estate of Lula King by an Order dated February 25, 1985. (R. Bar Exhibit 9(d)). Mrs. Jones assisted Mr. Jones in carrying out his duties as Personal Representative for the Estate. (TR2, p.208, L.5-10).

From March 20, 1984 through July 5, 1985, the Respondent also prepared and filed the following documents: a Formal Notice by Mail dated March 19, 1984; Death Certificate of Leula King, a/k/a Lula King; Order re: Estate Assets and Beneficiaries; Order Appointing Personal Representative; Notice of Hearing; Return Receipts re: Notice of Hearing on Petition for Administration; Formal Notice by Mail dated August 15, 1984; Affidavit for Service by Publication; Letters of Administration; Notice of Administration; and an Inventory dated July 5, 1985. (R. Bar Exhibits 9(a), 9(d)-(f), 9(h)-(n)).

During the course of the representation, the Respondent sent the following invoices to the Joneses in regard to the Estate of Lula King:

1. Invoice dated March 19, 1984 in the amount of \$1,425.00;
2. Invoice dated August 14, 1984 in the amount of \$1,380.07;
3. Invoice dated September 26, 1985 in the amount of \$695.93;
4. Invoice dated February 2, 1985 in the amount of \$706.24;
5. Invoice dated March 27, 1985 in the amount of \$761.07;
6. Invoice dated May 31, 1985 in the amount of \$1,5025.09; and
7. Invoice dated June 26, 1985 in the amount of \$1,525.09. (R. Bar Exhibits 4(a)-4(g)). (See appendix Exhibit 1).

The Respondent testified at the Final Hearing that he charged the Joneses \$85.00 per hour for attorney time, \$45.00 per hour for his clerical staff time, and \$65.00 per hour for his paralegal's time. (TR3,p.325,L.8-10,p.411,L.23-25). The Respondent also testified that he charged the Joneses a monthly cover charge. The monthly cover charge represents a fee that the Respondent charges to all of his clients for a pro bono public service he provides for others; continuing professional training; bulk consumable supplies, and annual surcharges for occupancy costs. (TR3,p.389,L.4-9; R. Bar Exhibit 1 and 2). The Respondent determines the sum he charges each client for the cover charge based on the amount of the client's fee each month. If the client's fee is less than \$500.00, the client is charged 15% of the fee for the cover charge; if the fee is between \$500.00 and \$1,500.00, the client is charged 10% of the fee for the cover charge; and if the fee is more than \$1,500.00, then the client is charged 7% of the fee for the cover charge. (TR3,p.389,L.12-24). In addition to the cover charge, the Respondent testified that he charged the Joneses fifty-five cents for each xeroxed document or letter; thirty-five cents for each mailing; thirty-five cents for each phone call made on behalf of the Joneses or to the Joneses; and Ten Dollars (\$10.00) for each travel trip he makes on behalf of the Joneses. In addition to charging a flat rate for mailing, travel and phone calls, the Respondent also charged the Joneses for his time and his staff's time for performing the aforementioned services. (TR3,p.403,L.9-25

p.404,L.1-2 and 20-22). Further, the Respondent testified that he charged the Joneses based on a "billing guideline" rather than actual time spent on a matter. According to the Respondent's "billing guideline", he charged the Joneses a minimum of 20 minutes for each phone call made on their behalf even though the phone call went unanswered. (TR3,p.417,L.3-5). In the instant case, the Respondent charged the Joneses \$28.00 for calling their home even though the Joneses were not home to answer the call. (TR3,p.418,L.11-19). Further, the Respondent charged a minimum of 45 minutes per page for preparing a document on behalf of the Joneses. (TR3,p.416,L.6-7). In the instant case, the Respondent charged the Joneses \$65.00 to prepare a one-page Standard Florida Bar Probate form (R. Bar Exhibit 9(h)) which would take 3 to 5 minutes to prepare. (TR3,p.416,L.14-24). The Respondent also charged the Joneses a minimum of 20 minutes for preparing inter-office memorandums regarding case management. (TR3,p.422,L.19). The inter-office memorandums were directions from the Respondent to his staff or vice versa.

The Joneses could not afford to pay the aforementioned invoices, and therefore the Respondent suggested that the Joneses obtain a loan for approximately \$13,000.00. (TR2,p.209,L.10-19). The Respondent put Mrs. Jones in contact with Community Federal Savings and Loan Association and he assisted her in obtaining a loan and charged her a finder's fee for doing so. (TR3,p.354,L.22-25,p.355,L.1-14).

On April 11, 1984, Mrs. Jones obtained a loan from Community

Federal Savings and Loan Association in the amount of \$13,045.74, which was secured by a note and a mortgage on the Jones' Homestead. (R. Bar Exhibit 25). The Jones' marital home was paid for in full prior to April 11, 1984. (TR2,p.209,L.24-25, p.210,L.1).

After Mrs. Jones obtained the aforementioned loan, she immediately paid the Respondent's invoices dated February 23, 1984 and March 19, 1984. (R. Bar Exhibit 8(c)). In addition, Mrs. Jones used a portion of the loan proceeds to pay all of the remaining invoices of the Respondent. (TR2,p.212,L.12-14; R. Bar Exhibits 8(c),8(e)-8(i)).

The Respondent also sent an invoice dated July 3, 1984 to the Joneses in the amount \$1,273.97 for "General Services". The invoice for general services referred to the following services allegedly performed by the Respondent: completion of Estate Plan documentation; services related to the \$13,000.00 loan: resolving a consumer problem in regard to Mr. Jones' automobile engine: services relating to small scale real estate development: and the Jones' acquisition of the estate property. (R. Bar Exhibit 5).

The Respondent's services in regard to the consumer problem relating to the repair of Mr. Jones automobile engine consisted of the Respondent writing a letter to the mechanic who did the engine repair. (TR2,p.215,L.4-17). The Respondent's services in regard to the development of the Lula King property related to a conversation that the Respondent had with Mrs. Jones wherein the Respondent advised Mrs. Jones that the Lula King property could

be developed and discussed how the same could be accomplished. Mrs. Jones did not hire the Respondent to assist her in developing the property. Furthermore, the property was never developed. (TR2,p.216,L.6-25,p.217,L.7-8). The Respondent's Services in regard to the Jones' acquisition of the Estates Property consisted of the Respondent preparing a standard Petition and Order Authorizing Sale of Real Property. The Respondent's services in regard to the completion of Estate Plan documentations related to the Jones' meeting with the Respondent on February 24, 1984 to execute their Joint Will and Trust, the Power of Attorney, and the Quitclaim Deed. John Arthur Jones, the Bar's expert in this case testified that Two Hundred and 00/100 Dollars (\$200.00) was a reasonable fee for the general services performed by the Respondent. (TR1,p.104,L.3-9).

The Joneses paid the Respondent's invoice regarding "General Services" on July 17, 1984. (R. Bar Exhibit 8(d)).

On April 18, 1985 one of the Respondent's office personnel called Mrs. Jones to advise her that the payment on the invoice of March 27, 1985 was overdue by approximately two (2) weeks. (R. Bar Exhibit 14; TR2,p.258,L.23-25,p.259,L.1-2). The Respondent's office personnel also advised Mrs. Jones that if the bill was not promptly paid, the Respondent would discontinue his services. Mrs. Jones responded to the phone call by advising the Respondent's office personnel to inform the Respondent that she was discontinuing his services. (R. Respondent's Exhibit 14).

When the Respondent received Mrs. Jones' message, he called Mrs. Jones and set up a meeting to discuss his fees and services. (TR2,p.259,L.3-8). Mrs. Jones and her pastor met with the Respondent and discussed the Respondent's fees and services. At the conclusion of the meeting, Mrs. Jones decided not to discharge the Respondent as the attorney for the Estate of Lula King. (TR2,p.257,L.4-11,23-25,p.258,L.1-2).

Thereafter, Mrs. Jones received the Respondent's invoice dated May 31, 1985 in the amount of \$1,525.09, which included a past due amount of \$500.00 from the invoice of March 27, 1985. (R. Bar Exhibit 4(f)). Mrs. Jones did not pay the invoice of May 31, 1985. As a result, the Respondent sent Mrs. Jones an invoice dated June 26, 1985 in the amount of \$1,525.09, said amount being the past due sums owed from the invoices of March 27, 1985 and May 31, 1985. (R. Bar Exhibit 4(g)). (See appendix Exhibit 1).

When Mrs. Jones received the aforementioned invoices, she consulted with another attorney and was informed that the Respondent's fees for the Estate of Lula King were excessive. (R. Bar Exhibit 12). Thereafter, Mr. and Mrs. Jones sent a letter to the Respondent, wherein they advised the Respondent that his services were terminated. (R. Bar Exhibit 26). Subsequently, on July 5, 1985, Mrs. Jones paid the Respondent \$1,525.09, the balance owed to the Respondent for legal services in regard to the Estate of Lula King. (R. Bar Exhibit 8(i)). On the same date, the Respondent filed in the Estate of Lula King, a Motion to Withdraw and a document entitled Consent to Withdraw

executed by Roosevelt Jones. (R. Bar Exhibit 9(o) and 9(p)). On August 1, 1985, the Probate Judge executed an Order Allowing Withdrawal of Counsel in the Estate of Lula King. (R. Bar Exhibit 9(q)).

On October 30, 1985, Roosevelt and Perry Jones filed a grievance against the Respondent with The Florida Bar, which is this case on review. (R. Bar Exhibit 12).

Thereafter Roosevelt Jones and his wife retained attorney Charles Wilson to conclude the administration of the Estate of Lula King and to seek reimbursement from the Estate of the attorney fees paid to the Respondent. (TR1,p.152,L.23-25,p.153,L.1-2).

On November 25, 1985, Charles Wilson submitted to the Probate Court a Petition for Discharge; Notice of Final Accounting and Petition for Discharge; and a Final Accounting of Personal Representative. (R. Respondent's Exhibits 2, 3, and 4). In the Petition for Discharge, Mr. Jones sought payment of the following: \$500.00 as a Personal Representative fee; \$750.00 to pay Mr. Wilson's fee for completing the administration of the Estate of Lula King and \$8,018.49 as reimbursement of the fees paid to the Respondent for administering the Estate of Lula King. (R. Respondent's Exhibit 2).

The Petition for Discharge was objected to by two (2) of the beneficiaries of the Estate of Lula King. The beneficiaries specifically objected to the Respondent's attorney fees. (TR1,p.48,L.6-9).

Mr. Wilson, as attorney for the Personal Representative, submitted a Response to Objection for Petition for Discharge and Request for Refund of Attorney's Fee. The aforementioned response asked the Probate Court to order an appropriate refund of the attorney fees paid to the Respondent by the Personal Representative if the Court determined the Respondent's fees to be excessive. Mr. Wilson certified that he furnished a copy of the Response to the Respondent. The Response had an Amended Notice of Hearing attached to it. The Amended Notice of Hearing scheduled a hearing for February 3, 1986, on the beneficiaries Objection to Petition for Discharge. Mr. Wilson certified that a copy of the Amended Notice of Hearing was sent to the Respondent. (R. Respondent Exhibit 5).

On February 3, 1986, the hearing on the Objection to Petition for Discharge was heard by the Probate Judge, the Honorable F. Dennis Alvarez. At the conclusion of the hearing, Judge Alvarez denied the Petition for Discharge, and found that \$2,500.00 was a reasonable attorney fee and \$150.29 was a reasonable cost for the administration of the Estate of Lula King. (R. Bar Exhibit 14, paragraph 5). John Arthur Jones testified that a \$2,500.00 fee for the Respondent's services was generous. (TR1,p.103,L.16).

Subsequently, Roosevelt Jones filed a Motion For Reimbursement of Excess Attorney Fees. In addition, the Respondent filed a Motion and Memorandum of Law and Motion to Dismiss In Opposition to the Motion for Reimbursement of

Excess Attorney Fees. A hearing in regard to the aforementioned Motions was held before Judge Alvarez on March 10, 1986. (R. Bar Exhibit 14).

On March 18, 1986, Judge Alvarez entered an Order Granting Motion for Reimbursement of Excess Attorney Fees and Denying Motion to Dismiss and Motion for Summary Judgment. In the aforementioned Order, Judge Alvarez found, in part, as follows:

1. That on March 31, 1983, Roosevelt Jones executed a written contract wherein he agreed to pay the Respondent an origination fee of \$500.00 and a commission of 10% of the gross amount of the Estate. (R. Bar Exhibit 14, Paragraph 1);

2. The sole asset of the Estate was a parcel of property purchased by the Jones' for \$18,000.00. (R. Bar Exhibit 14, Paragraph 2);

3. The attorney fees advanced by the Personal Representative to the Respondent on behalf of the Estate was excessive. (R. Bar Exhibit 14, Paragraph 6);

4. The parties stipulated that the Personal Representative advanced to the Respondent the total sum of \$8,018.49 for attorney fees rendered to the Estate. (R. Bar Exhibit 14, Paragraph 11); and

5. The Personal Representative and his wife who assisted him in his fiduciary responsibilities in the Estate, are both elderly and unsophisticated in the administration of Estates. (R. Bar Exhibit 14, Paragraph 8).

In the aforementioned Order of March 18, 1986, Judge Alvarez ordered the Respondent to return to the Estate the total sum of \$5,368.20 representing the fees advanced by Mr. Jones on behalf of the Estate less costs of \$150.29 and \$2,500.00 that the Court determined to be the reasonable fee and costs for the services rendered by the Respondent. (R. Bar Exhibit 14, p.3, paragraph 3).

The Respondent appealed Judge Alvarez's Order of March 18, 1986. (R. Bar Exhibit 16).

On May 2, 1986, the Second District Court of Appeals issued an opinion in the case of T. Carlton Richardson v. Jones, Case No. 86-1025. The Court found that Judge Alvarez was correct in ordering the Respondent to repay excessive fees. However, the Court also found that it appeared that Judge Alvarez erred in computing the amount of the fees paid by the Personal Representative. Based on the aforementioned findings, the Court remanded the case back to Judge Alvarez to recalculate the fees advanced by Mr. Jones. (R. Bar Exhibit 16).

Subsequently, the Respondent filed an appeal to the Supreme Court of Florida and on November 24, 1987, this Court entered an Order denying the Respondent's Petition For Review. (R. Bar Exhibit 19(b)). Thereafter, the Respondent submitted to the Supreme Court of Florida a Petition for Writ of Mandamus, and on March 31, 1988 this Court denied the Respondent's Petition. (R. Bar Exhibit 19(c)).

Judge Alvarez held a hearing on the mandate from the Second District Court of Appeals dated May 29, 1987 in regard to the fees paid by Mr. Jones to the Respondent. On September 15, 1988, Judge Alvarez entered an Amended Order on Refund of Attorney Fees, finding that the Respondent was paid \$10,550.99 for services allegedly performed in the Estate of Lula King. In addition, the Amended Order required the Respondent to refund \$7,970.00 to the Estate of Lula King. This figure was based on the \$10,550.99 found to be advanced by Mr. Jones to the Respondent, less \$2,650.29 for reasonable attorney fees and

costs. The Order also required the Respondent to pay the Estate \$1000.00 for attorney fees pursuant to the Supreme Court Orders dated November 24, 1987 and June 8, 1988 on the Respondent's Petition for Review and Petition for Writ of Mandamus, respectfully. Further Judge Alvarez's Amended Order required the Respondent to pay the Estate \$6,700.00 for the attorney fees incurred by the Estate in defense of the Respondent's position in the Probate Court and the Second District Court of Appeals in reference to the refund of excessive attorney fees. (R. Bar Exhibit 17).

On September 19, 1988, Judge Alvarez entered a Final Judgment adjudging that the Estate of Lula King recover from the Respondent the sum of \$15,670.00. (R. Bar Exhibit 20). The Respondent appealed to the Second District Court of Appeals and his appeal was denied as being untimely. The Respondent then appealed to the Supreme Court of Florida and said appeal was pending at the time of the Final Hearing in this cause. (TR1, p.10, L.1-8).

Judge Alvarez's determination that the Respondent received \$10,550.99 from Mr. Jones on behalf of the Estate was based on the following: all fees and costs advanced by the Joneses to the Respondent in the Estate of Lula King; all fees and costs paid by the Joneses for Estate Planning and General Services; and 73% percent of the interest Mrs. Jones paid on the \$13,000.00 loan from Community Federal Savings and Loan Association. (R. Bar Exhibits 8(a)-8(i), and 18; TR1, p.60, L.16-25, p.61, L.1-5, p.62,

L.8-25,p.64,L.10-13,p.65,L.9-24). (See Appendix Exhibit 1).

The Florida Bar forwarded the Jones' grievance against the Respondent to the Thirteenth Judicial Circuit Grievance Committee "C" and on May 26, 1988, a hearing was held. The Respondent objected to the Grievance Committee panel on the grounds that there were no members of the Afro-American descent on the Committee. The Chairperson of the Committee overruled the objection. At the conclusion of the hearing, the Committee found probable cause for further disciplinary proceedings. (AC, Paragraph 20).

On February 22, 1989, a hearing was held before the Referee in regard to the Respondent's Motion to Dismiss which set forth many of the same arguments made by the Respondent in his Initial Brief relating to the Grievance Committee proceedings and the Probate proceedings before Judge Alvarez. The Referee denied the Motion to Dismiss. (TR5,p.38,L.11-16).

On July 7, 1989, a pre-trial conference was held in this case.

On July 20 and 21, 1989, a Final Hearing was held in this cause. At the conclusion of the hearing, the Referee found that the Respondent charged the Joneses a clearly excessive fee. (TR3,p.461,L.24-25). In addition, the Referee found that \$500.00 was a reasonable fee for the services that the Respondent rendered to the Estate of Lula King, including the title work. The Referee also found that \$1,500.00 was a reasonable fee for the Respondent's services relating to the Jones' Estate Planning.

(TR3,p.462,L.5-15).

On August 24, 1989, a disciplinary hearing was held. During the disciplinary hearing, Counsel for The Florida Bar recommended that the Respondent be disciplined by being suspended for ninety-one days and thereafter until he made restitution to the Joneses in the amount of \$8,014.95 less the \$500.00 that the Referee found to be a reasonable fee for the Respondent's services to the Estate of Lula King. At the conclusion of the hearing of August 25, 1989, the Referee recommended that the Respondent be disciplined as follows: a public reprimand; six months probation to be supervised by The Florida Bar; a minimum of 12 hours of accredited courses approved by The Florida Bar pertaining to billing and attorney fees; at the end of the six (6) month probation period, the Respondent must prove to the satisfaction of The Florida Bar that his billing practices and office practices meet the standards of the State of Florida up to and including, if the Bar feels its necessary, that the Respondent retake the ethics portion of The Florida Bar exam; and that the Respondent make restitution to the Estate of Lula King in the amount determined by Judge Alvarez. The Referee also recommended that the Respondent be held responsible for The Florida Bar's cost.

On August 29, 1989 Judge Pennick issued his Report of Referee wherein he recommended that the Respondent be found guilty of violating Disciplinary Rule 2-106 (charging a client a clearly excessive fee).

On October 9, 1989, the Respondent filed a Petition for Review in this cause. On or about November 8, 1989, the Respondent filed his Initial Brief in support of his Petition for Review. This Brief is filed in answer to the Respondent's Initial Brief in support of his Petition for Review.

SUMMARY OF THE ARGUMENT

The Respondent contends that his due process rights were violated because the Grievance Committee panel in this cause was biased or prejudiced against him since there were no Afro-Americans on the panel; since Bar Counsel was present and participated in the Grievance Committee's deliberation regarding probable cause in this case for further disciplinary proceedings; and since void documents were introduced into evidence during the Grievance Committee hearing. The Respondent's challenge of the Grievance Committee proceedings is untimely in light of Rule 3-7.4(a) and (b), Rules Regulating The Florida Bar. The Respondent should have appealed the Grievance Committee proceedings to The Florida Bar Board of Governors' Designated Reviewer for the "13C" Grievance Committee. Further, based on the Respondent's own statements during the disciplinary proceedings before the Referee in this case, the Grievance Committee panel members were not prejudiced against the Respondent in any way.

The Respondent also challenges the Referee's finding that the Respondent charged the Joneses a clearly excessive fee and his recommendation that the Respondent be found guilty of violating DR 2-106 (an attorney shall not charge a clearly excessive fee). The aforementioned finding that the Respondent charged a clearly excessive fee and recommendation of guilt as to

DR 2-106 is supported by the the testimony of the Bar's expert witness in this case, John Arthur Jones, and is further supported by the Probate Court's ruling in the same regard.

In addition, the Respondent argues that the Referee's recommended discipline of a public reprimand, probation, continuing legal education on the subject of attorney billing and fee practices, and restitution is inappropriate in this case. A public reprimand is the minimum discipline that can be imposed against the Respondent since this case is not based on a Complaint of Minor Misconduct. (See Rule 3-7.5 (k)(1), Rules Regulating the Florida Bar). Further, a public reprimand is appropriate in order to deter other attorneys from engaging in similar misconduct. Continued legal education and probation is appropriate in this case in light of the Respondent's statements during the disciplinary hearing in this cause that he has the right to set whatever fee standards he desires without interference from The Florida Bar. The evidence in this case shows that the Respondent's billing practices are egregious and highly improper. The Respondent is apparently unfamiliar with the Rules Regulating the Florida Bar, and therefore continuing legal education is a necessity and probation must be imposed so that the Respondent's billing practices can be monitored. Restitution in this case is appropriate since the Respondent's fee was exorbitant and constituted a misappropriation of the Jones' funds. The Respondent took advantage of the Jones' age and naivety in the area of Estate Planning and Administration of

Estates. The Respondent should be required to reimburse to the Joneses the sum of \$15,670.00 as ordered by Judge Alvarez in the Probate proceedings.

Further, the Respondent challenges the Referee's recommendation that the Respondent should pay the Bar's costs in this proceeding. The Florida Bar's costs in this case are in accordance with Rule 3-7.5(k)(1), Rules Regulating The Florida Bar, as amended on April 20, 1989, and should be upheld.

ARGUMENT

THE RESPONDENT'S DUE PROCESS RIGHTS WERE NOT VIOLATED DURING THE GRIEVANCE COMMITTEE PROCEEDINGS OR THE REFEREE PROCEEDINGS IN THIS CAUSE.

The Respondent argues that his due process rights were violated in this case because the Grievance Committee panel was either biased, prejudiced or lacked impartiality since the panel excluded members of the Afro-American community. The Respondent raised this same argument during the Referee proceedings in this cause and during the course of the argument, the Respondent stated:

"I'm not arguing, your Honor, that the women and the men who sat on my panel did not give their best, I'm not arguing that they were in any way prejudiced toward me..". (TR5,p.26,L.19-22).

Based on the Respondent's statement above, the Grievance Committee panel was not prejudiced or bias against the Respondent and therefore the aforementioned argument is without merit.

The Respondent also contends that his due process rights were violated because the Grievance Committee panel was either biased, prejudiced, or lacked impartiality since Bar counsel attended and participated in the deliberations of the Grievance Committee in regard to a finding of probable cause for further disciplinary proceedings, without allowing the Respondent and his

counsel to observe the deliberations. The Respondent's due process rights were not violated. Contrary to the Respondent's contention, Bar counsel did not participate in the Grievance Committee deliberations on the merits of the case. Bar Counsel was present during the Grievance Committee's deliberation in order to assist the committee in its administrative duties in accordance with Rule 3-7.3(e), Rules Regulating the Florida Bar which states in part as follows:

"Staff counsel shall assist each Grievance Committee in carrying out its investigative and administrative duties.. ."

During the Grievance Committee's deliberation in this case, Bar counsel advised the Committee on questions regarding procedural issues and read and interpreted the Disciplinary Rules being considered by the Committee pursuant to the Grievance Committee Notice of Hearing. Bar counsel did not vote on the issue of probable cause. (R. Complainant's Answer To Request For Admissions, paragraph 20). Based on the foregoing, the Respondent's due process rights were not violated and the Grievance Committee panel was not prejudiced against the Respondent due to Bar Counsel's presence during the Committee's deliberation in this case.

In addition the Respondent argues that his due process rights were violated because the Grievance Committee panel was biased, prejudiced or lacked impartiality since the panel received in evidence, documents from the Probate file on The Estate of Lula King, which the Respondent contends were void

since the Probate Court did not have jurisdiction to issue Orders requiring the Respondent to refund excessive fees paid by Mr. Jones for the Respondent's services. The Respondent's argument is without merit. The issue of whether or not the Probate Court had jurisdiction to order the Respondent to reimburse the Estate of Lula King excessive fees is not relevant to this proceeding. Furthermore, the Second District Court of Appeals found that the Probate Court was correct in ordering the Respondent to repay excessive fees to the Estate of Lula King. (R. Bar Exhibit 16). The documents that the Grievance Committee panel received in evidence and considered in this case have not, at any time, been declared void by any Court in this State. (R. Bar Exhibit 16, 19(a) through 19(d)). Based on the foregoing, Respondent's due process rights were not violated during the Grievance Committee proceedings in this cause.

Further, the Respondent's challenge of the Grievance Committee proceeding in this case is untimely. According to Rule 3-7.4(a) (1) and (b), Rules Regulating the Florida Bar, the Respondent should have appealed the Grievance Committee proceedings to the Florida Bar Board of Governors' Designated Reviewer for the Thirteenth Judicial Circuit Grievance Committee "C"

Based on the foregoing, the Respondent's challenge of the Grievance Committee proceeding is untimely, and should not be considered by this Court. However, regardless of this fact, the Respondent's due process rights were not violated since the

Grievance Committee panel was not prejudiced or biased against the Respondent.

The Respondent also argues that his due process rights were violated during the Referee proceedings because the Referee admitted into evidence the Orders and Judgments (R. Bar Exhibits 14, 15, 17 and 20) of Judge Alvarez from the Probate proceedings. As previously set forth, the Respondent contends that Judge Alvarez' Orders and Judgments relating to the Respondent's charging an excessive fee for his services to the Estate of Lula King were void since the Probate Court did not have jurisdiction to enter the same. The Respondent further claims that the Referee's actions in permitting the documents to be introduced into evidence constitutes reversible error.

The Respondent's argument is without merit. As previously stated, none of Judge Alvarez's Orders or Judgments have been declared void by any Court in this State. In addition, the Second District Court of Appeals held that Judge Alvarez had jurisdiction to order the Respondent to refund excessive attorney fees to the Joneses. (R. Bar Exhibit 16). Furthermore, the Orders and Judgments of Judge Alvarez were relevant to the case sub judice since this case is based on the Probate proceedings before Judge Alvarez relating to the Respondent's fees to the Estate of Lula King. The testimony of Judge Alvarez during the Final Hearing in this cause was also relevant, in that the Referee needed to have an understanding of how Judge Alvarez calculated the Respondent's fee in the Estate of Lula King to be \$10,550.99.

Based on the foregoing Respondent's due process rights were not violated during the Grievance Committee proceedings or the Referee proceedings in this cause.

THE REFEREE'S FINDING THAT THE RESPONDENT CHARGED HIS CLIENTS A CLEARLY EXCESSIVE FEE AND THE REFEREE'S RECOMMENDATION OF GUILT AS TO DR 2-106 IS SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.

The Respondent challenges the Referee's finding that he charged his clients a clearly excessive fee. This finding by the Referee is supported by clear and convincing evidence.

On March 31, 1983, the Respondent entered into a Legal Services Agreement with Roosevelt Jones in regard to the matter of: The Estate of Lula King (Real Estate Title Clearing). The Legal Services Agreement provided that Mr. Jones would pay the Respondent an origination fee of \$500.00 to commence services and a commission of ten percent (10%) of the gross value of the Estate. (R. Bar Exhibit 1). The Respondent testified that the \$500.00 origination fee was to be applied against the base fee which was the ten percent (10%) commission. (TR3, p.378, L.5-7).

The gross value of the Estate of Lula King was \$22,000.00. (R. Bar Exhibit 9(a)). Therefore, \$2,200.00 was the maximum fee that the Respondent was entitled to receive on the Legal Services Agreement with Roosevelt Jones, dated March 31, 1983.

The Respondent charged Roosevelt Jones a minimum of \$8,018.49 for administering the Estate of Lula King and for clearing the title to the property in the Estate, which was the sole asset of the Estate. (R. Bar Exhibit 4(a) thru 4(f), 5, and 14, paragraph 3).

The Respondent testified during the Final Hearing in this cause that the Legal Services Agreement regarding the matter of:

The Estate of Lula King (real estate title clearing) was a side contract to the Legal Services Agreement between Mr. and Mrs. Jones dated March 31, 1983 in regard to the Jones' Estate Planning. (TR3,p.379,L.3-5). Respondent also testified that the ten percent (10%) commission provided for in the Legal Services Agreement regarding the Estate of Lula King was a minimum fee. Respondent further testified that once the commission amount (\$2,200.00) was exceeded according to his hourly rate of \$85.00 per hour, he was entitled to the excess fee pursuant to the Legal Services Agreement regarding the Jones' Estate Planning. (TR3,p.378,L.11-17).

The aforementioned testimony by the Respondent is in conflict with both of the Respondent's Legal Services Agreements with the Joneses. The Legal Services Agreement with Roosevelt Jones in regard to the Estate of Lula King does not set forth a notation that the ten percent (10%) commission was a minimum fee. (TR3,p.384,L.12-14; R. Bar Exhibit 1). In addition, the Agreement did not set forth a notation that once the Respondent's time and services exceeded the commission, that the Respondent would be entitled to \$85.00 per hour. (TR3,p.379,L.13-15; R. Bar Exhibit 1). Further, the Legal Services Agreement for the Estate of Lula King did not set forth a notation that the Agreement was part and parcel to the Legal Services Agreement regarding the Jones' Estate Planning. (TR3,p.379,L.16-19; R. Bar Exhibit 1).

In regard to the Legal Services Agreement relating to the Jones' Estate Planning, the Agreement provided for an initial

consultation fee of \$85.00; an origination fee of \$750.00 to commence services; and a minimum fee of \$1,250.00. (R. Bar Exhibit 2). Although the Legal Services Agreement for the Jones' Estate Planning stated that there would be a minimum fee of \$1,250.00, it should be noted that immediately following said provision was the phrase "or prevailing hourly rates, whichever is GREATER". This portion of the agreement was crossed out and evidences the fact that the Respondent was not charging the Joneses on a hourly basis, but rather was charging a maximum fee of \$1,250.00 for the Jones' Estate Planning. The Agreement also failed to reflect the Respondent's position that the Legal Services Agreement regarding the Estate of Lula King was part and parcel to the Agreement for Estate Planning. (R. Bar Exhibit 2). The Respondent charged the Joneses approximately \$1,444.93 for their Estate Planning. (See Appendix Exhibit 1). The total fee which the Respondent collected from the Joneses for his services relating to the Estate of Lula King, the Jones' Estate Planning, and for General Services was \$9,462.30. (R. Bar Exhibits 3, 4(a)-4(g), 5, 8(a)-8(i)). (See Appendix Exhibit 1). This sum was more than one-half of the Jones' income for one (1) year.

Integration Rule 11.02(4), Code of Professional Responsibility, which was in effect throughout the period of time that the Respondent represented the Joneses states as follows:

"...controversies as to the amount of fees are not grounds for disciplinary proceedings unless the amount demanded is clearly excessive, extortionate, or the demand is fraudulent."

During the Final Hearing in this cause, The Florida Bar called

John Arthur Jones as an expert witness. Mr. Jones was the only witness in this proceeding to be declared an expert in the field of Probate and Estate Planning.

John Arthur Jones reviewed the Probate file regarding the Estate of Lula King for approximately 2 hours; he reviewed the invoices submitted by the Respondent to Mr. and Mrs. Roosevelt Jones; he reviewed the Respondent's Schedule of Services (R. Bar Exhibits 6(a) and 6(b), and 7) for the period of March 21, 1983 through February 10, 1984, February 20, 1984 through June 30, 1984 and March 21, 1983 through January 4, 1986; he reviewed copies of all of the checks (R. Bar Exhibits 8(a)-8(i)), issued by Perry Jones to the Respondent for services rendered in relation to both Legal Services Agreements; he reviewed all of the pleadings (R. Bar Exhibits 9(a) - 9(q)) prepared by the Respondent in the Estate of Lula King; he reviewed the Legal Services Agreements (R. Bar Exhibits 1 and 2) between the Joneses and the Respondent; he reviewed the Will and Trust of Perry and Roosevelt Jones (R. Bar Exhibit 10) prepared by the Respondent; he reviewed the Power of Attorney and the Quitclaim Deed (R. Bar Exhibits 11 and 24) prepared by the Respondent for the Joneses; and he reviewed the Respondent's resume (R. Respondent Exhibit 6). (TR1, p.96, L.20-25, p.97, L.1-6 and 19-25, p.98, L.1-25, p.99, L.1-18).

During the Final Hearing in this cause, John Arthur Jones testified that he was of the opinion that the Respondent charged the Joneses a clearly excessive fee. (TR1, p.102, L.23-25). John

Jones also testified that \$2,500.00 was a generous fee for the Respondent's services to the Estate of Lula King (TR1,p.103,L.16); \$400.00 would be a generous fee for the Respondent's services regarding the Jones' Estate Planning (TR1,p.104,L.1); and \$200.00 would be ample for the Respondent's General Services to the Joneses (TR1,p.104,L.9). In addition, Mr. Jones testified that in reaching the opinion that the Respondent's fee was clearly excessive, he considered the following factors: the time and labor required for the Jones' Estate Planning and for probating the Estate of Lula King; the complexity of the matter; the likelihood that the acceptance of the employment would preclude other employment; the fee customarily charged in the locality for comparable services; the amount involved in the subject matter of the representation; the nature and length of the professional relationship; the experience, reputation, and ability of the Respondent; and whether or not the fee was fixed or contingent. (TR1,p.104, L.18-25,p.105,L.1-7). Mr. Jones also testified that the administration of the Estate of Lula King was not a complicated matter. (TR1,p.105,L.10-12). Further, John Arthur Jones testified as follows in response to questions propounded by the Respondent:

- Q. Let me ask you this. Did you feel that the fee charged in the Probate and the Estate Planning works was extortionate of the client?
- A. Very close to that, yes.
- Q. Do you feel that it constituted a misappropriation of client's funds?
- A. In this instance I think so.

- Q. And do you believe that fraud was practiced on the client?
- A. I don't have any reason to believe that there was fraud except insofar as the fee itself was excessive relative to the work done or required to be done or proper to be done in this case. (TR1,p.147,L.7-19).

Based on the foregoing, the Respondent's fee was clearly excessive, extortionate, and constituted a misappropriation of the Joneses funds.

The Respondent argues in his Initial Brief that John Arthur Jones should have been disqualified as an expert in this case because he had a conflict of interest since a member of his firm (Holland and Knight) is on the Board of Governors of The Florida Bar. The Respondent did not raise this objection to the testimony of John Arthur Jones during the Final Hearing in this cause. In fact, during the Final Hearing the Respondent was given the opportunity to review Mr. Jones' Biographical Data Sheet. (TR1,p.76,L.2-7). After reviewing John Arthur Jones' Biographical Data Sheet, the Referee asked the Respondent "Any objections to receiving him as an expert witness?" The Respondent replied "No, none". (TR1,p.96,L.14-16). The Respondent, in his Initial Brief, relies on Rule 3-7.10(i), Rules Regulating The Florida Bar, to support his argument that John Arthur Jones should have been disqualified as a witness in this case. Rule 3-7.10(i)(3), Rules Regulating The Florida Bar, provides that "a member of the Board of Governors of The Florida Bar shall not represent any party except The Florida Bar" in disciplinary proceedings. The aforementioned rule also applies

partners, associates and employees of the Board members. (See Rule 3-7.10 (i) (3)b, Rules Regulating The Florida Bar). John Arthur Johns was not representing anyone, including The Florida Bar, in this case. Rule 3-7.10(i) (3) does not apply to John Arthur Jones, and therefore the Respondent's argument regarding the same should be rejected.

Respondent also challenges John Arthur Jones's credibility and reliability on the grounds that Mr. Jones lacked sufficient legal or factual knowledge regarding the nature and extent of the services rendered by the Respondent. Clearly, based on the records and documents reviewed by Mr. Jones as set forth above, he had sufficient knowledge of the facts in this case to render an expert opinion as to whether or not the Respondent's fees were clearly excessive.

Based on the foregoing, the Referee's finding that the Respondent charged the Joneses a clearly excessive fee, and his recommendation that the Respondent be found guilty of violating DR 2-106, should be upheld by this Court.

THE REFEREE'S RECOMMENDED DISCIPLINE OF A PUBLIC REPRIMAND, PROBATION, CONTINUED LEGAL EDUCATION, RESTITUTION AND COSTS IS APPROPRIATE AND SHOULD BE UPHELD.

During the disciplinary proceedings in this cause, the Florida Bar recommended that the Respondent be disciplined by a ninety-one day suspension and, further, the Bar recommended that the Respondent be required to make restitution to the Joneses and pay the costs of the Bar's proceedings. The Referee rejected the Bar's recommendation and recommended that the Respondent be disciplined by a public reprimand; six months probation; enrollment and completion of 12 hours of accredited courses on attorney billing and fee practices; proof to the Florida Bar at the end of the probation period establishing that the Respondent has been rehabilitated in the area of fee practices (said proof to be to the satisfaction of the Florida Bar and to include, if necessary, retaking the ethics portion of the Florida Bar Exam); payment of restitution in an amount determined by Judge Alvarez; and payment of the Bar's costs. The Bar is not appealing the Referee's recommended discipline in this case.

The Respondent challenges the Referee's recommended discipline on the grounds that the same is inappropriate. The Referee's recommended discipline is appropriate.

The Respondent contends that a private reprimand and/or remedial education, mandatory fee arbitration, and mandatory pro bono community service is the appropriate discipline for this case. The discipline imposed against an attorney must be severe

enough to deter others who might be pruned or tempted to become involved in like violations. The Florida Bar v. Pahules, 233 So. 2d 130 (Fla. 1970). During the disciplinary proceedings in this cause, the Respondent stated " there are only twelve black lawyers in Tampa and I am the creme-de-creme (sic) of all of them. . .". (TR4,p.17,L.25,p.18,L.1-2). In addition, during the Final Hearing in this cause the Respondent testified that he started practicing law in the Tampa, Florida area because "the black community was in need of some type--quite frankly, a role model, a person to set the standard insofar as how law ought to be practiced, how you ought to treat people, how you ought to conduct your facility, what type of person you ought to be in terms of being a lawyer." (TR3,p.317,L.20-25). Further, the Respondent testified that he has lectured on office management and fee guideline practices. (TR3,p.415.L.18-25). Clearly, based on the Respondent's own testimony and statements, a private reprimand would be insufficient to deter others who might be pruned or tempted to become involved in like violations, since the discipline requested would remain confidential in nature. The Respondent's discipline in this case should be public in nature so that the attorneys who allegedly considered the Respondent to be a role model and so that the attorneys who have attended the Respondent's lectures regarding his fee guideline practices are put on notice that the Respondent's billing practices are inappropriate. Furthermore, Rule 3-7.5(k)(1), Rules of Disciplines, states in part, that a private reprimand

may be recommended only in cases based on a Complaint of Minor Misconduct. The case on review is not based on a Complaint of Minor Misconduct but is based on a formal, public Complaint, which makes a private reprimand procedurally inappropriate, especially in light of the public status of this case.

Furthermore, the Referee's recommended discipline of a public reprimand in this case is supported by recent case law.

In The Florida Bar v. Mirabole, 498 So.2d 428 (Fla. 1987), Mr. Mirabole charged his client \$24,000.00 for a \$3,000.00 mechanic's lien case. The Referee found that Mr. Mirabole charged his client a clearly excessive fee and he recommended Mr. Mirabole receive a public reprimand. This Court upheld the Referee's recommendation.

The Referee's recommended discipline of a public reprimand is also supported by Florida's Standards for Imposing Lawyer Sanctions (hereinafter referred to as The Standards). Section 7.0 of The Standards, entitled VIOLATIONS OF OTHER DUTIES OWED AS A PROFESSIONAL, relates to unreasonable or improper fees. Under this section of The Standards, a public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. The Respondent charged the Joneses a clearly excessive fee which was extortionate and constituted a misappropriation of the Joneses funds. In addition, the Respondent's conduct caused injury to the Joneses since the Joneses have been deprived of the excess

funds that they advanced to the Respondent.

The Respondent also challenges the Referee's recommendation that he be placed on probation and required to take continuing legal education courses in regard to attorney billing and fee practices.

The Respondent testified at the final hearing that he charged the Joneses \$85.00 per hour for attorney time, \$45.00 per hour for his clerical staff time and \$65.00 per hour for his paralegal's time. (TR3,p,325,L.8-10,p.411,L.23-25). The Respondent also testified that he charges all of his clients a monthly office coverage charge. The monthly cover charge represents a fee the Respondent charges to his clients for pro bono public services he provides to others; continuing professional training; bulk consumable supplies; and annual surcharges for occupancy costs. (TR3,p.389,L.4-9; R. Bar Exhibit 1 and 2). The Respondent determines the sum he charges each client for the cover charge based on the amount of the client's fee each month. If the client's fee is less than \$500.00, the client is charged 15% of the fee for the cover charge; if the fee is between \$500.00 and \$1,500.00, the client is charged 10% of the fee for the cover charge; and if the fee is more than \$1,500.00, then the client is charged 7% of the fee for the cover charge. (TR3,p.389,L.12-24). In addition to the cover charge, the Respondent testified that he charges his clients fifty-five cents for each xeroxed document or letter; thirty-five cents for each mailing; thirty-five cents for each phone call made on

behalf of a client or to a client; and Ten Dollars (\$10.00) for each travel trip he makes on behalf of a client. In addition to charging a flat rate for mailing, travel and phone calls, the Respondent also charges his clients for his time and his staff's time for performing the aforementioned services. (TR3,p.403,L.9-25, p.404,L.1-2 and 20-22). Further, the Respondent testified that he charges his clients based on a "billing guideline" rather than actual time spent on a matter. According to the Respondent's "billing guideline", he charges his clients a minimum of 20 minutes for each phone call made on behalf of his client. (TR3,p.417,L.3-5). In the instant case, the Respondent charged the Joneses \$28.00 for calling their home even though the Joneses were not home to answer the call. (TR3,p.418,L.11-19). Further, the Respondent charges a minimum of 45 minutes per page for preparing a document on behalf of a client. (TR3,p.416,L.6-7). In the instant case, the Respondent charged the Joneses \$65.00 to prepare a Standard Florida Bar Probate form entitled Formal Notice by Mail (R. Bar Exhibit 9(h)) which would take 3 to 5 minutes to prepare. (TR3,p.416,L.14-24). The Respondent also charged his clients a minimum of 20 minutes for preparing inter-office memorandums (Respondent's directions to his staff) regarding case management. (TR3,p.422,L.19). The Respondent contends that the practice of law is a business in which you make a profit on labor and on materials. (TR3,p.402,L.6-8). Clearly, the Respondent's billing practices and procedures are unconscionable, egregious, and improper, yet the Respondent fails

to recognize this fact, evidencing the need for probation and continuing legal education.

At the conclusion of the final hearing in this cause the Referee stated as follows:

"...but when you look at this in total, this is a classic example in America today where you can't apply the same standards that you'd use for Mr. Steinbrener, to Mr. and Mrs. Jones.

No conceivable way does the evidence that has been presented to this court here today justify in any stretch of the imagination charging Mr. and Mrs. Jones a flat minimum 45 minutes to prepare a document that, quite frankly, a chimpanzee could be trained to prepare for two banana pellets in 3 to 5 minutes. That's 40 minutes of waste. You can't charge Mr. and Mrs. Jones a telephone charge when they don't answer the telephone.

The fees were clearly and convincingly excessive. And compared to the product or to the people, the clients, I feel, based on my experience of sitting on the probate bench on three tours over in the judicial circuit, twice the probate administrator over there, based on what I saw here, where this was going, the estate would have been worth \$500.00 in attorney fees open and shut, even with the title work.

And the estate planning, I'll grant you, that was a unique approach. I'm more than intrigued by the approach. I may not agree with the expert witness, John Arthur Jones, I see some serious holes in it, I'm not sure it would stand up in Florida today, but it is headed in the right direction. I would have probably awarded you about \$1,500.00 for that." (TR3, p.461, L.10-25, p.462, L.1-15).

During the disciplinary hearing held in this cause on August 24, and 25, 1989, the Respondent testified as follows in regard to his billing practice and the Bar's right to monitor the same:

"...I mean I have the right as a lawyer to set whatever standards that I want to set in terms of my billing practices, and the Bar has no, none whatsoever, they didn't invest a dime insofar as my practice is concerned, and they have no right to tell me how I should bill insofar as to my procedures". (TR4, p.21, L.7-12).

The aforementioned statement by the Respondent further evidences the need for probation and continued legal education in this case. Contrary to the Respondent's assertion above, a license to practice law in this State confers no vested right to the holder thereof, but instead it is a privilege which can be revoked by this Court for cause. (See Rule 3-1.1, Rules Regulating the Florida Bar). In addition, the Supreme Court of Florida has the inherent power and duty to prescribe standards of conduct for lawyers, to determine what constitutes grounds for discipline of lawyers, and discipline for cause attorneys admitted to practice law in Florida. (See Rule 3-1.2 Rules Regulating the Florida Bar). Further, this Court has assigned to the Board of Governors of the Florida Bar the responsibility of maintaining high ethical standards among the members of the Florida Bar. (See Rule 3-3.2 Rules Regulating the Florida Bar).

Based on the foregoing, the Referee's recommended discipline of probation and continuing legal education on attorney billing practices and procedures is appropriate.

Respondent also challenges the Referee's recommendation that the Respondent be required to make restitution in an amount determined by Judge Alvarez, on the grounds that restitution is inappropriate. The requirement of restitution in this case is appropriate for the following reasons:

1. On March 18, 1986, Judge Alvarez entered an Order Granting a Motion for Reimbursement of Excessive Attorney Fees and Denying Motion to Dismiss and Motion for Summary Judgment.

In the aforementioned Order, Judge Alvarez found that the Respondent charged the Estate of Lula King \$8,018.49 based on the stipulation of the parties, including the Respondents. (R. Bar Exhibit 14). In addition, Judge Alvarez found that \$2,500.00 constituted a reasonable fee for the Respondent's services to the Estate and that \$150.29 constituted reasonable costs. (R. Bar Exhibit 14, paragraph 5 and 11).

2. The Respondent appealed Judge Alvarez' Order Granting Motion for Reimbursement of Excessive Attorney Fees and Denying Motion to Dismiss and Motion for Summary Judgment. (R. Bar Exhibit 16). The Second District Court of Appeals ruled that the Probate Court was correct in ordering the Respondent to repay excessive fees. However, it appeared to the Court that Judge Alvarez erred in computing the amount of fees paid by the Joneses, and thus the case was remanded back to Judge Alvarez for recalculation of the fees paid to the Respondent. (R. Bar Exhibit 16).

3. Judge Alvarez held another hearing in regard to the fees paid by the Joneses to the Respondent. (TR1, p.49, L.23-25, p.50, L.1-3). At the conclusion of the hearing, Judge Alvarez found that Roosevelt Jones, as Personal Representative for the Estate of Lula King, advanced fees to the Respondent in the amount of \$10,550.99. (R. Bar Exhibit 17, Paragraph (a)). Judge Alvarez' ruling that the Respondent was paid \$10,550.99 for services rendered to the Estate of Lula King was based not only on the fees paid by the Joneses to the Respondent in regard to

the Estate of Lula King, but also the fees paid by the Jones to the Respondent for Estate Planning and seventy-three percent of the interest paid by Mrs. Jones on the mortgage loan she obtained to pay the Respondent's fees for all services. (R. Bar Exhibit 18; TR1, p.68, L.20-23, p.62, L.8-25). (See Appendix, Exhibit 1). Judge Alvarez included, as fees charged to the Estate of Lula King, the fees that the Joneses paid the Respondent for Estate Planning because the Joneses were elderly, unsophisticated in the administration of estates, and were highly capable of being victimized and deceived by sharp conduct. (TR1, p.54, L.17-24). Judge Alvarez felt the Respondent took advantage of the Joneses since the Legal Services Agreements in this case were both executed on the same date. (TR1, p.65, L.9-18).

4. On September 15, 1988, Judge Alvarez entered an Amended Order on Refund of Attorney Fees which provided that the Respondent was to pay the following sums to the Estate of Lula King: (a) \$7,970.00 with interest from March 19, 1986, representing the sum advanced by Mr. Jones in the amount of \$10,550.99, less \$2,650.29 which the Court allowed as reasonable attorney fees and costs to the Respondent; (b) \$1,000.00 pursuant to the Supreme Court Orders dated November 24, 1987 and June 8, 1988 relating to the Respondent's Appeals; (c) \$6,700.00, representing attorney fees incurred by the Estate in its defense against the Respondent's position in the Probate Court and in the Second District Court of Appeals in reference to the refund of excessive attorney fees. (R. Bar Exhibit 17).

5. The Respondent appealed Judge Alvarez' ruling to the Second District Court of Appeals and the Supreme Court of Florida. The Respondent's appeals were unsuccessful. (R. Bar Exhibits 19 (a) through 19(d)) .

6. In the Estate of Lula King, a Final Judgment has been entered against the Respondent adjudging that the Estate is entitled to recover from the Respondent the sum of \$15,670.00. (R. Bar Exhibit 20).

7. Roosevelt Jones received \$2,650.29 from the Estate of Lula King as reasonable attorney fees and costs advanced to the Respondent for administering the Estate. Roosevelt Jones has not been reimbursed the excessive fees he advanced to the Respondent and as of the Final Hearing in this cause, the Respondent has not reimburse the Estate of Lula King the sum \$15,670.00. (TR2, p.261, L.20-21, p.262, L.1-2, 21-25, p.263, L.1-2) .

Based on the foregoing, the Respondent should be required to make restitution to the Estate of Lula King in the amount of \$15,670.00.

This Court has ordered restitution in cases similar to the instant case. (See The Florida Bar v. Moriber, 314 So.2d 145 (Fla. 1975), and The Florida Bar v. Lowe, 508 So.2d 6th (Fla. 1987)). Respondent's fees in this case were clearly excessive, extortionate, and constituted a misappropriation of the Joneses funds. When an attorney misappropriates client's funds, restitution is appropriate. Therefore The Florida Bar respectfully requests that this Court approve the Referee's recommendation of restitution.

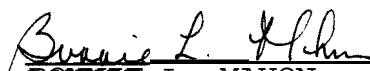
The Respondent also challenges the Bar's costs on the grounds that he was not given an opportunity to be heard in regard to the same. The Florida Bar served the Respondent with its Preliminary Statement of Costs on August 22, 1989. During the Disciplinary Hearing held in this cause on August 24 and 25, 1989, the Respondent raised the issue of the Bar's costs and was heard in regard to the same. (TR4,p.22,L.11-25, p.23,L.1-8). The Bar's costs in this proceeding are in accordance with Rule 3-7.5(k) (1), Rules Regulating The Florida Bar as amended by this Court on April 20, 1989, and therefore the Referee's recommendation that the Respondent be required to pay the Bar's cost should be upheld.

CONCLUSION

The Referee's finding that the Respondent charged the Joneses a clearly excessive fee, and his recommendation that the Respondent should be found guilty of violating DR 2-106, Code of Professional Responsibility, are supported by clear and convincing evidence. A public reprimand, continued legal education, probation, and restitution, is the appropriate discipline for the Respondent's misconduct.

Wherefore, the Florida Bar respectfully requests this Court approve the Referee's recommendation of guilt as to DR2-106. In addition, the Bar asks this Court to uphold the Referee's recommended discipline of a public reprimand, 6 months probation, 12 hours of continued legal education on the subject matter of billing and fee practices, and restitution to the Joneses in the amount of \$15,670.00. Further, the Bar requests this Court to approve the Referee's recommendation that the Respondent be held responsible for the Bar's costs in this proceeding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer Brief has been furnished by Certified Mail Return Receipt Requested P 827-886-092 to T. Carlton Richardson at his record Bar address at 1505 Pennsylvania Avenue, SE, Washington D.C. 20003 and by U.S. Mail to Daniel A. Medeiros, Co-Counsel for the Respondent at Ford, Medeiros and Treuhaft, P.A., 2861 Executive Drive, Suite 100, Clearwater, Florida 34622; and a copy to John T. Berry, Staff Counsel, The Florida Bar, Ethics and Discipline Department, 650 Appalachian Parkway, Tallahassee, FL 32399, this 1st day of December, 1989.



BONNIE L. MAHON