IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant

v.

FRANCIS R. MORSE,

Respondent.

_____/

Case Nos. 75,357

TFB No. 87-27,956(13C)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, a final hearing was held on October 22, 1990 and a disciplinary hearing was held on November 7, 1990. The enclosed pleadings, notices, motions, orders, transcripts 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 parties:

For The Florida Bar: BONNIE L. MAHON and SUSAN V. BLOEMENDAAL

For The Respondent: R. PATRICK MIRK

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged: After considering all the pleadings, evidence, testimony, I find:

1. That in 1982, the Respondent was engaged in a professional association with attorney Dennis Slater. At the time of the Final Hearing in this cause, Mr. Slater had resigned from The Florida Bar.

2. That in April 1985, Mr. Rockne Jordan entered into an Attorney-Client Contract for representation with the law firm of Slater and Morse, P.A. wherein the law firm agreed to represent Mr. Jordan in a personal injury action resulting from an auto/pedestrian accident in Trenton, Michigan on or about December 17, 1982.

3. The Respondent initially handled the Jordan case by conducting a client interview and by determining venue and the time limit on the statute of limitations. After the Respondent completed the initial work-up on the Jordan claim, he turned over the Jordan file to his law partner, Dennis Slater, who was responsible for filing a lawsuit and negotiating a settlement.

4. Mr. Slater failed to file a lawsuit on behalf of Mr. Jordan by December 17, 1985 when the statute of limitations expired.

5. After Mr. Slater determined that the statute of limitations had run on Mr. Jordan's claim, he took the Jordan file to the Respondent, advised him that the statute of limitations had run, and asked the Respondent to attempt to negotiate a settlement with AAA Insurance Company for $2,500.00, an amount that had previously been offered by said insurance company.

6. Pursuant to Mr. Slater's request, the Respondent contacted AAA insurance company in an effort to settle Mr. Jordan's claim for $2,500.00. A representative from AAA insurance company informed the Respondent that the insurance company would not make an offer of settlement on the Jordan claim since the statute of limitations had run.

7. Shortly, thereafter, on February 4, 1986, the Respondent wrote a note to Mr. Slater stating as follows: "$2,500.00 offer is now -0-! I will call cl [client] tonight and advise that he would not come above the $2,500.00 and he'll have his check in a week - want to try for some kind of release for us?" (See Bar Exhibit #5). The Respondent testified that he probably contacted Mr. Jordan as he advised Mr. Slater he would do, however, neither the Respondent nor Mr. Jordan could recall the contents of such conversation. Regardless of this fact, it is clear from the Respondent's note of February 4, 1986, that the Respondent intended to make a misrepresentation to Mr. Jordan by failing to advise Mr. Jordan of all pertinent facts regarding his case. Specifically, I find that the Respondent made a misrepresentation to Mr. Jordan by failing to advise Mr. Jordan of the fact that the statute of limitations had run on his claim; by failing to advise Mr. Jordan of the fact that his firm had committed malpractice by allowing the statute of limitations to run; by submitting a firm escrow account check to Mr. Jordan in an amount identical to that previously offered by the insurance company; and by failing to advise Mr. Jordan of the fact that the escrow account check was a sum being offered by the law firm in settlement of the claim rather then by AAA insurance company.

8. In addition, I find that Respondent had a conflict of interest when Mr. Slater allowed the statute of limitations to run on Mr. Jordan's claim and as a result, the Respondent had an

affirmative duty to advise Mr. Jordan to consult with another attorney to obtain legal advice regarding his legal options at that point in time. The Respondent intentionally prejudiced his client during the course of the professional relationship by consciously and deliberately failing to advise his client of the fact that the firm had negligently failed to file the client's claim within the statute of limitations, and by failing to advise his client to seek legal counsel with regard to legal remedies available to the client.

9. The $2,500.00 check issued to Mr. Jordan was improperly labelled as an "escrow account". In addition, at the time the Respondent issued the firm's $2,500.00 check to Mr. Jordan, there were no funds in said account for Mr. Jordan thus the firm used other clients' funds to pay Mr. Jordan for their malpractice. Respondent testified at the Final Hearing that he signed the escrow account check prior to the check being made out. Accepting the Respondent's testimony as true, the Respondent should never have executed a blank trust account check.

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty: I recommend that the Respondent be found guilty of violating Disciplinary Rule 1-102(A)(4), Code of Professional Responsibility in effect prior to January 1, 1987 (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) for engaging in conduct constituting a conspiracy with his former partner to deprive a client of information concerning an act of malpractice by a member of the professional association; Disciplinary Rule 1-102(A)(6), Code of Professional Responsibility in the effect prior to January 1, 1987 (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law) for failing to advise his client of the conflict of interest resulting from his partner's failing to file Mr. Jordan's claim prior to the expiration of the statute of limitations, attempting to limit liability for his partner's malpractice, and for signing a blank escrow account check; Disciplinary Rule 7-101(A)(3), Code of Professional Responsibility in effect prior to to January 1, 1987 (a lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship) for intentionally engaging in conduct, the purpose of which was to deprive a client of information that was necessary to allow the client to determine whether he had legal recourse against the Professional Association; Rule 5-1.1, Rules of Discipline (Integration Rule 11.02 (4) prior to January 1, 1987) (money or other property entrusted to an attorney for a specific purpose, including advances for costs and expenses is held in trust and must be applied only to that purpose) for signing a blank "escrow" account check that was paid to the benefit of a client when there were no funds held in the "escrow" account for that client; and Rule 5-1.1(a) (Integration Rule 11.02 (4)(b) prior to January 1,

1987) (any bank or savings and loan association account maintained by a member of The Florida Bar to comply with Rule 4-1.15, Rules of Professional Conduct, is and shall be clearly labelled and designated as a trust account) for improperly labeling his trust account as an "escrow" account.

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the Respondent receive a ninety (90) day suspension with the same being suspended, together with one year probation with the following three (3) conditions:

1. Upon a finding of probable cause by a Grievance Committee during the period of probation that the suspended ninety (90) day suspension be immediately imposed on Respondent.

2. That Respondent's trust account be audited by The Florida Bar at the beginning of the probationary period, and at three (3) month intervals thereafter during the period of probation; if one of these audits concludes that Respondent's trust account is not in substantial compliance with Chapter 5, Rules Regulating Trust Accounts, Respondent will immediately be suspended for a ninety (90) day period; and

3. Payment of costs of these proceedings.

V. Personal History and Past Disciplinary Record: After a finding of guilt, and prior to recommending discipline to be imposed pursuant to Rule 3-7.6(k)(1), Rules of Discipline, I considered the following personal history and prior disciplinary record of the Respondent, to wit:

(1) Age: 44 years old

(2) Date Admitted to Bar: October 29, 1982

(3) Prior Disciplinary Record: None

(4) Mitigating Factors: 1) absence of prior disciplinary record and less than 4 years out of law school at time of conduct 2) cooperative attitude toward the proceedings and under influence of senior attorney who had primary responsibility

(5) Aggravating Factors: 1) dishonest or selfish motive
2) multiple offenses.

VI. Statement of Costs and Manner in Which Costs Should Be Taxed: I find that the costs contained in The Florida Bar's Cost Summary were reasonably incurred by The Florida Bar. It is apparent that other costs might be incurred in the future, if further proceedings are necessary in this matter. It is recommended that such future costs, together with the foregoing costs, be charged to the Respondent and that interest at the statutory rate shall accrue and be payable beginning thirty (30) days after the judgment in this case becomes final unless a

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

FRANCIS R. MORSE

Respondent.

_____/

CONFIDENTIAL
Case No. 75,357
TFB No. 87-27,956(13C)

STATEMENT OF COSTS

The following costs listed below have been incurred by The Florida Bar in the above-referenced cases:

Administrative Bar Costs.....	$500.00
Bar Counsel Expense (Bonnie L. Mahon) (4/11/89)	
36 miles @ $0.30.....	10.80
Parking.....	.70
Bar Counsel Expense (Susan V. Bloemendaal) (10-9-90)	
50 miles @ $0.31.....	15.50
(10-22-90)	
50 miles @ $0.31.....	15.50
(11-07-90)	
50 miles @ $0.31.....	15.50
Court Reporter Expense (Robert A. Dempster & Associates) (4-11-89)	
Appearance	35.00
(10-9-90)	
Appearance.....	35.00
Transcript.....	133.00
Postage & Handling.....	3.00

(10-22-90)	
Appearance.....	120.00
Transcipt.....	680.20
(11-07-90)	
Appearance.....	45.00
Transcript.....	140.00
Postage & Handling.....	3.00
Travel Reimbursement (Rockne Jordan)	
(10-22-90).....	22.60
Branch Auditor Expense (Pedro Pizarro)	859.44
TOTAL AMOUNT DUE	$2,634.24

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing STATEMENT OF COSTS has been furnished by Regular U. S. Mail to R. Patrick Mirk, Counsel for Respondent, at 108 S. Armenia Ave., Tampa, Florida 33609; and a copy to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; this 30th day of November, 1990.

SUSAN V. BLOEMENDAAL