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SID J. WHITE

DEC 10 1990

CLERK, SUPREME COURT

By [Signature]  
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

The Florida Bar,  
Complainant,

v.

CASE NO. 76,158

Howard Neu

Respondent.

REPORT OF REFEREE

I. Summary of proceedings:

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, a stipulation relating to all material facts grounding the Bar's complaint was entered into by Mr. Neu with the Bar in lieu of an answer to the complaint. Without further pleadings or motions, an evidentiary hearing was conducted on October 3, 1990. The court announced its conclusions and directed the preparation of a draft report at a hearing for counsel which was held on October 25, 1990.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Paul Gross

For the Respondent: Arthur J. England, Jr.  
and Henry Latimer

II. Findings of fact as to each item of misconduct of which the respondent is charged:

After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find as follows:

In Count I of its complaint, the Bar contends that Mr. Neu's use of guardianship funds for his personal expenses, coupled with the retention of interest earned on his trust account for a limited period, constitute violations of the following disciplinary rules and provisions of the Integration Rule:

DR 1-102(a)(4), conduct involving dishonesty, fraud, deceit or misrepresentation;

DR 1-102(a)(6), conduct that adversely reflects on his fitness to practice law;

DR 9-102(b)(3), a lawyer shall maintain complete records of all funds, securities and other properties of a client coming into possession of the lawyer and render appropriate accounts to his client regarding them;

DR 9-102(A), commingling funds;

Integration Rule 11.02(4), money entrusted to an attorney for a specific purpose, including advances for costs and expenses as held in trust and must be applied only to that purpose;

Integration Rule 11.02(4)(d), failing to remit interest from interest bearing trust accounts to the Florida Bar foundation.

The facts underlying the Bar's allegations are these:

1. Following a review of the Bar's concerns and a series of informal discussions with Bar counsel, Mr. Neu stipulated on April 3 that the Bar had probable cause for disciplinary proceedings, waived a probable cause finding by a grievance committee, and tendered a consent judgment of discipline based on agreed facts without the necessity of the Bar's filing a formal complaint. The Bar's Board of Governors rejected Mr. Neu's proposed consent judgment, however, following which the Bar filed with the Supreme Court the complaint which is the basis for this proceeding. (Stipulation at paragraph 3.)

2. On or about December 16, 1982, Selser Bernard McKinney, age 2, was injured in a pedestrian-automobile accident in Dade County, Florida. As a result of this accident, McKinney was taken to the emergency room at Jackson Memorial Hospital in Miami where, in the course of treatment, McKinney suffered cardiac respiratory arrest resulting in brain damage. (Stipulation at paragraph 4(a).)

3. On or about September 2, 1983, Mr. Neu was appointed by the Dade County Circuit Court to act as guardian of McKinney's property. (Stipulation at paragraph 4(b).)

4. On January 7, 1987, while serving as guardian of McKinney's property, Mr. Neu wrote a check on the guardianship account for \$5,648.28, payable to the Internal Revenue Service. That check was written for Mr. Neu's own use, rather than for the benefit of his ward McKinney. On February 27, 1987, however, Mr. Neu repaid the guardianship account in full for the \$5,648.28, and three days later, on March 2 of that year, Mr. Neu deposited \$50.00 into the guardianship account as interest, thereby making the guardianship account whole. (Stipulation at paragraph 4(c).)

5. Between May 24, 1984 and October 9, 1985, Mr. Neu withdrew \$52,604.99 from his clients' trust account, which sum includes \$40,000 deposited in the trust account from four \$10,000 checks taken from the McKinney guardianship account as follows:

February 21, 1985  
April 12, 1985  
May 28, 1985  
August 13, 1985.

Mr. Neu used approximately \$31,000 of these funds to invest in a music venture. Mr. Neu asserts that this investment was made on behalf of his ward McKinney, but he had no court authority for the investment and he did not report the four \$10,000 withdrawals from the McKinney account on accountings filed in the guardianship proceeding. The venture failed, but by October 2, 1985, all \$40,000 had been replaced in the guardianship account with interest, thereby making the guardianship account whole. Mr. Neu repaid all other funds withdrawn from his trust account, and no client failed to receive trust account funds or have them applied on a timely basis. (Stipulation at paragraph 4(d).)

6. Between May 25, 1984 and July 7, 1986, Mr. Neu maintained an interest-bearing trust account for clients' funds which earned \$6,386.54. This account was not in

compliance with Florida's voluntary Interest on Trust Accounts program, as established by the Florida Supreme Court effective October 1, 1981. (Stipulation at paragraph 5.)

Based on evidence and stipulation, I find that the facts described above constitute a commingling of funds in violation of DR 9-102(A), a misapplication of trust funds in violation of Rule 11.02(4), and a failure to remit trust account interest to the Florida Bar Foundation in violation of Rule 11.02(4)(d).

The Bar has produced no evidence that Mr. Neu engaged in conduct which involves dishonesty, fraud, disceit or misrepresentation in violation of DR 1-102(a)(4), and I find from the evidence that Mr. Neu's conduct does not constitute a violation of that disciplinary rule because he had no intent to deprive his clients permanently of their funds. Transcript of Hearing at 80, 81; The Florida Bar v. Dougherty, 541 So.2d 610 (Fla. 1989). See also, The Florida Bar v. Lumley, 517 So.2d 13 (Fla. 1987). Nor has the Bar introduced any evidence to support its allegation that Neu's conduct adversely reflects on his fitness to practice law in violation of DR 1-102(a)(6), and I find as a fact that the Bar has failed to prove its allegations in that regard.

I further find that the Bar has introduced <sup>insufficient</sup> ~~no~~ evidence ~~whatsoever~~ to support its allegation that Mr. Neu failed to maintain complete records of all client funds and to render appropriate accounts to his clients regarding them in violation

of DR 9-102(b)(3), and I find as a fact that ~~in the absence of~~  
~~proof of this~~ allegation was not proved.

As to Count II

In Count II of its complaint, the Bar asserts that Mr. Neu's use of guardianship property for a personal payment to the Internal Revenue Service on January 7, 1987, constitutes a violation of Rules Regulating The Florida Bar numbered 4-8.4(c), which proscribes conduct involving dishonesty, fraud, deceit or misrepresentation, and Rule 5-1.1, which states that money entrusted to an attorney for a specific purpose is held in trust and must be applied only to that purpose. Based on the evidence and stipulation, I find that the facts described above constitute a misapplication of trust funds in violation of the latter rule.

The Bar has failed to introduce any evidence, however, to support its allegation that Mr. Neu's use of guardianship property for a payment on his personal taxes constituted dishonesty, fraud, disceit or misrepresentation, and I find as a fact that the Bar has failed to prove its allegation that Mr. Neu violated Rule 5-1.1. The Florida Bar v. Dougherty, supra; The Florida Bar v. Lumley, supra.

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty.

As to each count of the complaint, I make the following recommendations as to guilt or innocence:

As to Count I

I recommend that Mr. Neu be found not guilty of violating:

DR 1-102(a)(4): conduct involving dishonesty, fraud, deceit or misrepresentation;

DR 1-102(a)(6): conduct that adversely reflects on his fitness to practice law; and

DR 9-102(b)(3): a lawyer shall maintain complete records of all funds, securities and other properties of a client coming into possession of the lawyer and render appropriate accounts to his client regarding them.

I recommend that Mr. Neu be found guilty of violating the following provisions:

DR 9-102(A): commingling funds;

Integration Rule 11.02(4): money entrusted to an attorney for a specific purpose, including advances for costs and expenses as held in trust and must be applied only to that purpose;

Integration Rule 11.02(4)(d): failing to remit interest from interest bearing trust accounts to the Florida Bar foundation.

As to Count II

I recommend that Mr. Neu be found not guilty of violating Rule 4-8.4(c), relating to conduct involving dishonesty, fraud, deceit or misrepresentation.

I recommend that Mr. Neu be found guilty of violating Rule 5-1.1, which states that money in trust with the attorney for a specific purpose is held in trust and must be applied only to that purpose.

IV. Recommendation as to Disciplinary Measures to be Applied:

The Bar has requested Mr. Neu's disbarment, while Mr. Neu has asserted that a public reprimand is the appropriate form of discipline. I recommend that Mr. Neu receive a 90 day suspension, with no probation, but with his return to the practice of law conditioned on his prior payment of \$6,386.54 to the Florida Bar Foundation, without interest.

V. Personal History and Past Disciplinary Record:

After finding guilty on the matters identified, and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(4), I considered the following personal history and prior disciplinary record of Mr. Neu:

Age: 49

Date admitted to Bar: June 10, 1968

Prior disciplinary convictions and disciplinary measures imposed therein: None

Other personal data:

1. Mr. Neu was admitted to the Bar on June 10, 1968, and has been in the continuous practice of law from that date to the present. Throughout his 22 years of practice, Mr. Neu has for the most part been a sole practitioner in North Miami. (Stipulation at paragraph 6.)

2. During his professional career, Mr. Neu has attained prominence in his community in the performance of the following distinguished public services:

(a) Mayor of the City of North Miami from 1979 to 1983, and again from 1987 to 1989.

(b) Municipal judge of the City of North Miami from 1971 to 1975;

(c) City Councilman of the City of North Miami from 1975 to 1979;

(d) president of the Dade County League of Cities in 1981 - 1983;

(e) president of the Small Cities Committee of the National League of Cities, in 1982;

(f) chairman of the Intergovernmental Affairs Committee of the Florida League of Cities from 1981 to 1983;

(g) president of the North Dade Bar Association in 1980 - 1981;

(h) CLE lecturer for the Florida Bar on probate matters;

(i) member of the Florida Bar Condominium and Real Estate Committee;

(j) member of the Public Relations Subcommittee of the Real Property, Probate and Trust Committee of The Florida Bar;

(k) Director of Chosen Children from 1975 to 1985. This organization provided counselling to teenage Jewish children in Dade County, in part through the creation of a performance troupe (similar to "Up With People") which was nationally recognized through performances at the Washington Bicentennial, at the White House, in Israel, in Canada and throughout the United States; and

(l) chairman, Annual Celebrity luncheon of the Leukemia Society in 1987, 1988 and 1989.  
(Stipulation at paragraph 8.)

3. During the course of his professional and public career, Mr. Neu has received the following awards and recognitions, among numerous others:

(a) Dade County League of Cities Outstanding & Distinguished Service (1989)

(b) North Miami Chamber of Commerce Certificate of Appreciation (1989)

(c) Key to the City of North Miami Beach (1989)

(d) Special Olympics Honors (1988)

(e) Golden Key Award - City of North Miami 7/18/85



- (f) Key to the City of North Miami (1983)
- (g) The Florida Film and Recording Institute, for Tireless Efforts (1983)
- (h) Dade County League of Cities, Distinguished Service (1982-83)
- (i) Outstanding Young Man Award North Miami Jaycees (1981-82)  
(Stipulation at paragraph 9.)

4. In 1979, the community identified the need for a community stadium in northeast Dade County. The County was unwilling to spend the money to build such a facility. Mr. Neu was able to obtain federal funds to acquire the property, state funds to commence the project, school board funds to continue the project, and county funds to complete the project, at a total cost of \$2,000,000. As a result of those efforts, there is a 5,000 seat, state-of-the-art football and soccer stadium on N.E. 151st Street, just at the entrance to FIU. This is the only facility in the State of Florida which has aggregated federal, state, county and school board funds. The stadium sits on City of North Miami property at no cost to the taxpayers of North Miami, and is being utilized by all of the high schools, colleges, and junior colleges in the area. (Stipulation at paragraph 10.)

5. Mr. Neu has been active in educating the public concerning the legal profession, and in aiding citizens to obtain equal access to justice.

(a) Since February 1989, Mr. Neu has hosted the weekly radio talk show "The Complaint Department", originally in the evenings but more recently on Sunday mornings from 9 to 10 a.m. on WKAT. On this program, Mr. Neu answers call-in questions and complaints, giving helpful guidance and, where appropriate, following up by contacting governmental agencies to solve citizen complaints.

(b) Since September 1980, Mr. Neu has also produced and hosted a weekly television show entitled "South Florida Speaks." This show, the longest-running half-hour interview show in Miami, is presently aired on WLRN-TV, Channel 17, the public broadcast channel, on Sundays at 5:30 p.m. Mr. Neu interviews guests on topics of timely interest, including law-related matters. Over the course of more than 250 shows, Mr. Neu has interviewed Florida Supreme Court Justices, judges, the Dade County State Attorney, and bar president-elect Stephen Zack, among others. Through

these programs, Mr. Neu has provided hundreds of hours of free information about the legal profession to the citizens of South Florida. He has never been compensated for this public service.

(Stipulation at paragraph 11.)

6. Mr. Neu is presently unmarried. He has two children from a first wife, and one adopted daughter from a third wife. His alimony and child support obligations presently total \$9,187 per year. (Stipulation at paragraph 12.)

7. No client of Mr. Neu has ever lost money held in Mr. Neu's trust account, has ever complained of a delay in receiving funds from Mr. Neu's trust account when requested or required, or has filed a grievance against Mr. Neu. (Stipulation at paragraph 13.)

8. Mr. Neu was self-actuated to return all funds to the McKinney guardianship account and his trust account. He did so without prompting or inquiry by the Bar or by any outside agency or body. (Stipulation at paragraph 14.)

#### VI. Mitigating and Aggravating Factors

Mitigating. The following factors in mitigation were considered in my recommendation of discipline.

1. Cooperation with the Bar: Mr. Neu has cooperated with the Bar since the institution of these proceedings. From the outset, he appeared when requested by the Bar and brought all records he had available. (Transcript at 55-59, 81-85, 86-87.) He admitted the underlying facts which led to the Bar's complaint, and by waiver, he eliminated the need for a grievance committee process. (Stipulation at paragraph 3.) He then attempted to resolve the Bar's concerns by offering a consent agreement which would have obviated the appointment of a referee or further proceedings. (Id.) The Bar's Board of Governors rejected the proposed consent judgment submitted by Mr. Neu in

order to seek Mr. Neu's disbarment, thereby forcing the assignment of a referee and a hearing. (Id.) Even then, Mr. Neu initiated the stipulation which simplified and expedited the referee's proceeding.

The Florida Supreme Court has recognized as a mitigating factor "the appropriateness of considering the circumstances surrounding the incident, including cooperation . . . ." The Florida Bar v. Miller, 548 So.2d 219 (Fla. 1989). See also, The Florida Bar v. Hero, 513 So.2d 1053 (Fla. 1987); The Florida Bar v. Tunsil, 503 So.2d 1230, 1231 (Fla. 1986); The Florida Bar v. Pincket, 398 So.2d 802 (Fla. 1981); The Florida Bar v. Welty, 382 So.2d 1220 (Fla. 1980).

2. Acknowledgment of responsibility: Mr. Neu has at all times acknowledged responsibility for his conduct, without any attempt to put the Bar to its proof either in a grievance committee process or by challenge to the fundamental facts which prompted the Bar's inquiry. The Supreme Court has noted that acknowledgment of responsibility is a mitigating factor to be considered when sanctioning an attorney for misconduct. In The Florida Bar v. Perri, 435 So.2d 827, 829 (Fla. 1983), the Court imposed a less severe sanction than that requested by the Bar in view of "the respondent's early admission of guilt . . . ." See also, The Florida Bar v. Welty, 382 So.2d 1220 (Fla. 1980) (respondent's admission of allegations is a factor to be considered prior to sanctioning).

3. Return of trust funds: Mr. Neu voluntarily returned all trust monies that had been improperly withdrawn or commingled, with interest, shortly after withdrawal and prior to any inquiry by either a client or the Bar. (Stipulation at paragraphs 4(d) and 14.) (Transcript at 80.) The Florida Supreme Court has recognized that a voluntary return of monies taken, particularly when the return occurs prior to any inquiry by the Bar, is an important mitigating factor. The Florida Bar v. Welty, 382 So.2d 1220 (Fla. 1980); The Florida Bar v. Pincket, 398 So.2d 802 (Fla. 1981); The Florida Bar v. Roth, 471 So.2d 29 (Fla. 1985); The Florida Bar v. Miller, 548 So.2d 219 (Fla. 1989); The Florida Bar v. Schiller, 537 So.2d 992 (Fla. 1989); The Florida Bar v. Lumley, 517 So.2d 13 (Fla. 1987); The Florida Bar v. Reese, 247 So.2d 718 (Fla. 1971).

4. No financial loss to clients: None of Mr. Neu's clients at any time lost money, or any interest on money as a result of the trust account violations. (Stipulation at paragraphs 4(d) and 13.) The Court has appropriately reasoned that if clients did not lose money following an attorney's mishandling of trust funds, the Court will mitigate the sanction to be imposed. The Florida Bar v. Schiller, 537 So.2d 992 (Fla. 1989); The Florida Bar v. Miller, 548 So.2d 219 (Fla. 1989); The Florida Bar v. Lumley, 517 So.2d 13 (Fla. 1987); The Florida Bar v. Suprina, 468 So.2d 988 (Fla. 1985); The Florida Bar v. Perri, 435 So.2d 827 (Fla. 1983).

5. Contributions to the community: The public and legal community have significantly benefitted from Mr. Neu's participation in community affairs. (Stipulation at paragraphs 8-11.) In The Florida Bar v. Dougherty, 541 So.2d 610 (Fla. 1989), the Court took pains to list Mr. Dougherty's contributions to his community, and it considered those contributions as important mitigating factors. See also The Florida Bar v. Roth, 471 So.2d 29 (Fla. 1985); The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983).

6. Contributions to the profession through public education: In recent years the Bar has stressed the importance of educating the public about the legal profession. It has created its own public relations agency, F.L.A.M.E., for that express purpose. Mr. Neu has for several years been contributing to the public's education about the legal profession by providing media time to that goal and by donating his services to actually resolve the legal problems of citizens. (Stipulation at paragraph 11 and Transcript at 134-40.) His public education activities demonstrate a voluntary commitment to the justice system and to the legal profession. These activities must be considered as mitigating factors in the imposition of sanctions. The Florida Bar v. Tunsil, 503 So.2d 1230 (Fla. 1986); The Florida Bar v. Roth, 471 So.2d 29 827 (Fla. 1985).

7. Respondent's good character: Unrebutted evidence adduced at the hearing attests to Mr. Neu's good character. (See generally, transcript at 109-193.) That fact too must be

considered in mitigation of sanctions. See The Florida Bar v. Colclough, 15 F.L.W. S338, (Fla. June 7, 1990); The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983).

8. Sole practitioner: Mr. Neu has practiced law as a sole practitioner (Stipulation at paragraph 6) -- a factor to be considered as mitigating. See e.g., The Florida Bar v. Hero, 513 So.2d 1053 (Fla. 1987), where the Court listed as the first mitigating factor that respondent was a sole practitioner.

9. Rehabilitation: The one-month use of trust funds for Mr. Neu's income taxes occurred more than three years ago, and the McKinney withdrawals and repayments occurred over five years ago. No subsequent violations have occurred, and none are alleged. The evidence shows an honest and public-spirited attorney since those unfortunate events took place. This unforced conduct demonstrates that Mr. Neu has already been rehabilitated (if indeed any rehabilitation was needed) over more than 3 years. Rehabilitation is relevant both to mitigating discipline and to eliminate the need for probation. The Florida Bar v. Lord, 433 So.2d 983, 985 (Fla. 1983). See also The Florida Bar v. Franke, 548 So.2d 1119 (Fla. 1989); The Florida Bar v. Cohen, 534 So.2d 392 (Fla. 1988); The Florida Bar v. Holland, 520 So.2d 283 (Fla. 1988) and The Florida Bar v. Grant, 514 So.2d 1075 (Fla. 1987).

10. Remorse: Mr. Neu has amply evidenced remorse for his misguided activities, and his unchallenged testimony has been echoed by other witnesses. (Transcript at 79; See also

generally, transcript at 109-193.) The Florida Supreme Court has emphasized that remorse is an important mitigating factor in disciplinary proceedings. See, e.g., The Florida Bar v. Schiller, 537 So.2d 992 (Fla. 1989); The Florida Bar v. Tunsil, 503 So.2d 1230 (Fla. 1986).

11. Adverse impact of the proposed discipline on Mr. Neu's clients: The Florida Supreme Court has held that it is proper to consider the effect that a suspension might have on society, meaning on the attorney's clients. The Florida Bar v. Lord, 433 So.2d 983, 986 (Fla. 1983). While there is some testimony that a suspension might affect Mr. Neu's ongoing clients (transcript at 89-92, 168-171), I find that a suspension of 90 days will not adversely impact Mr. Neu's clientele.

Aggravating. The following aggravating factor was considered in my recommendation of discipline.

1. Mr. Neu's failure to show \$40,000 in withdrawals from the McKinney guardianship account on accountings which were filed in the guardianship proceeding in circuit court had the effect of misleading the court. (Complainant's Exhibit 2.)

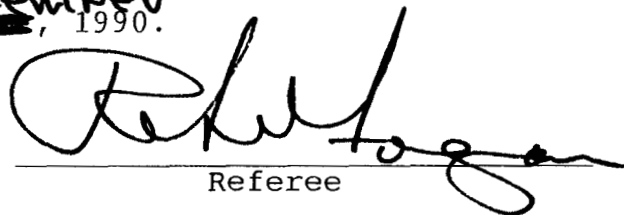
VII. Statement of Costs and Manner in Which Cost Should Be Taxed:

I find the following costs were reasonably incurred by The Florida Bar and should be taxed to Mr. Neu:

1. Administrative costs.....	\$500.00
(Pursuant to rule 3-7.6(k)(L)(5))	
2. Court reporter costs.....	\$996.46
3. Cost of Audit.....	\$2,009.00
4. Travel expenses of bar counsel.....	<u>\$54.49</u>
TOTAL COSTS:	\$3,559.95

These costs may be paid in installments as the Bar and Mr. Neu shall jointly agree, without interest. If these costs are not paid in full prior to the expiration of his suspension, Mr. Neu shall nonetheless be entitled to return to the practice of law upon the expiration of his period of suspension.

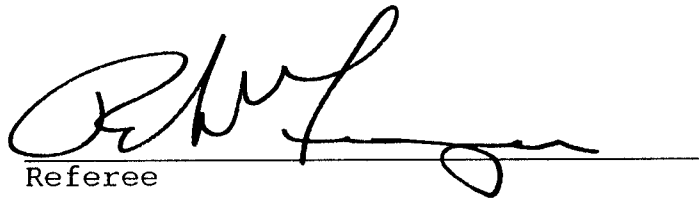
Dated this 5<sup>th</sup> day of December, 1990.

  
Referee



CERTIFICATE OF SERVICE

I certify that a copy of this Report has been served on Paul Gross, Esquire, at 444 Brickell Avenue, Suite M-100, Miami, Florida 33131, on Arthur J. England, Jr., Esquire, Fine Jacobson Schwartz Nash Block & England, One CentTrust Financial Center, 100 Southeast 2nd Street, Miami, Florida 33131, and on Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, ~~December~~ Dec: 6<sup>th</sup>, 1990.

  
Referee

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