

FILED

SID. J. WHITE

AUG 17 1992

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Complainant

v.

Supreme Court Case #76-903

RICHARD M. MCIVER,

Respondent

RESPONDENT'S REPLY BRIEF

Respondent, by and through his undersigned attorneys, in accordance with Rule 3-7.7(c)(3), Rules of Discipline, files this Reply Brief, and states:

1. It is respectfully submitted that the Answer Brief filed by Respondent contains an incorrect and misleading statement. Respondent states in their Answer Brief that Petitioner's witness, accountant Brian Matlin, "conceded that it **was** possible that Respondent borrowed money from third parties to cover the funds belonging to the estates," This allegation is completely incorrect, as Mr. Matlin testified, as follows, when questioned by Bar Counsel, Mr. Warren Stamm:

Q. You don't know if maybe he used fifty thousand dollars and went and borrowed fifty thousand dollars from a relative of his to put back in there? You just don't know that?

A. I have no idea. [emphasis added]

2. Additionally, Respondent's Answer Brief attacks the reasonableness of Petitioner's fee for the handling of certain

estates Answer Brief page 7). It is entirely inappropriate for Respondent, at this stage of the proceeding, to attack the validity of a fee owed Respondent. Respondent presently absolutely no rebuttable evidence to controvert the evidence presented by Petitioner as to the amount of fees he was owed for either attorneys fees, personal representatives fees, or both. Perhaps Respondent's late attack on the amount of fees due Petitioner stems from the fact that, as illustrated in Petitioner's Petition for Review, Respondent's analysis and conclusions as to the handling by Petitioner of trust and estate accounts did not take into account attorney's fees, which is a crucial flaw in Respondent's analysis. Evidence was presented by accountant Mr. Matlin that Petitioner would even sacrifice his fee when closing out an account, further illustrating Petitioner's lack of ill intention.

3. Even by Petitioner's own admission, any lack of cooperation by Respondent was not specifically directed toward Petitioner. (Please see Transcript, Pages 105 to 106, wherein Respondent's witness, Mr. Brian Matlin, testified that he too had a difficult time gathering information from Respondent).

4. Alleged shortages, either in certain estate accounts or trust accounts, serve as the basis for Petitioner's argument that Respondent misappropriated client funds. It has been conceded that Respondent didn't employ any accounting system which satisfies the standard established by either the Rules regulating The Florida **Bar** Rules or acceptable accounting principles. Importantly, though, Respondent prays this Honorable Court to consider the fact that he

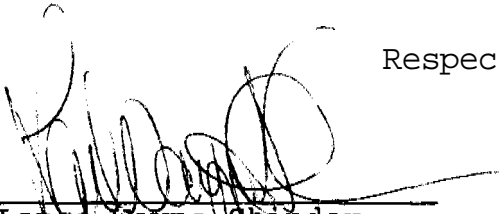
has practiced law for over thirty-five years (35), with no Bar complaints, (even though suspended since June 3, 1989) and maintains that his negligent handling of funds resulted in no client harm. He has helped many people with their legal problems, and maintains that he did not intentionally violate any Florida Bar Rules. Petitioner has already been severely punished, being suspended for over three (3) years.

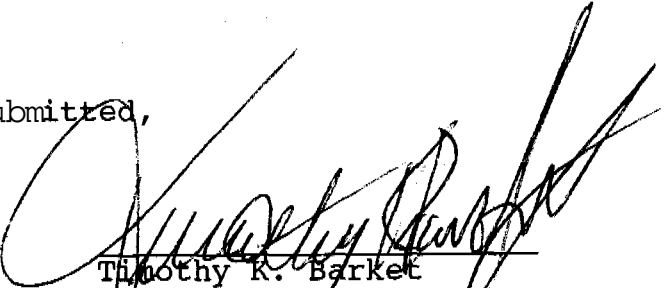
5. Respondent respectfully asks this Honorable court to allow him to resume practicing law, while strictly adhering to all Rules governing The Florida **Bar**.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served through the U.S. mail this 12th day of August, 1992, to The Florida Bar, c/o Arlene K. Senkel, Assistant **Staff** Counsel, Suite M-100, Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131.

Respectfully submitted,


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