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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

complainant,

v.

JAMES W. AARON,

Respondent.

Case No. 77,962
[TFB No. 90-30,684 (10A)]

ANSWER BRIEF

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
TABLE OF OTHER AUTHORITIES	iii
SYMBOLS AND REFERENCES	iv
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	5
ARGUMENT	
<u>ISSUE I</u>	7
WHETHER THE REFEREE'S RECOMMENDATION OF A THREE YEAR SUSPENSION IS THE APPROPRIATE DISCIPLINE GIVEN THE FACTS OF THIS CASE,	
<u>ISSUE II</u>	13
WHETHER THE RESPONDENT SHOULD BE REQUIRED TO PAY THE COSTS INCURRED BY THE FLORIDA BAR FROM THE BEGINNING OF THE INVESTIGATION OF THE RESPONDENT'S MISCONDUCT, RATHER THAN JUST THOSE COSTS INCURRED AFTER THE PROBABLE CAUSE FINDING BY THE GRIEVANCE COMMITTEE.	
CONCLUSION	17
CERTIFICATE OF SERVICE	18
APPENDIX	19
INDEX	20

TABLE OF AUTHORITIES

	<u>PAGE</u>
<u>The Florida Bar v. Baker</u> , 419 So.2d 1054 (Fla. 1982)	8
<u>The Florida Bar v. Bryan</u> , 432 So.2d 49 (Fla. 1983)	9
<u>The Florida Bar v. Davis</u> , 419 So.2d 325 (Fla. 1982)	16
<u>The Florida Bar v. Dykes</u> , 513 So.2d 1055 (Fla. 1987)	8
<u>The Florida Bar v. Farbstein</u> , 570 So.2d 933 (Fla. 1990)	11
<u>The Florida Bar v. Gold</u> , 526 So.2d 51 (Fla. 1988)	15
<u>The Florida Bar v. Golub</u> , 550 So.2d 455 (Fla. 1989)	8
<u>The Florida Bar v. Newman</u> , 513 So.2d 656 (Fla. 1987)	11
<u>The Florida Bar v. Pincket</u> , 398 So.2d 802 (Fla. 1981)	11
<u>The Florida Bar v. Roth</u> , 471 So.2d 29 (Fla. 1985)	10
<u>The Florida Bar v. Schiller</u> , 537 So.2d 992 (Fla. 1989)	11

TABLE OF OTHER AUTHORITIES

	<u>PAGE</u>
<u>Rule of Discipline</u>	
3-7.6(k)(1)	13, 14
<u>Florida Standards for Imposing Lawyer Sanctions</u>	
4.11	12
4.12	12

SYMBOLS AND REFERENCES

In this brief, the Appellant, James W. Aaron, shall be referred to **as** "the respondent".

The Appellee, The Florida Bar, shall be referred to as "The Florida Bar" or "the Bar".

The transcript of the final hearing on November 20, 1991, shall be referred to as "**T**" followed by the cited page number.

The Report of Referee dated January 16, 1992, shall be referred to **as** "RR" followed by the cited page number.

The respondent's Initial Brief shall be referred to as "RB" followed by the cited page number.

STATEMENT OF THE CASE AND FACTS

The Florida Bar accepts the respondent's statement of the case beginning on page two of his Initial Brief as accurate. However, the Bar would add that on July 14, 1988, by order of this Court, the respondent received a public reprimand and was placed on a two year period of probation for trust account violations. During the probation period, the respondent was subject to quarterly reviews of his trust account. It was during one of the quarterly reviews that the present matter involving the respondent came to the attention of The Florida Bar. Subsequent to investigation, this **case** was forwarded to the Tenth Judicial Circuit Grievance Committee "A" for disposition.

The Bar also submits the following statement of the facts in this case because the respondent's version of the facts **as** stated on page five of his Initial Brief are incomplete.

In the spring of 1985, the estate of Stephen P. Novak was opened in the Circuit Court for Highlands County, Florida, with probate Case No. 85-75. The estate was opened with the respondent's assistance in his capacity as attorney for George W. Arvanitis, a named co-personal representative and co-trustee under the Last Will and Testament of Stephen P. Novak. Under the provisions of the Last Will and Testament of Stephen P. Novak, certain shares of stock were bequeathed to Mr. Novak's brother and sister-in-law with **the** remainder of **the** estate bequeathed to Mr,

Novak's brother and Mr. Arvanitis as co-trustees for the establishment of a trust fund to provide financial aid for the education of their own grandchildren first, **as well as** other worthy students. The remainder of the estate was **also** bequeathed to Mr. Arvanitis and two members of the Board of Trustees of **Suffolk** University as trustees to establish the Stephen P. Novak Educational Trust Fund.

The respondent was an authorized signatory on the estate bank account. On or about March **28, 1986**, the respondent withdrew \$150,000.00 from the estate bank account. The respondent deposited that sum of **\$150,000.00** into his personal and family passbook savings account. On or about April **4, 1986**, the respondent transferred the approximate sum of **\$95,905.00** from his personal and family passbook savings account to the Stephen P. **Novak** Education Trust. On or about April **14, 1986**, the respondent transferred approximately **\$53,269.99** of the original \$150,000.00 deposit of estate funds back to the estate bank account.

On or about April 23, 1986, a Petition For Discharge bearing the signatures of the co-petitioners and the respondent was filed in the estate of Stephen P. Novak. Also filed was the **Final** Accounting and Waiver of Accounting and Service of Petition of Discharge and Receipt of Beneficiary and Consent to Discharge from each of the three beneficiaries of the estate. The Final Accounting filed with the court by the respondent reflected the

complete liquidation of stock/shares, attorneys fees and the current net assets of the estate to be distributed. An order discharging the personal representatives and closing the estate was entered by Circuit Judge J. Dale Durrence on May 23, 1986. During the time period the estate was opened, approximately \$47,000.00 in estate checks were made payable to the respondent or to cash and negotiated by the respondent which were not reflected on the Final Accounting filed with the court. The three receipt of beneficiaries filed with the court acknowledged "receipt of complete distribution in the share of the estate" to which each was entitled. The total distributions acknowledged as having been received by the three beneficiaries were equal in amount to the total net assets of the estate as set forth on the Final Accounting filed with the court. **The respondent failed to** reflect approximately \$47,000.00 of estate funds on the Final Accounting which the respondent helped to prepare and file. There was an additional \$7,000.00 which was not reflected on the final accounting nor was it distributed to the beneficiaries of the estate under the terms of the Will. Said amount was converted by the respondent for his personal use.

Although the Final Accounting prepared and filed by the respondent reflected the complete liquidation of the stock/shares of the estate, certain stocks of which the deceased was the record title holder remained unliquidated and undistributed and therefore part of the closed estate. Certain of the unliquidated

and undistributed stocks continued uninterrupted to pay dividends from the closing to the estate through November of 1990. Such stock dividends were paid to **the** respondent and converted to his personal use.

Subsequent to the Bar's investigation of this matter, a Petition To Revoke Order Of Discharge was filed by George W. Arvanitis on September 20, 1991. Said petition was also signed by the respondent as attorney for Mr. Arvanitis. The petition was filed in order to account for the other property of the estate that had not been distributed to the beneficiaries including the stock and dividends. On October 22, 1991, Circuit Judge J. David Langford issued an order revoking the Order of Discharge and reappointed Mr. Arvanitis as the personal representative. At the final hearing on November 20, 1991, the respondent reimbursed the estate/personal representative the stock dividends he had been receiving from the estate. The respondent still owes \$54,000.00 to the estate **as** evidenced by a promissory note he executed on April 26, 1991. Pursuant **to** the promissory note, the respondent has until April, 1993, to reimburse **Mr.** Arvanitis as the personal representative, the total amount of **excess** attorneys fees.

SUMMARY OF THE ARGUMENT

The respondent argues in his Initial Brief that the Referee's recommendation of a three year suspension is too harsh a discipline given the facts of this case. The Bar submits it is due to the facts of this case that a three year suspension is warranted. The Referee found the respondent guilty of misusing funds belonging to an estate in which he represented the personal representatives. Further, the respondent's misconduct occurred over a five year period. The Bar asserts that the respondent has engaged in serious misconduct and the Bar suggests it was only due to the respondent's position and reputation in the community in which he practices law that the **Bar** did not recommend to the Referee the respondent be disbarred. Thus, at the very least, a three year suspension is the appropriate discipline in this case.

In his Initial Brief, the respondent also complains that the costs assessed against him by the Referee for the Bar's prosecution of this matter are excessive. The respondent suggests that he only be charged the costs which accrued beginning after the probable cause finding was made by the grievance committee. However, the respondent's present misconduct was discovered by the Bas beginning in 1989. After extensive investigation, this case was brought before the Referee and ultimately this Court. The Bar submits the respondent should be charged the costs which accrued beginning from the initial investigations through to the conclusion of this case after the

final hearing. The amount of costs the Bar has charged are not excessive and are justified.

ARGUMENT

ISSUE I

THE REFEREE'S RECOMMENDATION OF A THREE YEAR SUSPENSION IS THE APPROPRIATE DISCIPLINE GIVEN THE FACTS OF THIS CASE.

In his report, the Referee found the respondent guilty of violating several of the Rules Regulating The Florida Bar involving the respondent's misuse of funds belonging to the estate/personal representatives (RR p. 4). At the final hearing the respondent readily admitted his guilt as to particular rule violations (T pp. 10-17). Therefore, the Referee recommended that the respondent receive a three year suspension; that he pay the Bar's costs in prosecuting this matter; and that he reimburse the Novak estate and/or personal representatives the excess attorney's fees he improperly obtained.

The respondent now argues a three year suspension is too harsh a discipline because his "conduct while improper, cause(d) no material injury to his client" (RB p, 7). The Bar submits that any time an attorney misuses client funds, a serious breach of ethics has occurred and the potential or actual harm to clients can be enormous. Even though the respondent has made arrangements to reimburse the estate/personal representatives for the funds he misused, the fact remains that during a five year period, the respondent retained funds which rightfully belonged to the estate. Further, the respondent has only recently

reopened the estate matter in order to disburse funds to the beneficiaries/personal representatives whom he failed to disburse at the time he was involved in the probate of the estate.

This Court has, on many occasions, disciplined attorneys for misusing client funds. Additionally, this Court has rendered numerous opinions indicating that attorneys who misuse funds belonging to clients have engaged in an egregious behavior which will be dealt with very harshly.

In The Florida Bar v. Golub, **550 So.2d 45** (Fla. 1989), the attorney admitted that he removed approximately \$23,000.00 from an estate in which he was the attorney for the personal representative. The attorney did not have the permission of the heirs, debtors, or the court to remove those funds. The attorney argued his misconduct was due to his extreme alcoholism. The referee recommended that the attorney's alcohol problem was sufficient mitigation to recommend a three year suspension. The Court, however, disagreed:

...[W]e believe that these circumstances do not outweigh the fact that the respondent stole substantial sums of money over an extended period of time from a client who had bestowed his trust upon the respondent to see that the client's beneficiaries were cared for after his death. The respondent betrayed that trust and has subsequently failed to repay the monies he removed. For such conduct, disbarment is the appropriate discipline. (At page **456**).

In The Florida Bar v. Dykes, 513 So.2d 1055 (Fla. 1987), the

attorney was charged in a four count complaint with failing to notify a client of his suspension from the practice of law, acting as a personal representative of an estate after his suspension, and misappropriating of estate funds. In one count, the referee found the attorney had misappropriated estate funds with the intent to convert money to his personal use. Further, the attorney willfully disregarded a court order to turn over estate assets to a successor personal representative. The referee recommended that the attorney be disbarred for a period of ten years and this Court approved that recommendation. **See** also The Florida Bar v. Baker, 419 **So.2d** 1054 (Fla. 1982), in which the attorney issued **checks** from an estate bank account totalling approximately \$35,000.00 which he wrote to either himself or his law firm. The attorney did not have prior court approval and did not disclose to or obtain the approval of the beneficiaries of the estate. The attorney ultimately reached a settlement with the beneficiaries of the estate, however, this Court ordered that "he be disbarred for his misconduct which amounted to theft.

In The Florida Bar v. Bryan, 432 **So.2d** **49** (Fla. 1983), the attorney was charged in a six count complaint with neglecting a legal matter, misappropriating funds from estates for personal use and failing to maintain adequate trust account records. Counts two through six of the Bar's complaint charged the attorney with misappropriating funds from five separate estates. The attorney admitted the allegations in the complaint and later

testified that he had made full restitution to some of the clients in the estate matters and that arrangements had been made to settle the claims of the remaining clients. The referee found the attorney had incurred personal indebtedness to enable him to pay back the estates in which he misappropriated funds. The referee stated "[h]e should be commended for his effort, but it should be remembered that his own wrongdoing required this action and that many of the restitution settlements were arrived at by compromise with those who suffered the losses." The Court agreed with the referee's recommendation that a three year suspension was the appropriate discipline in the case.

It should be noted The Florida Bar recognized prior to and during the final hearing that the respondent provides a valuable service in the community in which he practices law by rendering free legal services and advice to the poor within the area. Further, the respondent has a commendable position and reputation in his community. Based upon those reasons, the Bar recommended to the Referee that the respondent receive a three year suspension rather than disbarment. Arguably, the facts of this case warrant a disbarment recommendation.

This Court has, on occasion, lessened the level of discipline imposed on attorneys who have misappropriated or misused client funds when mitigating factors warrant a lesser discipline. In The Florida Bar v. Roth, 471 So.2d 29 (Fla.

1985), an attorney **was** disciplined for commingling, converting to his personal use estate funds and insurance proceeds, breaching fiduciary duty and failing to maintain required bank records. The accused attorney admitted he used approximately \$16,000.00 of the estate funds he misappropriated to satisfy his personal debt to the Internal Revenue Service. However, the attorney made restitution to the estate heirs prior to the initiation of the disciplinary proceedings. The referee recommended the attorney be disbarred. The Court considered several mitigating factors including the fact that the attorney performed a large amount of pro bono work; he donated his time to many charitable organizations; and he had no prior disciplinary history. Based upon those mitigating factors and the fact that the heirs had been reimbursed, the Court recommended the attorney receive a three year suspension rather than disbarment.

In a recent case, The Florida Bar v. Farbstein, 570 So.2d 933 (Fla. 1990), the Court offered the following:

This Court has stated on numerous occasions that misuse of client funds is one of the most serious offenses a lawyer can commit. The Fla. Bar v. Schiller, 537 So.2d 992 (Fla. 1989); The Fla. Bar v. Newman, 513 So.2d 656 (Fla. 1987). Upon a finding of misuse or misappropriation, there is a presumption that disbarment is the appropriate punishment. Schiller, 537 So.2d at 993. This Court has previously recognized, however, that this presumption can be rebutted by various acts of mitigation. See Schiller; The Fla. Bar v. Pincket, 398 So.2d 802 (Fla. 1981).
At p. 936.

Thus, according to Farbstein, the discipline imposed upon an attorney can be mitigated provided the factors warrant it. However, it is the decision of the Referee and this Court whether

the mitigating factors are sufficient. Additionally, according to the Florida Standards for Imposing Lawyer Sanctions, Standard 4.11, disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury. Alternatively, a suspension is appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client (Standard 4.12). The mitigating factors have been presented previously on the respondent's behalf concerning his character and reputation within his community. However, there are several aggravating factors present in this case as well. The respondent has substantial experience in the practice of law and has previously been the subject of prior disciplinary proceedings. The respondent's misconduct occurred over an extended length of time and during a time that the respondent was subject to other disciplinary proceedings. The Bar considered the Florida Standards when making a recommendation to the Referee as to discipline and this Court has utilized these standards in rendering decisions in Bar disciplinary cases.

The Bar is not suggesting that the respondent's misconduct only warrants a three year suspension. Rather, when the **Bar** recommended a three year suspension to the Referee, mitigating factors **were** considered on the respondent's behalf. This Court could ultimately recommend the respondent be disbarred. However, it is the Bar's intention only to suggest that discipline by suspension of no than a three years is warranted in this **case**.

ISSUE II

THE RESPONDENT SHOULD BE REQUIRED TO PAY THE COSTS INCURRED BY THE FLORIDA BAR FROM THE BEGINNING OF THE INVESTIGATION OF THE RESPONDENT'S MISCONDUCT RATHER THAN JUST THOSE COSTS INCURRED AFTER THE PROBABLE CAUSE FINDING BY THE GRIEVANCE COMMITTEE.

In his Initial Brief, the respondent objects to the amount of costs imposed upon him by **the Referee** in payment of the Bar's costs in prosecuting this **case**. (RB p. 9). The Referee's Report indicated the Bar's costs totaled **\$5,253.20**. (RR p. 4). This total was taken from the Final Affidavit of Costs filed by the Bar on December 12, 1991. **The** majority of the costs assessed against the respondent resulted from investigator expenses beginning in October, 1989, when the Bar first discovered the respondent's misconduct.

The investigator expenses, totaling \$4,018.82, were specifically documented in the Bar's Final Affidavit of Costs. The time spent by the Bar's investigator was carefully detailed as were the specific investigations which were undertaken and the amount of expenses the investigator incurred. A review of the Affidavit indicates the majority of investigation concerned obtaining the respondent's trust account records and reviewing same and obtaining and reviewing documents in the Novak Estate matter,

Pursuant to Rule of Discipline 3-7.6(k)(1), a referee's report must contain:

A statement of costs incurred by The Florida Bar and recommendations as to the manner in which such costs should be taxed. The costs of the proceedings shall include investigative costs, including travel and out-of-pocket expenses, court reporters' fees, copy costs, witness **and** traveling expenses, and reasonable traveling and out-of-pocket expenses of the referee and bar counsel, if any. **Costs** shall **also** include a **\$500** charge for administrative costs. **Costs taxed** shall be payable to The Florida Bar.

The Bar properly documented the investigator's expenses along with the other costs incurred in this case and presented them to the respondent and the Referee who included them in his report as required by Rule **3-7.6(k)(1)**.

The respondent states in his Brief that he believes he should be assessed costs only beginning from the final meeting of the grievance committee in which probable cause was found against him. "The final meeting of the committee which gave rise to the complaint in the instant cause occurred on July **24, 1992**. Only those costs which Complainant incurred after July **24, 1992** should be taxable to Respondent." (The Bar assumes that the aforementioned dates are typographical errors as the final meeting of the grievance committee occurred on July **25, 1991**), The Bar respectfully disagrees with the respondent's conclusion.

On July 14, 1988, the respondent received a public reprimand and was placed on a two year period of probation by this Court. **As** part of his probation, the respondent was subject to quarterly reviews of his trust account. The Bar conducted the quarterly reviews from 1988 through 1990 and it **was** during one of the

reviews that the Novak estate matter was discovered by the Bar's investigator. Beginning in October, 1989, the Bar conducted substantial investigation of the respondent's trust account relating to the Novak estate. The results of that investigation were forwarded to the Tenth Judicial Circuit Grievance Committee "A" in January, 1990, for their review. Ultimately, the committee found probable cause and a formal complaint was filed against the respondent.

It is apparent that had the Bar not been periodically reviewing the respondent's trust account, his misuse of the Novak Estate funds would not have been detected. Thus, the respondent's conclusion that he should only be assessed the costs which accrued beginning from the final grievance committee hearing in 1991 is incorrect. This matter would never have even reached the grievance committee if substantial investigation had not already been conducted beginning in 1989.

"In these cases, the choice is between imposing the costs of discipline on those who misbehave or on the members of the Bar who have not misbehaved," The Florida Bar v. Gold, 526 So.2d 51, 52 (Fla. 1988). The Bar submits it is appropriate to assess against the respondent all of the costs associated with his misconduct. This Court indicated in the Gold case the Bar could be challenged on costs that are unnecessary, excessive, or not properly authenticated. As the Bar's Final Affidavit of Costs demonstrates, each investigator expense related to the Rules of

which the respondent was charged and ultimately found guilty of violating. The Referee also apparently believed the Bar's statement of costs was appropriate because he included it in his report. See also The Florida Bar v. Davis, 419 So.2d 325 (Fla. 1982).

The Bar submits that substantial investigation had to be undertaken in order to determine the extent of the respondent's misconduct. Each and every cost and/or expense incurred by the Bar in prosecuting this matter has been documented. **As a** result of the Bar's investigation, the respondent was found guilty by the Referee of serious charges of misusing estate funds. Therefore, it is only appropriate that the respondent be required to pay the costs of his misconduct.

CONCLUSION

Based upon the foregoing, The Florida Bar respectfully requests that this Court approve the Referee's findings of fact and recommendations as to guilt and order the respondent be suspended for a minimum of three years, be required to reimburse the personal representative \$54,000.00 pursuant to the promissory note, and that he be required to pay the Bar's costs in prosecuting this matter which currently total \$5,253.20.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Answer Brief and Appendix have been sent by regular U.S. mail to the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by regular U.S. mail to respondent, James W. Aaron, at 819 North Highlands Avenue, Post Office Box 3351, Sebring, Florida, 33871-3351; and a copy of the foregoing has been furnished by regular U.S. mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 18th day of June, 1992.

Respectfully submitted,

BY:
FOR:

David D. McManis 174919/01
LARRY L. CARPENTER
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
complainant,
v.
JAMES W. AARON,
Respondent.

Case No. 77,962
[TFB No. 90-30,684 (10A)]

APPENDIX TO COMPLAINANT'S ANSWER BRIEF

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INDEX

	<u>PAGE</u>
Report of Referee	A-1
Final Affidavit of Costs	A-2

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JAN 23 1992

THE FLORIDA BAR
ORLANDO

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 77,962

[TFB NO. 90-30,684 (10A)]

v.

JAMES W. AARON,

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 Regulating The Florida Bar, the final hearing was held on November 20, 1991. The 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 Larry L. Carpenter

For The Respondent In pro se

- 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 on below, I find:

1. The respondent, James W. Aaron, is and at all times hereinafter mentioned, was a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating The Florida Bar.

2. In the spring of 1985, the estate of Stephen P. Novak was opened in the Circuit Court for Highlands County, Florida, as probate case number 85-75. The estate was opened with the respondent's assistance in his capacity as attorney for George W. Arvanitis, a named co-personal representative and co-trustee under the Last Will and Testament of Stephen P. Novak.

3. Under the provisions of the Last Will and Testament of Stephen P. Novak, the disposition of his estate was to be as follows:

a. One thousand (1,000) shares of Northeast Utility stock bequeathed to his brother and sister-in-law, Russell and Alice Novak;

b. Eighty percent (80%) of the estate bequeathed to Russell Novak and **George W. Arvanitis** as co-trustees for the establishment of a trust fund to provide financial aid for the education of their own grandchildren first, as well as other worthy students; and

c. The remainder of the estate bequeathed to **George W. Arvanitis** and two members of the **Board of Trustees of Suffolk University** as trustees to establish the Stephen P. Novak Educational Trust Fund for the benefit of the grandnephews and grandnieces of Stephen P. Novak and other needy young persons so long as they attend Suffolk University or Suffolk Law School.

4. The respondent was an authorized signatory on the estate bank account which was opened at Sun Bank of Highlands County, N.A. under account number 501 1813455. On or about March 28, 1986, the respondent withdrew \$150,000.00 from the estate bank account. The respondent deposited that sum of \$150,000.00 into his personal and family passbook savings account.

5. On or about April 4, 1986, the respondent transferred the approximate sum of \$95,905.00 from his personal and family passbook savings account to the Stephen P. Novak Education Trust. On or about April 14, 1986, the respondent transferred approximately \$53,269.99 of the original \$150,000.00 deposit of estate funds back to the estate bank account.

6. On or about April 23, 1986, a Petition For Discharge bearing the signatures of the co-petitioners and the respondent was filed in the Estate of Stephen P. Novak. Also filed was the Final Accounting And Waiver of Accounting and Service of Petition of Discharge and Receipt of Beneficiary and Consent To Discharge from each of three beneficiaries of the estate.

7. The Final Accounting filed with the court by the

respondent reflected the following:

a. Stock/shares complete liquidation in the amount of \$309,695.28;

b. Attorney fees in the aggregate amount of \$29,971.09;

c. Current net assets of the estate in the amount of \$479,526.96; and

d. Proposed distribution in the aggregate amount of \$479,526.95.

8. An order discharging the personal representatives and closing the estate was entered by Circuit Judge J. Dale Durrence on May 23, 1985. During the time period the estate was opened approximately \$47,000.00 in estate checks were made payable to the respondent or to cash and were negotiated by the respondent. The \$47,000.00 in estate checks were not reflected on the Final Accounting filed with the court.

9. The three Receipt of Beneficiary filed with the court acknowledged "receipt of complete distribution in the share of the estate" to which each was entitled. The total distributions acknowledged as having been received by the three beneficiaries were equal in amount to the total net assets of the estate as set forth on the Final Accounting filed with the court.

10. The respondent failed to reflect approximately \$47,000.00 of estate funds on the Final Accounting which the respondent helped to prepare and file. The \$7,000.00 which was not distributed to the beneficiaries of the estate under the terms of the Will was left in the estate bank account. Said amount of \$7,000.00 left in the estate bank account was converted by the respondent for his personal use.

11. Although the Final Accounting prepared and filed by the respondent reflected the complete liquidation of the stock/shares of the estate, certain stocks of which the deceased was the record title holder remain unliquidated and undistributed and therefore part of the closed estate. Certain of the unliquidated and undistributed stocks continued uninterrupted to pay dividends since the closing of the estate through November of 1990.

12. Subsequent to the Bar's investigation of this matter a

Petition To Revoke Order Of Discharge **was** filed by George W. Arvanitis on September 20, 1991. Said petition **was** also signed by the respondent as attorney for Mr. Arvanitis. The petition **was** filed in **order to** account for the other property of the estate that had not been distributed to the beneficiaries including the stock and dividends. On October 22, 1991, Circuit Judge J. David Langford issued an order revoking the order of discharge and reappointed Mr. Arvanitis as the personal representative.

13. At the final hearing on November 20, 1991, the respondent reimbursed the estate/personal representative the **stock** dividends he had been receiving from the estate. The respondent stills owes \$54,000.00 to the estate as evidenced by a promissory note he executed on April 26, 1991. This amount is for excess attorney's fees.

III. Recommendations 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:

I find the respondent guilty and specifically I find the respondent guilty of the following rules: For violations occurring prior to 1987 the respondent has violated Rule 9-102(A) from the Code of Professional Responsibility for improperly depositing funds belonging to the lawyer in a trust account containing client **funds**, including advances for costs and expenses; and Rule 9-102(B)(4) from the Code of Professional Responsibility for failing to promptly pay or deliver to the client funds or other property in the possession of the **lawyer** which the client is entitled to receive. For violations occurring after 1986 I find the respondent guilty of violating **Rule** of Discipline **3-4.3** for committing an act contrary to honesty and justice; and the **following** Rules of Professional Conduct: 4-1.15(a) for failing to hold in trust, separate from the lawyer's own property, funds **and** property of clients or third persons that are in a lawyer's possession **in** connection with the representation; 4-1.15(d) for failing to promptly deliver to a client or third person any **funds** or other property that the client or third person is entitled to receive; and 4-8.4(a) for violating the **Rules** of Professional Conduct.

IV. Recommendation as to Disciplinary measures to be applied:

I recommend that the respondent be suspended for a period of three years and that he be required to pay The Florida Bar's costs in prosecuting this matter. I further

recommend that the respondent be required to reimburse the Novak estate and/or the estate/personal representative the funds due them as excess attorney's fees which total \$54,000.00. The respondent has executed a promissory note to the personal representative in the amount of \$54,000.00 which is due on or before April 26, 1993.

V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 43

Date admitted to Bar: May 10, 1974

Prior Disciplinary convictions and disciplinary measures imposed therein: The Florida Bar v. Aaron, 490 So.2d 941 (Fla. 1986) - The respondent received a public reprimand for improper trust accounting records and procedures. The respondent was also placed on a one year period of probation subject to quarterly reviews of his trust account by The Florida Bar. The Florida Bar v. Aaron, 529 So.2d 685 (Fla. 1988) - The respondent received a public reprimand and was placed on two years probation for trust account violations. During the period of probation the respondent was subject to quarterly inspections of his trust account by The Florida Bar. It was a review of the respondent's trust account during the period of probation that brought the present matter to the attention of the Bar.

VI. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar.

A.	Grievance Committee Level Costs	
	1. Transcript Costs	\$ 296.00
	2. Bar Counsel/Branch Staff Counsel	\$ 68.47
B.	Referee Level Costs	
	1. Transcript Costs	\$ 143.88
	2. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 226.03
C.	Administrative Costs	\$ 500.00
D.	Miscellaneous Costs	
	1. Investigator Expenses	\$4,018.82
	TOTAL ITEMIZED COSTS:	\$5,253.20

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 16th day of January, 1992.

S/ GEORGE K. BROWN, JR.
Referee

Copies to:

Mr. Larry L. Carpenter, Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801

Mr. James W. Aaron, Respondent, 819 North Highlands Avenue, Post Office Box 3351, Sebring, Florida 33871-3351

Mr. John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 77,962

[TFB No. 90-30,684 (10A)]

v.

JAMES W. AARON,

Respondent.

FINAL AFFIDAVIT OF COSTS

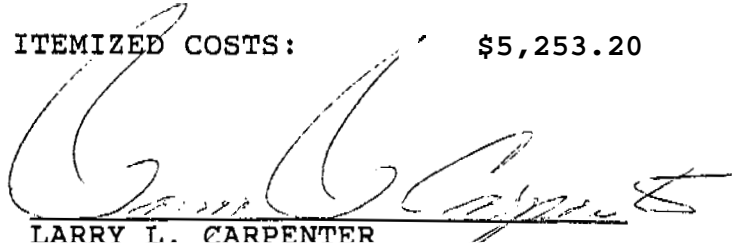
STATE OF FLORIDA)
COUNTY OF ORANGE)

BEFORE ME, personally appeared Larry L. Carpenter, who,
first being duly sworn and under oath states the following:

Below is an itemized list of the expenses incurred in the
above-styled cause.


A.	Grievance Committee Level Costs:	
	1. Transcript Costs	\$ 296.00
	2. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 68.47
B.	Referee Level Costs	
	1. Transcript Costs	\$ 143.88
	2. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 226.03
C.	Administrative Costs	\$ 500.00
D.	Miscellaneous Costs	
	1. Investigator Expenses	\$4,018.82

TOTAL ITEMIZED COSTS: \$5,253.20



LARRY T. CARPENTER
Bar Counsel
The Florida Bar
880 North Orange Avenue
Suite 200
Orlando, Florida 32801
(407) 425-5424
ATTORNEY NO. 312614

Sworn to and subscribed before
me this 12TH day of December, 1991.

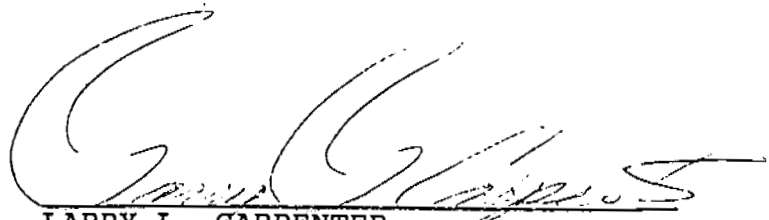


Terry C. Getz, Notary Public
State of Florida at Large

MY COMMISSION EXPIRES: NOTARY PUBLIC, STATE OF FLORIDA.
MY COMMISSION EXPIRES: MAY 15, 1992.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

CERTIFICATE OF SERVICE

I **HEREBY** CERTIFY that the original of the foregoing Final Affidavit of Costs was furnished by regular U.S. mail to The Honorable George K. **Brown**, Referee, **at** the Manatee County Courthouse, 1115 Manatee Avenue, West, Post Office **Box** 1000, Bradenton, Florida, 34206; a copy has been furnished by certified mail, return receipt requested, no. P **844 906 805**, to respondent, James W. Aaron, 819 North Highlands Avenue, **Post Office Box 3351**, Sebring, Florida, **33871-3351**; and a copy has been furnished by regular U.S. mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, **32399-2300**, this 12th day of December, 1991.



LARRY T. CARPENTER
Bar Counsel

INVESTIGATOR EXPENSES

CHARLES R. LEE

James W. Aaron

Case No. 90-30,684 (10A)

<u>DATE</u>	<u>NATURE</u>	<u>TIME</u>
11/13/89	Tel Aaron, Clerk of Probate re: S. Novak	.6
11/15/89	Tel Aaron - Ltr to Aaron	.5
12/01/89	Tel Aaron	.1
12/05/89	Tel Aaron	.1
01/11/90	Interview w/Aaron, review Ct file on Probate	2.5
01/12/90	Review account records - estate	4.5
01/22/90	Review addl estate records - att tel Co. PR	
	Tel Aaron re: missing estate bank acct records and client file inventory	3.4
01/23/90	Tel Arvanitis re: estate PR	.4
01/29/90	Tel Aaron re: missing statements	.2
02/13/90	Tel Aaron re: missing bank records	.1
03/01/90	Tel re: bank records	.1
03/12/90	Confer w/counsel - Tel Aaron	.1
03/13/90	Tel Aaron left message - Tel Arvanitis re: Florida schedule	.2
03/16/90	Tel Aaron re: bank records	.2
03/20/90	Tel Aaron and Arvanitis	.2
03/21/90	Tel G. Arvanitis, estate PR	.2
03/28/90	Tel Chmn, Aaron & prepare 2 subpoenas	1.8
04/02/90	Tel Chmn	.1
04/20/90	Review of subpoenaed records	.8
05/02/90	Review records from Sun Bank - Tel & ltr Sun Bank for missing records. Confer w/counsel. Subpoena records re: acct at First Home Fed.	4.3
05/11/90	Att locate G. Arvanitis	.2
05/15/90	Tel w/Crawford Home Fed. - Confer w/Brenner. Att contact Arvanitis	.7
05/15/90	Tel's w/Crawford & Haycock	.3
05/24/90	Review First Home Fed Savings & Loan account	3.0
05/25/90	Review trust records. Att contact possible witnesses	2.0
06/01/90	Review records - prepare journal - draft report	4.0
06/05/90	Review draft report	.3
06/06/90	Review draft - correct - complete	.3
06/12/90	Confer w/counsel	.6
06/15/90	Review - prepare for add'l invest. - complete trust document journal	2.9
06/18/90	Review, confer w/counsel - Tel Judge Durrance for appt.	.2
06/19/90	Review probate file - verify probate expenses - electric and mail service	9.4
06/20/90	Review work notes - prepare info for counsel	2.4
08/02/90	Tel Judge Durrance 10th Circuit re: accounting of Novak probate	.2
08/14/90	Tel Judge Durrance - Appt.	.2

INVESTIGATOR EXPENSES - CONTINUED
 CHARLES R. LEE

James W. Aaron
 Case No. 90-30,684 (10A)

<u>DATE</u>	<u>NATURE</u>	<u>TIME</u>
09/05/90	Meet w/and discuss case w/Judge Durrance	6.0
09/11/90	Attend GC hearing w/Branch Staff Counsel	6.0
	TOTAL TIME (through September 30, 1990)	59.1
	59.1 Hrs @ \$19.00 per hour -	\$1,122.90
10/03/90	Confer w/SC on case - Tel Arvanitis - Novak	1.8
10/04/90	Att reach Arvanitis	.1
10/05/90	Tel w/G. Arvanitis - confer w/counsel - draft subpoena	1.7
10/23/90	Tel w/Building Permits, Sebring - Att tel follow-up w/Arvanitis	.5
10/26/90	Tel w/Arvanitis & Sun Bank re: subpoenaed records	.5
10/31/90	Review subpoenaed bank records - contact stock companies re: distribution of dividends	3.0
11/02/90	Confer w/Carpenter/McGunegle/Berry - Tel Arvanitis, tvl agent, etc	4.0
11/05/90	Review - analyze asset distribution - Tel w/clerk & confer w/counsel & BSC	2.2
11/09/90	Tel w/BSC - att Tel w/Arvanitis - review input of court file - cancel tvl arrangements	.6
11/15/90	Confer w/counsel - contact court, bank, TECO - ltr to Novak	2.9
11/15/90	Tel w/TECO - draft subpoena	.5
11/19/90	Review court records	.3
11/26/90	Tel w/Ms. Frank, TECO - Tel D. Saliba	.9
11/27/90	Tel w/D. Saliba	.5
11/30/90	Tel w/TECO re: information	.2
12/04/90	Tel w/D. Saliba	.6
12/06/90	Confer w/counsel - draft subpoenas	2.0
12/07/90	Tel Chmn re: subpoenas - Tel Aaron, 10th Cir. Court & confer w/counsel	.5
12/13/90	Serve subpoena - review court files/records	7.5
12/17/90	Subpoena add'l bank records - Coordinate w/Mass. Bar & put together info for that Bar	4.5
12/18/90	Draft info for Mass. Bar & finalize	1.2
12/19/90	Working conference w/Carpenter	.5
12/20/90	Develope info - State Department of Revenue	.8
12/21/90	Review subpoenaed records - confer w/counsel	.8
12/31/90	Interview Aaron - confer w/counsel & BSC - draft affidavit - poss temp suspension - review complaint - confer w/counsel	2.3
01/02/91	Complete affidavit	.2

INVESTIGATOR EXPENSES - CONTINUED
 CHARLES R. LEE

James W. Aaron
 Case No. 90-30,684 (10A)

<u>DATE</u>	<u>NATURE</u>	<u>TIME</u>
01/03/91	Tel w/John Cross, Mass Bar & draft ltrs to Arvanitis & Saliba	.5
01/04/91	Research rules for ltr to Saliba	.3
01/15/91	Tel w/Saliba Jr.	.4
01/17/91	To Claude Meadow for interview of Rubinas - review input of M. Novak & D. Saliba	.3
01/23/91	Tel Barnett Bank - draft ltr to M. Novak	.4
01/25/91	Review ltr of Arvanitis and stocks	1.6
01/28/91	Review stock & receipts - draft ltr to Mr. Arvanitis	3.3
02/18/91	Assemble items for paper hearing	2.2
02/26/91	Review & correct summary & complaint	.3
03/27/91	Tel stock broker - research records - draft ltr to Mr. Arvanitis	2.3
04/10/91	Confer w/counsel - review draft complaint	.5
04/29/91	Tel w/TECO, Terry Bergum & Chmn	.8
05/03/91	Meeting w/Terry Bergum, inves State Atty's Ofc 10th Circuit - copies provided of requested documents	5.1
06/10/91	Respond to corres from Mass Bar	.6
06/13/91	Contact Aaron re: rules charge - confer w/ Carpenter & BSC	.3
06/24/91	Tel Boston Bar and D. Saliba	.3
06/25/91	Draft ltr to Mr. Arvanitis re: hearing	.5
06/27/91	Tel from D. Saliba	.3
06/27/91	Tel from Arvanitis - send copies of TECO & Tele de Mexico info on stock - ltr & stock info to Arvanitis	1.4
07/10/91	Tel w/Arvanitis re: new promissory note security - hearing	.2
07/29/91	Review mortgage dead & promissory note - review w/Highlands Cty Court	1.5
08/12/91	Tel w/Aaron re: tel hearing 8/15/91	.2
08/15/91	Tel Arvanitis re: continuance - Tel Aaron & ltr	.6
08/26/91	Ltr to referee w/subpoenas	.2
09/10/91	Tvl - Deliver documents to Aaron	6.0
09/30/91	Conference re: needs for final hearing	2.0
10/03/91	Tel Saliba & M. Novak - Att contact Arvanitis Probate clerk said probate file is being reopened	1.7
10/04/91	Preparing records for trial - memo	4.2
10/07/91	Confer with Carpenter	.6
10/09/91	Confer w/Carpenter	.3

INVESTIGATOR EXPENSES - CONTINUED
 CHARLES R. LEE

James W. Aaron
 Case No. 90-30,684 (10A)

<u>DATE</u>	<u>NATURE</u>	<u>TIME</u>
10/10/91	Confer w/BSC & Carpenter - review	.7
10/17/91	Tel Aaron - conference w/Aaron & counsel, tel Arvanitis - draft ltr to Arvanitis & memo for file	1.2
10/24 91	Tel M. Novak, D. Saliba & Clerk of Court	1.3
10/29/91	Review court pleadings - confer w/counsel - ltr to Russell & M. Novak - Tel clerk	.6
11/12/91	Tel w/Arvanitis & memo far file	.4
11/14/91	Prepare records for court	2.1
11/18/91	Asst in preparation for hearing	1.7
11/19/91	Complete preparation and tvl to referee hrg	5.7
11/20/91	Attend referee hearing & ret to Orlando	6.5
TOTAL TIME (After September 30, 1990)		99.7
99.7 Hrs @ \$20.00 per hour =		\$1,994.00

ADDITIONAL INVESTIGATOR EXPENSES

James W. Aaron
 Case No. 90-30,684 (10A)

<u>DATE</u>	<u>NATURE</u>	<u>AMOUNT</u>
04/20/90	Barnett Bank - provided information requested by summons	\$ 30.60
04/20/90	Sun Bank - provided copies of bank statements & corresponding items requested	\$ 30.25
05/24/90	First Home Federal - Research & copies of copies requested	\$ 253.70
06/19/90	Charles R. Lee travel to Sebring/Avon Park to review probate file - verify expenses & mail service	\$ 91.28
09/05/90	Charles R. Lee travel to Bartow to meet with & discuss case w/Judge Durrance	\$ 59.05
10/29/90	Sun Bank - provided research copies requested by subpoena	\$ 22.50

ADDITCNAL INVESTIGATOR EXPENSES - CONTI WED

James W. Aaron
 Case No, 90-30,684 (10A)

<u>DATE</u>	<u>NATURE</u>	<u>AMOUNT</u>
12/13/90	Charles R. Lee travel to Sebring to Serve subpoena - review & obtain copies of court records	\$ 73.82
01/23/91	Barnett Bank - provided copies of research requested	\$ 13.40
02/07/91	Barnett Bank - provided copies of research requested	\$ 181.60
09/10/91	Charles R. Lee travel to Sebring to deliver documents to James Aaron	\$ 61.80
11/14/91	C. Raymond McIntyre, County Property Appraiser for certified property record card	\$.85
11/19-20/91	Charles R. Lee travel to Bradenton to attend Referee hearing	\$ 83.07
	TOTAL INVESTIGATOR EXPENSES	\$ 901.92

TOTAL INVESTIGATOR TIME (BEFORE 10/1/90)	\$1,122.90
TOTAL INVESTIGATOR TIME (AFTER 10/1/90)	1,994.00
TOTAL INVESTIGATOR EXPENSES	<u>901.92</u>
TOTAL	\$4,018.82