

**FILED**

SID J. WHITE

JAN 21 1992

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

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 ✓

11. Find ngs 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, 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 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 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

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 16<sup>th</sup> day of January, 1992.

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**