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**FILED**

SID J. WHITE

JUL 15 1992

CLERK, SUPREME COURT.

IN THE SUPREME COURT OF FLORIDA

Chief Deputy Clerk

JOSEPH R. MIELE,

Appellant/Respondent,

vs.

THE FLORIDA BAR,

Appellee/Complaint.

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CASE NO. 78,589

TFB NO. 90-11,166 (06D)

Appellant's Reply Brief

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### Statement of Case and Facts

Both parties have agreed on the statement of facts as cited in the Appellant's Initial Brief with the exception of Mr. Miele's hourly rate. The Bar presented no testimony to rebut the Appellant's testimony that his fee was One Hundred Fifty and no/100 (\$150.00) Dollars per hour. In fact, one of the Complainants testified that Mr. Miele's fees were "skinny." (Tr. 119)

**Point One**

The Appellant had not been billing the condominium association for several years. When he found out that the Complainants were asking for his attorney **fees** to be paid to them, the Appellant asked the Complainants for proof of their payments so that he could prepare a statement.

The facts presented at the hearing showed the Mr. Miele had actually forgiven the condominium association for fees which it should have paid him. This is hardly a selfish motive.

## Point Two

While it is true that the allegations in the Complaint were serious in nature, there was no proof of them, other than the failure to keep the trust account records for six (6) years. The Appellant had admitted from the start that he did not have the trust records which had been destroyed.

Contrary to the Bar's brief, the Appellant did not require the Complainants to document that they were entitled to a refund of fees paid. He simply asked for proof of what payments they had made. Once that information was finally presented at the hearing, the evidence showed that the Complainants were not entitled to any refund.

Therefore, Mr. Miele should have to pay only those costs that were incurred up to the point at which the Bar counsel should have demanded the documentation from the Complainants and forwarded that documentation to Mr. Miele.

**Point Three**

Again, there was no injury to any client. The only one injured was Mr. Miele himself.

The Appellant's prior reprimands were years ago and unrelated to this incident and; therefore, should not be a aggravating factor. If this Court finds that there was no selfish motive under Point One, then that would not be an aggravating factor either.

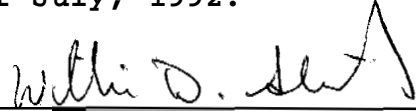
In light of all of the mitigating factors, the proper form of discipline in this instance should be an admonishment.

### Conclusion

In conclusion, the Respondent does not feel that a public reprimand is called for simply because a member disposes of his damaged records before the six year period expires. The Respondent suggests that an admonishment is appropriate and that a smaller portion of the costs, if any, should be assessed under the circumstances.

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing has been sent by U. S. Mail to: David R. Ristoff, The Florida Bar, Suite C-49, Tampa Airport, Marriott Hotel, Tampa, FL 33607; John T. Barry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300; and Bruce Bartlett, Chairman, P. O. Box 5028, Clearwater, FL 34616 on this 13 day of July, 1992.



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