IN THE SUPREME COURT OF FLORIDA

No. 80,046

THE FLORIDA BAR,

Complainant,

vs.

WILLIAM C. NESBITT,

Respondent.

PETITION FOR REVIEW OF REFEREE'S REPORT

FIRST AMENDED INITIAL BRIEF FOR RESPONDENT

William C. Nesbitt
Respondent

P.O. Box 900175
Atlanta, Georgia 30329

In Proper Person

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MISCELLANEOUS

SUMMARY OF ARGUMENT

The Referee recommended that the Respondent be suspended from The Florida Bar for 91 days and that he be required to prove rehabilitation at a hearing prior to his readmittance to the practice of law. The discipline requested by the Respondent, which is a public reprimand with such additional conditions as this Court might see fit to impose, serves the tripartite purposes of fairness to society, fairness to the Respondent, and sufficient severity much better than does the discipline proposed by the Referee. The proposed discipline would have the effect of virtually disbarring the Respondent and depriving him of the ability to repay his obligations. The lesser discipline requested by the Respondent, on the other hand, would not have these Draconian effects, and yet is well within the range of discipline which may be, and often has been, imposed for similar violations.

COMMENTS ON THE REFEREE'S FINDINGS

In the Report of Referee [hereinafter referred to as "the Report"], the Referee found 13 specific deficiencies, numbered 1 through 13. An examination of the documentation which the undersigned furnished to The Florida Bar (which included trust account bank statements, trust account deposit slips, trust account checks, cash receipts and fees charged journals, ledger cards, and miscellaneous accountings) will reveal that the Referee was mistaken; the first 7 of these deficiencies do not exist.

The first deficiency found by the Referee was that "Respondent failed to maintain a separate cash receipts and disbursements journal." The Bar requested that I forward monthly cash received and fees charged journals for 1989. I submitted my cash receipts and disbursements journals (Safeguard Form J-CRF-3, Cash Receipts and Fees Charged Journal) for the months of January through October of 1989. Those journals should be in the file which this Court has before it. An examination of those journals will reveal that such journals were maintained for January through October of 1989 (no such journals were prepared for November or December of 1989 because no funds were received or disbursed during either of those months). Thus, the Referee's statement that "[r]espondent failed to maintain a separate cash receipts and disbursements journal" is incorrect, as can be easily verified by reviewing the materials which I sent to the Bar Auditor, which materials I assume to be in the file which is before this Court.

The second deficiency found by the Referee was that "[d]uring 1988 and 1989, respondent failed to include the reasons for disbursements and receipts column in the cash receipts and disbursements journal." This statement makes no sense. If the Referee is trying to say that "[d]uring 1988 and 1989, respondent failed to include the reasons for disbursements and receipts in the appropriate column in the cash receipts and disbursements journal," then my response is that the referenced journal (which is represented by Safeguard as meeting all trust accounting requirements mandated by The Florida Bar) makes no provision for such information. If, on the other hand, the Referee is trying to say that "[d]uring 1988 and 1989, respondent failed to include the reasons for disbursements and receipts in the appropriate column in the trust account journal, then again, my response is that these journals should be in the file which this Court has before it. An examination of those journals will reveal that such information was included in the journals. Again, the Referee's statement that I failed to include the required information is incorrect. Again, this can be easily verified by reviewing the materials which I sent to the Bar Auditor, which materials I assume to be in the file which is before this Court.

The third deficiency found by the Referee was that "Respondent was missing at least one ledger card for the 1989 period." However, which ledger card or cards this might be (which should be easily determinable from the journals) is not specified. The undersigned is aware that one ledger card (for William and

Rebecca Taylor) was not supplied, because the undersigned has been unable to locate it. With the single exception of that one ledger card (not "at least" one ledger card), the Respondent's review of the documents which he submitted to the Bar indicates that all ledger cards were submitted. By failing to specify which additional ledger cards were missing, the Auditor and the Referee have denied the Respondent the ability to correct or rebut this finding.

The fourth deficiency found by the Referee was that "Respondent failed to include in his records the identity of some of the clients or matters concerning funds received, disbursed or transferred." Again, an examination of the records which were furnished to The Florida Bar will reveal that each transaction includes a reference to either a client by name or to client and matter by file number.

The fifth deficiency found by the Referee was that "Respondent failed to date when some of the trust funds were received, disbursed or transferred." Again, a review of the records which I submitted to the Bar (which includes, among other things, the cash received and fees charged journals, the trust account disbursement journal, and the trust account checks), will reveal that each transaction bears a date. In addition, the trust account disbursement journal includes a check number for each and every trust account check written. Each trust account check, as well as the appropriate journal entry for that check in the trust account disbursement journal, indicates the reason for which

trust funds were disbursed or otherwise transferred. The Referee's sixth and seventh findings, which were, respectively, that "Respondent failed to include check numbers for all disbursements" and "Respondent failed to include reasons for which trust funds were received, disbursed or transferred" are, therefore, completely and totally without basis.

The eighth, ninth, tenth, and eleventh deficiencies relate to receiving a check for $150.00, which was deposited into the trust account. The undersigned, thinking that the check had had ample time to clear the bank, made a disbursement against uncollected funds. My letter of April 7, 1992, to Ms. Mimi Daigle, the Bar's staff counsel at the time, makes it clear that this disbursement was inadvertent:

> As to Mr. Pearson's report: I do not yet have an answer to all of Mr. Pearson's concerns. However, I am able to make the following observations:
>
> **As to the $100 check which was disbursed against uncollected funds:** As is apparent from the bank statement and the check itself, the funds were deposited on February 9, 1989. The check itself was dated February 17, 1989, but was not cashed until February 21, 1989. While I admit that subsequent events proved me wrong, I was of the good-faith opinion that 12 days was ample time for the check to clear the bank. (Emphasis in original)

I believe that letter makes it clear that the disbursement which was made against uncollected funds was inadvertent on my part. If I had disbursed the check in question within a few days after receiving it, that would be one thing; but I waited twelve days for that check to clear the bank. I should not be penalized because I, in good faith, waited what would normally have been a

sufficient period of time for the check to clear the bank, only to find out that, for whatever reason, the clearing process for this check was abnormally slow.

The twelfth deficiency found by the Referee was that "[d]uring 1989 respondent negligently handled the service charges on his trust account." I do not understand, and have not been informed, how I was "negligent" in handling these charges.

The thirteenth finding of the Referee is that "Respondent's trust account reflects shortages in 1989." As it happens, that finding is correct. It is critical for this court to understand, however, that the undersigned was completely unaware of this situation until he was informed of it by the Bar Auditor. The steps which the undersigned is taking to resolve this problem will be discussed later in this Brief.

The undersigned therefore urges this Court to review the documentation which the undersigned furnished to The Florida Bar to verify that, while the undersigned is now aware that his trust accounting practices were deficient, they did not rise to the level of inadequacy implied by the Referee.

Another point which deserves mention is my "prior" history of discipline. As discussed in the Memorandum, The Florida Bar appears to be treating this matter as being entirely separate and distinct from my earlier public reprimand, as if after the earlier matter was resolved another complaint was filed, as the result of which the present disciplinary proceeding arose. That is not what happened at all. What did happen is this: At the con-

clusion of the hearing before the referee in the prior disciplinary matter (and many weeks before he announced his decision), the attorney representing The Florida Bar announced that she was going to have my trust account audited. Inasmuch as that disciplinary proceeding had nothing to do with my trust account, I did not see the connection, and asked why she was going to have my trust account audited. Her reply was that the Bar has the right to audit my trust account, so she was going to have it audited. As it happened, of course, trust account procedural violations were found, leading to the instant case. But it is important for this Court to realize that the instant case grew out of the earlier case, and is not a separate and distinct matter unto itself. Thus, to state that I "have a prior disciplinary record" makes the situation sound much worse than it actually is.

It is also important that this Court understand that these problems came to light because the Bar, for whatever its reasons may have been, instituted the audit of its own accord, and <u>not</u> because a trust account check was returned for insufficient funds, or because I did not have sufficient funds in the account to make a disbursement to a client, or for any similar reason. <u>All of my trust account violations were inadvertent</u>.

INTRODUCTION

In The Florida Bar v. Hartman, 519 So.2d 606, 608 (Fla. 1988), this Court stated that

> The purpose of attorney discipline is threefold:
>
> > First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. (Quoting The Florida Bar v. Pahules, 233 So.2d 130, 132 (Fla. 1970)).

In his Report, the Referee recommended that the undersigned Respondent be suspended from The Florida Bar for 91 days and that he be required to prove rehabilitation at a hearing prior to his readmittance to the practice of law. Thus, the question arises whether, based on the facts of this case, that proposed discipline meets the standards set forth in Pahules and reiterated in Hartman, or whether the discipline requested by the Respondent (a public reprimand with such additional conditions [e.g., participating in LOMAS and/or taking courses to gain proficiency in trust accounting procedures and/or probation] as this Court might see fit to impose) would accomplish the same purpose.

Because the issues of whether the proposed discipline is fair to society in terms of protecting the public from unethical conduct and whether the judgment is severe enough to deter others who might be prone or tempted to become involved in like viola-

tions involve a similar analysis and are supported by identical case law, those issues will be considered together. Following that analysis, the issue of whether the proposed discipline is fair to society in terms of not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty will be dealt with. Finally, the issue of whether the proposed discipline is fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation, will be considered.

FIRST ISSUE PRESENTED FOR REVIEW

WHETHER THE PROPOSED DISCIPLINE IS FAIR TO SOCIETY IN TERMS OF PROTECTING THE PUBLIC FROM UNETHICAL CONDUCT, AND WHETHER THE PROPOSED DISCIPLINE IS SEVERE ENOUGH TO DETER OTHERS WHO MIGHT BE PRONE OR TEMPTED TO BECOME INVOLVED IN LIKE VIOLATIONS

ARGUMENT

THE PROPOSED DISCIPLINE DOES PROTECT THE PUBLIC FROM UNETHICAL CONDUCT, BUT A LESSER DISCIPLINE WOULD PROTECT THE PUBLIC JUST AS WELL, AND WOULD STILL BE SEVERE ENOUGH TO DETER OTHERS WHO MIGHT BE PRONE OR TEMPTED TO BECOME INVOLVED IN LIKE VIOLATIONS

There are numerous cases which support the proposition that, on the facts of this case, a public reprimand with such additional conditions [e.g., participating in LOMAS and/or taking courses to gain proficiency in trust accounting procedures and/or probation] as this Court might see fit to impose) would accomplish purposes set forth above just as well as the discipline proposed by the Referee.

In The Florida Bar v. Gentry, 475 So.2d 678 (Fla. 1985), the attorney was found to have charged an excessive fee, engaged in conduct adversely reflecting on his fitness to practice law, and committed numerous trust account violations (including providing no client ledger cards to The Florida Bar and providing deposit slips for only about one-fourth of his trust account deposits; id. at 680). This attorney had previously been suspended from

the practice of law for six months (id. at 679), yet this Court ruled that the latest ethics violations warranted probation for 18 months and no suspension.

In The Florida Bar v. Fields, 520 So.2d 272 (Fla. 1988), the attorney was found to have charged illegal interest (the same misconduct for which this attorney had previously been disciplined, although this Court felt that this was an example of ongoing misconduct rather than a separate violation) and had committed numerous trust account violations. This Court agreed that a public reprimand was appropriate.

In The Florida Bar v. Staley, 457 So.2d 489 (Fla. 1984), this Court found the attorney guilty of entering into a business transaction with a client whose interests were in conflict, and of committing numerous trust account violations. The attorney received a public reprimand and was placed on probation for one year.

In The Florida Bar v. Borja, 554 So.2d 514 (Fla. 1990), the attorney was found to have "issu[ed] a $10,000 check from a trust account to pay the estate's taxes when there were no funds in the account for that purpose." Id. (emphasis added). Not surprisingly, the attorney was found not to be in substantial compliance with trust accounting procedures. (By way of comparison, the shortages in the undersigned Respondent's trust account are on the order of a few hundred dollars.) The attorney received a public reprimand and was placed on probation for two years.

In The Florida Bar v. Bell, 536 So.2d 974 (Fla. 1988), the

attorney, who had previously received one private reprimand and one year of probation, was found to have committed various trust accounting violations. He was publicly reprimanded and placed on probation for two years, with the condition that he complete a course in trust accounting.

In The Florida Bar v. Aaron, 529 So.2d 685 (Fla. 1988), the attorney was found to have committed numerous trust account violations, including having commingled funds on at least 65 occasions. This Court, noting that "this is not the first time Aaron has been found guilty of failure to maintain his trust accounts properly," found the appropriate discipline to be a public reprimand and 2 years' probation. Id. at 686.

In The Florida Bar v. Heston, 501 So.2d 597 (Fla. 1987), this Court considered a case in which the attorney was determined to have commingled personal and trust funds; poorly maintained his books and records; made no bank or client trust account reconciliations; failed to authorize his bank to notify The Florida Bar of dishonored checks; and to have had a shortage on over seven thousand dollars in his trust account. This Court agreed that the appropriate discipline was a public reprimand and 2 years' probation.

There are many other cases in which this Court has found a public reprimand to be the appropriate discipline for trust account violations. See, e.g., The Florida Bar v. Pino, 526 So.2d 67 (Fla. 1988) (misuse of trust account funds, conduct adversely reflecting on fitness to practice law, business tran-

sactions with client whose interest differ from attorney's, failure to promptly deliver funds, and trust account recordkeeping violations warrant public reprimand; The Florida Bar v. Johnson, 526 So.2d 53 (Fla. 1988) (numerous trust account violations, including failure to disburse funds, warrants public reprimand and 4 years' probation); The Florida Bar v. Lumley, 517 So.2d 13 (Fla. 1987) (commingling funds resulting in deficits in client funds and knowingly using entrusted funds for attorney's own purposes but "not ... with wrongful intent" [id. at 14] warrants public reprimand with no probation being required); The Florida Bar v. Hosner, 513 So.2d 1057 (Fla. 1987) (failure to follow trust accounting rules and intermingling personal funds with those held in trust warrants public reprimand and 3 years' probation); The Florida Bar v. Norton, 510 So.2d 290 (Fla. 1987) (trust account check returned for insufficient funds, depositing client funds into another attorney's trust account, issuing checks against uncollected funds, failure to make reconciliations, failure to keep accurate balance, and failure to maintain ledger cards warrant public reprimand and 2 years' probation); The Florida Bar v. Diaz-Silveira, 477 So.2d 562 (Fla. 1985) (failure to preserve identity of funds and property of clients and violation of trust accounting procedures warrants public reprimand and 3 years' probation); The Florida Bar v. Suprina, 468 So.2d 988 (Fla. 1985) (mishandling trust funds, conduct adversely reflecting on fitness to practice law), contacting opposing party represented by counsel, commingling personal funds

and trust funds, and improper recordkeeping warrant public reprimand); The Florida Bar v. Thomson, 429 So.2d 2 (Fla. 1983) (failure to maintain a trust account; and forty-three instances of checks being dishonored because of insufficient funds warrants public reprimand); The Florida Bar v. Borns, 428 So.2d 648 (Fla. 1983) (mishandling trust funds, not promptly returning trust funds when requested, using trust account to deposit payroll taxes, and failure to reconcile account warrants public reprimand); The Florida Bar v. Finta, 427 So.2d 721 (Fla. 1983) (unspecified trust account violations warrant public reprimand and submission of bimonthly affidavits certifying compliance with trust accounting rules).

In each of the cases cited above, as well as others not cited, this Court has, by imposing a public reprimand (sometimes with probation or other conditions) impliedly ruled that such discipline both protects the public from unethical conduct and is severe enough to deter others who might be prone or tempted to become involved in like violations.

In the instant case, a review of both the testimony taken before the Referee on October 30, 1992 and the Referee's findings, amply establish that, while trust accounting violations undoubtedly occurred, the violations were not committed knowingly, nor were any checks returned for insufficient funds (or any other reason), nor were any allegations made that any client funds were diverted to personal use. In short, the violations found by the Referee to have occurred in this case are well

within the limits for public reprimand (together with such conditions as this Court may impose) set by the cases cited above, and such a reprimand would amply serve the dual purposes of protecting the public from unethical conduct and deterring deter others who might be prone or tempted to become involved in like violations.

SECOND ISSUE PRESENTED FOR REVIEW

WHETHER THE PROPOSED DISCIPLINE IS FAIR TO SOCIETY IN TERMS OF NOT DENYING THE PUBLIC THE SERVICES OF A QUALIFIED LAWYER AS A RESULT OF UNDUE HARSHNESS IN IMPOSING PENALTY

ARGUMENT

THE PROPOSED DISCIPLINE IS NOT FAIR TO SOCIETY BECAUSE IT WILL DENY THE PUBLIC THE SERVICES OF A QUALIFIED LAWYER AS A RESULT OF UNDUE HARSHNESS IN IMPOSING PENALTY

In the Memorandum and Brief [hereinafter referred to as "the Memorandum"] which was submitted to the Referee subsequent to the October 30, 1992 hearing, the undersigned Respondent stated that

> [A]s as I testified to at length during the October 30 hearing, in the 35 months between January 1, 1990, and November 30, 1992 (assuming that nothing changes in the next few days), I have been employed on a full-time basis for only 9-1/2 months, and on a half-time basis for 2 months. Thus, I have been employed the equivalent of 10-1/2 of the last 35 months--which is to say, only 30% of the time.

As of December 31, 1992, those figures were: employed the equivalent of 10-1/2 of the last 36 months--which is to say, less than 30% of that time.

On January 4, 1992, to my great delight, my employment situation changed when I began working for a small distribution company here in Atlanta as their general counsel. As the attorney for the company I must, of course, keep my State Bar of Georgia membership current and active. As was testified to at some length during the October 30, 1992 hearing and discussed in the

Memorandum which was submitted subsequent thereto, my suspension in Florida will almost guarantee my suspension in Georgia.[1] That would cause me to be immediately terminated from my job (the first job I have had in fifteen months and the best, and best-paying, job which I have ever had).

From a professional point of view, I will point out to this Court that my new job involves handling no funds of any nature, whether trust or otherwise, and involves no bookkeeping or other accounting/financial responsibilities. While I have been, and remain, ready and willing to take whatever remedial courses this Court may require, including courses in trust accounting, the fact is that my new job involves no money-handling responsibilities. Indeed, a suspension from The Florida Bar for trust accounting violations, resulting in my loss of a job in which I control no money at all, would be a cruelly ironic twist of fate.

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[1] Standard 67 of Bar Rule 4-102 of the Rules and Regulations of the State Bar of Georgia states that "[d]isbarment or suspension by another state is a ground for disbarment or suspension in the State of Georgia." As noted in the ABA's monograph, Survey of Lawyer Disciplinary Procedures in the United States "as a practical matter, the record from the other state would probably be utilized" in Georgia as conclusive evidence that the lawyer committed the offense alleged.

There are several cases in which a lawyer has been suspended or disbarred in Georgia because of disciplinary proceedings in another state. See, e.g., In re Palmer, 261 Ga. 827, 411 S.E.2d 498 (1992) (attorney suspended by Supreme Court of South Carolina suspended from practicing law in Georgia for 3 years); In re Klepak, 250 Ga. 892, 302 S.E.2d 356 (1983) (attorney disbarred in Illinois for conviction of a felony disbarred in Georgia); and In re Maller, 259 Ga. 248, 379 S.E.2d 517 (1989) (attorney disbarred in Maryland permitted to voluntarily surrender license to practice law in Georgia).

From a personal point of view, I will point out to this Court that, with over fifteen months' very recent experience in the attorney employment market, I know only too well what the market is like. In the past few months several Atlanta-area law firms have either "laid off" (fired) numerous attorneys in order to cut costs or, as in the case of one of Atlanta's largest and most highly-respected firms (Hurt, Richardson, Garner, Todd, and Cadenhead), dissolved outright. Partly for these reasons and partly because of the generally moribund state of the economy, the employment market for attorneys is very tight at the present time. Because of the overcrowded and highly competitive nature of the attorney employment market, if I lose my present employment after having barely begun it, it is unlikely in the extreme that I will find another position.

Another consequence of becoming employed is, of course, financial. My "staying power" was very nearly at an end when I was fortunate enough to be offered my present position. I am now in a position where I can begin to retire the various debts which have built up. As I noted in the Memorandum,

> As I stated during the hearing held on October 30, 1992, I have no objection whatever to participating in LOMAS, taking classes which enable lawyers to become proficient in trust account management, paying all dues and outstanding costs (once I have obtained employment and am in a financial position to do so), and satisfying any outstanding CLE requirements as a condition to being reinstated in The Florida Bar.

My present employment gives me the ability to meet those obligations. My loss of that employment would cause me to lose that

ability.

As just noted, the proposed discipline (a 91-day suspension and subsequent requirement to prove rehabilitation at a hearing prior to readmission to The Florida Bar) would deny the public the services of a qualified lawyer because of the undue harshness of the proposed discipline. On the other hand, the discipline requested by the Respondent (a public reprimand with such additional conditions [e.g., participating in LOMAS and/or taking courses to gain proficiency in trust accounting procedures and/or probation] as this Court might see fit to impose) would permit the undersigned respondent to remain employed; retire his debts; continue to contribute to society as a hardworking lawyer; and regain his sense of self-worth which has been destroyed by his extended period of unemployment.

THIRD ISSUE PRESENTED FOR REVIEW

WHETHER THE PROPOSED DISCIPLINE IS FAIR TO THE RESPONDENT, BEING SUFFICIENT TO PUNISH A BREACH OF ETHICS AND AT THE SAME TIME ENCOURAGE REFORMATION AND REHABILITATION

ARGUMENT

THE PROPOSED DISCIPLINE IS NOT FAIR TO THE RESPONDENT, AS IT IS MUCH STRICTER THAN NECESSARY TO PUNISH A BREACH OF ETHICS, AND AT THE SAME TIME ENCOURAGES NO REFORMATION AND REHABILITATION BEYOND THAT WHICH THE REQUESTED DISCIPLINE WOULD AFFORD

As has been discussed above, while the proposed discipline certainly meets the "punishment" criterion, by virtually ensuring that the undersigned Respondent will return to the ranks of the unemployed, it encourages no rehabilitation at all. On the other hand, the requested discipline adequately punishes (the thought of having my name published, again, in connection with an ethics violation is one which I view with great distaste) and yet does not deprive the undersigned Respondent of his future as a lawyer. Certainly the undersigned can be suspended; but in this case, the effect of a suspension would be a de facto disbarment. In order to reinstate my membership in The Florida Bar (and in the State Bar of Georgia following the reciprocal suspension which would almost certainly ensue) would require that I retire the various debts which would be due to the Bars concerned. Without employment, how can I do that?

On the other hand, a public reprimand (with whatever else this Court may require) would hardly be a "free ride." First, there is the humiliation of again having my name published in connection with an ethics violation. Then, there is the fact that the costs imposed by this Court, which at the present time amount to approximately $4,600.00, plus another $700.00 in unpaid Bar dues, must be paid. In addition, there is the cost and time involved in complying with whatever conditions this Court may impose upon the undersigned. This path punishes, yet allows reformation and rehabilitation. The proposed discipline merely punishes without allowing the undersigned any way to rectify the situation.

Another thing which the proposed discipline does not do is rectify the problems with the undersigned's trust account. As I stated during the October 30, 1992 hearing before the Referee, I was ready and willing, with the Bar's guidance and under its supervision, to rectify the problems with the trust account and then, once that had been done and all funds disbursed, to close the account. To date I have not heard from the Bar on that subject. I have therefore begun the process of rectifying the problems with the trust account prior to disbursing the remaining funds and closing the account. I would expect that this should be completed by the time of oral argument, assuming that such is granted.

CONCLUSION

A comparison of the facts in the instant case to those in cases previously ruled upon by this Court quickly reveals that no aggravating circumstances exist. Certainly two of the more egregious aggravating circumstances--having a check returned for insufficient funds and having a client lose money--are wholly absent. The undersigned respondent has indicated his willingness to participate in LOMAS, to take classes in trust account management, to pay all dues and outstanding costs and, in sum, to do whatever may be required. What more can reasonably be requested? I could, of course, be suspended from The Florida Bar for some period of time. That is not necessary to restore any money to clients, as no clients have lost any money. It will not cause me to learn anything which I will not already learn in LOMAS or trust account classes. The fact of the matter is that suspension will not "protect the public" or do anything which a public reprimand would not do, except for <u>one</u> thing which a public reprimand will not do: a suspension <u>will</u> ensure that I again become unemployed. No one--not the public, not the Bar, and not the undersigned Respondent--gains by that.

Respectfully submitted, this the 1st day of March, 1993.

William C. Nesbitt
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REQUEST FOR ORAL ARGUMENT

COMES NOW the Respondent, WILLIAM C. NESBITT, pursuant to Rule 3-7.7(c)(4), Rules Regulating The Florida Bar, and requests that oral argument be heard in this matter.

Respectfully submitted, this the 1st day of March, 1993.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that he has on this date, March 1st, 1993, served upon The Florida Bar a copy of the First Amended Initial Brief for Respondent and Request for Oral Argument, by mailing the same by U.S. Mail, postage prepaid, to:

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