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IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

THE FLORIDA BAR,
Complainant,

CASE NO.: 85,470

vs.

TFB NOS.: 94-11,055(13A)
94-11,290(13A)

MICHAEL JOSEPH BARBONE,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR REVIEW

COMES NOW the Respondent, MICHAEL JOSEPH BARBONE, by and through his undersigned counsel, and for his Brief In Support Of Petition For Review pursuant to Rule 3-7.7, Rules Regulating The Florida Bar, now most respectfully states as follows:

I. THE FINDINGS OF FACT REGARDING COUNT I DO NOT COMPORT WITH THE EVIDENCE PRESENTED

There was ample evidence that Respondent complied with minimum trust account requirements. In fact, expert witness Leonard Anton, who is experienced and familiar with Florida Bar Rules concerning trust accounts testified that a comprehensive review and audit of the subject trust account records revealed that Respondent adequately maintained all required records, including client ledger cards, bank statements, monthly reconciliations, and related records. Each document was reviewed and determined to be in good order. The record as a whole supports this conclusion.

II. THE PROPOSED DISCIPLINE IS EXCESSIVE IN VIEW OF THE CIRCUMSTANCES IN THIS CASE AND EXISTING CASE LAW

The circumstances in this case and existing case law demonstrate that the proposed discipline of Respondent is excessive. Failure to keep adequate trust account records warrants a public reprimand and one year probation. The Florida Bar v. Aaron 490 So.2d 941 (Fla. 1986). An analagous case to the case at bar, The Florida Bar v. Neely 488 So.2d 535 (Fla. 1986) established that unintentional accounting errors in a trust account of a previously disciplined attorney warrants a 60 day suspension and two-year probation. A similar discipline was imposed in The Florida Bar v. Rogowski 399 So.2d 1390 (Fla. 1981), where on six occasions the balance in the respondent's trust account was less than the respondent's outstanding trust liabilities. Even where trust account funds were used for unauthorized purposes, without dishonest intent and apparently without knowledge of his trust account problems, a 90 day suspension was deemed appropriate with the requirement that a certified public accountant temporarily monitor the respondent's trust account upon resumption of practice. The Florida Bar v. Miller 548 So.2d 219 (Fla. 1989). Based on the foregoing cases, the proposed discipline of Respondent is excessive.

III. Respondent requests oral argument in accordance with Rule 3-7.7 (c) (4), Rules Regulating The Florida Bar.

THOMAS E. PARNELL, P.A.

By: 

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CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that a true and accurate photocopy of the foregoing Brief In Support Of Petition For Review was mailed, via U.S. Mail, First Class postage prepaid, to Stephen C. Whalen, Esquire, Assistant Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport, Marriott Hotel, Tampa, Florida 33607, and John A. Boggs, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 13th day of February, 1996.


THOMAS E. PARNELL, ESQUIRE

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