

TABLE OF CONTENTS

| | <u>Page</u> |
|-----------------------------|-------------|
| TABLE OF CONTENTS..... | i |
| TABLE OF AUTHORITIES..... | ii |
| SYMBOLS AND REFERENCES..... | iii |
| STATEMENT OF THE CASE..... | 1 |
| STATEMENT OF THE FACTS..... | 2 |
| SUMMARY OF ARGUMENT..... | 3 |
| ARGUMENT..... | 4-5 |

1

CONSIDERING THE CIRCUMSTANCES AND THE
FACTS OF THE CASE, THE DISCIPLINE RE-
COMMENDED BY THE REFEREE IS TOO SEVERE,
THIRTY DAYS SUSPENSION WOULD BE MORE
APPROPRIATE.

| | |
|-----------------------------|---|
| CONCLUSION..... | 6 |
| CERTIFICATE OF SERVICE..... | 7 |
| INDEX TO APPENDIX..... | 8 |
| APPENDIX | 9 |

TABLE OF AUTHORITIES

| <u>Cases</u> | <u>Page</u> |
|---|-------------|
| <u>The Florida Bar v. Weaver</u> 356 So.2d 797 (Fla. 1978)..... | 4 |
| <u>The Florida Bar v. Mueller</u> 351 So. So.2d 960 (Fla. 1977)..... | 4 |
| The Florida Bar v. Patarni 348 So. 2d 1110 (Fla. 1989)..... | 4 |
| The Florida Bar v. Harris 400 So.2d 1220 (Fla. 1981)..... | 5 |
| Florida Standards for Imposing Lawyer Dsctiond. Rule 4.11..... | 5 |

SYMBOL AND REFERENCE

IN THIS reply Brief the respondent will be referred to as "Respondent" or "Mr. Crowder". The Complainant will be referred to as "Complainant" or "The Florida Bar". Abbreviations utilized in this Reply Brief are as follows: "(RR)" will refer to the Report of Referee, and "T" refers to the transcript of proceedings, dated September, 14, 1989. For example, "T. 10" will refer to page 10 of the transcript.

STATEMENT OF THE CASE

Respondent accepts the Statement of The Case as submitted by Counsel of The Florida Bar other than Respondent submits a thirty day suspension would be more appropriate considering the facts and circumstances of the case.

STATEMENT OF THE FACTS

The respondent acknowledges he wrote two checks in the sum of \$4,000.00 and \$5,000.00 for a total of \$9,000.00 more than entitled but was not aware that he had written the two checks until the time of the first grievance committee when the two copies of the checks were presented. The Respondent did a substantial amount of work in marshalling the assets of the estate, protecting the real estate, consisting of the home, which was in an undesirable neighborhood. The residence was broken into on three different occasions causing severe damage to the residence that required several hours in an attempt to secure the dwelling which was a difficult task. Respondent negotiated the contract and sale of the property with the approval of the four beneficiaries and the approval of the Court. One of the beneficiaries is a German citizen and does not converse in English which delays the process. This caused concern and anxiety with one of the other beneficiaries.

The decedents were both in their middle eighties and very ill at the time of their death which was only a few weeks apart. Their documents and records were difficult to locate and assemble.

In the case, the respondent charged against the his

SUMMARY OF THE ARGUMENT

The time consumed in locating the assets due to the age and health condition of the decedents their filing system was not maintained in an orderly fashion which was time consuming beyond the normal or usual cases. The Respondents health due to a heart condition restricted and limited his hours of work. The misconduct charged against Respondent not being intentional committed by Respondent, a suspension of 30 days is adequate punishment.

ARGUMENT

THE DISCIPLINE RECOMMENDED BY THE REFEREE IS MORE THAN ADEQUATE CONSIDERING ALL OF THE CIRCUMSTANCES INVOLVED AND LACK OF INTENT TO COMMIT ANY MISCONDUCT ON THE PART OF RESPONDENT.

The Referee's recommendation being a 6 months suspension and reimbursement of funds to the estate plus cost is more than adequate punishment for the violations charged against the Respondent. The three year suspension sought by The Florida Bar should be rejected. The Referee's findings of facts are presumed to be correct and his recommendations as viewed by him are more in line with cases of similar violation than that sought by The Florida Bar Counsel.

The Florida Bar v. Weaver 356 So2d. 797 (Fla. 1978). The Florida Bar v. Mueller 351 So.2d 960 (Fla 1977), and The Florida Bar v. Patarni , 548 So2d. 1110 (Fla. 1989). Facts are Substantial-different in the aforesaid cases than the instant case before the Court. The the attorney withdrew his clients funds from the trust account both checks were not honored because of ISF, in addition Mr. Weaver accepted new clients while under suspension by The Fla. Bar. Mr. Mueller Misconduct was improper dual representation and knowingly filing two false affidavits with The Florida Bar. Mr. Patarni sought a muscle man to threaten an ex-wife's attorney over a period of time. The aforesaid acts were with deliberate intent.

At the time Respondent issued the two checks for \$6,000, Respondent had received all of the beneficiaries written consent for \$6,000.00 partial fee. The written consent from the beneficiaries was filed with the court.

Respondent surrendered the estate files and documents within two or three days after new counsel telephoned Respondent to inform Respondent he had been retained by the beneficiaries. This was done

without any notice of any Court Order. At the Florida Bar proceedings Mr. Shapiro stated the Respondent had Coopered, there was no problem at any time as to the Respondent producing the files. The Florida Bar counsel attempts to compare the Respondent's case with The Florida Bar v. Harris 400 So2nd 1220 (Fla. 1981) Mr. Harris was disbarred after The Florida Bar audited his trust accounts in January, 1980, the audit revealed Mr. Harris had over drawn the Ocala trust account 51 times. The trust records were not kept in an accordance with appropriate rules governing trust accounts, and trust funds belonging to clients were comingled with other clients funds and personal funds of Mr. Harris'.

Rule 4.11 of Florida's Standards for Imposing Sanctions against Lawyers, to-wit.

" Disbarment is appropriate when a lawyer intentionally or knowingly converts clients property regardless of injury or potential injury."

This Respondent did not intentionally or knowingly convert the the funds from the \$4,000.00 or \$5,000.00 checks to his own use. It was two acts that the Respondent did not realize he had committed until confronted with photo copies of the two checks at the hearing before The Florida Bar Greivenance Committee. Respondent had surrendered the files and checks several weeks prior to the hearing to Mr. Shapiro.

The request for a three year suspension is too severe, it should be rejected. The estate has been reimbursed as recommended by the Referee. Enclosed is my letter to The Florida Bar with my check in the sum of \$994.55 for administrative Costs as Respondent's Exhibit A.

CONCLUSION

WHEREFORE, THE Respondent respectfully request this Honorable Court to reject the request of The Florida Bar's Counsel for a three year suspension. Thirty day suspension would be more just and equitable, at the most no more than recommended by the Referee

Respectfully Submitted



Charles J. Crowder
Respondent
14011 S W 97th Avenue
Miami, Florida 33176
Florida Bar NO. 016852

CERTIFICATE OF SERVICE

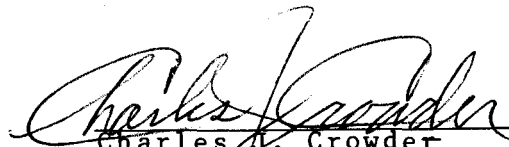
I CERTIFY that on February 11, 1990, a true copy of the original Brief was mailed by U. S. Mail to the following:

Paul A. Gross
Bar Counsel
The Florida Bar
Suite M-100, Rivergate Plaza
444 Brickell Avenue 33131

John F. Harkness, Jr.
TFB #123390
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, Fla. 32399-2300

John T. Berry
TFB #217395
Staff Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, Fla. 32399-2300

I CERTIFY that on February 12, 1990, the Original Brief of The Respondent, Charles J. Crowder was delivered to Sid J. White, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927.


Charles J. Crowder
Respondent
14011 S W 97th Avenue
Miami, Florida 31176
Bar No 016852
305 235-2192