

FILED

SID J. WHITE

JUN 1 1992

CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

vs.

Case No. 77,962
[TFB No. 90-30,684 (10A)]

JAMES W. AARON,
Respondent.

PETITION FOR REVIEW OF REPORT OF REFEREE GEORGE
K. BROWN, JR., COUNTY JUDGE OF MANATEE COUNTY, FLORIDA

BRIEF OF RESPONDENT

James W. Aaron
Respondent
819 N. Highlands Avenue
Post Office Box 3351
Sebring, Florida 33871
(813) 382-3668
Florida Bar No. 171560

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PRELIMINARY STATEMENT

This is an appeal of Petition For Review of the Report of Referee, George K. Brown, Jr. who serves as County Judge of Manatee County, Florida. All references to Complainant shall be by the designation "Complainant". All references to Respondent shall be by the designation "Respondent". Pleadings, orders and reports shall be denoted by the names that they bear. The following symbol will be used followed by the appropriate page number: TRN - Transcript of Final Hearing.

STATEMENT OF THE CASE

On January 12, 1990 Complainant referred to the Tenth Judicial Circuit Grievance Committee "A" for disposition. Hearing before the Committee was scheduled for July 10, 1990 but was later rescheduled for August 14, 1990 and finally **was** rescheduled and held on September 11, 1990. On September 13, 1990 the Committee issued its Notice of Finding of Probable Cause For Further Disciplinary Proceedings **and Record** of Investigation to Respondent. The Committee found probable cause that Respondent had violated Rule 3-4.3 of the Rules of Discipline; Rules 4-1.15(a), 4-8.4(b) and 4-8.4(c) of the Rules of Professional Conduct; and 5-1.1 of **the Rules** Regulating Trust Accounts. The record of proceedings of the Committee was referred to Complainant for drafting and filing a formal complaint against Respondent.

The Committee met again on April 9, 1991 and found **probable cause for further proceedings against Respondent**. On May 15 1991 Complainant filed its Complaint against Respondent. On June 7, 1991 the Court designated Judge George K. Brown, Jr. of Manatee County as referee for the Court.

On June 18, 1991 Referee Brown entered its Order **Approving Stipulation On Venue** after Respondent orally waived his rights to venue. On June 24, 1991 Complainant filed its **Notice of Pre-trial Conference and Final Hearing**.

On July 24, 1991 the Committee met again and found probable cause that Respondent had violated Rules of Professio-

nal Responsibility 1-102(A) (4); 9-102(A); and 3-7.4(j) occurring prior to 1987. The Committee's record of proceedings **was** referred to Complainant for drafting and filing of a formal complaint against Respondent. On August 1, 1991, Complainant filed its Motion For Leave To Amend Complaint. On August 19, 1991 Complainant filed it Amended Notice of Pre-trial conference and Final Hearing. On **August 21**, 1991 Referee Brown entered it Order granting Complainant's motion. On August 22, 1991 Complainant filed its Amended Complaint.

Complainant filed a Request For Admission on **August 28, 1991**. Respondent filed his Response To Complainant's Request For Admission on September 26, 1991. Complainant filed its Notice of Final Hearing on September 30, 1991. Respondent filed his Amended Response To Complainant's Request For Admissions on November 20, 1991 and Complainant filed its Recommendation **As To Discipline and Preliminary Affidavit of Costs**. On November 22, 1991 Complainant **filed** its Amended Affidavit of Costs. On December 4, 1991 Complainant filed its Motion For Extension of Time To File The Report of Referee. Respondent filed his Recommendations of Respondent on December 6, 1991. On December 12, 1991 Complainant filed its Final Affidavit of Costs.

Referee Brown filed his Report of Referee on January 16 1992. On March 20, 1992 Complainant advised the Court and Respondent that it would not seek review of the Report of Referee. Respondent filed his Petition For Review on April

7, 1992 and his Motion For Extension of Time To File Brief
on May 7, 1992.

STATEMENT OF THE FACTS

In March, 1985 Respondent was hired as attorney for two co personal representatives to assist in administering an estate in Highlands County, Florida. In the Course of administering the estate, Respondent violated certain Rules of Professional Conduct. Respondent did not contest and readily admitted his misconduct in violating the rules.

All of the conduct of Respondent which gave rise to the complaint herein was engaged in with the knowledge and consent of Respondent's clients who also were beneficiaries of the subject estate. **No** complaint by Respondent's clients and or beneficiaries of the estate has been made against Respondent.

In 1986 and again in 1988 Respondent was disciplined by the Court in Case Nos. 66,454, 67,132, 67,542 and **70,338**. In those cases Respondent failed to abide by all of the rules relative to trust account recordkeeping. **Much** of **the** conduct complained of occurred before Respondent was disciplined in the enumerated cases.

One of Respondent's client's, who was also nominated to serve **as** trustee of one of the trusts created **was** accorded unfettered discretion to invest or otherwise apply the funds of the trust by the Last Will and Testament filed in the estate.

POINTS FOR REVIEW

POINT I

THE DISCIPLINE RECOMMENDED IS SEVERE FOR THE TOTALITY
OF CIRCUMSTANCES HEREIN.

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THE DISCIPLINE RECOMMENDED IS SEVERE FOR THE TOTALITY OF CIRCUMSTANCES HEREIN.

ARGUMENT

Respondent's conduct while improper, cause no material injury to his client. Respondent's clients have made no complaint about his conduct and are satisfied with the arrangements for him to settle their claims with him. Respondent and his clients had reached agreement on those matters long before Complainant became involved in the matter. Despite the difficulties that he has had, Respondent's character and positive reputation is attested to my many.

The appropriated discipline should be a suspension for one year with leave to reapply upon making restitution and payment of costs. As an alternative, Respondent might be suspended from practice for three years, with the right to petition for reinstatement after one year if certain conditions relative to restitution are met. The Florida Bar vs. Bowles, 460 So 2d 366 (1984)

POINT 11

THE COST IMPOSED UPON RESPONDENT SHOULD BE LIMITED TO
THOSE WHICH ACCRUED AFTER THE FINAL SESSION OF THE GRIEVANCE
COMMITTEE.

POINT II

THE COST IMPOSED UPON RESPONDENT SHOULD BE LIMITED TO THOSE WHICH ACCRUED AFTER THE FINAL SESSION OF THE GRIEVANCE COMMITTEE.

ARGUMENT

Complainant's position relating to costs is that only those costs incurred after the meeting of the Grievance Committee wherein probable cause was found upon which the complaint is based should be assessed. The final meeting of the committee which gave rise to the complaint in the instant cause occurred on July 24, 1992. Only those costs which Complainant incurred after July 24, 1992 should be taxable to Respondent.

FILED

SID J. WHITE

AUG 6 1992

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THE FLORIDA BAR,
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Case No. 77,962
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JAMES W. AARON,
Respondent.

PETITION FOR REVIEW OF REPORT OF REFEREE GEORGE
K. BROWN, JR., COUNTY JUDGE OF MANATEE COUNTY, FLORIDA

SUMMARY OF ARGUMENT OF RESPONDENT

James W. Aaron
Respondent
819 N. Highlands Avenue
Post Office Box 3351
Sebring, Florida 33871
(813) 382-3668
Florida Bar No. 171560

SUMMARY OF ARGUMENT

In July 1986 Respondent was disciplined by the Court in Case No. 66,454 for committing technical violations of the rules relating to trust account recordkeeping. The Florida Bar vs. Aaron, 490 So. 2d 941 (Fla. 1986) Again in July 1988 Respondent was disciplined by the Court in Case No. 70,338 for substantially the same infractions. The Florida Bar vs. Aaron, 529, So. 2d 685 (Fla. 1988) In the initial case Respondent was placed on probation for a term of one year. In the second case Respondent was placed on probation for a term of two years.

The initial case involved conduct by the Respondent which occurred during the period leading up to 1984. The second case involved conduct by the Respondent that was engaged in 1986. The facts which gave rise to the instant case occurred in 1985 and beyond. The essential elements of the complaint involved conduct by the Respondent which occurred at a point in time contemporaneous with his discipline in the two earlier cases. Moreover, the conduct by the Respondent which is complained of in the instant case involved substantially the same conduct which was the subject of the earlier disciplinary matters.

A review of the record of the proceedings below shows that the instant cause arose not from any impropriety in the Respondent's maintenance of his trust account. Rather it was the cooperation of the Respondent in making his other finan-

cial records available to Complainant for inspection which gave rise to the instant case.

The Respondent has fully cooperated with the Complainant throughout the terms of his probation and otherwise. The record reveals that the same observation obtains with respect to the Respondent's relationship with his clients in the instant cause. The record below reflects no instances of the Respondent engaging in any dishonest conduct. There is no evidence of guile, misrepresentation, concealment or self dealing relative to the Respondent's conduct of the affairs of his clients.

Respondent's conduct while improper, caused no material injury to his client. Respondent's clients have made no complaint about his conduct and are satisfied with the arrangements for him to settle their claims with him. Respondent and his clients had reached agreement on those matters long before Complainant became involved in the matter. Despite the difficulties that he has had, Respondent's character and positive reputation is attested to by many.

The appropriated discipline should be a suspension for one year with leave to reapply upon making restitution and payment of costs. As an alternative, Respondent might be suspended from practice for three years, with the right to petition for reinstatement after one year if certain conditions relative to restitution are met. The Florida Bar vs. Bowles, 460 So 2d 366 (1984)

A review of the transcript of the proceedings before the referee in Case No. **66,454** (p43) indicates that Complainant's interpretation of Rule 11.06.(9) is that only costs incurred after a case has proceeded beyond the grievance committee should be taxable to the Respondent. The final grievance committee action which gave rise to the instant case occurred on **July 24**, 1992. Only taxable costs which occurred after that time should be taxable to the Respondent.

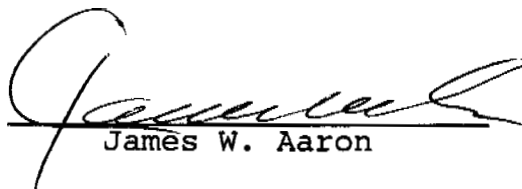
Respectfully submitted,



James W. Aaron
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CERTIFICATE OF SERVICE

I **HEREBY** CERTIFY that a true and correct copy of the foregoing Summary of Respondent's Argument was mailed to Mr. Larry L. Carpenter, Bar Counsel, The Florida **Bar**, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801 and Mr. John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 4 day of August, 1992.



James W. Aaron