

**IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)**

**THE FLORIDA BAR,**

**Complainant,**

**v.**

**JERRY ARTHUR RIGGS, SR.,**

**Respondent,**

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**Supreme Court Case**

**Nos. SC06-634**

**SC06-955**

**The Florida Bar File**

**Nos. 2005-51,470(17C)**

**2006-50,902(17C)**

**SECOND REPORT OF REFEREE**

**I. SUMMARY OF PROCEEDINGS:**

The initial Report of Referee was issued on October 3, 2006. Subsequent to the issuance of that Report, the Respondent filed the following items: Petition for Review, Respondent's Verified Motion to Recuse Referee and Incorporated Memorandum of Law, Respondent's Motion for New Trial and Incorporated Memorandum of Law, Stipulation for Substitution of Counsel, Respondent's Motion for Order Relinquishing the Florida Supreme Court's Exclusive Jurisdiction for the Limited Purpose of Permitting the Lower Tribunal to Entertain and Determine Respondent's Pending Motions and Respondent's Request to Toll the Time to File Initial Brief in Support of Petition for Review.

By Order dated December 8, 2006, the Supreme Court of Florida approved the substitution of counsel for Respondent. By Order dated December 20, 2006,

the Supreme Court of Florida granted Respondent's Motion for Order Relinquishing Jurisdiction for the Limited Purpose of Permitting the Lower Tribunal to Entertain and Determine Respondent's Motions and provided that the Referee shall have 60 days to file a report and recommendation on Respondent's Verified Motion to Recuse Referee and Incorporated Memorandum of Law and Motion for New Trial and Incorporated Memorandum of Law. By separate Order dated December 20, 2006, the Supreme Court of Florida granted Respondent's request to toll time and tolled the time for filing the initial brief pending filing and consideration of the Referee's recommendation on Respondent's Verified Motion to Recuse Referee and Incorporated Memorandum of Law and Motion for New Trial and Incorporated Memorandum of Law.

During the course of these proceedings, The Florida Bar was represented by Ronna Friedman Young. Pursuant to the Stipulation for Substitution of Counsel and Order thereon, Brian H. Bieber was substituted for Kevin P. Tynan as counsel for Respondent. The Referee held a telephonic status conference with Ms. Young and Mr. Bieber on February 7, 2007.

## **II. FINDINGS OF FACT:**

A. Jurisdictional Statement: Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary of Case: My findings of fact were contained the initial Report of Referee.

**III. RECOMMENDATION:**

My recommendations as to guilt and as to the disciplinary measures to be applied were contained in the initial Report of Referee.

As to the Respondent's Verified Motion to Recuse Referee filed on November 30, 2006, I reviewed said Motion for the sole purpose of determining legal sufficiency of same. *Livingston v. State*, 441 So.2d 1083 (Fla. 1983). Upon review of the submitted Motion, I find that said Motion is legally insufficient. *Gilliam v. State*, 582 So.2d 610 (Fla. 1991); *Gieseke v. Grossman*, 418 So.2d 1055 (Fla. 4<sup>th</sup> DCA 1982). The current Motion is insufficient in the following respects:

1. The Motion is untimely. Rule 2.330, formerly Rule 2.160(e), Fla. R. Jud. Admin.; *Fischer v. Knuck*, 497 So.2d 240 (Fla. 1986); *Michaud-Berger v. Hurley*, 607 So.2d 441 (Fla. 4<sup>th</sup> DCA 1992); *Bachman v. Bachman*, 539 So.2d 1182 (Fla. 4<sup>th</sup> DCA 1989).

2. Judicial rulings are not grounds for Disqualification. I am treating the pending Motion as a Motion for Disqualification pursuant to Rule 2.330, formerly Rule 2.160, Fla. R. Jud. Admin., and R. Regulating Fla. Bar 3-7.6(h)(8). I am recommending that Respondent's Verified Motion to Recuse Referee be denied for

the reasons set forth above. Additionally, I am recommending that Respondent's Motion for New Trial also filed on November 30, 2006 be denied.

**IV. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS:**

These items were contained in the initial Report of Referee.

**V. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:**

My recommendations as to costs were contained in the initial Report of Referee.

Dated this 12<sup>th</sup>, day of February, 2007.

s/ Joseph Marx  
HONORABLE JOSEPH MARX  
REFEREE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing Second Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular mail to the following: STAFF COUNSEL, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; and RONNA FRIEDMAN YOUNG, Bar Counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 900, Fort Lauderdale, Florida 33309-2366; and BRIAN H. BIEBER, Attorney for Respondent, Hirschhorn & Bieber, P.A., 550 Biltmore Way, Penthouse Three A, Coral Gables, Florida 33134 on this \_\_\_\_\_ day of February, 2007.

s/ Joseph Marx  
JOSEPH MARX, REFEREE