

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC 07-635

v.

TFB File No. 2006-10,591 (6C)

WARREN THOMAS LAFRAY,

2006-11,288 (6C)

2006-11,597 (6C)

Respondent.

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**AMENDED REPORT OF REFEREE**

**I. Summary of Proceedings:** Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar, hearing was held August 10, 2007. Any pleadings, notices, motions, orders, transcripts, and exhibits are forwarded to The Supreme Court of Florida with this report and constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Karen Boroughs Lopez

For The Respondent: Warren Thomas LaFray

**II. Findings of Fact as to Each Item of Misconduct With Which the**

**Respondent Is Charged:**

After considering all the pleadings and evidence before me, pertinent portions of which are commented on below, I find:

The Bar filed a three-count Complaint against Respondent on April 3, 2007. The Respondent failed to file an Answer to the Bar's complaint. On May 7, 2007, the Bar filed a Request for Admissions. The Respondent failed to respond to the Request for Admissions. On June 26, 2007, the Bar filed a Motion for Summary Judgment, which was heard on July 20, 2007. The Respondent failed to appear at the hearing on July 20, 2007 and summary judgment was granted in favor of the Bar.

By virtue of Respondent's failure to participate in these proceedings, he has admitted to serious misconduct involving misuse of client trust funds, commingling, and a failure to comply with basic trust accounting practices and procedures. Respondent has also admitted to neglecting two separate client matters and refusing to refund fees owed to a client until after the Grievance Committee hearing on the client's Bar complaint. Respondent has repeatedly failed to respond to the Bar, produce requested records, or participate in these proceedings. The facts can be summarized as follows:

COUNT I: In connection with a prior disciplinary matter resulting in Diversion, Respondent was required to attend The Florida Bar Ethics School. On November 17, 2005, Respondent attempted to pay for Ethics School with a check written on his trust account. This led to the Bar's investigation of Respondent's trust account, which

revealed his failure to comply with basic trust accounting practices required of members of The Florida Bar.

After receiving the aforementioned trust account check, the Bar requested Respondent to provide all of his trust account records for the period October 1, 2005 to December 31, 2005. On January 27, 2006, Respondent had not complied with Bar's request, and the Bar wrote to Respondent again giving him 15 days to respond in writing.

Respondent failed to respond by March 1, 2006, and the matter was referred to the Grievance Committee. Subsequently, Respondent forwarded a portion of the requested documents to the Bar. The Bar wrote to Respondent, requesting the specific documents that remained outstanding. After Respondent failed to respond, the Bar issued a subpoena for the trust account records. Respondent failed to comply with the subpoena despite repeated telephone calls by the Bar's auditor. On August 15, 2006, Respondent appeared before the Grievance Committee. In his testimony to the Committee, Respondent admitted to misconduct in violation of Bar rules, specifically, Respondent testified that *he used client funds in his Trust Account to pay his own personal expenses*, such as dry cleaning, personal phone charges, and personal health insurance. He also testified that he did not have an operating account and *was using his Trust Account as his sole banking account*. Respondent advised the Committee that he would produce the subpoenaed records by August 18, 2006. Again, Respondent failed to produce the records and on October 20, 2006, the Bar filed a Petition for Contempt and Order to

Show Cause with the Florida Supreme Court. Respondent again failed to provide the subpoenaed documents. In a response to the petition, Respondent stated he had provided all the records he had in “his original response to the Bar’s subpoena.” No records were ever provided in response to the subpoena. Rules violated: Rule 4-1.15 (Safekeeping Property); Rule 5-1.1 (Trust Accounts); Rule 5-1.2 (Trust Accounting Records and Procedures).

COUNT II: Count II is based on the complaint of Cynthia Toccalino. Ms. Toccalino hired the Respondent to represent her in a child custody matter and in regard to an injunction she had filed. The injunction was scheduled for a return hearing, which also included a motion for custody of the couple’s minor children. At a Grievance Committee hearing on August 15, 2006, Respondent testified that he went to the hearing unprepared and failed to have the matter continued. After the return hearing, Ms. Toccalino tried to get in touch with Respondent on many occasions but was unable to do so. Approximately one month later, she hired another attorney to represent her. Rules violated: Rule 4-1.1 (Competence); Rule 4-1.3 (Diligence); and Rule 4-1.4(b) (Duty to Explain Matters to Client).

COUNT III: Count III is based on the complaint of Debbie Schug. Ms. Schug hired Respondent to represent her in regard to a potential will contest and paid him a retainer of \$2,500.00. In the ensuing four to five weeks, Ms. Schug tried repeatedly to contact Respondent with little success. Ms. Schug terminated the services of Respondent.

At a Grievance Committee hearing held on August 15, 2006, Respondent testified that he owed Ms. Schug a refund. After the hearing, Respondent issued a partial refund to Ms. Schug. Rule violated: Rule 4-1.5 (Fees and Costs for Legal Services).

I have also reviewed and considered the Memorandum of Law on Sanctions filed previously by The Florida Bar, as well as the case law cited and analogy contained therein. Perhaps the most troubling aspect of this disciplinary proceeding has been the lack of response by the Respondent. The Florida Bar, on numerous occasions, requested documents from the Respondent relating to his trust account. At no time did the Respondent comply with The Florida Bar's request. I find it particularly concerning that the Respondent stated during the Grievance Committee process that he (and/or his accountant) had the trust account records, then requested additional time, and yet never produced a complete set of records. I cannot help but wonder why the Respondent did not request a copy of his trust account records from his bank, if his accountant was unable to produce them. It is abundantly clear that the Respondent did not keep adequate trust account records.

The Respondent's lackadaisical attitude continued after I was appointed as Referee. The Respondent appeared at the first case management conference, and then did not appear at any further hearings. The Respondent requested three continuances. The first continuance was granted to allow him extra time to hire counsel. After he was unable to retain counsel, the Respondent requested a continuance due to illness by faxing

a handwritten request to my office late in the afternoon prior to the hearing. Lastly, he requested another continuance due to illness for the final hearing. While I am sympathetic to medical issues, and generally grant as a matter of course continuances based on emergency medical conditions (as well as other causes), I did not grant either of these requests.

In Respondent's first request for a continuance due to illness, he referred to a physician in his handwritten fax, but did not provide a physician's name, phone number, appointment date or time, or means of contact. In Respondent's second request for a continuance he provided a note from a nurse dated August 9, 2007, as well as an earlier follow up report written by Dr. Sinoff dated August 1, 2007. Neither mentioned an inability to attend court proceedings. In fact, the nurse's note only advised Respondent not to drive. There are a variety of means of transportation to the Hillsborough County courthouse from Pinellas County, including but not limited to, buses and taxis. It is my opinion that Respondent was again, attempting to stall for additional time.

Given the importance of these hearings, and the potential impact a disciplinary proceeding has on the livelihood of a member of The Florida Bar, I find it disturbing the way Respondent has handled himself in this matter. I find that the Respondent has been both unprofessional and unresponsive. He has shown an inability to meet deadlines, comply with orders, keep adequate records, and represent clients in a competent manner. Thus my recommendation is for a longer suspension period than what is recommended

by The Florida Bar.

**III. Recommendations as to Whether or Not the Respondent should Be Found Guilty:**

As to the Complaint, I recommend that the Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

Rule 4-1.15 (Safekeeping Property); Rule 5-1.1 (Trust Accounts); Rule 5-1.2 (Trust Accounting Records and Procedures), Rule 4-1.1 (Competence); Rule 4-1.3 (Diligence); Rule 4-1.4(b) (Duty to Explain Matters to Client), and Rule 4-1.5 (Fees and Costs for Legal Services).

**IV. Recommendation as to Disciplinary Measures to Be Applied:**

I recommend that Respondent be found guilty of misconduct justifying disciplinary, measures, and that he be disciplined by:

- A. Thirty six month suspension from the practice of law, followed by a probationary period of two years.
- B. Payment of The Florida Bar's costs in these proceedings.

**V. Personal History and Past Disciplinary Record:**

After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(l), I considered the following personal history

and prior disciplinary record of the respondent, to wit:

- a. Year of Birth: 1946
- b. Date Admitted to Bar: June 29, 1976
- c. Prior Disciplinary convictions and Disciplinary Measures Imposed  
Therein: None
- d. The referee notes that the Respondent is not certified in any area of practice.

**Aggravating Factors:**

9.22 (d) Multiple offenses. Respondent is guilty of multiple Rule violations in three separate disciplinary cases.

9.22 (e) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. Respondent has repeatedly failed to respond to the Bar throughout these proceedings, which has added considerable time and expense to the disciplinary process. His failure to comply with the Bar's subpoena caused the Bar to have to file a Petition for Order to Show Cause with the Supreme Court of Florida.

9.22 (i) Substantial experience in the practice of law. Respondent was admitted to the Florida Bar in 1976 and has been practicing law for 31 years.

**Mitigating Factors:**           None

**VI. Statement of Costs and Manner in Which Costs Should Be Taxed:**

I find the following costs were reasonably incurred by The Florida Bar:

Administrative costs pursuant to Rule 3-7.6(q)(1)(I) .....	\$1,250.00
Court Reporter Expenses:	
August 15, 2006 Grievance Committee Hearing .....	565.50
May 21, 2007 Hearing (appearance fee) .....	75.00
May 21, 2007 Hearing (transcript) .....	51.50
July 20, 2007 Hearing .....	124.50
August 10, 2007 Sanctions Hearing .....	
Assistant Staff Counsel Expenses:	
May 21, 2007 Hearing .....	8.66
July 20, 2007 Hearing .....	8.66
August 10, 2007 Hearing .....	8.66
Staff Auditor Expenses:	
August 15, 2006 Hearing .....	12.46
August 18, 2006 Meeting at R's office .....	23.14
February 9, 2007 Attempt to obtain T/A records .....	20.37
Staff Investigator Expenses:	
Serve subpoena May 31, 2006 .....	24.03
Obtain copy of file from Courthouse June 20, 2006 .....	26.81

Staff Investigator Time:..... 364.25  
Miscellaneous Expenses:  
November 21, 2006 DHL Express ..... 14.21  
98 copies @ .15 per page ..... 14.70  
June 20, 2006 copy of file from Ken Burke, Clerk .....9.00

TOTAL ITEMIZED COSTS: \$2,425.55

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses, together with the foregoing itemized costs, be charged to the respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 25th day of September, 2007.

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/S/  
Honorable Margaret T. Courtney  
Referee

Copies:

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