IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

THE FLORIDA BAR,	**Supreme Court Case No. SC07-816**
Complainant,	
v.	**The Florida Bar File Nos. 2006-50,102(15D) 2006-50,580(15D)**
JACK BARRY PHILLIPS,	
Respondent.	

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REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar's formal Complaint in this cause was filed on May 3, 2007. Thereafter, the undersigned was appointed to preside as Referee in these proceedings by Order of the Chief Judge of the Seventeenth Judicial Circuit. Final hearing in the case was held on July 7, 8 and 10, 2008.

During the course of these proceedings, Respondent was initially represented by David Frank Petrano, Esq. After a hearing held on May 30, 2008, this Referee permitted Mr. Petrano to withdraw as Respondent's counsel. An Order was issued on June 4, 2008, granting Mr. Petrano's Emergency Motion to Withdraw. Thereafter, Respondent appeared *pro se*. The Florida Bar was represented by Michael David Soifer, Esq.

All items properly filed in this case including pleadings, responses thereto,

orders issued by the Referee, exhibits received into evidence and this Report constitute the record in this case and shall be forwarded to the Supreme Court of Florida in accordance with its rules. *See,* Rule 3-7.6 (n) The Record and (n)(2) and (n)(3) of the Rules Regulating the Florida Bar (effective date of amendment March 8, 2008).

II. FINDINGS OF FACT:

A. Jurisdictional Statement. Respondent is, and at all times hereinafter mentioned in this Report, 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.

As to Count I, The Florida Bar File No. 2006-50, 102 (15D)

I find the following facts were demonstrated by clear and convincing evidence. Respondent was retained by Jose Nicolas Castillo in or about 2002 for representation in immigration court proceedings (TFB Exhibit 10). Castillo had previously been denied political asylum and had become the subject of removal proceedings before the immigration court (TFB Exhibit 4). During the process, testimony established that Castillo married an American citizen in 2001, *see also* TFB Exhibit 6, and he sought to gain lawful permanent residence with an application for change of status to the U.S. Citizen and Immigration Services (USCIS). Since Castillo was already in removal proceedings, the immigration

court had exclusive jurisdiction to adjudicate the adjustment application (TFB Exhibit 4).

On or about February 3, 2004, Respondent attended a hearing with Castillo in which a "call up date" of March 19, 2004, was set by U.S. Immigration Judge Mahlon Hanson. The "call up date" was the deadline when Castillo's application for adjustment of status had to be filed with the immigration court. On February 26, 2004, Respondent and Castillo signed an additional retainer agreement for which Respondent was paid $1,000 by Castillo to prepare and file *inter alia,* the I-485 family package for adjustment of status on an approved I-130 petition with the court (TFB Exhibit 5). Respondent testified that he had actual notice of the "call up date" and he also testified that he was aware that he missed the "call up date."

A "call up date" is an important deadline. The failure to meet such a deadline which requires providing specific documentation by the "call up date," could result in a removal order against a client, in this case, Castillo. Respondent testified that he assumed that the USCIS would forward to the immigration court the previous application submitted by Castillo, but Respondent took no action to make sure that the application was forwarded to the immigration court or to determine whether the immigration court even had the application.

I find that the Respondent's failure to act with respect to properly preparing his client's application, by missing the "call up date" and by failing to follow-up on

the status of the application were flagrant omissions of his duties to represent his client, Castillo.

The USCIS and immigration court exist under different authorities. The USCIS is under the auspices of the Department of Homeland Security and the immigration court is under the auspices of the Department of Justice. Respondent admitted that he knowingly allowed the "call up date" to pass and he took no action to ascertain that the immigration court's requirements for the "call up date" were met or to request from the court an extension of time. On April 2, 2004, the immigration court issued an order in which it found that Castillo did not file the application for adjustment with the court by the "call up date" and therefore deemed Castillo's adjustment application abandoned and ordered Castillo removed to Columbia.

The April 2, 2004, Removal Order was mailed to Respondent's then record bar office address located at 805 Belvedere Road, West Palm Beach, Florida (TFB Exhibit 26). Respondent testified that that he did not recall receiving the Removal Order. In TFB Exhibit 6, which is dated May 24, 2005 and entitled, "Verified Motion to Reconsider Denial of May 13, 2005, Because of Confusion Whether Adjustment Application, Already on File, Was Being Forwarded to the Court by the Department of Homeland Security," Respondent stated that he did not receive the removal order. In TFB Exhibit 7, which is not dated and is entitled, "Motion to

Reopen, Review and Reschedule Individual Hearing Concerning Asylum, and an Alternative Immigration Benefit, Formerly Scheduled for February 22, 2005," Respondent stated that he did not receive the Removal Order.

However, Respondent testified at the hearing that he did not receive notice of the Removal Order until December 2004; he found out about the order from Castillo. I find that Respondent has demonstrated throughout his testimony that he could remember specific documentation, procedures and many facts about the immigration judge and he could discuss such information at length, but he could not remember what happened in each of his clients' cases or what he said during his deposition taken on June 10, 2008. I find that that the Respondent's testimony exhibits a pattern of selective memory, which I find not credible. Further, I find that the Respondent's selective memory and claimed depression from 2002-2007 (as Respondent had testified) does not excuse Respondent's admitted failure to take any actions on his own initiative to follow up with the immigration court to determine the status of Castillo's case after the "call up date" was missed.

Timely action was important as 8 C.F.R. §1003.23(b) (1) requires that a Motion to Reopen be filed within 90 days of the date of a final administrative order of removal, which Respondent failed to do (TFB Exhibit 22, 8 C.F.R.§ 1002.23, entitled "Reopening or reconsideration before the Immigration Court). There was no evidence that Respondent had any communication with Castillo during the

period of time following the February 26, 2004, retainer agreement until December 2004, when Respondent testified that he first learned of the Removal Order from Castillo.

Yet, even in December 2004, Respondent also failed to take any significant action on Castillo's behalf and in the following months, Respondent failed to return telephone calls from Castillo or to otherwise communicate with him (TFB Exhibit 9). When Castillo could not reach Respondent, Castillo prepared and filed a *pro se* Motion to Reopen on or about March 21, 2005, wherein Castillo expressed that Respondent's failure to communicate with him and to take action on his case required Castillo to bypass Respondent and to file the motion on his own (TFB Exhibit 10). Castillo's motion was denied by the immigration court on May 13, 2005, as untimely and legally insufficient (TFB Exhibit 11). 8 C.F.R. § 1003.23 (b)(1) permits a party to file only one Motion to Reopen (TFB Exhibit 22). I find that because of Respondent's failure to diligently act on Castillo's behalf and Respondent's failure to communicate with him, the *pro se* motion Castillo prepared and filed was one of several legal obstacles caused by Respondent, which the subsequent attorney hired by Castillo had to contend with when taking over Castillo's representation (TFB Exhibit 23, dated October 6, 2005 and entitled "Joint Motion to Reopen Proceedings," filed by Nicholas A. Olano, Esq., on behalf of Castillo). *See also,* TFB Exhibit 24, Order Denying Joint Motion to Reopen

Proceedings).

In late May 2005, Castillo requested that Respondent return his file, to which Respondent demanded payment of $750 as an additional fee owed (TFB Exhibit 9). In early June 2005, Castillo retained Attorney Nicolas A. Olano, Esq. to represent him.

Respondent failed to turn over Castillo's file or to respond to letters sent by Olano requesting Respondent to account for his attorney fees and to provide an explanation as to why Respondent failed to file Castillo's adjustment of status application package with the immigration court (TFB Exhibit 13).

Respondent testified that some of Castillo's problems were attributable to Castillo who was trying to mitigate expenses. According to Respondent, when Castillo provided new documents to Respondent, the package was thick and Castillo wanted to mail the documents himself. According to Respondent, the package was divided into two parcels, Respondent was not responsible for mailing them and only one parcel was allegedly received by Judge Hansen's clerk. Respondent testified that he had called the clerk. However, he did not follow up on the location of the missing documents and he testified that he did not do anything to find out what happened to the second package. I find that Respondent's placing the blame on his client for the failure to mail necessary documentation reflects Respondent's inability to take responsibility for his actions and his lack of

diligence in his representation of Castillo.

Mr. Olano testified at the final hearing. I find Mr. Olano's testimony credible, persuasive and undisputed. Mr. Olano testified that Respondent's failure to meet the "call up date" deprived Castillo from having his day in Court to present testimony and other evidence to resolve any questions the immigration judge might have had with Castillo's application and the "bona fides" of his second marriage. Because of the additional legal hurdles faced by Castillo which were a direct result of Respondent's failure to make sure that the "call up date" was met, Respondent's failure to timely file a Motion to Reopen and Respondent's repeated failure to communicate with Castillo, Mr. Olano's subsequent efforts to reopen Castillo's case were unsuccessful. In November 2007, Castillo "self deported" when he traveled out of the country with the Removal Order in effect.

I find that Respondent failed to act with reasonable diligence or promptness in his representation of Castillo. I further find that Respondent failed to keep Castillo reasonably informed about the status of his case, Respondent failed to promptly comply with reasonable requests for information and Respondent failed to explain to Castillo about the status of his case to the extent reasonably necessary to permit Castillo to make informed decisions regarding Respondent's representation.

As to Count III , The Florida Bar File No. 2006-50, 580(15D)

I find the following facts were demonstrated by clear and convincing evidence. Oriana Osorio testified that in or about September, 2004, she met with Respondent at an office location on Okeechobee Blvd. in West Palm Beach, Florida concerning her desire to become a lawful resident since she was married to a United States citizen. Osorio testified that she wanted to obtain a green card for legal residency in the United States. On October 25, 2004, Osorio signed a retainer agreement with Respondent for him to prepare and file an Adjustment of Status application based on her marriage to Manuel Lucena (TFB Exhibit 14). She paid Respondent $500. Osorio testified that Respondent gave her a list of documents to provide. She personally provided him with some of the documents he had requested and faxed to him the other documents. She also provided to Respondent four money orders payable to USCIS, totaling $745 (TFB Exhibit 19).

Respondent filed the application with USCIS in or about December 2004, and it was returned to Osorio on or about March 17, 2005, because Respondent had sent the application to the wrong location (TFB Exhibit 20). Osorio testified that she tried to contact Respondent for a few months and could not get a hold of him.

Although not a party to the telephone conversation, Osorio testified that her husband was advised by Respondent in March 2005 that the application was resubmitted. Thereafter, Osorio made other attempts to contact Respondent to ascertain the status of her application, but she was unable to reach him. She then

called the office suite on Okeechobee Blvd. where her initial meetings with Respondent had taken place. She was advised by the receptionist that Respondent was no longer at that location. Osorio only had Respondent's cell telephone number. She tried contacting him numerous times at that number and Respondent failed to return her telephone calls. Osorio testified that often times when she called the cell number she could not even leave a message because Respondent's automated voice message service was full and not accepting additional messages.

On or about May 11, 2005, Respondent was mailed a Request for Additional Evidence by USCIS pertaining to Osorio's application (TFB Exhibit 15). The request notified Respondent that the additional evidence had to be submitted within 87 days and that the failure to do so would result in a denial of the application. I find that Respondent failed to take any action regarding the request, failed to communicate the necessity for such additional information to Osorio and failed to keep her properly informed as to the status of her case. As a result, Osorio's application was denied on or about October 17, 2005 (TFB Exhibit 16).

Osorio testified that she filed a new application on her own, which required her to again expend money for the money orders to cover the various USCIS application related fees. Osorio testified that this second application she had processed on her own was granted and she was not reimbursed any money by Respondent. I find Osorio's testimony credible.

Respondent testified in his closing argument that in his opinion, Osorio breached their contract by failing to pay him and he was angry with her. At the sanction/mitigation phase of these proceedings, Respondent explained that he was hurt that he had not been paid. He did admit, however, that he knew he had 87 days to respond to the Request for Additional Evidence, but he did not do so.

I find that Respondent's placing the blame on his client for the failure to allegedly pay for his services and his failure to maintain contact with his client reflects Respondent's inability to take responsibility for his actions and his lack of diligence in his representation of Osorio.

I find that Respondent failed to act with reasonable diligence or promptness in representing Osorio. I further find Respondent failed to keep Osorio reasonably informed about the status of her matter, failed to promptly comply with reasonable requests for information or explain to her about her matter to the extent reasonably necessary to permit Osorio to make informed decisions regarding Respondent's representation.

Further Findings As to Counts I and III

In addition to the factual findings made in Counts I and III above, I find the following further facts were demonstrated by clear and convincing evidence. Respondent testified that he is a sole practitioner with the great majority of his law practice being related to immigration matters. Respondent admitted that he was

not as knowledgeable in the area of immigration law as he should have been and did not receive adequate training. For instance, he testified that he did not know the time limit to file a motion to reopen after a removal order was entered, such as occurred in the Castillo case. He further admitted that he did not receive necessary training in immigration law and in hindsight he should have had a mentor. Respondent also testified at one point that he did not receive notice of a change in an immigration rule. I find that Respondent did not have the required legal knowledge, skill, thoroughness and preparation reasonably necessary to render competent representation to Castillo and to Osorio.

As to Counts II and IV, The Florida Bar File Nos. 2006-50,102(15D) and 2006-50,580 (15D)

I find the following facts were demonstrated by clear and convincing evidence. During the time period from August 17, 2004 through June 10, 2008, Respondent's sole designated address which he provided to The Florida Bar was P.O. Box 222531, West Palm Beach, Florida 33422. During this time period, Respondent moved his office location several times without notifying the Bar (TFB Exhibit 1). Although he used a post office box, Respondent failed to inform the Bar of his physical location as required by R. 1-3.3, Rules Regulating the Florida Bar. The Florida Bar went to great lengths to try to obtain Respondent's response to the complaints filed by both Castillo and Osorio. The inquiries were

sent to Respondent's record bar address post office box and later, were also sent to a Hollywood, Florida, post office box and physical location of Respondent, of which the Bar later became aware. The inquiries were sent by regular mail and by certified mail (TFB Composite Exhibit 17). Respondent admitted receiving the inquiries but not opening them because he did not want to face the complaints and he chose instead to avoid them. Most of the inquiries that were sent by certified mail remained unclaimed.

Castillo's bar complaint against Respondent was filed with The Florida Bar in or about July, 2005. On or about July 28, 2005, bar counsel sent a copy of Castillo's complaint with a letter to Respondent at Respondent's record bar address requesting his written response to the complaint on or before August 12, 2005. Respondent failed to respond. On or about August 22, 2005, bar counsel sent a second letter to Respondent at his record bar address by regular and by certified U.S. Mail, return receipt requested, mandating Respondent's response. The certified letter was unclaimed by Respondent and returned. The letter sent by regular mail was not returned (TFB Composite Exhibit 17).

After investigation, the Bar determined that Respondent had moved from his previous address without informing The Florida Bar and without changing his record bar address. A new physical address and post office box address were obtained for Respondent in or about November 2005. The physical address was

1816 Harrison Street, Hollywood, FL, 33020, and the post office box address was P.O. Box 220876, Hollywood, FL, 33022. On or about November 23, 2005, bar counsel sent a third letter to Respondent to the new post office box address by regular and by certified U.S. Mail, return receipt requested, mandating Respondent's response on or before December 5, 2005. The certified letter was unclaimed by Respondent and returned. The letter sent by regular mail was not returned (TFB Composite Exhibit 17). Respondent again failed and refused to respond as required. Respondent did not respond to The Florida Bar's investigative inquiries until March 2006, after the matter was referred to the grievance committee.

Osorio's bar complaint against Respondent was filed with The Florida Bar in or about November, 2005. On or about December 1, 2005 bar counsel sent a letter to Respondent to both his record bar address and to the newly discovered post office box address in Hollywood. Respondent failed to respond. On or about December 23, 2005, bar counsel sent a second letter to Respondent at all three known addresses (his record bar address and the newly discovered post office box and physical address in Hollywood, FL) by both regular and by certified U.S. Mail return receipt requested, mandating Respondent's response on or before January 3, 2006. Respondent signed the green receipt cards indicating that he received the letter on December 28, 2005, at both the Hollywood post office box and the

Harrison Street location. The certified letter sent to Respondent's record bar address was returned as unclaimed (TFB Composite Exhibit 17). Respondent again failed and refused to respond as required. Respondent did not respond to The Florida Bar's investigative inquiries concerning the Osorio complaint until March 2006, after the matter was referred to the grievance committee.

III. RECOMMENDATION AS TO WHETHER RESPONDENT SHOULD BE FOUND GUILTY:

I find that by the conduct set forth above, Respondent violated the following Rules Regulating the Florida Bar:

As to each of Counts I and III: 4-1.1 [A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.]; 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.]; Former 4-1.4(a) [A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.]; Former 4-1.4(b) [A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.].

As to each of Counts II and IV: 3-7.11(b) [Every member of The Florida Bar is charged with notifying The Florida Bar of a change of mailing address or military status. Mailing of registered or certified papers or notices prescribed in

these rules to the last mailing address of an attorney as shown by the official records in the office of the executive director of The Florida Bar shall be sufficient notice and service unless this court shall direct otherwise.]; 4-8.4(g)(1) [A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee or board of governors.]; 4-8.4(g)(2) [A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made within 10 days of the date of any follow-up written investigative inquires by bar counsel, grievance committee, or board of governors.].

IV. **RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED**:

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

A. Three (3) year rehabilitative suspension.

B. Payment of The Florida Bar's costs in these proceedings.

C. As Respondent is also a member of the New Jersey Bar, it is also my recommendation that the Report of Referee, if approved by Order of the Supreme Court of Florida, be forwarded to the New Jersey Bar for whatever action it deems appropriate.

In arriving at the aforementioned sanction, both Florida Standards for Imposing Lawyer Sanctions (Florida Standards), including aggravating and mitigating factors and pertinent case law have been examined.

With respect to the Florida Standards, Section 4.4 of the Florida Standards for Imposing Lawyer Sanctions specifically speaks to lack of diligence. Standard 4.42 provides suspension is appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. I find that both 4.42(a) and (b) apply in the Castillo and Osorio cases.

In mitigation, I find that Respondent has no prior disciplinary history; that he has emotional problems which according to his testimony began with the death of his father in 2002 and were exacerbated by his divorce in 2004; that Respondent is inexperienced in the practice of law; and is remorseful. Though not specifically listed in the Standards as a mitigating factor, I also noted from Respondent's testimony that he has participated in community service by helping the homeless and he teaches Sunday school.

I also considered other mitigating factors but did not find them applicable. Although Respondent freely admitted that he suffered (and still may suffer) from a depressed emotional state, this does not excuse the acts of misconduct which resulted in the rule violations. Respondent testified he received large numbers of telephone calls from his clients on a daily basis but was unable to return the calls due to his emotional state. Notwithstanding his depressed emotional state, Respondent continued to take on more clients each year in order to meet his financial obligations because he was having trouble receiving payments from his current clients. He testified that his client base increased significantly each year. In 2004, he had 300 clients, which numbers increased to approximately 400 clients in 2005, 500 clients in 2006, and 600 clients in 2007. In December of 2007, when his client base was at its peak, Respondent decided at that point that he was unable to continue such work and began closing down his practice so that he could begin a process of healing.

Respondent testified that he still has some clients in Florida; he requested approximately thirty (30) days to finish up his cases or to do what was appropriate for his clients. It is unclear to this Referee from Respondent's testimony actually how many clients are currently being represented by Respondent. Since I have recommended suspension as a disciplinary sanction, if the Florida Supreme Court approves this recommendation, Respondent must be immediately required to

withdraw from his representation of all remaining clients in this State.

Respondent testified he is a Christian Scientist and does not believe in conventional medical treatment including mental health treatment for his depression. Treatment for depression is usually provided by a psychiatrist, a psychologist, a medical doctor or a social worker. Respondent testified that he only sought counseling from his Christian Scientist counselor during the extremely lengthy period of time that he was depressed. I do not find that under the circumstances when considering the over five-year time span of his depression and his repeated testimony expressing his continued feelings of being overwhelmed to the point that he could not adequately represent his clients or even return their telephone calls that Respondent obtained "interim rehabilitation." Therefore, I do not consider interim rehabilitation as a mitigating factor. Respondent is certainly free to continue to seek counseling through Christian Science, if he so chooses. But, the practice of law is a privilege and in view of The Florida Bar's obligation to protect the public, I recommend that Respondent seek some form of a medical evaluation of his emotional health to assure that he is emotionally fit to practice law prior to his filing a Petition for Reinstatement.

There was insufficient evidence to determine that Respondent had or has a physical or mental disability and I find this mitigating factor not to be applicable.

I find the following aggravating factors applicable: a pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceedings; refusal to acknowledge the wrongful nature of the conduct; and an indifference to restitution.

With respect to the finding of bad faith obstruction of the disciplinary proceedings, at the beginning of this disciplinary case, Respondent hired counsel from the West Coast of Florida who muddied up the process with a plethora of pleadings and alleged claims under the Americans With Disabilities Act (ADA), which resulted in almost one year's delay in these proceedings. During this delay, Respondent was able to continue to practice law and increase the number of his clients to approximately 600.

With respect to Respondent's indifference to restitution, he testified that it never occurred to him until the evening before the final day of trial that he should have made restitution to Osorio.

Case law supports a 3 year suspension. See, *The Florida Bar v. Feige*, 937 So.2d 605 (2006) [3 year suspension was appropriate for a complete lack of diligence in representing attorney's clients; attorney's health problems were no excuse for the lack of diligence since he had a duty to inform the parties and arrange for alternate counsel.]. *See also, The Florida Bar v. Shoureas*, 913 So.2d 554 (Fla. 2005) [3 year suspension for failure to take appropriate actions and

neglect of the clients in 2 cases; failure to respond to bar inquiries; and depression failed to excuse the misconduct].

I am satisfied that the imposition of a three (3) year suspension and payment of The Florida Bar's costs is necessary to meet the Florida Supreme Court's criteria for an appropriate sanction: attorney discipline must protect the public from unethical conduct and have a deterrent effect while still being fair to respondents. *The Florida Bar v. Pahules*, 233 So.2d 130,132 (Fla. 1972).

V. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS

Prior to recommending discipline and pursuant to Rule 3-7.6(m) (1), I have considered the following:

A. Personal History of Respondent

Age: 49

Date Admitted to The Florida Bar: August 27, 1999

B. Aggravating Factors:

9.22(c) Pattern of misconduct;

9.22(d) Multiple offenses;

9.22(e) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;

9.22(g) Refusal to acknowledge wrongful nature of conduct; and

9.22(j) Indifference to making restitution.

C. Mitigating Factors:

9.32(a) Absence of a prior disciplinary record;

9.32(c) Personal or emotional problems;

9.32(f) Inexperience in the practice of law; and

9.32(l) Remorse.

Participation in community service.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find that The Florida Bar has incurred reasonable costs in the matter and that same should be assessed against the Respondent, as follows:

A. Grievance Committee Level Costs:

1.	Court Reporter Costs	$ - 0 -
2.	Bar Counsel Travel Costs	$ - 0 -

B. Referee Level Costs:

1.	Court Reporter Costs	$ 2,072.75
2.	Bar Counsel Travel Costs	$ 154.24

C. Administrative Costs $ 1,250.00

D. Miscellaneous Costs:

1.	Investigator Costs	$ 342.52
2.	Witness Fees	$ 118.81
3.	Copy Costs	$ - 0 -

TOTAL ITEMIZED COSTS: $ 3,938.32

See TFB Exhibit 28, which was submitted to this Referee on July 28, 2008, a copy of which was mailed to Respondent at his New Jersey address [he provided the New Jersey address to this Referee and TFB at trial], by United States First Class Mail. At trial, TFB submitted an Interim Affidavit of Costs in the amount of $2,582.69 (TFB Exhibit 27) and explained that other costs have or may have been incurred. Respondent agreed to pay the Interim Costs (TFB Exhibit 27) and as stated by this Referee at the trial, Respondent has the right to contest the final Affidavit of Costs, if he so chooses and must do so in writing within fifteen (15) days from the date of the service of the index of the record of these proceedings on Respondent and on the Supreme Court. *See, e.g*. Rule 3-7.6 (n) (4).

It is recommended that such costs be charged to Respondent and interest at the statutory rate shall accrue and should such cost judgment not be satisfied within 30 days of said judgment becoming final, Respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this __________ day of ________________, 2008.

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Honorable Stanton S. Kaplan, Referee
Broward County Courthouse
201 Southeast Sixth Street
Fort Lauderdale, Florida 33301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing 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; MICHAEL DAVID SOIFER, Bar Counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 900, Fort Lauderdale, Florida 33309-2366; THOMAS M. GONZALEZ, Esq., Co-counsel for The Florida Bar, Thompson, Sizemore, Gonzalez and Hearing, P.A., 201 North Franklin Street, Ste. 1600, Tampa, FL 33062, and JACK BARRY PHILLIPS, Respondent, 1501 Hornberger Ave., Roebling, NJ 08554 on this _____ day of ____________________, 2008.

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Honorable Stanton S. Kaplan, Referee