

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

MICHAEL M. TOBIN,

Respondent.

Supreme Court Case
No. SC08-248

The Florida Bar File
No. 2007-71,093(11E)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.6(a) of the Rules Regulating The Florida Bar, review of a consent judgment for discipline was undertaken. All of the pleadings, notices, motions, orders, and exhibits are forwarded with this report and the foregoing constitute the record in this case.

The following attorneys appeared as counsel for the parties:

On Behalf of The Florida Bar: Margarita I. Cimadevilla
The Florida Bar
444 Brickell Avenue
Suite M-100
Miami, Florida 33131

On Behalf of the Respondent: Steven David Pinkert
Pinkert Law Firm, P.A.
9100 S. Dadeland Boulevard, Suite 1702
Miami, Florida 33156

Respondent submitted a Conditional Guilty Plea and Consent Judgment for Discipline (“Consent Judgment”) which provided for a ninety (90) day suspension from the practice of law.

The position of The Florida Bar, as approved by a Designated Reviewer of the Eleventh Judicial Circuit, is that Respondent’s plea be accepted.

II. FINDINGS OF FACT:

In his consent judgment, Respondent admits certain factual matters, which I hereby accept and adopt as the findings of fact in this cause to wit:

A. From on or about May 20, 1998 through the present, Respondent represented Ms. Delia Marie Benavides, the guardian of her minor daughter, Estefanie Benavides, in guardianship Case Number 1998-2246-GD-02.

B. Since the inception of the proceedings and every year thereafter, Respondent has failed to file the required annual guardianship report with the court in a timely manner, which resulted in the issuance of numerous Orders to Show Cause directing Respondent to file the annual reports and show cause why he should not be held in contempt of court.

C. On at least three (3) separate occasions, Respondent failed to comply with the Order to Show Cause, which failure resulted in the issuance of an Order of Contempt, finding Respondent in contempt of court and assessing a fine against Respondent.

III. RECOMMENDATION AS TO GUILT:

Based upon Respondent's admissions, I recommend that Respondent be found guilty of violating Rules 4-1.1 (Competence), 4-1.3 (Diligence), 4-3.4(c) (A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists) of the Rules of Professional Conduct.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Having reviewed the record of these proceedings, I find that Respondent's plea and the recommendation of The Florida Bar as to terms of discipline are both fair to Respondent and in the best interest of the public. Accordingly, Respondent's Conditional Guilty Plea and Consent Judgment for Discipline and the term of discipline recommended by The Florida Bar are accepted and hereby adopted as the recommendation of this Referee in this matter.

V. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED:

I find the following costs were reasonably incurred by The Florida Bar in these proceedings and should be assessed against Respondent:

Administrative fee Rule 3-7.6(q)(1)(I)	<u>\$ 1,250.00</u>
Total:	\$ 1,250.00

I recommend that the foregoing costs be assessed against Respondent. It is further recommended that the execution issue with interest at the statutory rate to accrue on all costs not paid within 30 days of entry of the Supreme Court's final order.

VI. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

Age: 77

Date Admitted to the Bar: June 10, 1953

Prior disciplinary record:

1. Respondent was privately reprimanded in The Florida Bar File No. 1972-00,520(11F).
2. Respondent was privately reprimanded in The Florida Bar File No. 1973-01,037(11F).
3. Respondent was publicly reprimanded by order of the Supreme Court of Florida dated November 21, 1979, in Supreme Court Case No. 57,803.
4. Respondent was privately reprimanded in The Florida Bar File No. 1988-71,545(11J).
5. Respondent was suspended for a period of forty-five (45) days by order of the Supreme Court of Florida dated May 23, 1996, in Supreme Court Case No. 84,203.

6. Respondent received an admonishment administered by grievance committee report in The Florida Bar File No. 1994-70,900(11F).

Dated this ____ day of _____, 2008.

ADA BEATRIZ POZO, Referee
Hialeah Branch Courthouse
11 East 6th Street, Room 229
Miami, Florida 33010

Copies to:

Michael M. Tobin c/o Steven D. Pinkert, Attorney for the Respondent
Margarita I. Cimadevilla, Bar Counsel
Kenneth L. Marvin, Director of Lawyer Regulation