

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC08-2085
[TFB No.2008-31,947 (09E)]

v.

Case No. SC08-2232
[TFB No. 2009-30,512(09E)]

CARLUS LEANDRUS HAYNES,

Respondent.

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On October 28, 2008, The Florida Bar filed its Complaint against Respondent in Case No. SC08-2085 and, on November 24, 2008, filed a second Complaint in Case No. SC08-2232. The undersigned Referee consolidated the two cases by Order dated January 15, 2009. The Florida Bar served written interrogatories and a request for production and took depositions in these proceedings. On July 7 and 8, 2009, a final hearing was held in this matter. All of the aforementioned pleadings, responses thereto,

exhibits received in evidence and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

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. In Case No. SC08-2085, The Florida Bar alleged that Respondent engaged improper conduct toward the court and a prosecutor during the proceedings in State v. Saintil, Case No. 48-2007-CF-18553-O, in the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida. Similarly, in Case No. SC08-2232, The Florida Bar alleged that Respondent engaged in improper conduct toward the court during the proceedings in State v. Carter, Case No. 48-2008-CF-420-O, in the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida.

More specifically, in the Saintil case, The Florida Bar alleged that after repeatedly arguing with the court during proceedings, Respondent filed¹ a pleading entitled “Memorandum of Law on Standing, and Request

¹ During the final hearing, Judge Marc L. Lubet testified that he filed the memorandum of law sent to him by Respondent with a cover letter. In the cover letter, Respondent indicated he did not file the

for Declaration that Mr. Haynes is the ‘Smartest’ Attorney the Judge has Ever Met.” In the memorandum, Respondent requested an apology from the judge, the Honorable Marc L. Lubet, for an alleged “improper comment” made by the court during a hearing. Additionally, Respondent questioned the judge’s impartiality. Later in the proceedings, Respondent filed a pleading entitled “Written Closing Argument for Defendant’s Motion to Suppress.” In the pleading, the Respondent noted that the court “has a personal disdain” for the crime of robbery and requested that the court “blindly” apply Fourth Amendment safeguards.

In connection with the Saintil case, The Florida Bar also alleged that Respondent used profane language² and was belligerent to a prosecutor during a telephone conference. During a hearing wherein the telephone conference was discussed, Respondent allegedly called the prosecutor a “liar.”³ Finally, The Florida Bar alleged Respondent failed to provide a document to a witness, Detective Jeff Iannuzzi, when instructed eight (8) times by the Court to do so.

memorandum with the clerk. Given the circumstances, Judge Lubet testified he felt obliged to file the memorandum.

² A review of the hearing transcript, Exhibit 3, page 5 lines 19-22, reflects the prosecutor advised Judge Lubet that Respondent cursed at her and said “BS” during the telephone conference.

³ A review of the hearing transcript, Exhibit 3, page 10 lines 15-16, reflects Mr. Haynes stated that the prosecutor was “lying.” Although Respondent argued a distinction between calling someone a “liar” and accusing one of “lying,” this Referee finds it to be a distinction without a difference.

With regard to the Carter case, The Florida Bar alleged Respondent repeatedly argued with the court, the Honorable A. Thomas Mihok, at trial. Specifically, The Florida Bar alleged that during a bench conference, Respondent argued with the court over rulings on objections and implied that the court was biased.

In his defense, Respondent testified on his own behalf and attempted to justify his conduct. The Respondent asserted that his conduct in the Saintil case was justified based upon conduct of the court and prosecutor. With regard to the memorandum on standing, Respondent testified that he did not file the memo but sent it to the court and opposing counsel with a cover letter. Respondent claims he was concerned about the court's ability to remain impartial given the court's comment that Respondent should not file a memo in an effort to "throw it up against the wall and see what sticks." Additionally, Respondent testified he felt the court was not acting impartially because the court stated prior to a hearing that it treated drug charges differently than crimes against persons.⁴ Respondent attempted to justify his conduct with the prosecutor based upon difficulties in scheduling and late notice of proceedings. Regarding his refusal to provide a document to a witness, Respondent testified that the witness never requested to see the

⁴ In his testimony, Judge Lubet explained he made this comment in connection with sentencing.

document and he did not find it necessary to provide the document despite the court's repeated instructions.

This Referee finds that the explanations offered by Respondent do not justify his conduct in Saintil. Judge Lubet's comments were not reflective of a lack of impartiality and, accordingly, did not justify Respondent's request for an apology or any insinuation of the court's bias. Nor does Respondent's non-filing of the memo excuse the conduct. Upon receipt, Judge Lubet had no option but to file the memo to preserve for appeal any arguments made therein. The difficulties in scheduling and late notice do not excuse Respondent's unprofessional conduct towards the prosecutor. Finally, regardless of whether the witness asked for the document, Respondent should have obeyed the Court and given the document to the witness, especially since Respondent did not claim any resulting undue prejudice to his client from following the court's clear and repeated direction.

As for the Carter case, Respondent testified that because the court made a series of evidentiary rulings often without a stated legal basis and before he could present argument, he felt the court was biased. Despite Respondent's concern, this Referee finds no justification for Respondent's statements at the bench conference that he did not "ever" expect the court to rule in his favor.

Additionally, as part of his defense, Respondent called character witnesses, including several judges and the defendant in Carter. This Referee was impressed with the testimony of the character witnesses. Judges Jon Berkley Morgan, W. Michael Miller, Faye Allen, and Alicia Latimore testified Respondent appeared before them, was always prepared and never disrespectful to the bench. Several of the judges described Respondent as a zealous and effective advocate for his clients. None of the judges ever filed a bar complaint against Respondent or held him in contempt.

The testimony of the Defendant, Rodney Earl Carter, Jr., also impressed this Referee. The State charged Mr. Carter with second degree murder. Initially, the court appointed a public defender to represent Mr. Carter. Mr. Carter testified that the public defender rarely saw him, would not respond to his letters and waived his right to speedy trial without consent. According to Mr. Carter, the public defender urged him to plead guilty to the charge in exchange for a 25 year prison term. Mr. Carter was unhappy with the public defender's services and, as a result, his father retained Respondent as private counsel. Ultimately, Mr. Carter's case went to jury trial and he was acquitted of all charges based upon self-defense.

Before the trial, Mr. Carter had no faith in the justice system but indicated his faith in the system was restored as a result of the hard work of Respondent. According to Mr. Carter, Respondent kept him informed of the proceedings and did not lose his temper at trial despite feeling that the court's rulings were going against him. Mr. Carter believes that were it not for Respondent, he would be serving a lengthy term in prison.

III. RECOMMENDATIONS AS TO GUILT.

Based upon clear and convincing evidence presented by The Florida Bar, I recommend Respondent be found guilty of violating the Rules of Professional Conduct of The Florida Bar. In connection with Respondent's conduct in the Saintil proceedings, Case No. SC08-2085, I recommend Respondent be found guilty of violating Rule 4-8.2 (a) based upon his authorship and submission to the court of the memorandum of law concerning standing. I recommend Respondent be found guilty of violating Rule 4-8.4 (d) in connection with his use of profanity and advising the court the prosecutor was "lying." Further, I recommend Respondent be found guilty of violating Rule 4-3.4 (c) for his refusal to provide a witness with a document after being instructed eight (8) times by the court to do so. Finally, I recommend that Respondent be found guilty of violating Rule 4-8.2 (a) in connection with his conduct in the Carter proceedings, Case No.

SC08-2232. I recommend that Respondent be found not guilty of the remaining alleged rule violations, including those pertaining to the written argument on the motion to suppress in Saintil. I find that the language contained in the motion simply urges the court to “blindly” apply the Fourth Amendment protections and, further, find the reference to the court’s “personal disdain” for the crime charged to be a result of a misunderstanding rather than a lack of professionalism.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following standards prior to recommending discipline:

A. Standards 2.1, 2.3, 2.8, 3.0, 5.2, 6.2, 7.2, 8.0 and 9.0, Florida Standards for Imposing Lawyer Sanctions.

V. CASE LAW

I considered the following case law prior to recommending discipline:

- A. The Florida Bar v. Abramson, 3 So.3d 964 (Fla. 2009).
- B. The Florida Bar v. Morgan, 938 So.2d 496 (Fla. 2006).
- C. The Florida Bar v. Brown, 905 So.2d 76 (Fla. 2005).
- D. The Florida Bar v. Shoureas, 892 So.2d 1002 (Fla. 2004).
- E. The Florida Bar v. Heptner, 887 So.2d 1036 (Fla. 2004).
- F. The Florida Bar v. Ray, 797 So.2d 556 (Fla. 2001).

- G. The Florida Bar v. Vining, 761 So.2d 1044 (Fla. 2000).
- H. The Florida Bar v. Wasserman, 675 So.2d 103 (Fla. 1996).
- I. The Florida Bar v. Rolle, 661 So.2d 296 (Fla. 1995).
- J. The Florida Bar v. Clark, 528 So.2d 369 (Fla. 1988).
- K. The Florida Bar v. Vannier, 498 So.2d 896 (Fla. 1986).
- L. The Florida Bar v. Grigsby, 641 So.2d 1341 (Fla. 1994).
- M. The Florida Bar v. Jaspersen, 625 So.2d 459 (Fla. 1993).
- N. The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983).

VI. AGGRAVATING AND MITIGATING FACTORS

I considered the following aggravating and mitigating factors prior to recommending discipline:

A. Aggravating factors – In this case, aggravating factors include Respondent’s prior disciplinary offenses, a pattern of misconduct and multiple offenses.

B. Mitigating factors – Mitigating factors include the absence of a dishonest or selfish motive on behalf of Respondent, inexperience in the practice of law, good character and imposition of other penalties or sanctions, including the ninety (90) day suspension by Supreme Court order dated February 18, 2009 in Supreme Court Case No. 08-2290 (TFB Case No. 200990059).

VII. 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. A ten (10) day suspension.
- B. Apology letters written by Respondent to Judges Marc L. Lubet and A. Thomas Mihok.
- C. Payment of The Florida Bar's costs in these proceedings.

VIII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

- A. Personal History of Respondent:
 - Age: 35
 - Date admitted to the Bar: November 5, 2004
- B. Aggravating Factors:
 - Prior Discipline: Admonishment with probation by Supreme Court order dated April 24, 2008 in Supreme Court Case No. 07-2048 (TFB Case No. 200731591). Ninety (90) day suspension by Supreme Court order dated February 18, 2009 in Supreme Court Case No. 08-2290 (TFB Case No. 200990059).

C: Mitigating Factors: Here, The Florida Bar recommended a ninety-one (91) day suspension based upon Respondent's cumulative misconduct over a relatively short period of time. The undersigned referee recognizes that the conduct is cumulative; however, the transgressions found herein are simply not as egregious as the conduct justifying ninety-one (91) day suspensions in Abramson and Morgan.

In Abramson, the attorney continually interrupted jury selection after the judge refused to allow a bench conference beforehand. During his voir dire, the attorney disparaged the judge's qualifications to prospective jurors and indicated that the judge had been completely disrespectful, unprofessional and violated the rules and procedures. 3 So.2d at 965-966. In this case, Respondent's conduct was much more limited in nature and scope and was confined to either pre-trial hearings or bench conferences. None of the conduct herein occurred before prospective jurors.

In Morgan, the attorney engaged in a loud and angry exchange before a jury after the court sustained an objection against him. 938 So.2d at 497. Given the attorney's conduct, the court removed the jury and the exchange continued for some time as reflected in the transcript. The judge allowed the attorney to conduct a proffer with the witness and, after the proffer exceeded the scope, the court ordered an end to the proffer but the attorney refused.

Ultimately, the court threatened the attorney with arrest and the attorney countered with a request for mistrial. Id. at 498. The attorney was disciplined twice before for similar misconduct resulting in a public reprimand and a ten (10) day suspension. Here, Respondent's conduct simply did not rise to the level of egregiousness exhibited in Morgan and each incident was shorter in duration.

This Referee finds the absence of a dishonest or selfish motive, Respondent's inexperience in the practice of law and his otherwise good character as reflected by the testimony of the judges and his client, Mr. Carter, to be mitigating factors. Additionally, this Referee notes that Respondent recently served a ninety (90) day suspension after failing to respond to an Order to Show Cause arising from the probable cause determinations underlying these proceedings. Without question, Respondent should have timely responded to the Order to Show Cause and deserves to be sanctioned for failing to do so. However, this Referee does not believe that imposition of a ninety-one (91) day suspension in addition to his recent ninety (90) day suspension would be appropriate given the limited nature of the conduct involved here.

Finally, this Referee notes that Respondent represented himself along with some assistance from his law partner, Bradley Laurent, during the

hearing. At all times, Respondent conducted himself in a competent and professional matter. While this Referee recognizes that Respondent exhibited unprofessional behavior towards the court in the past, Respondent exhibited remorse in his closing statement. This Referee believes that Respondent, as a member of The Florida Bar, has many positive attributes to offer his clients, who may otherwise be unable to find competent representation. He must, however, learn to exhibit effective advocacy within the bounds of professionalism.

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

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

A.	Referee Level Costs:	
1.	Court Reporter's Fees	\$ 1,511.00
2.	Bar Counsel Travel Costs	194.25
B.	Administrative Costs	1,250.00
C.	Miscellaneous Costs:	
1.	Investigator Costs	224.00
2.	Copy Costs	<u>63.45</u>
	TOTAL COSTS	\$ 3,242.70

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Carol Falvey, Circuit Judge/Referee
Citrus County Courthouse
110 N. Apopka Avenue, Room
Inverness, FL 34450
(352) 341-6714
(352) 341-6738 (fax)

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 32301, and that copies were mailed by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; Kenneth H. P. Bryk and Keshara Darcel Davis, 1200 Edgewater Drive, Orlando, FL 32804-6314; Bradley N. Laurent, 550 N. Bumby Avenue Suite 280, Orlando, FL 32803-4927; and Respondent, 550 N. Bumby Avenue Suite 280, Orlando, FL 32803-4927, this _____ day of _____, 2009.

Mori Campea, Judicial Assistant