

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

**THE FLORIDA BAR,**

**Supreme Court Case  
No. SC08-2248**

**Complainant,**

**v.**

**JOHN MICHAEL MOODY, II,**

**The Florida Bar File  
No. 2009-50,540(17D)FFC**

**Respondent.**

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**REPORT OF REFEREE**

**I. SUMMARY OF PROCEEDINGS:**

The Florida Bar filed its Notice of Judgment of Guilt in the Supreme Court of Florida on December 5, 2008. On December 8, 2008, The Supreme Court of Florida suspended respondent from The Florida Bar pursuant to R. Regulating Fla. Bar 3-7.2(f), and referred the matter to the Chief Judge of the Fifteenth Judicial Circuit for the appointment of a referee. The undersigned was appointed on December 12, 2008. Respondent failed to appear at the case management conference of January 5, 2009, during which the matter was set for final hearing on January 27, 2009. After the January 5, 2009 case management conference, however, The Florida Bar learned that respondent did not receive actual notice of the case management conference because he was in federal custody. Accordingly, The Florida Bar reset the matter for case management conference on January 22,

2009, and arranged for respondent to participate telephonically from the D. Ray James Detention Facility, in Folkston, Georgia.

On January 22, 2009, the referee received a letter from respondent (dated January 20, 2009) advising that he had been unaware of the Bar's prosecution of his case and requesting a continuance of all proceedings until his release from federal custody on February 19, 2009.<sup>1</sup> [This letter waived respondent's right to a hearing within the 90 days set forth in the referral Order entered by the Supreme Court of Florida on December 8, 2008.] Also on January 22, 2009, The Florida Bar initiated a conference call for purposes of the case management conference scheduled for that date. When The Florida Bar reached the appropriate personnel at the D. Ray James Detention Facility in Folkston, Georgia, bar counsel was informed that respondent had been moved. No further information regarding respondent's location was available on that date.

On February 2, 2009, I entered an order granting respondent's motion to continue the final hearing in this cause until after his release date of February 19, 2009. On February 10, 2009, The Florida Bar set a second telephonic case management conference for March 12, 2009, and served respondent at his new location: the Federal Correctional Institution in Miami, Florida. Final hearing was reset to April 20, 2009.

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<sup>1</sup> A copy of this letter was immediately faxed to Bar Counsel. The original is part of the record in this case.

On April 20, 2009, The Florida Bar appeared for trial. Respondent did not appear, but telephoned The Florida Bar's office earlier that morning to state a desire to consent to disbarment. In the courtroom on April 20, 2009, I telephoned respondent and accepted his representations as to his desire and agreement to forego trial and consent to disbarment. The Florida Bar requested and was granted an opportunity to examine respondent, on the record, as to the voluntary nature of his plea, as well as his competence to enter into same. I am satisfied that respondent's announced plea was knowing and voluntary. I am satisfied that respondent was competent to understand the import and effect of his actions. At the conclusion of the April 20, 2009 hearing, respondent agreed to appear in The Florida Bar's offices to sign the necessary settlement documents on the following Monday, April 27, 2009.

Respondent never appeared in The Florida Bar's offices to sign the necessary settlement documents. On May 13, 2009, I granted The Florida Bar's motion for an order compelling respondent to attend a status check on May 28, 2009. Respondent did not appear. Accordingly, I have construed respondent's refusal to appear before this referee to finalize his consent to disbarment as a withdrawal of such consent. At The Florida Bar's request, the matter was reset for final hearing on June 11, 2009. The Florida Bar served respondent at his record bar address and at all known addresses. The Florida Bar also made a good faith effort

to effect personal service upon respondent, as evidenced by the Affidavit of diligent search, filed by The Florida Bar's investigator Richard J. Giannotti, and received into evidence in this cause.

The final hearing was conducted on June 11, 2009. The Florida Bar was represented by Lorraine Christine Hoffmann. Respondent appeared, announced his desire to enter into and sign a Guilty Plea and Consent to Immediate Disbarment, and did so — before a notary public in open court. This document was received into evidence and is part of the record in this case. I recommend acceptance of respondent's Guilty Plea and Consent to Immediate Disbarment.

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

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

B. Narrative Summary:

1. On June 11, 2007, respondent boarded Southwest Airlines Flight 1590 at Indianapolis, Indiana, en route to Fort Lauderdale, Florida, with a stop in Jacksonville, Florida.

2. While respondent was aboard Flight 1590, he knowingly assaulted and intimidated the flight attendants by repeatedly using profanity and crude language in the presence of other passengers and small children;

by repeatedly leaving his seat and walking to the tail section of the aircraft to make contact with a male flight attendant; by making inappropriate sexual comments to the male flight attendant, and by deliberately rubbing the male flight attendant's back and stomach, without his consent.

3. The male Southwest Airlines flight attendant whom respondent assaulted was offended by respondent's inappropriate touching, and by his lewd comments.

4. While the aircraft was in flight, respondent also deliberately lifted a 7 year-old boy above respondent's head and shook the child, nearly causing the boy's head to hit an aircraft exit sign.

5. Respondent also used his cellular telephone during the flight's descent, an action he knew to be in violation of the airline's safety rules and regulations.

6. All of the foregoing conduct interfered with and diminished the flight attendants' ability to perform their duties, and to safeguard the aircraft, its crew and its passengers.

7. On or about September 13, 2007, a Grand Jury Indictment was filed against respondent, in United States District Court, Middle District of Florida, in Case No. 3:07-cr-252-J-25TEM, charging respondent with one count of intimidating and assaulting flight attendants of Southwest Airlines

Flight 1590, in violation of Title 49, United States Code, Section 46504.

8. Respondent was convicted, and adjudicated guilty of the charges set forth in the federal indictment.

9. On October 30, 2008,<sup>2</sup> respondent was sentenced to a prison term of 4 months, followed by 2 years of supervised release, pursuant to certain terms and conditions.

10. Respondent served his federal prison sentence, as imposed. The special conditions of respondent's supervised release include: a) participation in a program for substance abuse treatment; b) participation in a program for mental health treatment; and c) cooperation in the collection of respondent's DNA materials, as directed by his probation officer.

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

My recommendation as to guilt is as follows:

A. By the conduct set forth above, respondent violated R. Regulating Fla. Bar **3-4.2** [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; **3-4.3** [The commission by a lawyer of an act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida and whether or not the act

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<sup>2</sup> The sentencing order was not entered until November 14, 2008.

is a felony or misdemeanor, may constitute a cause for discipline.]; **3-4.4** [In addition, whether the alleged misconduct constitutes a felony or misdemeanor The Florida Bar may initiate disciplinary action regardless of whether the respondent has been tried, acquitted, or convicted in a court for the alleged criminal offense.]; **4-8.4(a)** [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; and **4-8.4(b)** [A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.].

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

I recommend that respondent's Guilty Plea and Consent to Immediate Disbarment be accepted, and that he should be disbarred from the practice of law (with leave to reapply in 5 years) immediately, and ordered to pay The Florida Bar's costs in this matter, with statutory interest until paid in full.

Disbarment is the presumptive sanction after conviction of a federal felony. *See* The Florida Bar v. Dougherty, 769 So. 2d 1027 (Fla. 2000) [Disbarment for federal felony convictions]; The Florida Bar v. Kandekore, 766 So. 2d 1004 (Fla. 2000) [Disbarment for conviction of assault on a police officer]; The Florida Bar v. Insua, 609 So. 2d 1313 (Fla. 1992) [Disbarment for attorney's participation in drug importation scheme despite extensive cooperation with authorities]; The Florida

Bar v. Nedick, 603 So. 2d 502 (Fla. 1992) [Disbarment despite respondent's cooperation with authorities]; and The Florida Bar v. Eisenberg, 555 So. 2d 353 (Fla. 1989) [Disbarment despite respondent's cooperation with authorities].

Although respondent did appear at the final hearing, he elected not to testify and did not present any mitigation which would rebut the presumption of disbarment.

Additionally, the Standards for Imposing Lawyer Sanctions also support disbarment as the appropriate sanction. Standard 5.11 states that disbarment is appropriate "when a lawyer is convicted of a felony under applicable law."

**V. PERSONAL HISTORY, AGGRAVATION AND MITIGATION, AND PAST DISCIPLINARY RECORD:**

I have considered respondent's personal history, the applicable aggravation and mitigation (as set forth in the Florida Standards for Imposing Lawyer Sanctions), and respondent's prior disciplinary record, to wit:

A. Personal History of Respondent:

Age: 45

Date Admitted to the Bar: February 19, 2004

B. Aggravation and Mitigation under the Florida Standards for Imposing Lawyer Sanctions

Aggravating Factors: Standard 9.22

(b) dishonest or selfish motive;

(c) multiple offenses;

(h) vulnerability of victim (as to the small child)

Mitigating Factors: None.

C. Prior Discipline: None

**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, with statutory interest until paid in full:

A. Grievance Committee Level Costs:	
1. Court Reporter Costs	\$ - 0 -
2. Bar Counsel Travel Costs	\$ - 0 -
B. Referee Level Costs:	
1. Court Reporter Costs	\$ 749.00
2. Bar Counsel Travel Costs	\$ 135.15
C. Administrative Costs	\$1,250.00
D. Auditor Costs	\$ - 0 -
E. Miscellaneous Costs:	
1. Investigator Costs	\$ 100.50
2. Witness Fees	\$ - 0 -
3. Copy Costs	\$ - 0 -
4. Telephone Charges	\$ - 0 -
5. Translation Services Fees	\$ - 0 -
<b>TOTAL COSTS</b>	<b><u>\$2,234.65</u></b>

Dated this 18th day of June, 2009.

s/Karen Martin  
KAREN MARTIN, Referee

## **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, FL 32399-1927, and that copies were mailed by regular U.S. mail to the following: STAFF COUNSEL, The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300; and LORRAINE CHRISTINE HOFFMANN, Bar Counsel, The Florida Bar, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, FL 33323; and JOHN MICHAEL MOODY, II, Respondent, 419 NE 23<sup>rd</sup> Street, Wilton Manors, FL 33305 on this 18<sup>th</sup> day of June, 2009.

s/Karen Martin  
KAREN MARTIN, REFEREE

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