

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC09-14

v.

[TFB Case Nos. 2008-00,308(18A);  
2008-00,485(18A);  
2008-00,901(18A);  
2009-00,042(18A);  
2009-00,361(18A)]

FRANK MICHAEL COSTANZO,

Respondent.

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**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, a hearing was held on March 5, 2009. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - JoAnn Marie Stalcup

For The Respondent - No Appearance

II. Findings of Fact as to Each Item of Misconduct of 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 respondent was emergency suspended by the Supreme Court of Florida on December 23, 2008 pursuant to a petition filed by The Florida Bar. See, Bar's Composite Exhibit 4. Thereafter, the bar filed the instant complaint and served it upon the respondent at his record bar address and via e-mail on January 7, 2009. Pursuant to the Respondent's failure to file the requisite answers to the above-styled complaint or to make a timely appearance in these matters, this referee entered an order of default on February 6, 2009. Additionally, the respondent failed to appear for the final hearing as to discipline conducted on March 5, 2009,

and therefore the allegations of the Bar's complaint are deemed admitted and are adopted as the findings of fact of this referee.

III. Recommendations as to Whether the Respondent Should Be Found Guilty:

As to each count of the complaint, I make the following recommendations as to guilt or innocence:

I find the respondent guilty as charged.

IV. Rule Violations Found:

1-3.3 Each member of The Florida Bar shall designate an official bar name, mailing address, and business telephone number. If the address given is not the physical location or street address of the principal place of employment, then such information shall also be given. Each member shall promptly notify the executive director of any changes in any information required by this rule. The official bar name of each member of The Florida Bar shall be used in the course of the member's practice of law. A change in official bar name may be made only upon request to and approval of the Supreme Court of Florida; 4-1.1 A lawyer shall provide competent representation to a client; 4-1.2 Subject to subdivisions (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, shall reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter; 4-1.3 A lawyer shall act with reasonable diligence and promptness in representing a client; 4-1.4(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law; 4-1.15 A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts; 4-1.16(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has

not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law; 4-3.2 A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client; 4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; 4-8.4(d) A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice; 5-1.1(b) Money or other property entrusted to an attorney for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of an attorney are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be deemed a conversion; and 5-1.1(e) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

V. Recommendation as to Disciplinary Measures to Be Applied:

Pursuant to the Rules Regulating The Florida Bar 3-711(c) the respondent was duly served with the bar's complaint at his record bar address and by e-mail, the only other address known to the bar, on January 7, 2009. The respondent is currently residing in the country of India and has resided in India for more than one year. While the respondent failed to file an answer to the bar's complaint, he did send by e-mail on March 4, 2009 a scanned copy of his signature to a Conditional Guilty Plea for Consent Judgment wherein the respondent agreed to be disbarred for a period of 10 years and to pay the bar's costs in this matter. See, Bar's Composite Exhibit 5. Nevertheless, this referee found that it was appropriate to proceed with the sanction hearing in this matter.

The bar argued that the respondent should be disbarred for 10 years and that he should pay the bar's costs. The bar argued that the evidence supported a finding that the respondent's conduct in misappropriating client funds, abandoning his practice, failing to act competently and diligently on behalf of his clients, and failing to communicate with his clients supported its recommendation of enhanced disbarment. The bar cited to the following cases to support its recommendation: *The Florida Bar v. Valentine-Miller*, 974 So.2d 333 (Fla. 2008) (attorney was disbarred for misappropriating client funds and for abandoning her practice,

despite substantial mitigation); *The Florida Bar v. Martinez-Genova*, 959 So.2d 241 (Fla. 2007) (attorney was disbarred for intentionally misappropriating third-party funds and for failing to maintain proper trust accounting procedures); *The Florida Bar v. Bloom*, 972 so.2d 172 (Fla. 2007) (attorney was disbarred for misappropriating funds and improperly borrowing funds from a client); and *The Florida Bar v. Horowitz*, 697 So.2d 78 (Fla. 1997) (attorney was disbarred for neglecting clients and for failing to respond to the bar; the attorney's mitigation that he suffered from clinical depression which impaired his judgment was rejected by the referee because the attorney failed to present any evidence to substantiate his statements or to show improvement of his psychological state). The bar conceded that, in the afore-mentioned cases, the respondents only received a 5 year disbarment, but argued that it was appropriate to enhance the respondent's discipline based upon his theft of client funds, his abandonment of his clients, his failure to ensure his clients were protected, his failure to make restitution to his clients, and his failure to participate meaningfully in the bar's process.

Pursuant to the Florida Standards for Imposing Lawyer Sanctions, the bar argued that the following aggravating factors exist in this case: 9.22(a) dishonest and selfish motive; 9.22(c) a pattern of misconduct; 9.22(d) multiple offenses; 9.22(h) vulnerability of the victims; 9.22(i) substantial experience in the practice of law; and 9.22(j) indifference to making restitution. The bar further indicated that the following mitigating factor exists in this case: 9.32(l) remorse. Finally, the bar indicated the following mitigating factors may exist in this case: 9.32(c) personal or emotional problems; and 9.32(h) physical or mental disability or impairment based upon the respondent's November 3, 2008 e-mailed response to the Notice of Probable Cause Votes wherein the respondent asserted that he suffered from depression, had contracted Dengue fever while in India, and was suffering a crisis in regard to the adoption of his child in India. See, Bar's Composite Exhibit 1.

Finally, the bar argued it was appropriate for this referee to consider the following Standards: 4.11 (disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury), 4.41(a) (disbarment is appropriate when a lawyer abandons the practice and causes serious injury or potentially serious injury to a client); and 7.1 (disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system).

Therefore, after review of the evidence, consideration of all aggravating and mitigating factors, the Standards, and the law, it is the referee's recommendation that the respondent be disbarred from the practice of law for an enhanced period of 10 years and that he be required pay the bar costs in this matter pursuant to R. Regulating Fla. Bar 3-7.6(q).

VI. Personal History and Past Disciplinary Record: After the finding of guilt and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(m)(1)(D), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 41

Date admitted to bar: March 26, 1996

Prior disciplinary convictions and disciplinary measures imposed therein: *The Florida Bar v. Frank Michael Costanzo*, Case No. SC08-2343 [TFB Case No. 2009-30,710(18A)(CES)] the Court issued an order of emergency suspension on December 23, 2008, ordering that the respondent be suspended from the practice of law until further order from the Court.

VII. Statement of Costs and Manner in Which Costs Should be Taxed: I find the following costs were reasonably incurred by The Florida Bar.

A.	Grievance Committee Level Costs	
1.	Bar Counsel Travel Costs	\$ 14.70
B.	Referee Level Costs	
1.	Court Reporter	\$ 170.00
2.	Bar Counsel Travel Costs	\$ 89.33
C.	Administrative Costs	\$ 1,250.00
D.	Miscellaneous Costs	
1.	Investigator Expenses	\$ 815.23
2.	Copy Costs	\$ 102.90
	TOTAL ITEMIZED COSTS:	<u>\$ 2,442.16</u>

It is recommended that all 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. It is further recommended that respondent shall be deemed delinquent and ineligible to practice law pursuant to R. Regulating Fla. Bar 1-3.6 for failure to timely pay the costs assessed in this proceeding.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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J. David Langford  
Referee

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

JoAnn Marie Stalcup, Bar Counsel, The Florida Bar, 1200 Edgewater Drive,  
Orlando, FL 32804-6314

Frank Michael Costanzo, Respondent, Thomas Connelly & Costanzo, LLP, 2800  
Halcyon Avenue, Baltimore, Maryland 21214-2535

Frank Michael Costanzo, at [goglobalganes@yahoo.com](mailto:goglobalganes@yahoo.com)

Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 East Jefferson  
Street, Tallahassee, FL 32399-2300

this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Judicial Assistant/Deputy Clerk



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