

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC09-33

v.

TFB File No. 2007-00,743(2A)

JOSE L. DELCASTILLOSALAMANCA,

Respondent.

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REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed referee on January 23, 2009 to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On January 12, 2009, The Florida Bar filed a Notice of Determination of Guilt in the Supreme Court of Florida. Attached to that notice was a Judgment entered on September 10, 2008 convicting Respondent of one count of Document Fraud, a felony, in violation of 18 U.S.C. sections 2 and 1546(a). On January 14, 2009, Respondent was suspended from The Florida Bar effective February 13, 2009, pursuant to his felony conviction.

By order dated March 19, 2009, I granted Respondent's motion to abate Florida disciplinary proceedings pending his release from federal custody. On June 24, 2009 the Florida Supreme Court approved my order staying these proceedings.

On October 26, 2009, a final sanction hearing was held in this matter. Respondent was the only witness to testify. All items properly filed, including pleadings, exhibits in evidence and the report of referee, 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.

1. On September 10, 2008, Respondent was convicted of one count of Document Fraud, in violation of 18 U.S.C. sections 2 and 1546(a) for conduct that occurred on June 20, 2002. Respondent was sentenced to twelve months and one day incarceration. Upon release, he was to be on supervised release for two years. He was also fined \$15,000.

2. Respondent's conviction was predicated on his falsely declaring that a client's daughter was an employee in a restaurant Respondent owned and operated.

3. On November 20, 2008, Respondent was placed on interim suspension from the practice of law in Connecticut. Thereafter, he was suspended from practice in New Jersey. The Connecticut suspension was subsequently modified to an 18-month suspension.

4. Upon his release from prison, Respondent asked for leave to practice law in Connecticut on a limited basis solely for charitable organizations. At a hearing on October 20, 2009, Respondent's request was granted.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating Rule 4-8.4(b) of the Rules of Professional Conduct of The Florida Bar (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 be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. Suspension from the practice of law in Florida for two years, nunc pro tunc February 13, 2009, and continuing thereafter until his civil rights are restored and until he proves rehabilitation in reinstatement proceedings.

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

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

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

A. Personal History of Respondent:

Age: 50 years old

Date admitted to The Florida Bar: April 23, 1994

B. Aggravating Factors:

Standard 9.22(i) of the Florida Standards for Imposing Lawyer Sanctions:

Substantial experience in the practice of law,

C. Mitigating Factors:

I find the following mitigation, as set forth in Standard 9.32 to be applicable:

9.32(b). Absence of a dishonest or selfish motive. Respondent's offense was an improper attempt to help a client's daughter stay in the United States.

9.32(e). Full and free disclosure and cooperation with disciplinary authorities.

9.32(g). Good character and reputation.

9.32(l). Remorse. I observed Respondent’s demeanor during his testimony and throughout the final hearing. I believe his expressions of remorse were genuine.

9.32(m). Remoteness of Prior Offense. Respondent had two prior public reprimands in Connecticut—one in 1999 and one in 2002. I find these disciplines were remote in time and the conduct was not related to the conduct before me in this case.

While not a specific element of mitigation, I am favorably impressed by Respondent’s community service and pro bono work while he was a practicing lawyer. I also note, and consider as a factor in my recommendation of discipline, that Respondent’s home state, Connecticut, has imposed an 18-month suspension for his offense and has allowed him to perform legal services for charitable organizations during his suspension.

I find that the presumption of disbarment has been overcome by the substantial mitigation presented in this case.

VI. 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

Administrative Costs	\$ 1,250.00
Court Reporter's Fees and transcripts	225.00
TOTAL	\$ 1,475.00

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.

Dated this 10th day of December, 2009.

JONATHAN ERIC SJOSTROM, Referee
Leon County Courthouse, Room 331-A
301 South Monroe Street
Tallahassee, FL 32301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been hand delivered 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 U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; ALLISON C. SACKETT, Bar Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and JOHN A. WEISS, Attorney for Respondent, 2937 Kerry Forest Parkway, Suite B-2, Tallahassee, Florida 32309, this 10th day of December, 2009.

Lorraine Gauss, Judicial Assistant to
JONATHAN SJOSTROM, Referee