

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

THE FLORIDA BAR,

Complainant,

v.

JOSIE KERRIE-ANN JAMES,

Respondent.

**Supreme Court Case
No. SC09-34**

**The Florida Bar File
No. 2008-51,278(15G)**

REPORT OF 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 or about January 12, 2009, The Florida Bar filed its Complaint against respondent with the Supreme Court of Florida. Thereafter, the undersigned was appointed to preside as Referee on or about February 11, 2009 by order of the Chief Judge of the Fifteenth Judicial Circuit.

The bar filed a Motion for Default Judgment, which was granted by order dated March 27, 2009. The final hearing was scheduled for May 22, 2009 for the purpose of determining discipline. The bar sent notice of the final hearing to respondent's record bar address by regular and certified mail on March 30, 2009.

Those notices were returned to The Florida Bar. Additionally, as shown by the affidavit of a bar investigator (which was provided to the Referee at the final hearing), the bar determined through investigation that respondent may be residing at the address of 378 West Dayton Circle, Fort Lauderdale, Florida. On March 31, 2009, a bar investigator contacted an individual at that address, who identified herself as respondent's mother. The bar investigator then left a copy of the notice of the final hearing.

At the final hearing, the bar appeared through bar counsel, Ronna Friedman Young, and respondent, having received notice at the address developed through investigation, appeared *pro se*.

II. FINDINGS OF FACT:

A. Jurisdictional Statement: Respondent is, and at all times material to this action 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:

Based on the bar's Complaint as admitted by virtue of the default, I find:

1. Fifteenth Judicial Circuit Grievance Committee "G," at a duly constituted meeting and by majority vote of the eligible members present, found probable cause to charge respondent with violation of the Rules Regulating The

Florida Bar, as set forth in the bar's complaint. The grievance committee chair reviewed and approved the bar's complaint.

2. In or about February 2008, Larry Lee Johnson filed a formal complaint against respondent with The Florida Bar.

3. By letter dated March 10, 2008, The Florida Bar sent an investigative inquiry by regular mail to respondent's record bar address requesting a written response to Johnson's complaint no later than March 25, 2008.

4. The March 10, 2008 letter was returned as "not deliverable as addressed and unable to forward." A copy of the letter and return envelope were attached to the bar's complaint as Exhibit A.

5. A follow-up letter was sent on March 26, 2008, by regular mail to respondent at her place of employment (The Palm Beach County Public Defender's Office), requesting a response by April 10, 2008. A copy of the letter was attached to the bar's complaint as Exhibit B.

6. No response was ever received.

7. A second follow-up letter was sent to respondent at her place of employment on April 30, 2008, by regular mail, requesting a response by May 12, 2008. A copy of the letter was attached to the bar's complaint as Exhibit C.

8. Again, respondent failed to respond.

9. On June 13, 2008, The Florida Bar sent via certified mail, a letter directed to respondent at her employment address and her record bar address.

10. An employee of the Public Defender's Office signed the green card receipt for the copy of the letter sent to respondent's employment address. The copy of the letter directed to respondent at her record bar address was returned unclaimed. Copies of the letter and green card receipts were attached to the bar's complaint as Composite Exhibit D.

11. No response was made by Ms. James.

12. On or about August 21, 2008, The Florida Bar contacted respondent by telephone and informed her that there was an outstanding grievance against her which required a response.

13. On the same date, The Florida Bar sent another letter to respondent at a new record bar address. Such letter was sent by regular and certified mail.

14. The certified letter was returned "unclaimed."

15. The letter sent regular mail was not returned. A copy of the letter and the certified mail envelope marked unclaimed were attached to the bar's complaint as Composite Exhibit E.

16. The Florida Bar left numerous telephone messages for respondent on her voice mail, but no written response has ever been made by respondent.

17. By the conduct set forth above, respondent violated R. Regulating Fla. Bar **4-8.4(g)** [A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made: (1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors...].

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

I recommend that respondent is guilty of violating R. Regulating Fla. Bar **4-8.4(g)**.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that the following disciplinary measures be imposed:

- A. Public reprimand by Order of the Supreme Court of Florida to be issued in this proceeding;
- B. Payment of the bar's costs in this matter.

In imposing discipline, I gave consideration to various factors which are set forth below, including the Standards for Imposing Lawyer Sanctions and relevant case law. The Florida Standards suggest that the following general factors should be considered in imposing sanctions:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors.

As to the duty violated, I have found that respondent failed to respond to The Florida Bar despite being aware of the complaint of Larry Lee Johnson.

Addressing respondent's mental state as suggested by the Florida Standards, the respondent admitted at the final hearing that she had been suffering from personal problems.

In terms of harm, the bar had been unable to obtain respondent's written position concerning this matter.

Aggravating and mitigating factors are set forth in the next section. I have found no factors in aggravation and the bar has stipulated to two factors in mitigation, which are absence of a prior disciplinary record and inexperience in the practice of law.

At the final hearing, the bar recommended that a 10 day suspension be imposed with the condition that before respondent resumes the practice of law, she be required to (1) submit a certification from Florida Lawyers Assistance, Inc. that she is fit to resume the practice of law and (2) provide the bar with a complete response to the complaint of Larry Lee Johnson. Additionally, the bar requested

costs. In making this recommendation, the bar relied on *The Florida Bar v. Grosso*, 647 So.2d 840 (Fla. 1994). In *Grosso*, as in the instant case, the only charge was the failure to respond to the bar's investigative inquiry. Mr. Grosso, like Ms. James, had no prior disciplinary record. The Supreme Court of Florida suspended Mr. Grosso for 10 days and before Mr. Grosso resumed the practice of law, he was required to provide the bar with a certification from a Florida licensed psychiatrist attesting to his ability to resume practice and provide the bar a complete response to the substantive charges underlying the proceeding. Additionally, he was assessed costs.

Ms. James requested that no suspension be imposed and indicated to me that no such suspension was necessary. Accordingly, I ordered that by June 1, 2009 Ms. James was required to: (1) submit a certification from Florida Lawyers Assistance, Inc. that she is fit to resume the practice of law and (2) provide the bar with a complete response to the complaint of Larry Lee Johnson. Ms. James has submitted a certification from Florida Lawyers Assistance, Inc. and the response to the complaint of Larry Lee Johnson. Although the certification was dated June 9, 2009, Ms. James was evaluated by Florida Lawyers Assistance, Inc. on May 28, 2009 and the slight delay in obtaining the written certification was not due to any fault of Ms. James. Given that Ms. James met the requirements of the my Order, I am satisfied that a public reprimand, rather than a suspension, and payment of the

bar's costs are appropriate to meet the three purposes of lawyer discipline: (1) the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty; (2) the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation; and (3) the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. *The Florida Bar v. Lord*, 433 So.2d 983, 986 (Fla. 1983).

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

Prior to recommending discipline, and pursuant to R. Regulating Fla. Bar 3-7.6(k)(1), I considered the following:

A. Personal History of Respondent:

Age: 31

Date admitted to The Florida Bar: April 21, 2006

B. Aggravating Factors:

None

C. Mitigating Factors:

The presence of the following factors were stipulated to by the bar:

9.32(a) absence of a prior disciplinary record; and

9.32(f) inexperience in the practice of law.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

I find that The Florida Bar has incurred \$1,551.85 as reasonable costs in this matter and that same should be assessed against the Respondent:

A. Grievance Committee Level Costs:		
1. Court Reporter Costs	\$	00.00
2. Bar Counsel Travel Costs	\$	00.00
B. Referee Level Costs:		
1. Court Reporter Costs	\$	75.00
2. Bar Counsel Travel Costs	\$	49.00
C. Administrative Fee	\$	1,250.00
D. Miscellaneous Costs:		
1. Investigator Costs	\$	177.85
2. Witness Fees	\$	00.00
3. Copy Costs	\$	00.00
4. Telephone Charges	\$	<u>00.00</u>
TOTAL ITEMIZED COSTS:		<u>\$ 1,551.85</u>

It is recommended such costs be charged to respondent and if not paid immediately, that interest at the statutory rate shall accrue. Should respondent fail to satisfy her cost obligation within 90 days of the entry of the final order in this case, respondent shall be deemed delinquent and shall be ineligible to practice law,

pursuant to R. Regulating Fla. Bar 1-3.6, (unless otherwise deferred by the Board of Governors of The Florida Bar).

Dated this _____ day of _____, 2009.

_____/s/_____
PAUL DAMICO, 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, Florida 32399-1927, and that a copy had been sent by e-mail to e-file@flcourts.org; and that copies were mailed by regular mail to the following: STAFF COUNSEL, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; RONNA FRIEDMAN YOUNG, Bar Counsel, The Florida Bar, Lake Shore Plaza II; 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323; and JOSIE KERRIE-ANN JAMES, Respondent, at her new record bar address of 301 East Las Olas Boulevard, Fort Lauderdale, Florida 33301 on this 30th day of June, 2009.

_____/s/_____
PAUL DAMICO, REFEREE