

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

THE FLORIDA BAR,  
  
Complainant,

Supreme Court Case  
No. SC09-564

v.

ELAINE OFFORD MCKILLOP,  
  
Respondent.

The Florida Bar File  
No. 2007-70,033(11D)

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**REPORT OF REFEREE**

**I. SUMMARY OF PROCEEDINGS:** Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.6 of the Rules Regulating The Florida Bar, the following proceedings occurred:

On March 27, 2009, The Florida Bar filed its Complaint and Request for Admissions in The Florida Bar File No. 2007-70,033(11D). Despite several reminders and the forwarding of courtesy copies of the pleading, Respondent did not reply to the Request for Admissions. The Florida Bar filed an appropriate motion, and Respondent was properly noticed for a hearing on the Motion to Deem Matters Admitted. Respondent did not appear for that hearing. The matters were deemed admitted pursuant to this referee's July 16, 2009 order granting The Florida Bar's Motion for Order Deeming Matters Admitted. Furthermore, Respondent was found guilty of

violating specific Rules Regulating The Florida Bar, referenced in this report of referee, by virtue of this referee's aforementioned order granting The Florida Bar's Motion for Order Deeming Matters Admitted.

In addition to her failure to respond to the Request for Admissions, Respondent also failed to respond to the Florida Bar's discovery requests. Accordingly, an Order to Compel Discovery was entered. Respondent failed to respond to the Order to Compel, and was therefore precluded from presenting any evidence at the final hearing in this cause.

On September 25, 2009, a final hearing was held in this matter. Respondent appeared and asserted that she had been suffering from a disability or incapacitation, and was not ready to go forward. Although Respondent had previously mentioned maladies of this sort, she has presented no evidence or supporting documentation to this Referee at any stage of these proceedings to corroborate her statements or to indicate what form of accommodations may have been required. Further, for the sole request for an accommodation that Respondent made prior to the final hearing, specifically that pleadings and documents be e-mailed to her, that request for accommodation made by Respondent was meticulously honored by the Florida Bar and the Referee. Accordingly, this Referee held that the matter would proceed as scheduled. All of the pleadings, responses thereto, notices, orders, and exhibits, along

with this report, constitute the record in this case and are forwarded to the Supreme Court of Florida.

The following attorneys appeared as counsel for the parties:

On behalf of The Florida Bar: Jennifer R. Falcone Moore

On behalf of the Respondent: *Pro se*

## II. **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

### A. Jurisdictional Statement:

The Respondent is and was at all times material herein, a member of The Florida Bar and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

### B. Narrative Summary of Case:

The following facts were deemed admitted pursuant to Order of this Referee:

1. Respondent conspired with Ms. Lucrecia Custodio (“Custodio”) in the fraudulent conveyance of real estate as more fully set forth in the following paragraphs:

a. On or about January 26, 2005, Irmina Rodriguez (“Rodriguez”) passed away. Her address at the time of her death was 3030 N.W. 15<sup>th</sup> Avenue, Miami, FL 33142.

b. Custodio was Rodriguez's longtime friend and housekeeper.

Custodio moved into Rodriguez's house immediately after her death.

c. On or about February 1, 2005, Custodio advised the representative for the Public Internment Program that Rodriguez had several bank accounts, but that the person designated as beneficiary under those accounts was listed without a phone number or address. At no point during the meeting, did Custodio mention the existence of any deed or other document of conveyance transferring title of Rodriguez's house to her.

d. On or about April 25, 2005, Circuit Court Judge Maria M. Korvick appointed Attorney John M. Thomson, Esq. ("Thomson") as Curator of the Estate of Irmina Rodriguez. Thereafter, Thomson contacted Custodio and informed her that he had control over Rodriguez's property and that Custodio would be required to pay rent if she continued to live in the house. Custodio again failed to make mention of any deed or document of conveyance transferring title to the house to her.

e. On or about May 17, 2006, a Quit Claim Deed ("Deed") to Rodriguez's home dated December 28, 2004, which had been prepared by Respondent, was recorded. The Deed named Rodriguez and Custodio as "joint tenants with right of survivorship," and was notarized by Kerry M. Kolsch ("Kolsch"), Respondent's daughter, who is also an attorney.

f. A visual inspection of the signature purporting to be that of Rodriguez on the Quit Claim Deed shows that it does not match in any way the known signature of Rodriguez from around the same time period.

g. On or about September 29, 2006, Respondent sent a letter to The Harrison Title Group advising them that she was representing Custodio in the sale of the house to Lourdes Mass aka Maria Delourdes Gutierrez (“Gutierrez”). Respondent further indicated that Custodio would subsequently be purchasing a condominium at Sunrise Lakes, and instructed that the proceeds from the sale of the house be distributed as follows:

\$75,000.00	Respondent’s Trust Account
\$75,000.00	Lucrecia Custodio
\$4,464.87	John M. Thomson, Esq.
\$5,519.50	Van Orsdel Funeral Chapels
Balance	Lucrecia Custodio

h. On or about September 29, 2006, the closing on the sale of the house took place and the proceeds were distributed as instructed. The total amount received by Custodio was \$111,181.36, which was distributed to her in two separate checks, one in the amount of \$75,000.00 and the other in the amount of \$36,181.36.

i. Respondent also received a check in the amount of \$75,000.00 out of the proceeds of the sale which she deposited into her Wachovia Trust Account (account number: 2000013762579). According to line 1306 of the

HUD-1 closing statement (“Escrow for Purchase of Property”), these funds were to be placed in escrow for the subsequent purchase of the Sunrise Lakes Condominium.

j. Custodio did not purchase the Sunrise Lakes Condominium, nor did she purchase any other property with the funds held in trust by Respondent. Rather, Respondent used a portion of the \$75,000.00 escrow deposit in her trust account to pay for her own medical and other personal expenses. Respondent also issued four checks totaling \$13,200.00 to her daughter, Kolsch, who notarized the deed. (These four checks were issued as follows: \$5,000.00 on October 5, 2006; \$6,000.00 on October 26, 2006; \$1,200.00 on November 8, 2006; and \$1,000.00 on November 21, 2006).

2. On or about June 20, 2006, The Florida Bar received a letter from Ursula DuPree, Account Monitor for Wachovia Bank, notifying The Bar that a check had been presented against insufficient funds in Respondent’s Trust Account. Thus, The Florida Bar commenced an investigation.

3. On or about July 25, 2006, Respondent responded, in writing, to The Florida Bar’s investigation by stating that the overdraft had been caused by an electronic transfer and that she did not have any record of it, but that she had immediately taken care of the situation and that a similar incident had not occurred before.

4. Respondent further stated, in direct contradiction of the specific designation of the funds as “Escrow for Purchase of Property” on the Custodio/Gutierrez HUD-1 closing statement, that the money in the account was money she had collected as fees from a recent real estate transaction (the sale from Custodio to Gutierrez) and that she had simply not had the time to transfer the funds to her *personal account* with the same bank.

5. On or about October 24, 2006, Carlos Ruga (“Ruga”), the Branch Staff Auditor, sent a letter to Respondent stating that she had not yet provided original bank statements, canceled checks, deposit slips, and any other documentation supporting her response. Thereafter, a Subpoena Duces Tecum for those documents was served on Respondent.

6. On or about January 19, 2007, Respondent appeared before Ruga pursuant to the subpoena. Respondent indicated that she had made personal use of the \$75,000.00 that was deposited in her trust account following the sale to Gutierrez because she had made several loans to Custodio, which loans had not yet been repaid.

7. On or about May 24, 2007, another Subpoena Duces Tecum was served on Respondent to appear before Ruga and present original bank records reflecting the loans given to Custodio by her. In addition, Respondent was requested to explain, in writing, why she had made personal use of the funds when they had been

specifically designated to be used as “Escrow for Purchase of Property”.

8. On or about May 24, 2007, Respondent sent a letter to Ruga stating that she had been unable to provide the requested documents because she had been recently hospitalized with a neurological incident that had affected her memory, and that she had been further diagnosed with a lung condition.

9. In her May 24, 2007 letter, Respondent further changed her previous explanation, and now asserted that she had used the funds because Custodio had stolen valuable goods from Respondent’s home when she worked there as a housekeeper, and also because of the outstanding loans made to Custodio. Specifically, Respondent alleged that Custodio had taken her stepfather’s watch, which was valued at over \$20,000.00, jewelry, paintings, and thousands of dollars worth of old coins. Respondent provided an inventory list of all the items that were allegedly stolen from her.

10. Respondent acknowledged that she failed to notify police of the alleged thefts.

11. On or about July 9, 2007, Respondent was deposed. As explanation for why she had issued four checks to Custodio even after the latter allegedly stole from her, Respondent claimed that she felt pity for Custodio who was ill and was recovering from heart surgery (four checks were issued as follows: \$250.00 on

March 31, 2006; \$1,020.00 on April 28, 2006; \$150.00 on May 12, 2003 [sic]; and \$250.00 on May 14, 2006).

12. During her deposition, Respondent testified that Custodio approached her *sometime in 2005*, and informed her that Rodriguez intended to convey her house to Custodio after she died. Respondent informed Custodio and Rodriguez that the best way to convey the property in order to avoid probate would be to execute a Quit Claim Deed naming Rodriguez and Custodio as “joint tenants with right of survivorship.”

13. According to Respondent, the Deed, which is *dated December 28, 2004*, was prepared by Respondent and notarized by Kolsch. Respondent charged no fee for this service. The Deed names Custodio and Rodriguez as “joint tenants with right of survivorship,” but Rodriguez’s signature on the Deed does not match her known signature. Furthermore, the Deed was not recorded until May 17, 2006, following the appointment of Thomas as Curator for the Estate.

14. Custodio’s whereabouts are currently unknown.

15. Respondent further stated in her deposition that she had deposited the \$75,000.00 in her Trust Account, even though she was entitled to make personal use of those funds, because she did not have a *personal bank account* at the time. However, in her July 25, 2006 correspondence to The Bar, Respondent had stated that

she had not yet been able to transfer these same funds from her trust account to her *personal bank account* (see paragraph 6, *supra*).

16. As evidenced by the foregoing, Respondent was a principal in the commission of this fraud.

**III. RECOMMENDATION AS TO GUILT:** Based on the foregoing, I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rules 4-8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness); and 4-8.4(c) (a lawyer shall not commit conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct; and Rule 5-1.1 (trust accounts) of the Rules Regulating Trust Accounts.

**IV. CASE LAW:**

I considered the following case law prior to recommending discipline:

- *The Florida Bar v. Spann*, 682 So.2d 1070 (Fla. 1996);  
The Florida Supreme Court held that authorization of a forged signature on a release form, to be signed by the client, followed by notarization of the signature, compiled with a number of other violations over an extended period of time, and insistence that no wrongdoing had occurred, warranted disbarment.
- *The Florida Bar v. Gold*, 203 So.2d 324 (Fla. 1967);  
The Florida Supreme Court held that forging names to satisfaction of mortgage, witnessing and causing another to witness forgery, taking acknowledgment and causing forgery to be recorded in public records of county, and converting funds warranted disbarment

**V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE**

**APPLIED:** I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that she be disciplined by:

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

**VI. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:**

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

A. Personal History of Respondent:

Age: 62

Date admitted to The Florida Bar: August 2, 1993

Prior Discipline: None

B. Factors Considered in Aggravation:

9.22 (e) Bad faith obstruction of the disciplinary proceeding\*

9.22 (g) Refusal to acknowledge wrongful nature of conduct.

\* Additionally, I considered not only Respondent's conduct in the underlying case, but also her conduct throughout the Bar proceeding. Since the Bar filed its Complaint, Respondent has continuously obstructed the proceedings by refusing to accept pleadings and discovery requests at her record bar address, by misrepresenting that Counsel for the Florida Bar failed to comply with her request that documents be e-mailed, by failing to appear for hearings, and by behaving in a disruptive

and unprofessional manner at the few hearings she did choose to attend. Most recently, at the final hearing in this matter, Respondent refused to remain quiet when instructed to do so, and used profane and vulgar language towards this Referee and towards the bailiff in the courtroom. Respondent raised her voice to the Referee and bailiff, and stormed out of the courtroom in a violent manner prior to the conclusion of the hearing. Her behavior during the course of the proceeding led the bailiff to request a female police officer to stand by outside the courtroom, and that officer was requested to escort Respondent from the courthouse.

Based upon these observations, this Referee would recommend a psychological evaluation be conducted on Respondent before re-admission to the Florida Bar be considered.

C. Factors Considered in Mitigation:

9.32 (a) Absence of a prior disciplinary record

**VII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD**

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

Administrative costs	
Rule 3-7.6(q)(1)(i) .....	\$ 1,250.00
Court reporter attendance fee for September 25, 2009 final hearing.....	\$ 85.00
Investigator costs.....	\$ 4,851.00
Auditor's costs.....	\$ 1,510.76
	_____
<b>TOTAL</b>	<b>\$ 7,696.76</b>
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It is recommended that such costs be charged to 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.

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YVONNE COLODNY, Referee  
Circuit Court Judge  
Dade County Courthouse  
73 West Flagler Street  
Room 511  
Miami, Florida 33130

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that the original of the foregoing Report of Referee was mailed to the **Honorable Thomas D. Hall**, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399; and a true and correct copy was mailed to **Elaine Offord McKillop**, Respondent, at her record bar address of 3301 N.E. 170th Street, North Miami Beach, Florida 33160; and to **Jennifer R. Falcone Moore**, Bar Counsel, The Florida Bar, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131; and to **Kenneth Lawrence Marvin**, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, on this 19th day of October, 2009.

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YVONNE COLODNY, Referee  
Circuit Court Judge