

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

THE FLORIDA BAR,

Complainant,

**Supreme Court Case
No. SC09-1023**

v.

GREGORY ERNEST MONALDI,

Respondent.

**The Florida Bar File
No. 2009-50,251(17A)**

_____/

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar filed its complaint with the Supreme Court of Florida on June 10, 2009. Thereafter, the Chief Judge of the Fifteenth Judicial Circuit appointed the undersigned to serve as referee. The parties have presented to me a Conditional Guilty Plea for Consent Judgment, which has been approved by The Florida Bar Board of Governors' designated reviewer. After due deliberation, I have determined to recommend that respondent's Conditional Guilty Plea for Consent Judgment be approved, for the reasons set forth herein. The pleadings, and all other papers filed in this cause, which are forwarded to the Supreme Court of Florida with this report, and constitute the entire record.

During the course of these proceedings, respondent was represented by Barry William Rigby; The Florida Bar was represented by Lorraine Christine Hoffmann.

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:

COUNT I

1. In or about 2003, respondent began representing Chan Latchman (“Latchman”) in a personal injury case.

2. Latchman signed a contingency fee agreement with Monaldi.

3. Respondent does not handle personal injury litigation

4. After attempting to settle the case, Monaldi referred the Latchman matter to Scott Rovenger, Esq. (“Rovenger”), for litigation.

5. Monaldi failed to get his client’s written agreement to transfer his case to Rovenger.

6. Further, respondent failed to enter into any written fee agreement with his client or Rovenger, regarding the fees to be charged by respondent or Rovenger.

7. After Rovenger settled the case before trial, respondent demanded 50% of the fee collected by Rovenger.

8. Respondent's demand for a 50% fee is clearly excessive.

COUNT II

9. In or about May 2008, Monaldi filed a civil action against Rovenger, styled Monaldi v. Rovenger, et al., Case No. 08-20164, in the Circuit Court of the 17th Judicial Circuit in and for Broward County Florida. A true copy of this complaint was attached to the Florida Bar's Complaint, and identified as Exhibit A.

10. In his civil complaint against Rovenger, respondent alleged that he and Rovenger had an oral contract by which respondent would be entitled to 50% of the fee earned by Rovenger in all cases that respondent referred to him.

11. Respondent admitted that he *routinely* accepted referral fees from Rovenger that were well above the allowed limit of 25% [See R. Regulating Fla. Bar 4-1.5(f)(4)(D)], without court or client approval.

12. Respondent testified (in The Florida Bar grievance committee probable cause hearing) that he believed that he may rightly (and without court approval) receive up to 90% of a fee earned by Rovenger, in a case he referred to Rovenger.

13. Respondent also testified that it is not his practice to, and he does not

disclose such (excessive) legal fees to his clients or to the courts and/or tribunals before which these cases are tried and/or determined.

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

I recommend that the Court accept respondent's guilty plea, and I find him guilty of the following rule violations (to which he has entered a guilty plea):

A. As to Count I: 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 is a felony or misdemeanor, may constitute a cause for discipline.]; **4-1.5(g)** [Subject to the provisions of subdivision (f)(4)(D), a division of fee between lawyers who are not in the same firm may be made only if the total fee is reasonable and: (1) the division is in proportion to the services performed by each lawyer; or (2) by written agreement with the client: (A) each lawyer assumes joint legal responsibility for the representation and agrees to be available for consultation with the client; and (B) the agreement fully discloses that a division of fees will be made and the basis upon which the division of fees will be made.]; **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.]; **4-8.4(c)** [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.]; and **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...].

B. As to Count II: 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 is a felony or misdemeanor, may constitute a cause for discipline.]; **4-1.5(f)(4)(D)** [A lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for personal injury or for property damages or for death or loss of services resulting from personal injuries based upon tortious conduct of another, including products liability claims, whereby the compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only under the following requirements: As to lawyers not in the same firm, a division of any fee within subdivision (f)(4) shall be on the following basis: (i) To the lawyer assuming primary responsibility for the legal services on behalf of the client, a minimum of 75% of the total fee. (ii) To the lawyer assuming secondary

responsibility for the legal services on behalf of the client, a maximum of 25% of the total fee. Any fee in excess of 25% shall be presumed to be clearly excessive.

(iii) The 25% limitation shall not apply to those cases in which 2 or more lawyers or firms accept substantially equal active participation in the providing of legal services. In such circumstances counsel shall apply to the court in which the matter would be filed, if litigation is necessary, or if such court will not accept jurisdiction for the fee division, the circuit court wherein the cause of action arose, for authorization of the fee division in excess of 25%, based upon a sworn petition signed by all counsel that shall disclose in detail those services to be performed. The application for authorization of such a contract may be filed as a separate proceeding before suit or simultaneously with the filing of a complaint, or within 10 days of execution of a contract for division of fees when new counsel is engaged. Proceedings thereon may occur before service of process on any party and this aspect of the file may be sealed. Authorization of such contract shall not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive. An application under this subdivision shall contain a certificate showing service on the client and, if the application is denied, a copy of the petition and order denying the petition shall be served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Counsel may proceed with representation of the client pending court approval.]; **4-1.5(g)** [Subject to the provisions of

subdivision (f)(4)(D), a division of fee between lawyers who are not in the same firm may be made only if the total fee is reasonable and: (1) the division is in proportion to the services performed by each lawyer; or (2) by written agreement with the client: (A) each lawyer assumes joint legal responsibility for the representation and agrees to be available for consultation with the client; and (B) the agreement fully discloses that a division of fees will be made and the basis upon which the division of fees will be made.]; **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.]; **4-8.4(c)** [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.]; and **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...].

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I approve the plea agreement between the parties, and recommend that respondent receive a 10-day suspension, and that he be ordered to pay The Florida Bar's costs in this case.

I have based my recommendation upon the plea agreement between the parties, and upon my review of the applicable case law and the applicable Florida Standards For Imposing Lawyer Sanctions ("The Florida Standards"). The Florida

Standard support the imposition of a suspension. The applicable standard is as follows:

7.0 Violations of other Duties Owed as a Professional

7.2 Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

I believe that that a 10-day suspension, coupled with payment of The Florida Bar's costs in this matter, meet the Court's criteria for an appropriate sanction: it is sufficient to public from unethical conduct, it has a deterrent effect, and it is still fair to respondent. *See The Florida Bar v. Pahules*, 233 So. 2d 130, 132 (Fla. 1972).

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

I considered the following personal history and prior disciplinary record of respondent, to wit:

A. Personal History of Respondent:

Age: 53

Date Admitted to the Bar: June 28, 1994

B. Aggravating Factors: Florida Standards

9.22(a) prior disciplinary offenses;

9.22(b) selfish motive;

9.22(c) pattern of misconduct.

C. Mitigating Factors: None applicable.

D. Prior Discipline: Respondent received a public reprimand for trust accounting violations, by Supreme Court Order dated April 4, 2007. Respondent was also publicly reprimanded for neglect, by Supreme Court Order dated December 20, 2007.

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.

A.	Grievance Committee Level Costs:	
1.	Court Reporter Costs	\$ 400.75
2.	Bar Counsel Travel Costs	\$ - 0 -
B.	Referee Level Costs:	
1.	Court Reporter Costs	\$ - 0 -
2.	Bar Counsel Travel Costs	\$ - 0 -
C.	Administrative Costs	\$1,250.00
D.	Auditor Costs	\$ - 0 -
E.	Miscellaneous Costs:	
1.	Investigative Costs	\$ 340.97
2.	Witness Fees	\$ - 0 -
3.	Copy Costs	\$ 36.45
4.	Telephone Charges	\$ - 0 -
5.	Translation Services Fees	\$ - 0 -
TOTAL COSTS		<u>\$2,028.17</u>

I recommend that these costs be charged to respondent, with statutory interest until paid in full. Should respondent fail to pay these costs within 30 days of the final Court Order in this case, respondent should be deemed delinquent and

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 16th day of December, 2009.

/s/ Sandra Bosso-Pardo

Sandra Bosso-Pardo, County Court Judge/Referee
Palm Beach County Courthouse
205 N. Dixie Highway
West Palm Beach, Florida 33401

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; LORRAINE CHRISTINE HOFFMANN, Bar Counsel, The Florida Bar, Lakeview Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, FL 33323; and BARRY WILLIAM RIGBY, counsel for respondent, 934 N. Magnolia Avenue, #319, Orlando, FL 32803 on this 16th day of December, 2009.

/s/ Sandra Bosso-Pardo

Sandra Bosso-Pardo, Referee