

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

THE FLORIDA BAR,

Complainant,

Case No.
[TFB Case Nos.]

**SC09-1116
2008-31,603(09A);
2008-31,900(09A)]**

v.

MARTIN LEWIS CORDELL,

Respondent.

_____ /

REPORT AND RECOMMENDATION OF REFEREE

Pursuant to the undersigned being appointed as Referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar, a hearing was held on December 23, 2009. Thereupon, the Referee finds and concludes as follows:

I. FINDINGS OF FACT

The following has been proved by Complainant, The Florida Bar, by the standard of clear and convincing evidence:

Between July 2007 and July 2008, Respondent, Martin Lewis Cordell, operated and managed an office for The Evans Firm located in Volusia County, Florida. The Evans Firm was owned by Franklin R. Evans, a member of the State Bar of Georgia and the Ohio State Bar Association. Mr. Evans was not admitted to practice law in Florida during the time in question.

The Evans Firm was not a bona fide partnership operating pursuant to a partnership agreement between Respondent and Mr. Evans. The Evans Firm was not authorized to operate in the State of Florida pursuant to the applicable rules for interstate partnerships and/or multi-jurisdictional law firms. Further, The Evans Firm was not authorized to operate in the State of Florida pursuant to the applicable case law for interstate partnerships and/or multi-jurisdictional law firms. *See, The Florida Bar v. Savitt*, 363 So.2d 559 (Fla. 1978).

The Evans Firm had an office located next door to a chiropractic/rehabilitation office that referred at least three patients who had been injured in vehicle accidents to The Evans Firm for representation in personal injury claims. The Evans Firm based its income on fees earned in these personal injury cases litigated solely in Florida, rather than basing its income on fees earned in cases litigated in any other state.

Respondent shared a percentage of earned fees received from The Evans Firm with Mr. Evans. Respondent therefore shared earned legal fees with a nonlawyer. In addition, Respondent utilized a letterhead that failed to indicate Mr. Evans was not admitted to practice law in Florida. Respondent permitted a situation to exist whereby Mr. Evans was able to engage in professional activities in Florida that constituted the practice of law.

Respondent employed a paralegal who often carried out Evans Firm activities at a location not in the same office building in which Respondent was located. As a result, Respondent failed to exercise meaningful supervision of his paralegal to ensure her activities complied with the Rules Regulating The Florida Bar.

No statement of client's rights were disseminated to clients.

The contingency fee contract utilized by Respondent in the cases before this Referee failed to comply with the Rules Regulating The Florida Bar. The fee contract failed to contain required language and provisions set forth in Rule 4-1.5(f)(4) in The Rules Regulating The Florida Bar. The original contingency fee contracts that were executed by clients of the firm were not executed by either Respondent or Mr. Evans, and were not properly disseminated. The proposed closing statement utilized by Respondent in one particular case failed to provide for Respondent's signature. Further, Respondent took no steps to ensure that the contingency fee contract was in full compliance with the provisions as required in Rules Regulating The Florida Bar.

II. CONCLUSIONS

- A. **Recommendations as to Whether the Respondent Should Be Found Guilty:** As to the complaint filed in Case No. SC09-1116, your Referee finds the Respondent guilty as to all charges.

Rule Violations Found: 4-1.5(f)(2) (2007) Every lawyer who accepts a retainer or enters into an agreement, express or implied, for compensation for services rendered or to be rendered in any action, claim, or proceeding whereby the lawyer's compensation is to be dependent or

contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only where such fee arrangement is reduced to a written contract, signed by the client, and by a lawyer for the lawyer or for the law firm representing the client. No lawyer or firm may participate in the fee without the consent of the client in writing. Each participating lawyer or law firm shall sign the contract with the client and shall agree to assume joint legal responsibility to the client for the performance of the services in question as if each were partners of the other lawyer or law firm involved. The client shall be furnished with a copy of the signed contract and any subsequent notices or consents.

All provisions of this Rule 4-1.5(f) apply to such fee contracts: 4-1.5(f)(4) (2007), 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: (A) The contract shall contain the following provisions: (i) "The undersigned client has, before signing this contract, received and read the statement of client's rights and understands each of the rights set forth therein. The undersigned client has signed the statement and received a signed copy to refer to while being represented by the undersigned attorney(s)." (ii) "This contract may be cancelled by written notification to the attorney at any time within 3 business days of the date the contract was signed, as shown below, and if cancelled the client shall not be obligated to pay any fees to the attorney for the work performed during that time. If the attorney has advanced funds to others in representation of the client, the attorney is entitled to be reimbursed for such amounts as the attorney has reasonably advanced on behalf of the client;" 4-1.5(f)(4)(C) (2007).

Before a lawyer enters into a contingent fee contract for representation of a client in a matter set forth in this rule, the lawyer shall provide the client with a copy of the statement of client's rights and shall afford the client a full and complete opportunity to understand each of the rights as set forth therein. A copy of the statement, signed by both the client and the lawyer, shall be given to the client to retain and the lawyer shall keep a copy in the client's file. The statement shall be retained by the lawyer with the written fee contract and closing statement under the same conditions and requirements as subdivision (f)(5); 4-5.3(b).

With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar: (1) a partner, and a lawyer who

individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; 4-5.3(c) Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants; 4-5.4(a) A lawyer or law firm shall not share legal fees with a nonlawyer; 4-5.4(e).

A lawyer shall not practice with or in the form of a business entity authorized to practice law for a profit if: (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration; or (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer; and 4-5.5(a) A lawyer shall not practice law in a jurisdiction other than the lawyer's home state, in violation of the regulation of the legal profession in that jurisdiction, or in violation of the regulation of the legal profession in the lawyer's home state or assist another in doing so.

B. Factors Considered in Recommending Discipline Herein

In making these recommendations, your Referee has considered the following Florida Standard for Imposing Lawyer Sanctions:

4.4 Lack of Diligence

4.43 Public reprimand is appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. Here, Respondent

has demonstrated an appalling lack of knowledge as to the Florida Rules of Professional Conduct.

7.0 Violations of Other Duties Owed as a Professional

7.3 Public reprimand is appropriate when a lawyer negligently 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.

9.22 Aggravating Factors

- (a) prior disciplinary offenses;
- (d) multiple offenses; and
- (i) substantial experience in the practice of law.

9.32 Mitigating Factors

- (b) absence of a dishonest or selfish motive;
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; and
- (l) remorse.

Your Referee has also considered the following case law:

The Florida Bar v. Sheppard, 529 So. 2d 1101 (Fla. 1988) - The Supreme Court of Florida approved a guilty plea for consent judgment of a public reprimand based upon the accused attorney's use of letterhead of a deceased attorney with the attorney's name added and for his failure to adequately supervise a secretary/paralegal. The lack of supervision resulted in the secretary/paralegal sending out two letters signed by her which did not clearly indicate she was not an attorney. In mitigation, the accused attorney had no prior disciplinary record, he was cooperative with the bar, and he took corrective action upon inquiry as to the appropriateness of the above.

The Florida Bar v. Perez, 608 So. 2d 777 (Fla. 1992) - An attorney received a public reprimand and restitution required for an isolated instance of gross neglect. Respondent allowed a non lawyer to handle checks payable to clients, and indiscriminately exchanged such funds for repayment of personal loans owed by clients. The court found significant mitigating factors as a basis for the discipline.

The Florida Bar v. Borja, 554 So. 2d 514 (Fla. 1990) – An attorney received a public reprimand and two year's probation for failing to follow the minimum required trust accounting procedures and failing to maintain the minimum required trust accounting records. There was no evidence of misappropriation and no clients lost any money. Although the attorney

still was not in substantial minimum compliance at the time of a follow up audit, he had no prior disciplinary history and there was no client harm.

The Florida Bar v. Goodrich, 212 So. 2d 764 (Fla. 1968) – An attorney received a private reprimand for unintentionally allowing the use of his name or services in aid of the unauthorized practice of law and for allowing his professional services to be controlled or exploited by a law agency. Mr. Goodrich worked for an insurance agency for which he furnished estate analyses for prospective purchasers. Mr. Goodrich fully cooperated with the bar in its investigation, was a relatively young lawyer at the times, and enjoyed a good reputation in the community.

Your Referee has further considered the following as to the Respondent:

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), this Referee considered the following personal history and prior disciplinary record of the Respondent, to wit:

Age: 59

Date admitted to Bar: October 23, 1975

Prior disciplinary convictions and disciplinary measures imposed therein: Respondent received an admonishment by letter from the Chair of the grievance committee in The Florida Bar File No. 2003-30,862(05B) by Order dated March 16, 2006, for being found guilty of misdemeanor domestic battery and failure to pay child support.

C. **Statement of Costs:** This Referee finds the following costs were reasonably incurred by The Florida Bar:

- | | | |
|----|----------------------------------|-------------------|
| 1. | Grievance Committee Level Costs: | |
| a. | Court Reporter Costs | \$ 240.00 |
| b. | Bar Counsel Travel Costs | \$ N/A |
| 2. | Referee Level Costs: | |
| a. | Court Reporter Costs | \$ 764.00 (TBD) |
| b. | Bar Counsel Travel Costs | \$ 447.57 |
| 3. | Administrative Costs: | \$ 1,250.00 |
| 4. | Miscellaneous Costs: | |
| a. | Investigator Costs | \$ 2,963.11 (TBD) |
| b. | Copy Costs | \$ 512.70 |
| c. | FedEx Overnight Charges | \$ <u>22.11</u> |

TOTAL ITEMIZED COSTS:

\$ 6,199.49

E. **Recommendation as to Disciplinary Measures to be Applied:** This Referee makes the following recommendations as to the disciplinary measures to be applied:

1. Public reprimand.
2. Completion of 25 (twenty-five) hours of Continuing Legal Education in the field of ethics within three years.
3. Payment of the costs of the disciplinary proceedings currently totaling \$6,199.49.

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with 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.

4. Immediate dissemination of the Court's Disciplinary Order to all Circuit and County Judges within the Seventh and Eighteenth Judicial Circuits of Florida at Respondent's Expense.¹

Dated this 7th day of January, 2010.

HUGH A. CARITHERS
REFEREE

¹ It is the experience of this Referee that trial judges in Florida often do not receive knowledge of disciplinary actions taken against lawyers who regularly appear before them until several weeks after the action has been taken.

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

Patricia Ann Toro Savitz, Bar Counsel
The Florida Bar
1200 Edgewater Drive
Orlando, Florida 32804-6314

Martin Lewis Cordell, Respondent
Post Office Box 547546
Orlando, Florida 32854

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

this 7th day of January, 2010.

Judicial Assistant