

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

THE FLORIDA BAR,

Complainant,

**Supreme Court Case
No. SC09-1786**

v.

SCOTT ELLIOT ROVENGER,

Respondent.

**The Florida Bar File
No. 2009-50,196(17A)**

_____ /

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar filed its complaint in the Supreme Court of Florida on September 23, 2009. Thereafter, and pursuant to an Order entered by the Supreme Court of Florida, the Chief Judge of the Fifteenth Judicial Circuit appointed the undersigned to serve as referee. In lieu of a trial, the parties have presented to me a Conditional Guilty Plea and 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 and 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, constitute the entire record.

During the course of these proceedings, respondent was represented by Howard Leslie Greitzer and 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:

1. Gregory Ernest Monaldi, Esq. (hereinafter “Monaldi”) filed a sworn Florida Bar complaint against respondent, alleging that respondent failed to pay Monaldi an attorney’s fee owed to him.

2. Monaldi claimed an entitlement to a fee in excess of 25% of the total attorney’s fee charged in the subject case.

3. Because he and Monaldi were in different law firms, respondent refused to pay Monaldi more than 25% of the total fee collected.

4. During The Florida Bar’s investigation of the matter, The Florida Bar discovered that Monaldi had also filed a civil suit against respondent, to collect the referenced attorney’s fee.

5. Specifically, Monaldi’s civil suit against Rovenger alleged that they had an ongoing and informal fee agreement: in all cases that Monaldi referred to

Rovenger for litigation, Monaldi would be entitled to a fee equal to 50% of the total attorneys' fee collected. Monaldi would also be entitled to full payment of all of his actual costs.

6. This constant but non-disclosed fee agreement between Monaldi and respondent (providing for fees substantially higher than those allowed by the Rules Regulating The Florida Bar) was never put in writing.

7. Further, the fee agreement between Monaldi and respondent was never formally disclosed to or formally approved by any client.

8. Finally, the fee sharing agreement between Monaldi and respondent exceeds the maximum percentage permitted by The Rules Regulating The Florida Bar (without court approval).

9. At all times relevant to this complaint, respondent knew that his informal fee agreement with Monaldi exceeded the fee sharing maximum allowed by The Rules Regulating The Florida Bar.

10. Respondent admitted that his fee sharing agreement with Monaldi violated The Rules Regulating The Florida Bar.

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

My recommendation as to guilt is as follows:

A. By the conduct set forth above, respondent violated R. Regulating Fla. Bar: **4-1.1(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)¹, 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.]; and **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.].

¹ R. Regulating Fla. Bar 4-1.5(f)(4)(D) limits the fee percentage which may be paid to the lawyer with “secondary responsibility” to a maximum of 25%, without Court approval.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that respondent be found guilty of Minor Misconduct, and that he be admonished by the Supreme Court of Florida, via service of their Order. I also recommend that respondent be ordered to pay the costs of this matter. 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. I believe that that this determination meets 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. 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: 56

Date Admitted to the Bar: March 28, 1978

B. Aggravating Factors: 9.22:

(i) substantial experience in the practice of law.

C. Mitigating Factors: 9.32

(a) lack of a prior disciplinary record;

- (e) full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings;
- (g) good character and reputation;
- (l) remorse.

D. Prior Discipline: None

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.

Administrative Costs	\$1,250.00
TOTAL COSTS	<u>\$1,250.00</u>

It is recommended that such costs be charged to respondent with statutory interest, until paid in full. If respondent does not pay these costs within thirty days of the Court's final Order, respondent shall 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 _____ day of _____, 2009.

Caroline Shepherd, 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, Florida 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, Florida 32399-2300; and LORRAINE CHRISTINE HOFFMANN, Bar Counsel, The Florida Bar, Lakeview Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323; and HOWARD LESLIE GREITZER, counsel for respondent, 1301 E. Broward Boulevard, Suite 220, Fort Lauderdale, Florida 33301 on this _____ day of _____, 20____.

Caroline Shepherd, Referee