

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

THE FLORIDA BAR,

**Supreme Court Case
No. SC09-1791**

Complainant,

v.

MICHAEL M. MILCHMAN,

**The Florida Bar File
No. 2010-50,402(17A)OSC**

Respondent.

_____/

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar filed a Petition for Contempt and Order to Show Cause on September 23, 2009. The Supreme Court of Florida made a circuit appointment on February 15, 2010 and the chief judge entered an administrative order assigning a referee on February 24, 2010. The case progressed until respondent filed a successful motion (dated July 20, 2010) to disqualify the referee. The undersigned successor referee was appointed on August 2, 2010. Thereafter, the matter was set for calendar call, and trial. Prior to trial, but on the day of trial, the parties announced settlement. A transcript of the December 9, 2010 hearing, during which respondent entered his plea, has been included in the record forwarded to the Supreme Court of Florida.

The parties have presented to me a 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 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, constitute the entire record.

During the course of these proceedings, respondent was represented by Christopher A. Grillo; The Florida Bar was represented by Lorraine Christine Hoffmann.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT WITH WHICH RESPONDENT IS CHARGED:

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. On October 28, 2008, in Supreme Court Case Number SC06-2189, the Supreme Court of Florida entered an Order suspending respondent from the practice of law.

2. This Court Order compelled respondent to "close out his practice" within thirty days, and stated that: "[r]espondent shall accept no new business from the date this order is filed until he is reinstated."

3. On November 4, 2008, in direct contradiction of the Order of the

Supreme Court of Florida directing him to accept no new business, respondent accepted legal fees to represent Marc Mamert (hereinafter “Mamert”) in a criminal case. Mamert’s sworn bar complaint and follow-up letter to The Florida Bar, were attached to The Florida Bar’s Petition for Contempt and Order to Show Cause as **Composite Exhibit A**.

4. On November 4, 2008, in direct contradiction of the Order of the Supreme Court of Florida directing him to accept no new business, respondent caused Mamert to deposit the \$1,500 legal fee, in cash, in respondent’s Wachovia bank account.

5. On November 4, 2008, Mamert did deposit \$1,500 in cash into respondent’s Wachovia bank account. The deposit receipt from Wachovia Bank, NA, Dadeland Branch, Miami, was attached to The Florida Bar’s Petition for Contempt and Order to Show Cause as **Exhibit B**. It is undisputed that this cash deposit was for legal fees in Mamert’s new criminal case.

6. Respondent admitted that the bank account into which Mamert had made the \$1,500 cash deposit was respondent’s law office operating account. Respondent also told The Florida Bar that the deposit was made “based on an arrangement [respondent] had at that time with Daryl [sic] Mitchell, who handled the case and received a portion of the funds.” This representation was set forth in respondent’s letter to The Florida Bar (through counsel) dated September 10, 2009.

A copy of this letter was attached to The Florida Bar's Petition for Contempt and Order to Show Cause as **Exhibit C**.

7. On September 1, 2009, Darryl Mitchell, Esq. advised The Florida Bar that:

- A. he never represented Mamert;
- B. the Notice of Appearance filed in Mitchell's name (in Mamert's criminal case) was signed by respondent, and
- C. he received no payment from Mamert's cash deposit into respondent's law office operating account.

The letter to The Florida Bar from Darryl Mitchell was attached to The Florida Bar's Petition for Contempt and Order to Show Cause as **Exhibit D**.

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

Based on the pleadings, respondent's testimony before me on December 9, 2010, and the Guilty Plea for Consent Judgment submitted to me, I find that The Florida Bar has proven contempt by clear and convincing evidence. I find that respondent failed to comply with all of the terms and conditions of his suspension, in direct violation of the Order of the Supreme Court of Florida.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that respondent receive a 3-year suspension, to be entered nunc

pro tunc September 23, 2009,¹ and that he be required to pay The Florida Bar's costs in this matter.

I am satisfied that a 3-year suspension, nunc pro tunc September 23, 2009, and payment of The Florida Bar's costs is an appropriate disposition of this matter. I find that this sanction meets the Court's criteria for appropriate bar discipline: it is sufficient to protect the 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:

In entering this report, I considered the following personal history and prior disciplinary record of respondent:

A. Personal History of Respondent:

Age: 54

Date Admitted to the Bar: January 31, 1983

B. Prior Discipline: Respondent received a public reprimand for trust accounting violations via Supreme Court Order dated September 1, 2005 in Supreme Court Case No. SC04-1773. Respondent received a 91-day suspension for contempt and trust accounting violations via Supreme Court Order dated October 28, 2008 in Supreme Court Case No. SC06-2189.

¹ The Florida Bar filed its Petition for Contempt and Order to Show Cause on September 23, 2009.

Finally, respondent received an 18-month suspension for misrepresentation and personal behavior via Supreme Court Order dated July 16, 2009 in Supreme Court Case No. SC08-696.

C. Aggravating Factors: None

D. Mitigating Factors: I have considered the mitigation advanced by respondent in his plea and accepted his representation that he initially believed that his representation of Mamert would begin prior to the cut-off date established by the Court's Order.

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	\$ - 0 -
2.	Bar Counsel Travel Costs	\$ - 0 -
B.	Referee Level Costs:	
1.	Court Reporter Costs	\$ 142.00
2.	Bar Counsel Travel Costs	\$ 64.20
C.	Administrative Costs	\$1,250.00
D.	Auditor Costs	\$ - 0 -
E.	Miscellaneous Costs:	
1.	Investigative Costs	\$ 283.59
2.	Witness Fees+travel costs	\$ 105.25
3.	Copy Costs	\$ - 0 -
4.	Telephone Charges	\$ - 0 -
5.	Translation Services Fees	\$ - 0 -
TOTAL COSTS		<u>\$1,845.04</u>

It is recommended that the foregoing costs be charged to respondent, with statutory interest until paid in full. If this cost judgment is not satisfied within thirty days of the Court's order in this case, respondent shall be deemed delinquent, 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 February, 2011.

THOMAS H. BARKDULL III, 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, FL 32399-1927, and that copies were mailed by regular mail to the following: Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300; and Lorraine Christine Hoffmann, Bar Counsel, The Florida Bar, Lakeshore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, FL 33323, and to Christopher A. Grillo, counsel for respondent, 1 East Broward Boulevard, Suite 700, Fort Lauderdale, FL 33301 on this _____ day of _____, 2011.

THOMAS H. BARKDULL, III, Referee