

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

G. ERIC MARSHALL,

Respondent.

Supreme Court Case
No. SC10-1293

The Florida Bar File Nos.

2007-70,600(11L), 2008-70,028(11L)
2009-70,517(11L), 2009-70,679(11L)
2009-70,709(11L), 2009-70,917(11L)
2009-71,057(11L), 2009-71,060(11L)
2010-70,477(11L), 2010-70,744(11L)
2010-71,256(11L), 2010-71,266(11L)
2010-71,311(11L), 2011-70,184(11L-OSC)
2011-70,307(11L), 2011-70,357(11L)
2011-70,380(11L) & 2011-70,590(11L)

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, review of a Stipulation as to Probable Cause, Unconditional Guilty Plea and Consent Judgment for Discipline was undertaken. All of the pleadings are forwarded with this report and the foregoing constitutes the record in this case.

The following attorneys acted as counsel for the parties:

On behalf of The Florida Bar: Jennifer Falcone Moore, Bar Counsel
The Florida Bar
444 Brickell Avenue, Suite M-100
Miami, Florida 33131

On behalf of the Respondent: Gretchen A. Marshall, Esq.
Nine Island Avenue, #404
Miami Beach, Florida 33139

Respondent submitted a Stipulation as to Probable Cause, Unconditional Guilty Plea and Consent Judgment for Discipline (“consent judgment”) which has been approved and signed by both Respondent’s counsel and Bar counsel, and provides for the following:

- A. Three year suspension *nunc pro tunc* to October 1, 2010, the date of Respondent’s first negative drug screen.
- B. A probationary period of three (3) years to become effective upon entry of the final order of discipline by the Supreme Court of Florida. The following special conditions of probation shall be satisfied and completed:
 - 1) Respondent shall participate actively in the program offered by Florida Lawyer’s Assistance, Inc. (FLA) by signing a rehabilitation contract with that organization within thirty (30) days of entry of the Supreme Court order approving this consent judgment; or in the alternative, if Respondent is still in the residential inpatient treatment program, Respondent shall sign the FLA rehabilitation contract within thirty (30) days of his successful completion of that program. Respondent shall comply with all terms of the rehabilitation contract and shall be responsible for any fees incurred for monitoring such contract. Fees may include, but not be limited to, a registration fee of \$250 and a probation monitoring fee of \$100 a month. These fees shall be remitted to the bar’s headquarters office no later than the end of each respective month in which the monitoring fee is due. *Failure to comply with the conditions of treatment or counseling as recommended by Florida Lawyer’s Assistance, Inc. and/or pay the fees set forth above shall be deemed cause to revoke probation.*

- 2) Respondent shall pay restitution to the following former clients/complainants in the amounts delineated below. Respondent must submit proof of payment of restitution to the Bar's headquarters office in Tallahassee prior to the expiration of his term of probation. Respondent shall provide verifiable proof of payment and receipt which shall consist of a copy (front and back) of the negotiated check or a copy of the check and certified return receipt. In the event the client cannot be located after a diligent search, respondent shall execute an affidavit of diligent search and provide same to The Florida Bar and shall pay the full amount of the restitution to the Clients' Security Fund of The Florida Bar within 30 days of the date of the affidavit of diligent search.
- a) As to The Florida Bar File No. 2007-70,600(11L), Respondent shall pay restitution to Amanda Jones in the amount of \$443.00;
 - b) As to The Florida Bar File No. 2009-70,917(11L), Respondent shall pay restitution to Elaine K. Renard in the amount of \$500.00;
 - c) As to The Florida Bar File No. 2009-71,057(11L), Respondent shall pay restitution to Renia Smith in the amount of \$900.00;
 - d) As to The Florida Bar File No. 2010-70,477(11L), Respondent shall pay restitution to Victor Di Persia in the amount of \$250.00;
 - e) As to The Florida Bar File No. 2010-70,744(11L), Respondent shall pay restitution to Cortia Wong in the amount of \$300.00;
 - f) As to The Florida Bar File No. 2010-71,256(11L), Respondent shall pay restitution to Bernard Moore

in the amount of \$500.00;¹

- g) As to The Florida Bar File No. 2010-71,266(11L), Respondent shall pay restitution to Gerald Morrison in the amount of \$200.00;
- h) As to The Florida Bar File No. 2010-71,311(11L), Respondent shall pay restitution to Dollester Covington in the amount of \$200.00;
- i) As to The Florida Bar File No. 2011-70,307(11L), Respondent shall pay restitution to Carlos Lopez in the amount of \$1,250.00;
- j) As to The Florida Bar File No. 2011-70,357(11L), Respondent shall pay restitution to Love Muselaire in the amount of \$250.00;
- k) As to The Florida Bar File No. 2011-70,380(11L), Respondent shall pay restitution to Alberto Rodriguez in the amount of \$250.00; and
- l) As to The Florida Bar File No. 2011-70,590(11L), Respondent shall pay restitution to Wayne Johnson in the amount of \$500.00.

Having reviewed the record of these proceedings, I find that Respondent's plea and the recommendation of The Florida Bar are both fair to the Respondent and in the best interest of the public. Accordingly, Respondent's Stipulation as to Probable Cause, Unconditional Guilty Plea and Consent Judgment for Discipline

¹ Respondent agrees to pay any additional restitution to the complainant Bernard Moore should complainant provide documentary proof to The Florida Bar, within the probationary period, that he paid Respondent more than \$500.00 in legal fees.

and the terms recommended by The Florida Bar are accepted and hereby adopted as the recommendation of this referee in this matter.

II. FINDINGS OF FACT: In his consent judgment, Respondent admits certain factual matters which I hereby accept and adopt as the findings of fact in this cause, to-wit:

A. As to The Florida Bar File Nos. 2007-70,600(11L), 2009-70,709(11L), 2009-70,917(11L), 2009-71,057(11L), 2010-70,477(11L), 2010-70,744(11L), 2010-71,256(11L), 2010-71,266(11L), 2010-71,311(11L), and 2011-70,357(11L), Respondent admits that the following facts are true and accurate and stipulates as follows:

1. Respondent was retained to perform agreed upon legal services. Respondent failed to perform all, or some significant portion, of the services he was paid to perform.

2. Respondent failed to communicate with his clients, and failed to return phone calls, letters and e-mails. Respondent further failed to return the unearned portions of his fees or retainers.

3. Similarly, when his clients filed complaints with the Florida Bar, Respondent failed to respond to Bar Counsel's request for a response and/or for additional information. As a result, on July 6, 2010, this Court issued an Order finding Respondent in contempt for his failure to respond to the Florida Bar, and

suspending his license to practice law.

B. As to The Florida Bar File Nos. 2008-70,028(11L), 2009-70,679(11L), and 2009-71,060(11L), Respondent admits that the following facts are true and accurate and stipulates as follows:

1. Upon completion of his professional services, Respondent failed to return important case related documents to his clients, thereby prejudicing the clients' ability to pursue post-conviction relief.

2. Respondent failed to communicate with his clients, and failed to return phone calls, letters and e-mails.

3. Similarly, when his clients filed complaints with the Florida Bar, Respondent failed to timely respond to Bar Counsel's request for a response and/or for additional information. As a result, on July 6, 2010, this Court issued an Order finding Respondent in contempt for his failure to respond to the Florida Bar, and administratively suspending his license to practice law.

4. When, after repeated requests, in at least one case Respondent did eventually respond to the grievance, he made misrepresentations regarding the cause of his failure to provide the requested documents, and failed to deliver on his renewed promise to provide the requested documents.

C. As to The Florida Bar File No. 2009-70,517(11L), Respondent admits that the following facts are true and accurate and stipulates as follows:

1. Respondent made misrepresentations to Bar Counsel regarding his continuing to engage in the practice of law during a period of delinquency for failure to pay his membership fees for the fiscal year of 2008-2009.

2. Respondent failed to respond when Bar Counsel requested additional information.

D. Additionally, Respondent admits that he has engaged in contemptuous conduct in violation of this Court's July 6, 2010, Order of Suspension:

1. As to The Florida Bar File Nos. 2011-70,307(11L), 2011-70,380(11L), and 2011-70,590(11L), Respondent admits that the following facts are true and accurate and stipulates as follows:

a) Following this Court's issuance of the Order of Suspension prohibiting Respondent from taking on new clients from that point forward, Respondent met with prospective new clients, agreed to perform legal services on their behalf and accepted a retainer or payment of fees from same.

2. As to The Florida Bar File No. 2011-70,184(11L-OSC), Respondent admits that the following facts are true and accurate and stipulates as follows:

a) Subsequent to the effective date of this Court's July 6, 2010 Order of Suspension, Respondent appeared before the Honorable Peter R. Lopez on behalf of a criminal defendant where he misrepresented the basis for his

suspension to the Judge.

b) Respondent further attempted to engage the prosecutor in plea negotiations on behalf of the incarcerated criminal defendant.

III. RECOMMENDATION AS TO GUILT: Based upon Respondent's admissions, I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

- As to Florida Bar File No. 2007-70,600(11L), he has violated Rule 4-1.4 (Communication) of the Rules of Professional Conduct; as to Florida Bar File No. 2009-70,709(11L), he has violated Rule 4-1.1 (Competence), Rule 4-1.3 (Diligence), Rule 4-1.4 (Communication) and Rule 4-8.4(g) (A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency); as to Florida Bar File No. 2009-70,917(11L), he has violated Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and Rule 4-8.4(g) (A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency); as to Florida Bar File No. 2009-71,057(11L), he has violated Rule 4-1.1 (Competence), Rule 4-1.3 (Diligence), Rule 4-1.4 (Communication) and Rule 4-8.4(g) (A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency); as to Florida Bar File No. 2010-70,477(11L), he has violated Rule 4-1.1 (Competence), Rule 4-1.3 (Diligence), Rule 4-1.4 (Communication), Rule 4-8.4(b)

(A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and Rule 4-8.4(g) (A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency); as to Florida Bar File No. 2010-70,744(11L), he has violated Rule 4-1.1 (Competence), Rule 4-1.3 (Diligence), Rule 4-1.4 (Communication), Rule 4-8.4(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and Rule 4-8.4(g) (A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency); as to Florida Bar File No. 2010-71,256(11L), he has violated Rule 4-1.1 (Competence), Rule 4-1.3 (Diligence), Rule 4-1.4 (Communication), Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and Rule 4-8.4(g) (A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency); as to Florida Bar File No. 2010-71,266(11L), he has violated Rule 4-1.1 (Competence), Rule 4-1.3 (Diligence), Rule 4-1.4 (Communication), Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and Rule 4-8.4(g) (A lawyer shall not fail to respond, in writing, to any official

inquiry by bar counsel or a disciplinary agency); as to Florida Bar File No. 2010-71,311(11L), he has violated Rule 4-1.1 (Competence), Rule 4-1.3 (Diligence), Rule 4-1.4 (Communication), Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and Rule 4-8.4(g) (A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency); and as to Florida Bar File No. 2011-70,357(11L), he has violated Rule 4-1.1 (Competence), Rule 4-1.3 (Diligence), Rule 4-1.4 (Communication), and Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct.

- As to Florida Bar File No. 2008-70,028(11L), he has violated Rule 4-1.4 (Communication), Rule 4-8.1 (Bar Admission and Disciplinary Matters), and Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); as to Florida Bar File No. 2009-70,679(11L), he has violated Rule 4-1.4 (Communication) and Rule 4-8.4(g) (A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency); and as to Florida Bar File No. 2009-71,060(11L), he has violated Rule 4-1.4 (Communication) and Rule 4-8.4(g) (A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency) of the Rules of Professional Conduct.

- As to The Florida Bar File No. 2009-70,517(11L) he has violated Rule 4-8.1 (Bar Admission and Disciplinary Matters), Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and Rule 4-8.4(g) (A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency) of the Rules of Professional Conduct.

- As to The Florida Bar File Nos. 2011-70,307(11L), 2011-70,380(11L), 2011-70,590(11L), and 2011-70,184(11L-OSC), Respondent is found to be in contempt of this Court's July 6, 2010, Order of Suspension.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE

APPLIED: Having reviewed the record of these proceedings, I find that Respondent's plea and the recommendation of The Florida Bar as to terms of discipline are both fair to the Respondent and in the best interest of the public. Accordingly, I recommend that Respondent be found guilty of misconduct justifying disciplinary measures and that Respondent receive the following discipline:

- A. Three year suspension *nunc pro tunc* to October 1, 2010, the date of Respondent's first negative drug screen.
- B. A probationary period of three (3) years to become effective upon entry of the final order of discipline by the Supreme Court of Florida. The following special conditions of probation shall be satisfied and completed:

- 1) Respondent shall participate actively in the program offered by Florida Lawyer's Assistance, Inc. (FLA) by signing a rehabilitation contract with that organization within thirty (30) days of entry of the Supreme Court order approving this consent judgment; or in the alternative, if Respondent is still in the residential inpatient treatment program, Respondent shall sign the FLA rehabilitation contract within thirty (30) days of his successful completion of that program. Respondent shall comply with all terms of the rehabilitation contract and shall be responsible for any fees incurred for monitoring such contract. Fees may include, but not be limited to, a registration fee of \$250 and a probation monitoring fee of \$100 a month. These fees shall be remitted to the bar's headquarters office no later than the end of each respective month in which the monitoring fee is due. *Failure to comply with the conditions of treatment or counseling as recommended by Florida Lawyer's Assistance, Inc. and/or pay the fees set forth above shall be deemed cause to revoke probation.*
- 2) Respondent shall pay restitution to the following former clients/complainants in the amounts delineated below. Respondent must submit proof of payment of restitution to the Bar's headquarters office in Tallahassee prior to the expiration of his term of probation. Respondent shall provide verifiable proof of payment and receipt which shall consist of a copy (front and back) of the negotiated check or a copy of the check and certified return receipt. In the event the client cannot be located after a diligent search, respondent shall execute an affidavit of diligent search and provide same to The Florida Bar and shall pay the full amount of the restitution to the Clients' Security Fund of The Florida Bar within 30 days of the date of the affidavit of diligent search.
 - a) As to The Florida Bar File No. 2007-70,600(11L), Respondent shall pay restitution to Amanda Jones in the amount of \$443.00;

- b) As to The Florida Bar File No. 2009-70,917(11L), Respondent shall pay restitution to Elaine K. Renard in the amount of \$500.00;
- c) As to The Florida Bar File No. 2009-71,057(11L), Respondent shall pay restitution to Renia Smith in the amount of \$900.00;
- d) As to The Florida Bar File No. 2010-70,477(11L), Respondent shall pay restitution to Victor Di Persia in the amount of \$250.00;
- e) As to The Florida Bar File No. 2010-70,744(11L), Respondent shall pay restitution to Cortia Wong in the amount of \$300.00;
- f) As to The Florida Bar File No. 2010-71,256(11L), Respondent shall pay restitution to Bernard Moore in the amount of \$500.00;²
- g) As to The Florida Bar File No. 2010-71,266(11L), Respondent shall pay restitution to Gerald Morrison in the amount of \$200.00;
- h) As to The Florida Bar File No. 2010-71,311(11L), Respondent shall pay restitution to Dollester Covington in the amount of \$200.00;
- i) As to The Florida Bar File No. 2011-70,307(11L), Respondent shall pay restitution to Carlos Lopez in the amount of \$1,250.00;
- j) As to The Florida Bar File No. 2011-70,357(11L), Respondent shall pay restitution to Love Muselaire in the amount of \$250.00;

² Respondent agrees to pay any additional restitution to the complainant Bernard Moore should complainant provide documentary proof to The Florida Bar, within the probationary period, that he paid Respondent more than \$500.00 in legal fees.

- k) As to The Florida Bar File No. 2011-70,380(11L), Respondent shall pay restitution to Alberto Rodriguez in the amount of \$250.00; and
- l) As to The Florida Bar File No. 2011-70,590(11L), Respondent shall pay restitution to Wayne Johnson in the amount of \$500.00.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

Age: 39

Date admitted to The Florida Bar: July 27, 2005

Prior Disciplinary Record: In *Supreme Court Case No. SC10-622, The Florida Bar File No. 2010-70,930(11L-OSC)*, Respondent was suspended as a result of his failure to respond to official Bar inquiries.

VI. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE

MANNER IN WHICH COSTS SHOULD BE TAXED: The Florida Bar shall

be awarded their necessary taxable costs of this proceeding and shall submit their statement of costs, as well as a request for payment of same.

Dated this _____ day of _____, 2011.

GLORIA GONZALEZ-MEYER, Referee
Circuit Court Judge
Coral Gables Courthouse
3100 Ponce De Leon Boulevard
Courtroom 1-5
Coral Gables, Florida 33134

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original Report of Referee was mailed to the **Honorable Thomas D. Hall**, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-2300; and a true and correct copy was mailed to **Gretchen Marshall**, Attorney for the Respondent, at her record Bar address of Nine Island Avenue, #404, Miami Beach, Florida 33139; and to **Jennifer R. Falcone Moore**, Bar Counsel, The Florida Bar, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131; and to **Kenneth L. Marvin**, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, on this _____ day of January, 2011.

GLORIA GONZALEZ-MEYER, Referee
Circuit Court Judge