

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case Nos. SC10-1334 and SC11-36

v.

TFB File Nos. 2009-00,156(4B),
2009-00,188(4B),
2009-00,518(4B),
2009-00,676(4B),
2010-00,449(4B)

JAY CLIFTON HALSEMA,

Respondent.

_____ /

**REPORT OF THE REFEREE ACCEPTING
PERMANENT DISBARMENT ON CONSENT**

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On July 9, 2010, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in Supreme Court Case No. SC10-1334 and, on January 7, 2011, in Supreme Court Case No. SC11-36, in these proceedings. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. Narrative Summary Of Case.

COUNT I

TFB File No. 2009-00,156(4B)

1. On or about May 7, 2008, Respondent was retained pursuant to a contract for legal services by Heidi Jenkins-Gardner to represent her in regards to a dissolution of marriage.
2. As provided for in the contract for legal services, Respondent was paid \$4,000 as a retainer and a non-refundable minimum fee by Jenkins-Gardner.
3. As part of Respondent's June 15, 2008 invoice, he requested \$7,500 to replenish the retainer.
4. Jenkins-Gardner subsequently provided Respondent \$7,500 as a second retainer.
5. On July 3, 2008, Jenkins-Gardner notified Respondent she was terminating Respondent's services and requested Respondent return the second retainer of \$7,500. Respondent agreed to return the balance of her retainer of \$7,500.
6. Jenkins-Gardner requested Respondent provide her an invoice of any charges against the \$7,500 retainer which Respondent failed to provide.
7. Respondent failed to provide an invoice for any legal services after June 15, 2008, that were charged against the remaining balance of the initial retainer or the second retainer of \$7,500.

8. Respondent failed to refund any balance of the \$7,500 retainer to Jenkins-Gardner.

COUNT II

TFB File No. 2009-00,188(4B)

9. On or about March 4, 2005, Respondent purchased a condominium located at 205 South Ocean Drive, Unit 104, Ponte Vedra Beach, Florida.
10. Subsequent to purchasing the Ocean Grande Drive condominium, Respondent applied for and sought to refinance the condominium with Summit Mortgage.
11. As part of the loan application process, Respondent submitted a Uniform Residential Loan Application to Summit Mortgage.
12. In executing the Uniform Residential Loan Application, Respondent acknowledged that knowingly making any false statements concerning any facts within the application was a federal crime.
13. Under Section VI of Respondent's Uniform Loan Application, page 3, Respondent listed the Ocean Grande Drive condominium as real estate owned and indicated there were no mortgages or liens on the condominium.
14. At the time Respondent executed the Uniform Loan Application for the Summit Mortgage loan, there were actually two prior mortgages on the property. One mortgage was in favor of J. Michael Barker, Trustee, for \$210,000 and another was given to Richard D. Barker, Jr., and Claudette Barker for \$140,000.
15. Respondent also signed a Borrower's Certification and Authorization as part of the Summit loan application wherein he further certified that all information provided was true and complete, he made no misrepresentations in the loan documents, and did not omit any pertinent information.

16. Respondent requested a mortgage loan from Summit Mortgage in the amount of \$417,000. As demonstrated by the contract, this loan was intended to be a first mortgage on the Ocean Grande Drive condominium.
17. The refinancing loan was closed on February 3, 2006, and Respondent was disbursed proceeds from the loan in the amount of \$398,397.47.
18. At the closing, Respondent accepted the above-referenced proceeds of the loan and failed to pay off the outstanding Barker mortgages and converted such funds to his personal use improperly.
19. As a result of Respondent's failure to pay off the outstanding mortgages on the Ocean Grande Drive condominium from the Summit loan proceeds, a foreclosure action was filed against Respondent and Summit.
20. On August 29, 2008, Respondent was mailed a copy of the Bar complaint in this matter and was instructed he was required by rule to respond to the complaint by September 15, 2008. Respondent failed to respond as directed.
21. On September 26, 2008, Respondent was sent a second notice requiring his response to the Bar complaint by October 7, 2008. Again, Respondent failed to respond as directed.

COUNT III

TFB File No. 2009-00,518(4B)

22. At all times pertinent to this complaint, Respondent was married to Catherine M. Halsema.
23. Mrs. Halsema was the defendant in Duval County Court Case No. 2007-SC-012736 in the matter of Ford Motor Credit v. Catherine M. Halsema.
24. A final judgment was awarded Ford Motor Credit when Catherine Halsema failed to appear at the scheduled trial.

25. As a result of the final judgment, a writ of garnishment of wages was served on Catherine Halsema.
26. Respondent filed a motion in Duval County Court to set aside the final judgment and a claim of exemption from the writ of garnishment on behalf of Catherine Halsema.
27. At the time Respondent filed the aforementioned pleadings, he was a delinquent member of The Florida Bar for nonpayment of annual membership fees and not permitted to practice law.
28. On October 9, 2008, Respondent appeared in court before Judge Robert Arias on behalf of his wife, Catherine Halsema. At this time, Respondent represented to Judge Arias that Respondent had sent a check by overnight mail to The Florida Bar for his delinquent annual membership fees and that he should have been reinstated.
29. At the October 9, 2008, hearing, the Court received documents purportedly signed by Catherine Halsema that showed a signature markedly different from the signature of Mrs. Halsema contained in the exemption from garnishment filed by Respondent.
30. Judge Arias continued the matter until November 7, 2008, at which time Catherine Halsema was to appear and testify as to the motion to set aside the final judgment and her claim of exemption.
31. On November 7, 2008, Catherine Halsema failed to appear in court.
32. Respondent did appear in court before Judge Arias on November 7, 2008, and announced he was still not eligible to practice law. Respondent offered, as an explanation, that his check to The Florida Bar had not cleared due to insufficient funds.
33. As an explanation for the discrepancy in the signatures of his wife, Catherine Halsema, on the documents before Judge Arias, Respondent represented he had attached the wrong signature page.

34. While Respondent later produced a correct signature page to Judge Arias, he gave no explanation of who had signed his wife's signature to the incorrect signature page.
35. As a result of Respondent's actions in the case of Ford Motor Credit v. Catherine Halsema, The Florida Bar opened a complaint file against Respondent. On January 5, 2009, Respondent was asked to respond to the complaint within 15 days under the provisions of Rule 4-8.4(g)(1) of the Rules Regulating The Florida Bar. Respondent failed to respond as directed.

COUNT IV

TFB File No. 2009-00,676(4B)

36. On or about January 7, 2009, Respondent entered into an agreement with Tony R. Foster of South Daytona, Florida, to purchase a 2001 Ducati motorcycle.
37. On or about January 7, 2009, Respondent deposited check #1002 for the sum of \$1,500 drawn on his account with Etrade Bank into Foster's account for the deposit on the Ducati motorcycle.
38. On or about January 10, 2009, Respondent deposited check #1003 for the sum of \$2,850 drawn on his account with Etrade bank into Foster's account for the balance of the sale price on the Ducati motorcycle.
39. After depositing the aforementioned Etrade Bank checks into Foster's account, Respondent took possession of the Ducati motorcycle on January 14, 2009.
40. On January 15, 2009, Foster received notice that Respondent's check #1002 for \$1,500 had been returned for insufficient funds.
41. On January 21, 2009, Foster received notice that Respondent's check #1003 for \$2,850 had been returned for insufficient funds.
42. On January 15 and 23, 2009, Foster sent Respondent formal notices of the insufficient funds checks and demanded payment.

43. From January 19, 2009 until January 26, 2009, Foster and Respondent engaged in a series of email communications concerning the insufficient funds checks from Respondent to Foster.
44. Respondent repeatedly informed Foster that he was making arrangements to make the Etrade Bank checks #1002 and #1003 good.
45. On January 21, 2009, Respondent represented to Foster that cashier checks were to be obtained for all funds plus bank charges.
46. On January 22, 2009, Respondent later represented that all the requested funds were being wired to Foster's account.
47. Respondent failed to provide Foster with cashier checks or wired funds to replace the worthless checks given for the purchase of the Ducati motorcycle as represented to Foster on January 22, 2009.

COUNT V

TFB File No. 2010-00,449(4B)

Morgan Condominium Purchase

48. Respondent undertook the representation of William C. Morgan (Morgan) in a commercial real estate transaction in or around August 2004.
49. While still representing Morgan, Respondent entered into a transaction with Morgan to purchase a condominium located at Ocean Grande Boulevard, Ponte Vedra Beach, Florida.
50. On March 8, 2005, Morgan executed a document prepared by Respondent transferring his interest in the Ocean Grande condominium to Respondent.
51. In conjunction with the sale of the Ocean Grande condominium, Respondent executed a promissory note to Morgan in the amount of \$288,973.24.

52. The promissory note by Respondent to Morgan, in connection with the Ocean Grande condominium, was unsecured. No mortgage was executed in favor of Morgan.
53. Respondent failed to advise Morgan, in writing, of the desirability of seeking advice of independent counsel as to the terms of the condominium transaction or gave Morgan a reasonable opportunity to seek such independent legal advice.
54. Respondent failed to obtain Morgan's informed consent, in writing, waiving Respondent's potential conflict of interest.
55. After executing the promissory note and obtaining possession of Morgan's condominium, Respondent failed to make payments to Morgan as required by the promissory note.

Green Ridge Marital Home

56. Respondent owned with his wife, Catherine Halsema, their marital home located at 1205 Greenridge Road, Jacksonville, Florida.
57. The Greenridge property was purchased from George and Julie Bisig on or about November 10, 2005.
58. Catherine Halsema has stated she did not sign any purchase documents relating to the Greenridge property.
59. The HUD Final Settlement Statement (HUD-1) and the Purchase Money Mortgage executed on December 9, 2005, contained both Respondent's signature and the signature of his wife, Catherine Halsema.
60. Respondent procured the notarization of the signature purported to be Catherine Halsema's from employees of Respondent's law firm – namely: Kendall Greiner and Christina Christopher. Both acknowledge Catherine Halsema was not present when they notarized her signature on the Greenridge documents.

61. Respondent had produced previously executed loan documents to Greiner and Christopher and instructed them to witness and notarize the documents.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating Rules 1-3.6(a) (Any person now or hereafter licensed to practice law in Florida shall be deemed a delinquent member if the member fails to pay membership fees.), 4-1.4(a) (Informing Client of Status of Representation), 4-1.4(b) (Duty to Explain Matters to Client), 4-1.8(a) (Business Transactions With or Acquiring Interest Adverse to Client), 4-3.3 (Candor Toward the Tribunal), 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 in other respects.), 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.), 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.), and 4-8.4(g)(1) (A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors.) of the Rules Regulating The Florida Bar.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by permanent disbarment and payment of The Florida Bar's taxable costs. It has also been shown that Respondent agreed to surrender his Bar license and was ordered to do so as part of his sentence in the criminal case of State of Florida v. Halsema, Case No. 16-2010-CF-011885, Circuit Court, Duval County, Florida.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1), I considered the following personal history of Respondent, to wit:

Age: 38

Date admitted to the Bar: April 20, 1998

Prior Discipline: None

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs, pursuant to	
Rule 3-7.6(q)(1)(I), Rules of Discipline	\$ 1,250.00
Bar Counsel Travel Expenses	528.75
Investigative Costs and Expenses	<u>591.75</u>
TOTAL	\$ 2,370.50

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within

thirty days of said judgment becoming final, 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 _____, 2011.

Richard S. Graham
Circuit Court Judge/Referee
Volusia County Courthouse Annex
125 East Orange Avenue, Suite 307
Daytona Beach, Florida 32114

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, Supreme Court Building, Tallahassee, Florida 32399-1927, and that copies were furnished by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; «TFBATTY», Bar Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and JAY CLIFTON HALSEMA, Respondent, whose record Bar address is 4446-1A Hendricks Avenue, Suite 378, Jacksonville, Florida 32207-6326, on this _____ day of _____, 2011.

Richard S. Graham, Referee