IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JOSE A. GARCIA,

Respondent.

CONFIDENTIAL

CASE NO. 65, 936

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of The Florida Bar, hearings were held on January 25, 1985, in Lakeland, Florida. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to The Supreme Court of Florida, with this report, constitute the record in this case. The following attorneys appeared as counsel for the parties:

For The Florida Bar: David G. McGunegle, Esquire

For the Respondent: The respondent appeared pro se.

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is Charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

AS TO COUNT I

1. In April, 1983, the Respondent met with one Peggy Haroon in a parking lot in Winter Haven, Florida, and agreed to represent her in a dissolution action that she wished to prosecute against her husband.

2. Approximately one month later Mrs. Haroon met with the Respondent and signed some forms related to the dissolution action. She could not recall exactly what the forms were.

3. The Respondent later mailed Mrs. Haroon a second set of the same forms to be signed. Those forms were sent to her by mail accompanied by a letter. The letter requested that

she sign and return the enclosed forms so that he could proceed with the dissolution action.

4. Subsequently, but at a time not certain to this Referee, the Respondent advised Mrs. Haroon that the dissolution action was being advertised in Pakistan. He further advised her that it would be several weeks before they could have a hearing because the judge was old and slow.

5. Mrs. Haroon called the Clerk of the Circuit Court in Polk County after the communication referred to in the preceding paragraph. She was advised that no dissolution action had been filed on her behalf.

6. In January, 1984, Mrs.Haroon wrote the Respondent and discharged him as her attorney. She requested a return of the deposit she had paid him. The Respondent then sent her an additional copy of the letter he had previously written to her, with a new bill.

7. After Mrs. Haroon complained to The Florida Bar the Respondent returned $80.00 to her.

8. Although the Respondent suggests that he told Mrs. Haroon he was not going to file the action until he was paid in full this Referee finds that such is not the case. He represented to her, at least by implication, that the dissolution action had been filed and was proceeding.

9. Mrs. Haroon and her husband maintained their marital domicile in Florida. She was seeking nothing in the way of personal relief from her husband; she simply wanted a divorce. In suggesting to Mrs. Haroon that the action was being advertised in Pakistan, her husband's residence at the time of the proposed dissolution, the Respondent was either making excuses for his dilatory practice or simply didn't know how to obtain a dissolution under these circumstances.

10. The Respondent's conduct in this matter persuades this Referee that he undertook to represent a prospective plaintiff in a dissolution action when he was apparently ill equipped to prosecute it. Although he purported to represent

her in this matter he did very little on her behalf except take money from her.

AS TO COUNT II

1. In March, 1984, Donnis Foster, a former paralegal of the Respondent paid for repairs to his car with a trust account check of the Respondent's in the amount of $830.00. The check dated March 30, 1984, was returned by the bank marked account closed. It was subsequently discovered Mr. Foster had taken a number of Respondent's trust account checks, forged Respondent's signatures and used them for his own benefit. Respondent thereafter filed complaints with the appropriate authorities.

2. Respondent's trust account was maintained at NCNB National Bank of Florida in Winter Haven, No. 4006707601. It was opened originally with another attorney who went off the account in approximately May of 1983. The account was closed in March, 1984. Review of the account records beginning in January, 1983, demonstrated that much of the required record keeping information was lacking. Many of the monthly bank statements, cancelled checks and check stubs were missing. Numerous deposit slips did not list the client(s) from which the money was received. Respondent did not maintain any individual client ledger sheets although he maintained one overall sheet and some index cards which indicated the amount received but not other pertinent data such as the date. No complete or adequate record of trust fund disbursements and the appropriate recipients was kept.

3. Although Respondent indicates he did reconcile his account, he did not maintain any of the minimally required quarterly reconciliations. Throughout this period, the Respondent had checked and signed his Bar Dues Statement stating he had read the applicable rules and was in substantial minimum compliance.

4. Money had to be transferred from his office account to his trust account on at least one occasion to cover

overdrafts in the account in 1983. The account also ran negative balances at the bank in late 1983 and early 1984 primarily due to the activities of Mr. Foster. The Respondent states he did not determine these problems until he received his bank statement dated January 2, 1984, which reflected seven overdraft charges during the month of December and a closing negative balance of $343.72. The records for October and November, 1983, transactions were not available. The statement for January 31, 1984, reflects eleven overdraft charges and an ending negative balance of $213.72. In February a deposit was credited for that amount on February 16 bringing the closing balance to zero. The account was thereafter closed out in early March.

5. Prior to the problems with Mr. Foster, the Respondent had misused moneys within the trust account by paying clients on more than one occasion prior to the clients' checks actually clearing, necessitating a subsequent deposit into the account. The Respondent paid client Wilson Davis $150.00 on August 18, 1983, and $200.00 to his own paralegal wife on August 29, 1983, for work on the Davis matter prior to receiving and depositing $200.00 in cash on August 30, 1983. Although the Respondent indicates he received other cash from Mr. Davis, he did not deposit that into his trust account. Respondent also advanced costs out of the trust account prior to making a corresponding deposit for those costs.

6. Although many of the problems in Respondent's trust account were the apparent fault of his former employee, the Respondent was not maintaining or operating the trust account within the substantial minimum requirements of The Florida Bar's Integration Rule and corresponding Bylaw.

III. Recommendations as to Whether or Not the Respondent Should be Found Guilty: As to each Count of the complaint I make the folowing recommendations as to guilt or innocence:

AS TO COUNT I

I recommend that the Respondent be found guilty and specifically

that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit:

(1) Article XI, Rule 11.02(3)(a) for engaging in conduct contrary to honesty, justice and good morals.

(2) 1-102 (A)(4) by engaging in conduct involving misrepresentation, misadvising the client as to the status of her case.

(3) 1-102(A) (6) for engaging in conduct adversely reflecting on his fitness to practice law.

(4) 6-101 (A)(3) by neglecting a legal matter entrusted to him.

(5) 7-101 (A)(1) by intentionally failing to seek the lawful objective of his client.

(6) 7-101 (A)(2) for intentionally failing to carry out a contract of employment with his client.

AS TO COUNT II

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit:

(1) Article XI, Rule 11.02 (4) for misuse of trust funds.

(2) Article XI, Rule 11.02 (4) (c) and corresponding Bylaws for improper trust account record keeping.

(3) 9-102 (A) for co-mingling personal and trust account funds.

(4) 9-102 (B) (3) for failing to maintain proper trust account records.

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend that a public reprimand be adminstered to Respondent in an appropriate manner under Rule 11.10 of the Integration Rule of The Florida Bar, and further that Respondent be placed upon probation for a period of one year, consecutive to any discipline imposed in Case No. 65,468. It is further recommended that the conditions of the probation include

supervision of all the Respondent's work by a member of The Florida Bar, and the filing by the Respondent of quarterly reports on his caseload. Said reports are to be filed with the Clerk of The Supreme Court, with a copy furnished to staff counsel of The Florida Bar. Any future adjudication that the Respondent is in contempt of court, or any finding of probable cause as to conduct of the Respondent committed during the period of probation, or any failure to file a timely report as heretofore ordered, indicating that Respondent is not continuing to make satisfactory progress shall provide grounds to terminate probation and re-open the judgment.

V. Personal History and Past Disciplinary Record: After finding of guilty and prior to recommending discipline pursuant to Rule 11.06 (9) (a) (4) I considered the following personal history and prior disciplinary record of the Respondent, to wit:

1. The Respondent was graduated from the University of Miami College of law in 1977 and was admitted to practice law in the State of Florida in 1978. Prior to the instant complaints there have been no previous disciplinary matters involving the Respondent.

VI. Statement of Costs and Manner in which Cost Should be Taxed: The costs incurred in this case were concurrent with those imposed in Case No. 65,468 and were as follows:

A. Grievance Committee Level Costs	
1. Case Nos. 1084C35 and 1084C40	
a. Administrative Costs	150.00
b. Transcript of grievance committee hearing, 4/12/84	344.00
2. Case Nos. 1084C71 and 1084C76	
a. Administrative Costs	150.00
b. Transcript of grievance committee hearing, 8/9/84	306.65
B. Referee Level Costs	
1. Case Nos. 1084C35, 1084C40,1084C71 and 1084C76	
a. Administrative Costs	150.00
b. Transcript of referee hearing held 1/25/85	531.00
c. Bar counsel's travel expenses	39.00
C. Miscellaneous Costs	
a. Staff investigator's expenses	63.80
CURRENT TOTAL	$1,734.45

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

Dated this 4th day of March, 1985.

TED P. COLEMAN, Referee

Copies to:

David G. McGunegle, Bar Counsel, The Florida Bar
John T. Berry, Staff Counsel, The Florida Bar
Jose A. Garcia, Esquire