

65,481

FILED

SID J. WHITE

JUN 22 1984

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

THE FLORIDA BAR,)
)
 IN RE: PETITION FOR)
 RESIGNATION BY:)
)
 RICHARD J. BORECKY,)
)
 Petitioner.)
)
)
)
)
)

CONFIDENTIAL

Supreme Court Case No. ~~64,666~~

The Florida Bar Case Nos.

| | |
|----------|----------|
| 11A83M13 | 11A83M44 |
| 11A83M17 | 11A83M64 |
| 11A83M36 | 11A83M71 |
| 11A83M42 | 11A83M94 |
| 11A83M43 | 11A83M95 |

PETITION FOR LEAVE TO RESIGN
PENDING DISCIPLINARY PROCEEDINGS

COMES NOW THE PETITIONER, RICHARD J. BORECKY, pursuant to Article XI, Rule 11.08 of the Integration Rule of the Florida Bar, and files this Petition for Leave to Resign Pending Disciplinary Proceedings and states the following:

1. Petitioner is 52 years old and has been a member of The Florida Bar since November 19, 1969, and therefore, is subject to the jurisdiction and Disciplinary Rules of this Honorable Court.

2. That at all times incident to The Florida Bar's investigation, processing, and prosecution of this matter, Petitioner has been made aware of his right to counsel, his right to confront his accusers, his right against self-incrimination, his right to call witnesses in his own behalf, his right to formal proceedings by a Supreme Court-appointed referee, and Petitioner hereby acknowledges his waiver of same.

3. That pursuant to formal Notice of Hearing, Grievance Committee "A" of the Eleventh Judicial Circuit convened disciplinary hearings on or about February 22, 1983, and May 24, 1983 pertaining to the Florida Bar Case Nos. 11A83M13, 11A83M17, 11A83M36, 11A83M42, 11A83M43, 11A83M44, 11A83M64, 11A33M71, 11A83M94, and 11A83M95.

Respondent was duly noticed of said hearings at his Record Bar Address at 2701 So. Bayshore Drive, Suite 603, Coconut Grove, FL 33133; at his secondary law office address at 3737 S.W. 8th Street, Miami, FL; at his local residence at 5700 S.W. 94th Place, Miami, FL; and at his secondary residence at P. 2 Buttonwood Bay, Key Largo, FL 33037. Regarding the latter hearing, formal Notice of Hearing was forwarded to Respondent's then-counsel Edward Carhart, Esq., at Suite 331, 717 Ponce de Leon Blvd., Miami, Florida 33134.

4. That Respondent appeared with counsel at the initial Grievance Committee hearing convened on or about February 22, 1983; Respondent failed to appear at the second set of hearings convened on May 24, 1983, although his counsel of record attended.

5. That at both disciplinary hearings, Grievance Committee "A" of the Eleventh Judicial Circuit entertained and admitted testimony and various other documentary evidence.

6. That based upon its considered review of all the evidence, on or about May 24, 1983, Grievance Committee "A" of the Eleventh Judicial Circuit entered a finding of Probable Cause with regard to Florida Bar Case Nos. 11A83M13, 11A83M17, 11A83M36, 11A83M42, 11A83M43, 11A83M44, 11A83M64, 11A83M71, 11A83M94 and 11A83M95.

7. That by letter dated May 26, 1983, counsel for The Florida Bar notified Respondent's counsel (with copies to Respondent) of the Committee's specific findings; that subsequent to the filing of a formal complaint, the Supreme Court of Florida, on or about January 6, 1984, appointed the Honorable Linda L. Vitale to serve as Referee.

8. That pursuant to Article XI, Rule 11.08 (2) of the Intergration Rule of the Florida Bar, Petitioner hereby advises this Honorable Court of all past and pending disciplinary actions and criminal proceedings against him, to wit:

(a) That as a result of the verified allegations in The Florida Bar Case Nos. 11A83M13 (complaint of Martha L. Dardy) and 11A83M17 (Fernando J. Cantens), both matters involving alleged defalcations of clients' trust funds, Respondent was temporarily suspended from the practice of law by Order of this Honorable Court, said Order dated December 21, 1982. As a result of same, Respondent remains temporarily suspended from the practice of law as of the date of the filing of this Petition.

(b) The Florida Bar Case No. 11A83M13; Complaint of Martha L. Dardy:

(1) That on or about September 27, 1979, the minor son of Martha L. Dardy was injured in a pedestrian-motor vehicle accident.

(2) That during or about December, 1981, Petitioner was associated as co-counsel to represent the interests of the minor child.

(3) That Petitioner was able to affect a settlement on behalf of the minor child in the amount of THIRTY THOUSAND DOLLARS (\$30,000.00).

(4) That said settlement offer was acceptable to the client and was approved by the Court.

(5) That Petitioner caused Martha L. Dardy to endorse the settlement check and that Petitioner co-endorsed said check and deposited same into his trust account.

(6) That Mrs. Dardy now alleges that Petitioner never tendered to her (or on her behalf or the

behalf of her minor child) the settlement monies due her, less attorney's fees and costs.

(c) The Florida Bar Case No. 11A83M17; Complaint of Fernando J. Cantens:

(1) That during or about May, 1977, Mr. and Mrs. Fernando J. Cantens were injured in an automobile accident.

(2) That shortly thereafter, the Cantens retained Petitioner to represent them relative to their automobile accident.

(3) That as a result of formal arbitration, Petitioner was able to secure the composite award of ELEVEN THOUSAND FIVE HUNDRED NINETY DOLLARS (\$11,590.00) for Mr. and Mrs. Cantens, of which forty percent (40%) was due Respondent as his attorney's fees.

(4) That during or about July, 1982, Petitioner caused Mr. and Mrs. Cantens to endorse the insurance company draft; Petitioner co-endorsed same and deposited the check in his trust account. That notwithstanding their repeated requests and efforts to secure their funds, Mr. and Mrs. Cantens now allege that Petitioner has failed to pay them their share of the arbitration award.

(d) The Florida Bar Case No. 11A83M43; Complaint of Mr. and Mrs. Hosea Gonzalez:

(1) That during or about January, 1979, Mr. and Mrs. Hosea Gonzalez were involved in an automobile accident.

(2) That as a result of said automobile accident, Mr. and Mrs. Gonzalez sustained injuries which required the medical treatment of Dr. Ubaldo Rodriguez.

(3) That subsequent thereto, Mr. and Mrs. Gonzalez retained Petitioner to represent their interests.

(4) That at the direction of Petitioner, Mr. Gonzalez forwarded all medical bills pertaining to the treatment and services rendered by Dr. Rodriguez directly to Petitioner.

(5) That on or about March 30, 1979, the insurance company issued a draft in the amount of FIVE HUNDRED ELEVEN DOLLARS AND EIGHTY-EIGHT CENTS (\$511.88) directly to Petitioner, with the understanding of all parties that Petitioner would pay the medical expenses incurred by Mr. and Mrs. Gonzalez to include the treatment and services rendered by Dr. Rodriguez.

(6) That Mr. and Mrs. Gonzalez now allege that notwithstanding their repeated efforts and requests, Petitioner has failed to pay Dr. Rodriguez his fees.

(e) The Florida Bar Case No. 11A83M42; Complaint of Coralia Figueroa:

(1) That during or about December, 1980, the minor child of Coralia Figueroa was injured in a moped-automobile accident.

(2) That subsequent thereto, Mrs. Figueroa retained Petitioner to represent her and her minor child in an effort to recover money damages resulting from this accident.

(3) That Petitioner filed a lawsuit on behalf of the Figueroas.

(4) That during or about February, 1982, the insurance company offered to settle the lawsuit in the amount of TWENTY-NINE THOUSAND FIVE HUNDRED DOLLARS (\$29,500.00). Mrs. Figueroa accepted the proposed settlement and same was approved by the Court, it being the further Order of the Court that the minor's share of the settlement proceeds be deposited in a restricted savings account at one of the branch offices of the Dade Savings and Loan Association.

(5) That Petitioner caused Mrs. Figueroa to endorse the settlement check, and advised Mrs. Figueroa that, pursuant to the Court's Order, he would place the minor's share of the recovery in the restricted savings account.

(6) That during the following three (3) month period, Petitioner tendered Mrs. Figueroa the total amount of NINE THOUSAND TWO HUNDRED DOLLARS (\$9,200.00), advising her to use these funds to extinguish all medical debts and to use the remainder for her personal benefit.

(7) That there remained due and owing, to the minor, the approximate sum of TEN THOUSAND FOUR HUNDRED DOLLARS (\$10,400.00), and that Mrs. Figueroa now alleges Petitioner never deposited said sum into a restricted savings account on behalf of her minor child.

(f) The Florida Bar Case No. 11A83M95; Complaint of Blanco Balseiro:

(1) That on or about January 26, 1982, Blanco and Juan Balseiro were injured in an automobile accident involving a vehicle owned and operated by Metropolitan Dade County, State of Florida.

(2) That subsequent thereto, the Balseiros retained Petitioner to represent their interests in this action.

(3) That by operation of Florida Statute, Petitioner's legal fee in any suit against Metropolitan Dade County was limited to a maximum of TWENTY-FIVE PERCENT (25%) of the total proceeds of any recovery.

(4) That the Balseiro's authorized Petitioner to settle their lawsuit for SIXTEEN THOUSAND DOLLARS (\$16,000.00).

(5) That during or about late-November, 1982, Blanco and Juan Balseiro and Petitioner, jointly endorsed the settlement check, and Petitioner deposited same in his trust account. That although Petitioner eventually tendered Mrs. Balseiro his trust account check in the amount of EIGHT THOUSAND DOLLARS (\$8,000.00), Mrs. Balseiro now alleges that Petitioner has failed to tender the balance of the settlement proceeds due her.

(g) The Florida Bar Case No. 11A83M94; Complaint of Mireya Rivero:

(1) That on or about January 26, 1982, Mireya Rivero and her minor daughter, Mariela Rivero, were injured in an automobile accident involving a motor vehicle owned and operated by Metropolitan Dade County, State of Florida.

(2) That subsequent thereto, Petitioner was retained to bring suit, on behalf of the Riveros against Dade County.

(3) That by operation of Florida Statute, Petitioner's attorney's fees were limited to a maximum of TWENTY-FIVE percent (25%) of the total proceeds of any recovery.

(4) That on or about December 9, 1982, the Riveros agreed to settle this matter for the total amount of TWENTY-TWO THOUSAND DOLLARS (\$22,000.00); SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00) for Mireya Rivero and FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00) for Mariela Rivero.

(5) That Metropolitan Dade County issued two (2) checks in the composit amount of TWENTY TWO THOUSAND DOLLARS (\$22,000.00), as indicated above, and that on or about December 10, 1983, Petitioner endorsed said checks on behalf of his clients and deposited same in his trust account.

(6) That the Riveros now allege that Petitioner never advised them that he had received the settlement drafts; that Petitioner never advised them that he had endorsed the settlement checks; that Petitioner never advised them that he had deposited the settlement checks in his trust account; and that Petitioner has never tendered them their portion of the settlement proceeds.

(h) The Florida Bar Case No. 11A83M44; Complaint of Wallace and Karo, P.A.:

(1) That on or about August 16, 1982, Petitioner retained the law offices of Wallace and Karo, P.A., and on or about August 17, 1982, Petitioner tendered

to Mr. Karo a check drawn on the "Law Office of Richard J. Borecky" in the amount of FIVE HUNDRED DOLLARS (\$500.00), said check representing a partial payment toward Mr. Karo's fee.

(2) That on or about August 26, 1982, Petitioner's check was returned dishonored by the City National Bank of Miami due to insufficient funds.

(3) That notwithstanding numerous requests, Messrs. Wallace and Karo now allege that, to date, Petitioner has failed to honor his check and to pay them their legal fees.

(i) The Florida Bar Case No. 11A83M36; Complaint of Louis Perrero:

(1) That on or about August 2, 1978, Louis Perrero was involved in an automobile accident.

(2) That on or about August 2, 1978, Mr. Perrero retained Petitioner to represent him in the filing of a lawsuit to recover lost wages and property occasioned as a result of the automobile accident.

(3) That Mr. Perrero alleges that Petitioner, on several occasions, assured him that a lawsuit would be timely filed in this matter.

(4) That Mr. Perrero alleges that during the ensuing four year (4) period, he attempted to contact Petitioner on numerous and diverse occasions regarding the status of his lawsuit.

(5) That Mr. Perrero now alleges that notwithstanding Petitioner's representations to the contrary, at no time did Petitioner file a lawsuit

on his behalf.

(j) The Florida Bar Case No. 11A83M71; Complaint of Serafin Debesa:

(1) That during or about 1979, Serafin Debesa sustained injuries as a result of an automobile accident.

(2) That subsequent thereto, Mr. Debesa retained Petitioner to represent his interests regarding the automobile accident.

(3) That Petitioner filed two (2) separate lawsuits on behalf of Mr. Debesa, but that on or about October 23, 1981, and March 10, 1982, both lawsuits were dismissed by the court for lack of prosecution.

(4) That although Respondent was notified of the Court's action regarding these dismissals, Mr. Debesa now alleges that Petitioner failed to properly notify him of the dismissals, and that since the statute of limitations has run on both cases, Mr. Debesa now alleges that he has been prejudiced as a result thereof.

(k) The Florida Bar Case of 11A83M64; Complaint of Ruben M. Barge:

(1) That during or about 1981, Mr. and Mrs. Ruben M. Barge retained Petitioner for the purpose of obtaining a quit-claim deed from the seller of the condominium which they had purchased during or about 1979.

(2) That Petitioner advised Mr. and Mrs. Barge that he would obtain a quit-claim deed from the sellers and that he would record same in order that

Mr. and Mrs. Barge could then obtain a second mortgage on the property.

(3) That Mr. and Mrs. Barge paid Petitioner ONE THOUSAND DOLLARS (\$1,000.00), in cash, as a retainer for his legal services.

(4) That Mr. Barge presently alleges that Petitioner failed to secure a quit-claim deed and has failed to return to him any portion of the previously tendered ONE THOUSAND DOLLARS (\$1,000.00).

(1) That there is presently pending a criminal action against Petitioner, styled State of Florida v. Richard J. Borecky. The action bears Circuit Court Case No. 83-13849 and is presently pending before the Honorable Harold Solomon. Petitioner avers that he is charged with various counts of grand larceny, all of which pertain to the alleged defalcations referenced above. Although this criminal case is set for trial on or about June 25, 1984, Petitioner further avers that it is his intention to enter a guilty plea to those matters pertaining to the defalcations.

9. That in light of the pending criminal case and in light of his Constitutional right to remain free from compelled self-incrimination, Petitioner neither admits nor denies the veracity or accuracy of the allegations contained in the foregoing complaints.

10. That to the extent that it does not conflict with his Constitutional right to remain free from compelled self-incrimination, Petitioner agrees to cooperate with any Client Security Fund investigation conducted by The Florida Bar.

11. That to the best of Petitioner's knowledge and belief, no other cases or complaints are currently under investigation by

either The Florida Bar or any other investigatory or prosecutorial agency.

12. That Petitioner hereby represents that there is a basis to maintain confidentiality in this matter until final determination and adjudication of Criminal Case No. 83-13849 has been reached by the Court.

13. Petitioner wishes to advise this Honorable Court that to the best of his knowledge and belief the Client Security Fund of the Florida Bar has honored Applications for Relief in the composite amount of FIFTY ONE THOUSAND SIX HUNDRED TWENTY DOLLARS (\$51,620.00), as indicated below:

| | |
|---------------------------------------|-------------|
| The Florida Bar Case No. 11A83M13.... | \$18,000.00 |
| The Florida Bar Case No. 11A83M17.... | \$ 6,954.00 |
| The Florida Bar Case No. 11A83M42.... | \$10,400.00 |
| The Florida Bar Case No. 11A83M95.... | \$ 1,600.00 |
| The Florida Bar Case No. 11A83M94.... | \$14,666.00 |

14. That without admitting guilt or innocence, the Petitioner wishes to advise this Honorable Court that he initiated action to cause the sale of his real property at P.2 Buttonwood Bay, Key Largo, Florida, for the exclusive purpose of providing restitution (to either the individual claimants or to the Client Security Fund of the Florida Bar) for the alleged defalcations. As of the date of this Petition, there is presently THIRTY ONE THOUSAND ONE HUNDRED TWENTY-FOUR DOLLARS FORTY-THREE CENTS (\$31,124.43) on deposit in the Registry of the Circuit Court, in and for Dade County, Florida. Petitioner acknowledges the absolute right of the Client Security Fund of The Florida Bar to make claim on the total of said sum. Notwithstanding, Petitioner recognizes his present deficiency regarding total restitution in the amount of TWENTY THOUSAND FOUR HUNDRED NINETY-FIVE DOLLARS FIFTY-SEVEN CENTS (\$20,495.57), said sum representing the amount (less lawful interest) due to the Client Security Fund of The Florida Bar.

15. That Petitioner wishes to advise this Honorable Court, not as a defense, but rather as a matter in mitigation and extenuation, that during or about the time of the alleged defalcations of client's funds, Petitioner was severely addicted to alcohol. Petitioner's alcohol addiction was so severe that during the period of the alleged defalcations Petitioner was often-times unable to attend to the basic essentials of day-to-day living. Aside from the matters giving rise to the pending disciplinary proceedings, Petitioner is most distressed by the fact that at no time did he seek medical or psychological treatment for his alcohol addiction. Had he done so at a much earlier time, Petitioner is confident that the matters giving rise to the present disciplinary proceedings would not have developed. Petitioner is now well aware of his past mistakes, and through the assistance and good advises of close personal friends and counsel, he is dedicating his life's purpose to seeking a cure of his alcohol addiction so that he may once again become a productive member of society. In this regard, it is Petitioner's most fervent desire to hoist himself out of the gutter, to remedy his alcohol addiction, to regain his self-respect and the respect of the community, and to offer full restitution.

16. Petitioner acknowledges his awareness and understanding of Article XI, Rule 11.08 of the Intergration Rule of The Florida Bar as it pertains to resignations pending disciplinary proceedings. Petitioner realizes that, unless modified, in the case of a resignation submitted in connection with a disciplinary action, no readmission application may be filed until three (3) years after the date of the Supreme Court Order which accepts such resignation, or such other additional time as the attorney may have stated in his petition to resign.

17. Accordingly, Petitioner hereby requests this Honorable Court to accept his Petition for Resignation pending Disciplinary

Proceedings, subject to the following supplemental conditions:

- (a) That this Petition for Resignation ~~is~~ submitted for a minimum period of five (5) years.
- (b) That Petitioner shall seek immediate medical and/or psychological treatment for his alcohol addiction.
- (c) That Petitioner shall not be permitted to apply for readmission to The Florida Bar until:
 - (1) His civil rights shall have been restored, should same be removed as a result of the pending criminal proceedings.
 - (2) Such time as he has made full and complete restitution to both the Clients' Security Fund, as indicated above, and to any claimants who might in the future legitimately allege any defalcations or other losses occasioned by Petitioner's wrongdoing.
 - (3) Such time as Petitioner can demonstrate his successful alcohol rehabilitation.
 - (4) Such time as Petitioner shall have paid the costs of the present disciplinary proceedings, said costs agreed to be in the amount of ONE THOUSAND ONE DOLLARS FIFTY CENTS (\$1,001.50.).


18. Petitioner hereby acknowledges his understanding that the conditions precedent, above, apply only to the timing of any future Petition for Reinstatement. Should this instant Petition be approved and should the above conditions precedent be met, Petitioner will nevertheless possess the burden of proving, to the satisfaction of this Honorable Court, by clear and convincing evidence, that he

has been rehabilitated and is deserving of readmission to the practice of law.

19. That Petitioner believes that the public interest will not be adversely affected by the granting of this Petition and that the granting of this Petition will not adversely affect the sanctity of the Courts, nor will it hinder the administration of justice, nor will it adversely affect the confidence of the public in the legal profession.

WHEREFORE, PETITIONER, respectfully requests that this Honorable Court grant this Petition for Leave to Resign Pending Disciplinary Proceedings, subject to and predicated upon the above-enumerated conditions.

Respectfully submitted,

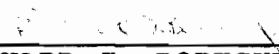


RICHARD J. BORECKY

Dated this 20 day of June, 1984.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Resignation Pending Disciplinary Proceedings was hand-delivered this 20 day of June, 1984, to Robert D. Rosenbloom, Assistant Staff Counsel, The Florida Bar, Suite No. 211. Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131.



RICHARD J. BORECKY
Post Office Box 55-8911
Miami, Florida 33255-8911