

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR

Complainant,

Supreme Court Case  
Nos. 67,736 and 67,849

v.

ROBERT A. CERVANTES,

The Florida Bar Case  
Nos. 17D85105 and 17D86F25

Respondent.

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

1. The Florida Bar filed its Complaint and Request for Admissions in Supreme Court Case No. 67,736 on October 7, 1985. The undersigned was duly appointed as Referee in that cause by the Chief Justice of the Supreme Court of Florida by order dated October 9, 1985. The Florida Bar thereafter filed its Complaint and Request for Admissions in Supreme Court Case No. 67,849 on November 5, 1985. A Motion to Consolidate both the aforesaid cases was also filed on November 5, 1985. The undersigned was appointed as Referee in Supreme Court Case No. 67,849 by the Chief Justice of the Supreme Court of Florida by order dated November 8, 1985. Respondent did not file any responsive pleadings. Accordingly, The Florida Bar filed a Motion for Judgment on the Pleadings as to both cases on January 7, 1986 which came on for hearing on January 30, 1986.

The following attorneys appeared for the respective parties:

On behalf of The Florida Bar: Richard B. Liss, Esquire  
On behalf of Respondent: No appearance

II. FINDINGS AS TO SUFFICIENCY OF NOTICE AND FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH RESPONDENT IS CHARGED:

After considering all pleadings, documentary evidence, testimony, and correspondence from The Florida Bar after the January 30, 1986 hearing, the undersigned referee finds:

1. That Respondent is, and at all times hereinafter mentioned was, a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. That copies of the Complaint and Request for Admissions filed by The Florida Bar in both cases were mailed to Respondent by certified mail to his official Bar address at 4331 North Federal Highway, Fort Lauderdale, Florida and to his then last known address of 2426 S.E. 17th Street, Apartment 105A, Fort Lauderdale, Florida. Both Complaints and their accompanying Request for Admissions were returned undelivered to The Florida Bar by the United States Postal Service.

3. That copies of the Notice of Hearing on The Florida Bar's Motion for Judgment on the Pleadings were sent by regular mail to Respondent at his official Bar address, his last known address and in care of his mother. Although there is no proof that Respondent actually received said Notice, The Florida Bar adduced sufficient proof that Respondent was using his mother's address as his address at the time of his arrest on January 2, 1986 thereby satisfying the notice requirements set forth below.

4. That Florida Bar Integration Rule, article XI, Rule 11.01(2) states:

mailing by registered or certified mail of papers or notices prescribed in these rules to the last mailing address of an attorney as shown by the official records in the office of the executive director of The Florida Bar shall be sufficient notice and service unless this court shall direct otherwise.

5. That Florida Bar Integration Rule, article XI, Rule 11.13(2) provides:

service of process if [sic] not required to obtain jurisdiction over respondents in disciplinary proceedings; but due process requires the giving of reasonable notice and such shall be effective by the service of the complaint upon the respondent by mailing a copy thereof by registered or certified mail return receipt requested to the last known address of the respondent according to the records of The Florida Bar or such later address as may be known to the person effecting the service.

6. That The Florida Bar has complied with the notice requirements of the Integration Rule of The Florida Bar as stated above.

7. That after the conclusion of the hearing on The Florida Bar's Motion for Judgment on the Pleadings, the undersigned directed that The Florida Bar attempt to make contact with Respondent and apprise him of the pendency of these proceedings.

8. That the basis for this directive was that The Florida Bar had

adduced proof that Respondent was physically present in Broward County and required to stay there by virtue of his arrest and release upon his own recognizance.

9. That The Florida Bar made a diligent effort to contact Respondent by and through the services of one of its staff investigators and the undersigned is satisfied that these bonafide efforts to contact Respondent have proven unsuccessful.

10. That by virtue of The Florida Bar's efforts to contact Respondent after the hearing on its Motion for Judgment on the Pleadings, Respondent has been afforded every opportunity to file pleadings or otherwise make known his position in this matter and has failed to do so.

11. That Respondent has received notice of these proceedings as required by the Integration Rule of The Florida Bar and has chosen not to be a participant in these proceedings.

12. That the requests propounded to Respondent in The Florida Bar's Request for Admissions as to both cases are deemed admitted by virtue of Respondent's failure to respond to them.

13. That based upon the foregoing, the undersigned finds that all allegations in The Florida Bar's Complaint have been proven by clear and convincing evidence and are incorporated by reference as if set forth fully herein.

14. That as to Supreme Court Case No. 67,736, Respondent was retained to represent, through trial, a client who had been arrested and charged with Driving Under the Influence. Respondent failed to appear when his client's case was called for trial thereby necessitating a continuance so that the client could secure the services of another attorney.

15. That as to Supreme Court Case No. 67,849, Respondent failed to appear at calendar call and trial on behalf of a client that he was representing. A judgment was ultimately entered against his client.

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

As to Supreme Court Case No. 67,736, the undersigned recommends that Respondent be found guilty of violating the following Disciplinary Rules and Integration Rules of The Florida Bar: Disciplinary Rules

1-102(A)(1) [a lawyer shall not violate a disciplinary rule], 1-102(A)(6) [a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law], 6-101(A)(3) [a lawyer shall not neglect a legal matter entrusted to him] and 7-101(A)(2) [ a lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services] of the Code of Professional Responsibility and article XI, Rule 11.02(2) [violation of the Code of Professional Responsibility is a cause for discipline] of the Integration Rule of The Florida Bar.

As to Supreme Court Case No. 67,849, the undersigned recommends that Respondent be found guilty of violating the following Disciplinary Rules and Integration Rules of The Florida Bar: Disciplinary Rules 1-102(A)(1) [a lawyer shall not violate a disciplinary rule], 1-102(A)(6) [a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law], 2-110(A)(1) [a lawyer shall not withdraw from employment in a proceeding before a tribunal without permission of that tribunal], 2-110(A)(2) [a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client], 6-101(A)(3) [a lawyer shall not neglect a legal matter entrusted to him], 7-101(A)(2) [a lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services] and 7-101(A)(3) [a lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship] of the Code of Professional Responsibility and article XI, Rule 11.02(2) [violation of the Code of Professional Responsibility is a cause for discipline] of the Integration Rule of The Florida Bar.

IV. PERSONAL HISTORY AND STATEMENT OF PAST DISCIPLINE:

Respondent has been a member of The Florida Bar since March 27, 1978 and is thirty-seven years of age. Respondent has been the subject of a public reprimand. The Florida Bar v. Cervantes, 476 So.2d 668, (Fla. 1985).

V. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED:

The undersigned finds the following costs were reasonably incurred by  
The Florida Bar:

Court Reporter Attendance and Transcript, Grievance Committee hearings .....	\$175.25
Administrative Costs at Grievance Committee level (article XI, Rule 11.06(9)(a) of the Integration Rule of The Florida Bar ) .....	\$300.00
Investigative Costs .....	\$476.47
Court Reporter Attendance and Transcript, Referee level proceedings .....	\$163.08
Administrative Costs at Referee Level (article XI, Rule 11.06(9)(a) of the Integration Rule of The Florida Bar) .....	\$150.00
Bar Counsel Travel Expense .....	\$ 9.03
TOTAL COSTS .....	\$1,273.83

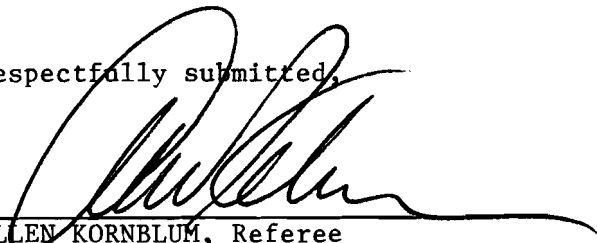
It is recommended that Respondent be taxed costs in the amount of One  
Thousand Two Hundred Seventy Three Dollars and Eighty-Three Cents  
(\$1,273.83).

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

The undersigned recommends that Respondent be disbarred from the  
practice of law in this jurisdiction. Respondent has evidenced a  
callous disregard for his responsibility to represent clients once they  
have retained him on a particular matter. Such a course of conduct is  
harmful to the individual clients and also to the orderly administration  
of justice. Such actions can not be countenanced as our legal system  
can not operate if attorneys cease representation at their whim without  
obtaining leave of court to do so. Costs of these proceedings should be  
taxed against Respondent in the amount of One Thousand Two Hundred  
Seventy Three Dollars and Eighty-Three Cents (\$1,273.83) with execution  
to issue and with interest at a rate of twelve per cent (12%) to accrue  
on all costs not paid within thirty (30) days of entry of the Supreme  
Court's Final Order in this cause, unless time for payment is extended  
by the Board of Governors of The Florida Bar.

DATED this 28 day of March, 1986, at Miami,  
Dade County, Florida.

Respectfully submitted,

  
ALLEN KORNBLUM, Referee

Copies furnished to:

Robert A. Cervantes, Respondent  
c/o Olga Cervantes  
6315 Southgate Blvd.  
Margate, FL 33063

Richard B. Liss, Attorney for Complainant

*all copies  
mailed  
3/28/86  
RL*