

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,  
v.  
JOSE R. CAPIRO,  
Respondent.

CONFIDENTIAL

CASE NOS:  
67,794 (TFB No. 11H85107) c  
68,117 (TFB No. 11H85M88) c  
68,325 (TFB No. 11H86M32) c

**FILED**  
SID J. WHITE  
MAY 22 1986  
CLERK, SUPREME COURT  
By *pl*  
Chief Deputy Clerk

REPORT OF REFEREE

(Symbol used: T = Transcript of testimony; i.e., T.5  
means page 5 of the transcript of testimony)

I. SUMMARY OF PROCEEDINGS. On the dates indicated, the Chief Justice of the Supreme Court of Florida appointed the undersigned to serve as Referee in the following cases:

- 67,794 - October 5, 1985
- 68,117 - January 8, 1986
- 68,325 - February 21, 1986

These proceedings were conducted pursuant to Article XI, Rule 11.05 of The Florida Bar Integration Rule, as amended and reported at 453 So.2d 37 (Fla. 1984). On March 10, 1986, this Referee signed an order granting Complainant's Motion to Consolidate the three cases, so that all cases may be heard at one trial and be handled with one Report of Referee (T. 3).

These proceedings were conducted at The Florida Bar's office located at 211 Rivergate Plaza, 444 Brickell Avenue, Miami, Florida, on April 11, 1986.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Paul A. Gross of Miami

For the Respondent: Jose R. Capiro, pro se of Miami

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT, OF WHICH THE RESPONDENT IS CHARGED:

After considering all pleadings and evidence, pertinent portions of which are commented upon below, the undersigned referee finds the following:

AS TO CASE NO. 67,794

The Respondent failed to respond to the Request for Admissions submitted by The Florida Bar, therefore the matters therein were deemed admitted in accordance with Florida Rules of Civil Procedure, Rule 1.370. Also, Respondent did not object (T. 7). Nevertheless, the complaining witnesses, Waldo Ferreira and Rosa Blanca Ferreira testified (T. 8 - 28).

In summary, Mr. and Mrs. Ferreira gave Respondent One Hundred Dollars (\$100.00) on or about January 16, 1985, for the purpose of obtaining permission for Mrs. Ferreira's brother to come to the United States from Argentina. At that time, the Respondent was given certain papers, including Mrs. Ferreira's Certificate of Naturalization. The Ferreriras told Respondent that they needed the certificate because they planned to travel. Mr. Capiro, the Respondent, promised it would be returned the next day. The Ferreriras made numerous requests for the return of the Certificate of Naturalization, but it was not returned until the date of this hearing, to wit: April 11, 1986. Also, the matter for which Mr. Capiro was retained, was never accomplished.

AS TO CASE NO. 68,325

Mrs. Maria Villarreal retained Mr. Jose R. Capiro during or about May, 1979, because her house was flooded when a repairman broke a water pipe (T. 40-41). Mr. Capiro advised Mrs. Villarreal not to pay the rent (T. 41).

When Mrs. Villarreal received an eviction notice, Mr. Capiro told her not to worry, that nothing was going to happen to her (T. 42). On July 24, 1979, her furniture was removed from her home, as she did not comply with the eviction notice (T. 41). Mrs. Villarreal asked Mr. Capiro to sue the landlord and gave Mr. Capiro papers relevant to the case.

However, Mr. Capiro never filed suit in this case (T. 58), and it is apparent that the statute of limitations has expired. Although no retainer agreement was signed and Mr. Capiro was not paid a fee or costs (T. 45-46), he created a situation whereby Mrs. Villarreal was led to believe that he was representing her. I find that there was an attorney-client relationship between Mrs. Villarreal and Mr. Capiro.

AS TO CASE NO. 68,117

Between August 4, 1984, and April 4, 1985, Mr. Capiro was late for scheduled hearings before Immigration Judges approximately five times and failed to appear at scheduled hearings on three occasions (T. 61-84 and Bar Ex. 5).

III. RECOMMENDATION AS TO WHETHER OR NOT RESPONDENT SHOULD BE FOUND GUILTY. The undersigned Referee recommends that Mr. Jose Capiro, the Respondent, be found guilty of vio-

lating the following Disciplinary Rules of the Code of Professional Responsibility, as indicated below:

Case No. 67,794: DR1-102(A)(6), engaging in conduct adversely reflecting on his fitness to practice law and DR6-101(A)(3), neglect of a legal matter entrusted to him.

Case No. 68,117: DR1-102(A)(6), engaging in conduct adversely reflecting on his fitness to practice law and DR6-101(A)(3), neglect of a legal matter entrusted to him.

Case No. 68,325: DR1-102(A)(6), engaging in conduct adversely reflecting on his fitness to practice law and DR6-101(A)(3), neglect of a legal matter entrusted to him.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED. It is recommended that Jose R. Capiro, the Respondent, be given a Public Reprimand, to be published in the Southern Reporter. In addition, it is recommended that the Respondent be required to successfully complete a course in professional responsibility, from an accredited law school or pass the Multistate Professional Responsibility Examination. This shall be accomplished no later than January 31, 1987. If the Respondent should fail to accomplish this, it is recommended that he be suspended until such time that he passes the Multistate Professional Responsibility Examination or successfully passes a course in Professional Responsibility from an accredited law school.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD. On August 22, 1985, this court gave Jose R. Capiro a Public

Reprimand for violating Disciplinary Rules 1-102(A)(6) and 6-101(A)(3), in Case No. 66,104 (Bar Ex. 6).

The Respondent received a law degree in Havana, Cuba during 1940 and has been an attorney for forty-five (45) years. However, he has been a member of The Florida Bar for ten (10) years (T. 83).

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED. The undersigned Referee finds the following costs, as reported by Bar Counsel, were reasonably incurred by The Florida Bar and it is recommended said costs be taxed against the Respondent:

Court Reporter Costs for Grievance Committee Hearings:

May 16, 1985 (11H85M88 & 11H85107)	135.45
December 30, 1985 (11H86M32)	128.80

Court Reporter Costs for Referee Trial April 11, 1986	516.35
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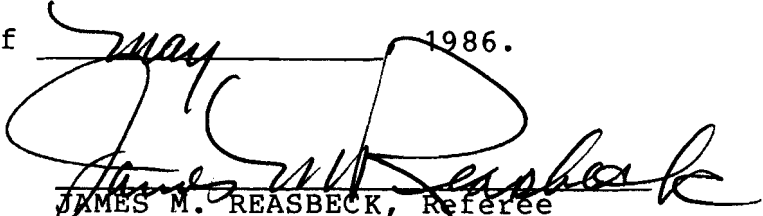
Administrative Costs (Fla. Bar Integr.  
Rule 11.06(9)(a)(5))

Grievance Committee Level	150.00
Referee Level	<u>150.00</u>

TOTAL: \$1,080.00

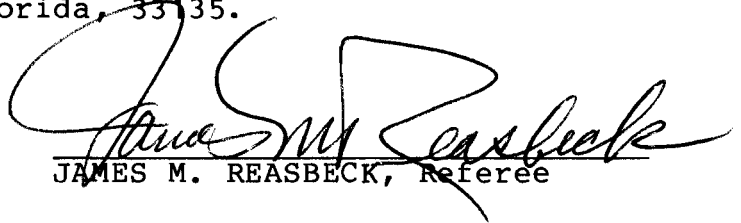
This referee further recommends that execution issue with interest at the rate of twelve percent (12%) per year to accrue on all costs not paid within thirty (30) days of entry of this Court's final order, unless time for such payment is extended by the Board of Governors of The Florida Bar.

Dated this 19 day of May 1986.

  
JAMES M. REASBECK, Referee  
Broward County Courthouse  
201 SE 6th Street  
Ft. Lauderdale, Florida 33301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true copies of the foregoing Report of Referee were mailed this 19 day of May, 1986, to the following: Paul A. Gross, Bar Counsel, The Florida Bar, 444 Brickell Avenue, Suite 211, Miami, Florida, 33131; John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida, 32301-8226; and Jose R. Capiro, Respondent, 1430 SW First Street, Suite 15, Miami, Florida, 33135.

  
JAMES M. REASBECK, Referee