

FILED

SID J. WHITE

MAY 17 1991

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CLERK, SUPREME COURT

THE FLORIDA BAR,
Complainant,

CASE NO. **76,254**
(TFB Nos. 88-10,252 (6B)
88-10,335 (6B)
88-10,336 (68)
88-11,451 (6B)
89-10,588 (6B))

By _____
Chief Deputy Clerk

v.

JOSEPH P. CILLO,
Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar, hearings were held on March 13, March 14, and March 15, 1991. Any pleadings, **notices**, motions, orders, transcripts, **and** exhibits are forwarded to The Supreme Court of Florida with this report **and** constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: David R. Ristoff
Joseph A. Corsmeier

For The Respondent: Hugh Smith
Lori A. Brown

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

As to Count I

The Respondent was at all times material to this count (and this case) an attorney licensed to practice only in the State of Florida.

In 1985, while living in the State of Texas, Respondent undertook to act as an attorney for John Lenoir in the incorporation of Liberty Limited in the State of Nevada. The Respondent received compensation for the legal services rendered and was to have an interest in the business as well. The Respondent ultimately had the company incorporated in Texas. **A**t all times Respondent's conduct and activity reasonably caused Mr. Lenoir to conclude and believe that the Respondent was an attorney licensed to practice in Texas.

Respondent's activity in this regard constituted the unauthorized practice of law by a Florida lawyer in a foreign state.

The allegations of Count I also complain of misconduct in connection with the purchase of a diamond ring from Mr. Lenoir. I find that the Respondent purchased a diamond ring from Mr. Lenoir for **\$4,200**. Mr. Lenoir was in the jewelry business. The Respondent issued his personal check in payment and that check was dishonored due to insufficient funds. The Respondent later gave Mrs. Lenoir a check for \$5000.00 and asked her to hold it until she heard further from him. He did not contact her again about the check and Mrs. Lenoir never deposited the check for collection knowing it would not clear.

Subsequently Mr. Lenoir filed for bankruptcy and listed the Respondent **as** one of his debtors. In 1988, after **a** Bar Complaint had been filed, the Respondent paid Mr. Lenoir \$4,200.00, the original purchase price of the ring.

I find that the Respondent's difficulty in paying for the ring was due to his personal financial problems at the time and did not result from any dishonesty or other misconduct on his part.

As to Count II

I find that at all material times in connection with this Count, the Respondent was acting as the President of a company known as Resources International, Ltd., hereinafter referred to as R.I.L.

The Respondent **as** President of R.I.L. entered into negotiations with James Joyce, President of Joyce Western Corporation. The negotiations had to do with Joyce's prospective acquisition of properties owned by R.I.L. in West Virginia. This related to gas and oil production. At a time when the parties believed they had an agreement, Joyce Western released funds in the amount of \$105,000.00 to R.I.L. R.I.L. used that money to satisfy an outstanding indebtedness in the amount of \$50,000.00 (Combustion Engineering) and the balance amount into the operating account of R.I.L. for day to day expenses. The Respondent received no direct personal gain from this transaction.

The deal fell through and Joyce Western Corporation wanted the \$105,000.00 returned.

I find there was no agreement to refund the \$105,000.00. It was used by R.I.L. as contemplated by the parties when they thought they had a deal. It was, or should have been evident to everyone involved that R.I.L. had absolutely no ability to refund that sum of money in the event the deal fell through for whatever reason.

The Respondent was at all times acting as the President of R.I.L. and in the best interest of that company and its stockholders.

R.I.L. and Joyce Western Corporation were negotiating at arms length through their respective Presidents. The failure to consummate **the** deal was not due to any dishonesty or other misconduct on the Respondent's part.

As to Count III

The first portion of this Count relates to endorsements on a check made payable to Cillo, Williamson and Dunham, a California law firm. The count does not directly charge the Respondent with having forged the endorsement of Dunham and Williamson, but that apparently is the inference the Bar wishes to be drawn. The check was given to the firm for the purchase of an oil well interest owned by R.I.L.

Contrary to the allegation of the Amended Complaint, Mr. Dunham testified that the check endorsement is, in fact, his signature.

The Bar alleged and Mr. Williamson testified that his signature was a forgery. The Respondent denied signing Williamson's name to the check.

I find that Mr. Williamson is not a credible witness and that there is no evidence that the Respondent signed Mr. Williamson's endorsement on the check.

Two additional issues are presented by Count 111.

It is alleged that the Respondent performed legal services for the O'Connells in California in the preparation of a Trust Agreement for which he received **\$250.00**. The Respondent acknowledged this and testified that the O'Connells were friends. The Respondent was not at that time, and never has been, admitted to the practice of law in California. I find that this activity constituted the unauthorized practice of law in California by a Florida attorney.

The last issue presented by Count III involves the Respondent's use of cocaine during the period of 1983 to 1985 in California. Witnesses corroborated this use and the Respondent has candidly admitted it. It has been stipulated that such use would have been unlawful in California during that time period. No commercial involvement in the use or delivery of cocaine has been shown by the evidence. The Respondent used cocaine with

friends and particularly business associates. The evidence suggests that it was almost the thing to do in California in those times and places.

The Respondent has testified that he has not used cocaine since sometime in 1985, and The Bar has not shown otherwise.

As to Count IV

Count IV involves the Respondent's conduct vis a vis one Mr. Schwartz while in the State of Texas. **The** Respondent represented, for securities legal problems, a company known **as** Gulf Texas Oil and Gas of Dallas, Texas. When in Dallas he used office space provided by his client Gulf Texas Oil and Gas. An employee of that company had a friend -- Mr. Schwartz -- and he agreed to talk to Mr. Schwartz about **a** legal problem. **As a** result of this contact the Respondent did undertake to perform legal services for Mr. Schwartz in connection with a dispute he had with a printing company. Mr. Schwartz paid the Respondent **\$250.00** for services rendered in this regard.

I further find that the Respondent discussed another legal matter with Mr. Schwartz. It involved **a** small lawsuit pending in a Florida Court against Mr. Schwartz. Respondent made a telephone call to the plaintiff's attorney for Mr. Schwartz seeking an extension of time or change of hearing date. I find that the Respondent did not undertake and was not retained to defend Mr. Schwartz in that lawsuit.

I further find that the Respondent did not undertake and was not retained to represent Mr. Schwartz in a separate matter involving Schwartz' claim for a baggage loss.

I have granted The Florida Bar's Motion to Allow The Florida Bar to Amend the Complaint to Conform to the Evidence and find that that the Respondent did engage in the unauthorized practice of law in Texas with reference to his representation of Mr. Schwartz in the printing company dispute.

I find that The Bar has failed to prove the other violations charged in this Count.

As to Count V

I find that Mr. Jones did not pay the Respondent \$10,000.00 to represent him in a Federal Criminal case in California as alleged in Count V of the Amended Complaint.

The, Bar's **case**, however, against the Respondent is based upon the contention that the Respondent was guilty of misconduct in attempting to pay off Mr. **Jones** after Jones had filed his Bar complaint against the Respondent by offering money and or prospective employment opportunities to Mr. Jones.

Mr. Jones was told that he might recover some money by filing a Bar Complaint against the Respondent and he did so charging that he had paid Respondent \$10,000.00 to act as a corporate attorney and that he wanted his money back.

At a subsequent time, at the Respondent's request, Jones signed a Declaration and forwarded it to the Respondent who in

turn forwarded it to The Florida Bar. In this Declaration, prepared by Respondent or by someone on this behalf, Jones stated that his Bar complaint was filed erroneously and was without basis.

Respondent sent Jones **\$250.00** for this act. The Bar's investigation continued and in August 1989, the Respondent secured a second handwritten notarized statement in which Jones again reiterated that he had no complaint against the Respondent and that his Bar complaint was filed in error. Jones received \$1000.00 after signing this statement. The \$1000.00 given to Jones was in the form of a cashier's check purchased by a company known as Centurion Financial and was delivered to Jones by an agent of Respondent. The Respondent testified that this payment was an advance on a job he had arranged for Jones with Centurion Financial rather than **as** consideration of the statement given by Jones. It is clear, however, that Jones **was** not going to receive the \$1000.00 unless he signed that second statement.

This factual scenario presents a difficult issue to this referee in the context of the alleged misconduct.

I find that the Respondent did, in fact, induce Jones to sign both statements by payment of money to him and/or accompanied by the prospect of **a** job opportunity.

I also find, however, that Jones' Bar Complaint against the Respondent was, in the first place, unjustified and without merit.

I find that **the** two statements given by Jones which were procured by the Respondent speak the truth and that his Bar complaint was false.

Clearly to induce a witness to testify falsely would be misconduct and more but this is not the issue here. The factual scenario, as I have found it, raised this question. Is it misconduct to induce a witness to tell the truth by offering and giving money or some other valuable consideration?

I think not and find no misconduct on the part of Respondent in this **regard**.

111. Recommendation as to Whether or Not the Respondent Should be Found Guilty: As to the complaint, I make the following recommendations **as** to guilt or innocence.

As to Count I

I recommend that the Respondent be found guilty of unauthorized practice of law in Texas in connection with his representation of John Lenoir and incorporation of Liberty Limited.

I further recommend the Respondent be found innocent of misconduct in connection with purchase of **a** diamond ring from John Lenoir.

This constitutes **a** violation of Disciplinary Rule 3-101(b).

As to Count II

I recommend the Respondent be found innocent of these charges.

As to Count III

I recommend the Respondent be found guilty of the unauthorized practice of law in California and the unlawful use of cocaine in California between the years 1983 - 1985.

This constitutes a violation of Disciplinary Rule 3-101(B) and Rules of Professional Responsibility, Article XI, Rules 11.02(3)(a)(b).

I further recommend that the Respondent be found innocent of the charges pertaining to forgery of a check endorsement as set forth in paragraphs 36 through 43 of Count III.

As to Count IV

I find that Respondent engaged in the unauthorized practice of law in Texas with reference to his representation of Mr. Schwartz in the printing company dispute. This constitutes a violation of Disciplinary Rule 3-101(B).

As to Count V

I recommend that the Respondent be found innocent.

IV. Recommendation as to Disciplinary Measures to be

Applied: I recommend that the Respondent be disciplined by a public reprimand and be assessed costs incurred by The Florida Bar as stated in Section VI.

V. Personal History and Past Disciplinary Record Applied:

After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1), I considered the following personal history and prior disciplinary record of the Respondent, to wit:

Year of Birth: 1940

Date Admitted to Bar: 10/30/81

Prior Disciplinary Convictions and
Disciplinary Measures Imposed therein:

(1) Florida Bar File No. 17F85F06:

Respondent was administered a private reprimand before the Board of Governors on May 16, 1986. Costs of the proceedings were charged to Respondent.

(2) Supreme Court Case No. 70,801

The Florida Bar v. Cillo
535 So.2d 265 (1988)

(TFB No. 87-21,848-02): Respondent was disciplined by a six (6) month probationary period and assessed costs.

Aggravating Factors:

Mitigating Factors:

A. Relative to the use of Cocaine:

- (1) The illness and death of respondent's wife; substantial personal and financial pressures- during the years he was in California in connection with R.I.L.
- (2) Open admission of his use of cocaine
- (3) Remorse
- (4) Respondent has not used cocaine since 1985.
- (5) The evidence showed that others used cocaine in California during this time period, and it appeared to be the thing to do.

B. Unauthorized Practice of Law:

- (1) No continuous unauthorized practice of law and Respondent's actions were "isolated" acts of unauthorized practice.
- (2) No serious efforts to hold himself out as attorney in these other states.
- (3) No harm done to anyone as a result of these three matters. They were services rendered to friends and friends of friends.
- (4) During the times herein, Respondent wasn't sure whether he wanted to be a lawyer or businessman, and this dichotomy contributed to his erratic behavior.

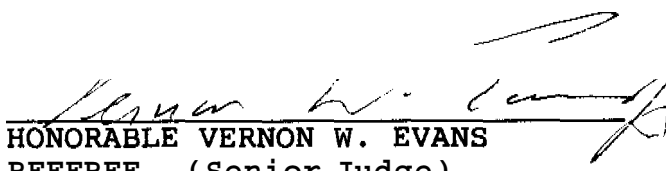
VI. Statement of Costs and Manner in which Costs should be

Taxed: I find the following costs were reasonably incurred by The Florida Bar: \$ 8,132.74 (See attached Statement of Costs).

~~It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses, together with the foregoing~~ itemized 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 9th day of May, 1991.


HONORABLE VERNON W. EVANS
REFEREE (Senior Judge)

Copies furnished to:

Lori A. Brown, Esquire
Hugh Smith, Esquire
John T. Berry, Staff Counsel, The Florida Bar
David R. Ristoff, Branch Staff Counsel
Joseph A. Corsmeier, Assistant Staff Counsel

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.
JOSEPH P. CILLO,
Respondent.

Case No. 76,254
(TFB Nos: 88-10,252 (6B)
88-10,335 (6B)
88-10,336 (6B)
88-11,451 (6B)
89-10,588 (6B)

STATEMENT OF COSTS

The following costs listed below have been incurred by The Florida Bar in the above-referenced case at the Grievance Committee and Referee level:

I. GRIEVANCE COMMITTEE LEVEL:

1. Court Reporting Service (Grievance Committee Hrg.)
(Gregg Stone & Associates) 12/04/89
Appearance Fee: (\$155.00 @ 3/5) 93.00
Transcript: (202pgs x \$2.80) (\$565.60 @ 3/5). 339.36

11. REFEREE LEVEL:

2. Administrative Cost: 500.00
3. Branch Staff Counsel: (Meeting w/Smith & Brown)
David R. Ristoff (12/17/90)
Mileage: (18 miles x .31) 5.58
4. Court Reporter Expenses: (Referee Hearing)
(Clark Reporting Service) (March 13, 14, & 15, 1991)
Appearance Fee: (\$380.00 @ 3/5) 228.00
Transcript Fee: (685pgs x \$3.90 (w/copy))..
(\$2,671.50 @ 3/5) 1,602.90
Exhibits: (198 @ 3/5) 35.64

5.	<u>Court Reporter Expenses:</u> (Hrg. on Motions)	
	(Clark Reporting Service) (1/10/91)	
	Appearance Fee: (\$40.00 @ 1/2)	20.00
	Transcript Fee: (20pgs x \$3.90) (78.00 @ 1/2)	39.00
	Delivery (2.50 @ 1/2)	1.25

Count I: TFB No. **88-10,252** (6B) (John Lenoir)

6.	<u>Staff Investigator Expenses:</u>	
	Ernest J. Kirstein, Jr.	
	Time Expended: (10.9 hrs. x \$19.00)	207.10
	Mileage: (100 miles x \$.31)	31.00
7.	<u>Staff Investigator Expenses:</u>	
	Joseph McFadden	
	Time Expended: (12.3 hrs. x \$16.00)	196.80
8.	<u>Staff Investigator Expenses:</u>	
	Walter B. Granger	
	Time Expended: (3.9 hrs. x \$19.00)	74.10
	Mileage: (33 miles x \$.31)	10.23

COUNT III: TFB No. **88-10,336** (6B)

9.	<u>Saddleback Attorney Service, Inc.</u>	
	Service of Subpoenas: 11/14/90	
	Mary O'Connell	37.50
10.	<u>Hahn & Bowersock</u>	
	Deposition of: (11/16/90)	
	Mary O'Connell	360.15
11.	<u>Witness Expenses:</u>	
	Jeff Dunham 3/13/91 thru 3/17/91	
	Airfare: (from LA to Tpa and return)	436.00
12.	<u>Witness Expenses:</u>	
	Jeff Dunham (3/19/91)	
	Lodging/meals/per diem	258.03
13.	<u>Branch Staff Counsel:</u>	
	David R. Ristoff (11/15/90)	
	Airfare (Tpa to/from Orange County, CA)	336.00
	Car Rental	145.00
	Meals	49.45
	Lodging @ Comfort Inn	49.01
	Lodging @ Courtyard Marriott (11/16/90)	54.00

14. Staff Investigator Expenses:
 Ernest J. Kirstein, Jr.
 Time Expended: (36.8 hrs. x \$19.00)
 (\$699.20 @ 1/2) 349.60
 Mileage: (325 miles x \$.31)
 (\$100.75 @ 1/2) 50.37

15. Staff Investigator Expenses:
 Joseph McFadden
 Time Expended: (12.3 hrs. x \$16.00)
 (\$196.80 @ 1/2) 98.40

16. Staff Investigator Expenses:
 Walter B. Granger
 Time Expended: (111.3 hrs. x \$19.00)
 (\$2,114.70 @ 1/2) 1,057.35
 Mileage: (1,247 miles x \$.30)
 (\$374.10 @ 1/2) 187.05

Count IV: TFB No. 88-11,451 (6B) (Matthew Schwartz)

17. Witness Expenses:
 Matthew Schwartz (3/12, 13/91)
 Airfare: (Lv Dallas, TX to/from Tampa) 611.00
 Lodging/Meals/per diem 158.00

18. Staff Investigator Expenses:
 Ernest J. Kirstein, Jr.
 Time Expended: (3.8 hrs. x \$19.00)
 (\$72.20 @ 1/2) 36.10
 Mileage: (85 miles x .31)
 (\$26.35 @ 1/2) 13.17

19. Staff Investigator Expenses:
 Joseph McFadden
 Time Expended: (12.3 hrs. @ \$16.00)
 (\$196.80 @ 1/2) 98.40
 Mileage: (14 miles @ \$.30)
 (\$4.20 @ 1/2) 2.10

20. Staff Investigator Expenses:
 Walter B. Granger
 Time Expended: (31.2 hrs. x \$19.00)
 (\$592.80 @ 1/2) 296.40
 Mileage: (438 miles x \$.30)
 (\$131.40 @ 1/2) 65.70
 TOTAL ESTIMATED COSTS TO DATE: \$8,132.74

The foregoing costs have been incurred in the above-styled cause **at** the Grievance Committee and Referee level by The Florida Bar.

Dated this 30th day of April, 1991.

Respectfully submitted,

David R. Ristoff

DAVID R. RISTOFF # 358576
Branch Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport Marriott Hotel
Tampa, Florida 33607
(813) 875-9821

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Statement of Costs has been furnished by regular U.S. Mail to Hugh S, **Smith** and **Lori Brown**, Attorneys for Joseph P. Cillo, Respondent at 101 E. Kennedy Boulevard, Suite 1800, Tampa, Florida 33602; and a copy to **John T. Barry**, Staff Counsel, The Florida Bar, Legal Division, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 30th day of April, 1991.

David R. Ristoff

DAVID R. RISTOFF