IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

JOSE M. INSUA,

Respondent.

_____/

The Florida Bar Case
NO. 90-71,130(11K)

Supreme Court Case
No. **77,958**

FILED
SID J. WHITE
JAN 10 1992
CLERK, SUPREME COURT
By_____
Chief Deputy Clerk

REPORT OF REFEREE

I. SUMMARY OF PROCEEDING: Pursuant **to** the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.5 of the Rules Regulating The Florida Bar (article XI, Rule 11.06 of the Integration Rule of The Florida Bar), a Final Hearing was held in Chambers at the Broward County Courthouse on December 9, 1991 and concluded on December 12, 1991. All of the pleadings, transcripts, notices, motions, order and exhibits are forwarded with this report **and** the foregoing constitutes the record of the case.

The following attorneys acted as counsel for the parties:

For The Florida Bar: Randi Rlayman Lazarus
Suite M-100, Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131

For the Respondent: Nicholas R. Friedman, Esq.
2200 New World Tower
100 North Biscayne Boulevard
Miami, Florida 33132

11. FINDING OF FACT: **I** find Respondent guilty of all allegations contained in the Bar's complaint which I hereby accept and adopt as the findings in the cause in addition to those stated to wit:

That Respondent entered into a Plea Agreement with the United States Attorneys Office for the Southern District of Florida on February 12, 1988.

That pursuant to the Plea Agreement Respondent agreed to waive indictment and plead guilty to a one count information charging him with conspiracy to import cocaine, in an amount in excess of five kilograms, in violation of Title 21, United States Code, Section 846.

That pursuant to the Plea Agreement Respondent agreed to begin cooperating with the Federal government and their law enforcement agencies.

That Respondent testified as a confidential informant at the trial of United States of America vs. Alfredo Duran, Case No. **89-802** beginning on April 11, 1990.

That at the Duran trial Respondent admitted under oath that he procured an aircraft for Andrew Barnes and John Torres for the purpose of smuggling controlled substances into the United States.

That at the Duran trial Respondent admitted under oath he **had** brokered between ten and twelve aircraft knowing that they were going to be used to smuggle narcotics into the United States.

That at the final hearing of this cause The Florida Bar did prove Respondent's knowing involvement in three or four of these instances. That it was proven that the Respondent at the very least should have known that he was brokering aircraft which were going to be used for drug smuggling in the remaining instances.

That at the Duran trial Respondent admitted under oath that he participated with a group who successfully imported approximately one to two thousand pounds of marijuana into the United States. The Florida Bar did prove Respondent's knowing involvement in that scheme.

III. RECOMMENDATION OF GUILT: I recommend that the Respondent be found guilty of violating Rule 4-8.4(b) (commit a criminal act that reflects adversely on the lawyer's honest, trustworthiness or fitness as a lawyer in other respects). I recommend that Respondent be found not guilty of violating Rule 4-8.4(c) (engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules Regulating The Florida Bar, as such a finding would be duplicitous. Jes

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED: I have reviewed the .Florida Standards for Imposing Lawyer Sanctions, as well as caselaw presented to me by both parties. It is abundantly clear to me that disbarment is the fitting level of discipline to be imposed. I have not made the foregoing decision lightly. During the course of two days of final hearings on this cause I closely observed the demeanor of the Respondent and carefully scrutinized his testimony. I was left with the distinct impression that Mr. Insua was anything but remorseful for the egregious acts he committed. In fact, at no point did he actually say, "yes, I did these things with full knowledge of my actions and I am sorry". Instead he blamed these acts on his own stupidity and seemed to believe that he deserved recognition for cooperating with the United States Government and their agencies. He fails to recognize that his cooperation is **but** a small price that he must pay for a series of bad acts spanning over at least a three year period of time. Consequently, I do not find that Respondent's cooperation should serve as a mitigating factor sufficient to avoid disbarment. jes

I had an opportunity to review The Florida Bar **v. Pettie**, **424** So.2d **734** (Fla. **1983)** as well as The Florida Bar v. Eisenbexg, 555 So.2d 353 (Fla. 1990). Both cases involved attorneys who had rendered assistance to the government. In **Pettie**, supra that Respondent was involved in one conspiracy involving five overt acts and turned himself in to the authorities prior to their knowledge of his nefarious conduct. Additionally, there was no evidence of any prior problems with Mr. Pettie's ethical conduct and there was evidence that Mr. Pettie was a well respected lawyer in the community. In Eisenberg, supra that Respondent was involved in

various criminal activities in Georgia, Florida and West Virginia and rendered Cooperation when his activities were discovered by authorities.

The facts of the case sub judice are much closer to Eisenberg, supra. Mr. Insua was involved in several separate criminal acts, he rendered cooperation once discovered and unlike Mr. Pettie, had various prior problems with his ethical conduct. Although this Respondent was given a sufficient opportunity to present evidence in mitigation, this Referee after reviewing several applicable cases expressed a concern that other than Respondent's Federal Public Defender there was no other evidence presented regarding his good standing in the community as a person and an attorney. After request by Respondent's counsel I afforded Respondent an additional opportunity to present any further evidence of mitigation. I likewise afforded the Florida Bar an opportunityto present further evidence of aggravation. The evidence presented by The Florida Bar involved several instances of unethical behavior as an attorney soonafter Respondent became a member of The Florida Bar, One attorney testified that he employed Respondent as an associate in his law firm whose emphasis was in banking matters. The employer discovered that Respondent was running a "ghost practice'' out of the office without the knowledge of the partners. Another attorney testified that he shared office space with the Respondent and discovered that Respondent had wrongfully obtained approximate $1,500.00 from a potential client. Upon confrontation Respondent admitted his wrongful behavior and returned $1,100.00. This same attorney testified that Mr. Insua had convinced a secretary to place his name on a brief to the Florida Supreme Court when he had

nothing whatsoever to do with the case. The attorney noted the name when the Florida Supreme Court issued its opinion.

As further evidence of aggravation, The Florida Bar presented Respondent's driving record which revealed that he had been cited for driving without any valid driver's license and had failed to appear in court.

In assessing discipline I considered the fact that Respondent became a member of The Florida Bar in 1984. His criminal involvement began in 1985 and ceased in 1988, once intercepted. Testimony regarding his unethical behavior as an attorney included approximately 1985 through 1987, his motor vehicle problems occurred in 1987 and 1988. It is clear to me that Respondent has failed to abide by Federal Law, State Law and the Rules Regulating The Florida Bar. Although I recognize that Respondent is a young man with a new family he **does** not have the fiber which is demanded by the privilege to practice law.

Consequently, I specifically find the application of Florida Standard for imposing lawyer sanctions 5.11(c) which provides that disbarment is appropriate when a lawyer engages in the sale, distribution or importation of controlled substances. I also find the existence of aggravating factor 9.22(c) a pattern of misconduct and 9.22(d) multiple offenses.

V. RECOMMENDATION AS TO COSTS: I find the following costs to have been reasonably incurred by The Florida Bar:

Administrative Charge [Rule 3-7.6(k)(1)]	$ 500.00
Court Reporter's Transcript and Attendance at: Grievance Committee Hearing held on October 17, 1990	95.10

Deposition of Jose Insua held on November 13, 1991	440.15
Hearings held before Referee on June 19, 1991	127.05
on August 8, 1991	103.60
on August 25, 1991	184.00
on December 6, 1991	123.70
Final hearing held on December 9, 1991 and concluded December 12, 1991	*
Staff Investigator's Costs and Bar Bar Counsel's Costs	198.79
Courier and Express Mail Services	139.20
Facsimiles	4.00
TOTAL:	$ 1,915.59

(*The cost for the transcript of the final hearing has not been included in this report. Upon receipt of same this report will be amended to include that cost.)

It is recommended that the foregoing be assessed against Respondent. It is further recommended that execution issue with interest at a rate of twelve percent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order, unless time far payment is extended by the Board of Governors of The Florida Bar.

Dated this _____ day of _____, 1991.

JEFFREY E. STREITFELD, Referee

Copies furnished to:

Randi Klayman Lazarus, Bar Counsel
Nicholas R. Friedman, Attorney for Respondent