

**FILED**

SID J. WHITE

JAN 20 1992

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

CHARLES G. DeMARCO,

Respondent.

Case No. 78,146  
[TFB Nos. 91-30,901 (18A);  
91-30,920 (18A);  
91-30,937 (18A);  
91-31,074 (18A);  
91-31,129 (18A);  
91-31,198 (18A);  
and 91-31,145 (18A)]

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 of Discipline, a hearing was held on Monday, December 2, 1991, at the Indian River County Court House at 11:00 o'clock A. M.

Chronology of Pleadings:

June 19, 1991	Complaint filed by The Florida Bar
July 31, 1991	Petitioner's Answer filed
July 22, 1991	Request for Admissions filed by The Florida Bar
October 3, 1991	Motion for Admission of Complainant's Request for Admission
October 9, 1991	Cause Set for final hearing on December 2, 1991
October 10, 1991	Order of Admissions for Respondent's failure to file answer of objection
November 22, 1991	Respondent's request to appear at final hearing by telephone
November 22, 1991	Order Denying Request to appear at final hearing telephonically
December 2, 1991	Respondent's request by telephone

for a continuance denied and the matter proceeded to final hearing on Counts I, III, IV, V, VI and VII, The Florida Bar announcing it was voluntarily dismissing Count II.

December 18, 1991 Final Affidavit of Costs

The following attorneys appeared as counsel for the parties:  
For the Florida Bar - Larry L. Carpenter  
For the Respondent - no appearance

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

As to Count I - Case No. 91-31,145 (18A)

1. That at all times relevant to Count I that the Respondent, Charles G. DeMarco, was a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating the Florida Bar, and that he resided in and practiced law in Seminole County, Florida.
2. That on September 28, 1990, Respondent was arrested in Osceola County, Florida, and charged with the crime of Driving While Under the Influence of Alcohol, a violation of Florida Statute 316.193 (1); Seminole County Court Case No. 90-TT-03-8891.
3. That the trial on the charge was set on February 4, 1991, and Respondent failed to appear resulting in the issuance of a warrant for his arrest.
4. That Respondent has fled the jurisdiction of the Court and is currently a fugitive from the State of Florida.
5. The affidavit of Assistant State Attorney, Walter E. Taylor, establishing these facts is attached hereto as page 1 of Florida Bar composite Exhibit #1.

As to Count III - Case 91-30,920 (18A)

6. That all times relevant to Count III the Respondent, Charles G. DeMarco, was a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the

Rules Regulating the Florida Bar, and that he resided in and practiced law in Seminole County, Florida.

7. That on about May, 1990, Respondent was retained by Robert McMaster to represent him as Plaintiff in a civil law suit, and Respondent received a \$980.00 retainer.

8. That Respondent left town with the original paperwork turned over to him by the client, and the Client cannot proceed with his lawsuit with other counsel because he cannot afford to pay a new attorney and lacks his original documents which Respondent still has.

9. The uncontested affidavit of Robert McMaster is attached hereto as page 2 of Florida Bar Composite Exhibit #1.

As to Count IV - Case No. 91-30,937 (18A)

10. That all times relevant to Count IV that the Respondent, Charles G. DeMarco, was a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating the Florida Bar, and that he resided in and practiced law in Seminole County, Florida.

11. That on or about August 1, 1990, Respondent was retained by Joseph Boch to represent him in a controversy involving a vehicle purchased from Action Nissan, Kissimmee, Florida, and the Respondent received a \$300.00 retainer from the client.

12. That in mid-October of 1990 Respondent misrepresented to the Client that his case was accepted to be heard under the Florida Lemon Law, when in fact no complaint had been filed by Respondent.

13. Respondent left town, and the client's paperwork is gone and the client received nothing of value for his \$300.00 retainer.

14. The uncontested affidavit of Joseph Boch is attached hereto as page 3 of Florida Bar Composite Exhibit #1.

As to Count V - Case No. 91-31,074 (18A)

15. That all times relevant to Count V that the Respondent, Charles G. DeMarco, was a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating the Florida Bar, and that he resided in and practiced law in Seminole County, Florida.

16. That on or about November 10, 1990, Respondent was retained by one Andrew Desario to recover property taken from him, and Respondent was paid a \$500.00 retainer.

17. Respondent drafted a complaint that contained incorrect information. When the Client attempted to contact Respondent about the errors, he discovered that Respondent had left town with his \$500.00 retainer and has heard nothing from Respondent since.

18. The uncontested affidavit of Andrew Desario is attached hereto as page 4 of Florida Bar Composite Exhibit #1.

As to Count VI - Case No. 91-31,129 (18A)

19. That all times relevant to Count VI that the Respondent, Charles G. DeMarco, was a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating the Florida Bar, and that he resided in and practiced law in Seminole County, Florida.

20. There was no testimony offered by affidavit or otherwise that support the allegations against Respondent. The only basis upon which the Referee could make a finding would be from the Request for Admissions, Nos. HH through MM, and these form no basis upon which Respondent could be found guilty. There is no showing that the statements made by Respondent to Mr. Hurst were false or misleading, and Respondent owed no duty to keep his office open to Mr. Hurst. It is specifically noted that no attorney-client relationship existed between Respondent and Mr. Hurst.

As to Count VII - Case No. 91-31,198 (18A)

21. That all times relevant to Count VII that the Respondent, Charles G. DeMarco, was a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating the Florida Bar, and that he resided in and practiced law in Seminole County, Florida.

22. That on or about April 3, 1990, Respondent was retained to represent one Yvonne Jacobs in a dissolution of marriage action, and he was paid \$500.00 to represent her.

23. That Respondent failed to diligently represent this client, and he closed his office and left for whereabouts unknown retaining several of his client's documents.

24. The affidavit of Yvonne Jacobs is attached hereto as page 5 of Florida Bar Composite Exhibit #1.

**III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty:** As to each count of the complaint I make the following recommendations as to guilt or innocence:

As to Count I - Case No. 91-31, 145 (18A)

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations: Rule of Discipline 3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice; Rules of Professional Conduct 4-8.4(a) for violating the Rules of Professional Conduct; 4-8.4(b) for committing a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

As to Count III - Case No. 91-30,901 (18A)

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations: Rule of Discipline 3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice; Rules of Professional Conduct 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable request for information; 4-1.5(a) for charging a clearly excessive fee; 4-1.16(d) for failing to take reasonable steps to protect a client's interest upon termination of representation; 4-3.2 for failing to make reasonable efforts to expedite litigation consistent with the interest of the client; 4-8.4(a) for violating the Rules of Professional Conduct; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

As to Count IV - Case No. 91-30,937 (18A)

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations: Rule of Discipline 3-4.3 for engaging in conduct

that is unlawful or contrary to honesty and justice; Rules of Professional Conduct 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; 4-1.5(a) for charging a clearly excessive fee; 4-1.16(d) for failing to take reasonable steps to protect a client's interest upon termination of representation; 4-3.2 for failing to make reasonable efforts to expedite litigation consistent with the interest of the client; 4-8.4(a) for violating the Rules of Professional Conduct; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

As to Count V - Case No. 91-31,074 (18A)

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations: Rule of Discipline 3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice; Rules of Professional Conduct 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; 4-1.5(a) for charging a clearly excessive fee; 4-1.16(d) for failing to take reasonable steps to protect a client's interest upon termination of representation; 4-3.2 for failing to make reasonable efforts to expedite litigation consistent with the interest of the client; 4-8.4(a) for violating the Rules of Professional Conduct; and 4-8.4(d) for engaging conduct that is prejudicial to the administration of justice.

As to Count VI - Case No. 91-31,129 (18A)

I recommend that the Respondent be found not guilty.

As to Count VII - Case No. 91-31,198 (18A)

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations: Rule of Discipline 3-4.3 for engaging in conduct unlawful or contrary to honesty and justice; Rules of Professional Conduct 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; 4-1.5(a) for charging a clearly

excessive fee; 4-1.16(d) for failing to take reasonable steps to protect a client's interest upon termination of representation; 4-3.2 for failing to make reasonable efforts to expedite litigation consistent with the interest of the client; 4-8.4(a) for violating the Rules of Professional Conduct; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

**IV. Recommendation as to Disciplinary Measures to be Applied:**

- A. As to Counts I, III, IV, V, VII, I recommend that Respondent be disbarred pursuant to Rule 3-5.1(f), Rules of Discipline.
- B. As to Count VI, having found Respondent not guilty no discipline is recommended.

**V. Personal History and Past Disciplinary Record:** After finding the Respondent, Charles G. DeMarco guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(4), I considered the following personal history and prior disciplinary record of the Respondent, to-wit:

Age: 45 years

Date Admitted to the Bar: October 18, 1973

Prior disciplinary convictions and disciplinary measures: On January 29, 1988 Respondent received a private reprimand after he plead guilty to Resisting an Officer and Officer Without Violence, a first degree misdemeanor. Adjudication was withheld on this charge and a felony charge of Corruption by Threat Against a Public Servant was dismissed.

Other personal data: No other personal data was determined because of Respondent's failure to appear before the Referee and be heard.

**VI. Statement of Costs and Manner in Which Cost Should be Taxed:** I find the following costs were reasonably incurred by The Florida Bar.

- A. Costs incurred at grievance committee

level as reported by bar counsel	\$ .00
B. Referee Level Costs	
1. Transcript Costs	\$ 80.65
2. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 64.05
C. Administrative Costs	\$ 500.00
D. Miscellaneous Costs	
1. Investigator Expenses	\$ 472.55

TOTAL ITEMIZED COSTS           \$1117.25

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.

Dated the 24<sup>th</sup> of January, 1992.

James B. Balsiger  
Referee

Certificate of Service

I hereby certify on the \_\_\_\_\_ day of January, 1992 that a copy of the above report of referee has been served on:

✓ Larry L. Carpenter, Bar Counsel, at 800 North Orange Avenue, Suite 200, Orlando, FL, 32801.

✓ Charles G. DeMarco, Respondent pro se, at P.O. Box 1117, Deerfield Beach, FL, 33433 and at P.O. Box 8531, Reno, NV, 89507.

✓ Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL, 32399-2300.

James B. Balsiger  
Referee