

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

Supreme Court Case  
No. 83,988

THE FLORIDA BAR,

Complainant,

The Florida Bar  
File No. 93-70,232 (11G)

vs.

GARY ALLYN BARCUS,

Respondent.

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**REPLY BRIEF  
OF RESPONDENT, GARY BARCUS**

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**POINTS ON REVIEW**

**I**

**THE REFEREE ERRED IN FINDING MR. BARCUS  
GUILTY ON COUNT I.**

**II**

**THE REFEREE ERRED IN FINDING MR. BARCUS  
GUILTY ON COUNT II.**

**III**

**THE REFEREE ERRED IN FINDING MR. BARCUS  
GUILTY ON COUNT V.**

**IV**

**THE MOST SEVERE PENALTY THAT CAN BE  
IMPOSED UPON MR. BARCUS, EVEN IF HE WERE  
GUILTY OF EVERY COUNT, IS A PUBLIC  
REPRIMAND.**

## ARGUMENT

### I

#### **THE REFEREE ERRED IN FINDING MR. BARCUS GUILTY ON COUNT I.**

It remains difficult, nay impossible, to discern how Mr. Barcus did anything *unethical*.

The Bar attempts to make much of Mr. Barcus's and Mr. Mas's failure to appear for Mr. Mas's deposition scheduled for July 18, 1990. Mr. Barcus simply wrote down the wrong date (RR 3). An attorney who never has made a mistake never has practiced law.

The Bar whines that Mr. Barcus and Mr. Mas did not appear for Mr. Mas's deposition scheduled for August 1, 1990. However, it ignores the simple truth: Mr. Barcus did not receive notice of the deposition until approximately one hour after the deposition was scheduled (RR 4). How does the Bar expect Mr. Barcus to be aware of a scheduled deposition if he is not informed of it?

The Bar is very upset that Mr. Barcus took Mr. Mas's deposition. Anything unusual upsets the Bar. The Bar is like the short order cook who can prepare hamburgers only one way -- well done. An order for a rare hamburger unsettles him.

The opposing side did take Mr. Mas's deposition in September, 1990 (T.80-III). No harm was done.

Mr. Barcus simply showed good faith in taking Mr. Mas's deposition (T.81-III). The opposing attorneys were informed by phone (T.81-III). Mr. Barcus asked Mr. Mas only

about the circumstances involving the method by which the documents from Michigan, usury documents, were obtained.

This Court must reverse the Referee's finding of guilt on Count I.

## II

### THE REFEREE ERRED IN FINDING MR. BARCUS GUILTY ON COUNT II.

Long ago this Court held that:

“...In the absence of clear abuse of the right of appeal *and* obvious bad faith attorneys should not be censured for availing themselves of appellate review.” (*The Florida Bar v. Neal*, 246 So.2d 104 (Fla. 1971))

The Bar’s silence concerning *Neal* is deafening.

The Bar’s silence concerning Mr. Mas’s actions is also deafening. Mr. Barcus agreed to file the notice of appeal in order to obtain time for Mr. Mas to employ an appellate attorney or a bankruptcy attorney (T.95-III). On cross-examination, Mr. Barcus reiterated that he filed the notice of appeal at the request of the Mases (T.151-III). He filed a motion for extension of time at the request of the Mases (T.151-III). The intent was to leave the door open for another attorney to file the brief if the Mases did not file bankruptcy (T.151-152-III).

Mr. Barcus did nothing wrong.

First, Mr. Mas had the absolute *right* to appeal the partial summary judgment. There was no *clear* abuse of the right of appeal.

Second, not only did Mr. Barcus not act in obvious bad faith, he acted in utmost good faith. His concern was the Mases. He sought to protect them. He filed the notice of appeal at their request (RR 5; T.151-III). The intent was to gain time so that they could employ other counsel for the appeal or to file bankruptcy (T.95-III; 151-152-III). How can Mr.

Barcus be faulted for that?

Third, no harm was done. The appeal was dismissed. The District Court of Appeal was not required to write any opinion. The opposing side was not required to file a brief. The law suit proceeded.

This Court must reverse the Referee's finding of guilt on Count II.



### III

#### THE REFEREE ERRED IN FINDING MR. BARCUS GUILTY ON COUNT V.

The holding of the Referee and the position of the Bar are unfathomable.

Mr. Barcus learned of the entry of the final judgment of foreclosure when he received a copy of it in the mail (T.102-III). Mr. Barcus and Mr. Mas discussed the situation. Mr. Barcus told Mr. Mas that he had to move immediately to set the order aside. He could not ignore it. It was imperative (T.104-III). He also spoke to Mrs. Mas and told her that they had to retain a bankruptcy attorney or go to another attorney and have the foreclosure order set aside. He told them that they must take care of this immediately (T.105-III). Mr. Mas said that he would do so (T.105-III). *Mr. Barcus explained to them that he would not seek to have the order set aside (T.107-III). They agreed. They would see a bankruptcy attorney (T.107-III).*

The Mases barged into Mr. Barcus's home in the evening of September 12, 1991 (T.107-III). They arrived at approximately 7:00 P.M. They did not have an appointment. They appeared unannounced (T.107-III).

At the end of the meeting, the Mases again accepted that Mr. Barcus *no longer would be representing them (T.117;179-180-III). He advised them to seek new counsel immediately (T.117-III). They said that they would do so (T.117;180-III).*

Mr. Mas confirmed that *when he and his wife left Mr. Barcus's house that night, there was doubt that Mr. Barcus no longer would represent them (T.69;98-II).* Mr. Barcus

reiterated on redirect that when the Mases left his house that night *they understood that he would take no further legal action for them* (T.179-180-III). *They were to obtain other counsel* (T.180-III).

Linda Wright testified that when Mr. Barcus learned of the judgment of foreclosure he called Mr. Mas immediately (T.29-III). He advised Mr. Mas to retain another attorney (T.29-III).

Mr. Barcus told the Mases that they had to obtain other counsel when they met at Mr. Barcus's home on September 12, 1991 (T.31-III).

Gary Gostel, the Mases's new attorney, testified that he first spoke to the Mases the very next day, September 13, 1991 (T.30-I).

The question that the Bar should concern itself with is: What circuit judge enters a judgment of foreclosure without notice, without a hearing, *ex parte*?

This Court must reverse the Referee's finding of guilt on Count V.

#### IV

**THE MOST SEVERE PENALTY THAT CAN BE IMPOSED UPON MR. BARCUS, EVEN IF HE WERE GUILTY OF EVERY COUNT, IS A PUBLIC REPRIMAND.**

The Bar has not responded to this portion of Mr. Barcus's argument.

The Referee concluded, on the first page of his report, that:

“This case is not unlike the adage or homily that ‘no good deed goes unpunished.’....” (RR 1).

The record clearly establishes that Mr. Barcus's sole intent was to protect the Mases.

The Mases' sole interest was self interest. They would not have filed the Bar complaint if Mr. Barcus had refunded the minuscule amount of money they had paid him. They are extortionists, along with their other innumerable shortcomings.

*At least*, the following mitigating circumstances are present:

1. Absence of a prior disciplinary record.
2. Absence of a dishonest or selfish motive.
3. Thorough and free disclosure to the Grievance Committee and Bar and cooperative attitude toward proceedings.
4. Character and reputation.

The sterling character testimony established that Mr. Barcus is an able attorney who possess the highest moral and ethical standards.

Reverend David Manning testified as a character witness for Mr. Barcus.

He is a United Methodist Pastor (T.83-II). He is married and has two children (T.83-II). He has a Bachelor of Arts Degree from Florida Southern College and received his Masters Degree in Theology at Emory University (T.83-II). He has been a minister for seven years (T.83-II).

He served for three years at Coral Gables First United Methodist Church and then for four years at United Methodist Church in Fort Meade. He is there now (T.84-II). He is the Pastor (T.84-II). The church has three hundred and fifty members. He was the Associate Pastor at Coral Gables First Methodist Church. That church has about twenty eight hundred members. That is where he met Mr. Barcus (T.84-II). He and his wife met Mr. Barcus in 1988 (T.84-II). They know him well (T.84-85-II).

They were in a lot of different Bible studies with Mr. Barcus and saw his involvement in various out-reach activities of the church. Disciple Bible Study is one Bible study they were in together. That was over thirty six weeks on a weekly basis (T.85-II).

Mr. Barcus was also involved in the Stephen Ministry, which is a lay ministry. It is a care giving ministry between lay people. Mr. Barcus was involved in the training. It helped people who were bereaved or going through other crises. Mr. Barcus and those who are trained as Stephen Ministers would help a particular person in his or her time of crisis and be a support through listening and sharing common experiences (T.85-II).

Their friendship extended beyond the church. It is a real friendship that they continue to share. Mr. Barcus is a very special friend to him and his wife (T.86-II).

When he and his wife moved to Miami they did not know anyone. Mr. Barcus

befriended them. He expressed interest in them on numerous occasions. He would come by and they would go out to dinner. They were not accustomed to someone being that friendly, particularly in a big city. He extended a lot of other courtesies to them (T.86-87-II).

Since they moved to Fort Meade they have stayed in touch with Mr. Barcus. Two years ago he drove up to Fort Meade from Miami and worshiped in the church one Sunday. That meant a lot to them (T.87-II).

When asked what type person Mr. Barcus is, Reverend Manning said that he can best describe Mr. Barcus is by quoting a passage from scripture, Micah, Chapter 6, Verse 8, which says in part, that:

“What does the Lord require of you but to do justice, to love kindness and to walk humbly with the Lord your God.” (T.87-88-II).

That very accurately describes Gary Barcus. He loves justice and that which is true and right (T.88-II). Reverend Manning said that with all his heart (T.88-II).

Mr. Barcus is very passionate and zealous for that which is true and right and good and just. He is unwavering in that. He loves kindness. He does kindness. He is very benevolent, very kind, very gracious and very generous. He walks humbly with God. His faith is very important to him. He saw that first hand. He honors and respects that (T.88-89-II).

Mr. Barcus is an honest man (T.89-II).

Alvah Chapman testified as a character witness for Mr. Barcus. He was Chairman and CEO of Knight-Ritter for fourteen years (T.71-72-II). Before that he was President of

Knight-Ritter. Before that he was general manager of The Miami Herald and President of The Miami Herald (T.72-II).

He and Mr. Barcus are members of the same church, the First Methodist Church of Coral Gables, and members of the same Sunday School class (T.72-II). Sunday School is Bible study class for men and women. They study various books of the Bible, discuss what they mean to them in their everyday life and how they can use the Bible to help them live better lives (T.73-II).

He has known Mr. Barcus for six or seven years (T.73-II). He and Mr. Barcus did some things together in the church (T.73-II). They jointly conducted a Laymen's Day service in the church. They worked together and planned their presentation and spoke together in three different services (T.73-II).

Mr. Barcus is a fine person, a person of good character, a person of integrity, and a person of strong spiritual commitment. He cares about his country, his fellow man, and himself (T.74-II). He is honest and reliable (T.74-II).

Michael J. Lewis testified. He is a systems specialist technician with Bell South (T.91-92-II). He handles the computers and the lines that serve them throughout a nine state region. He has been with Southern Bell and Bell South twenty-five years, all in Miami (T.92-II).

He knows Mr. Barcus. Mr. Barcus took over his representation in a law suit he had against Allstate Insurance Company for its failure to pay on a claim, a bad faith claim (T.92-93-III). It was resolved in his favor (T.93-II). He obtained \$40,000.00. The original claim

was \$7,500.00 (T.93-II).

Mr. Barcus usually let him know what was going on by phone and then followed it up with a letter so that he always knew what was happening (T.93-94-II). Mr. Barcus always kept him informed (T.94-II). His work was very good (T.94-II).

He and Mr. Barcus are friends (T.94-II). Mr. Barcus is an honest straight-forward man. He can be overbearing at times. But that's Mr. Barcus. He is a self made man. He put himself through law school and he worked hard to do it.

Mr. Barcus is a very generous man. He treats everyone well. He is very affable. He gets along with everyone (T.95-II). If one goes to see him, one expects to be fed. When they go out to dinner, Mr. Barcus will try to pick up the tab. He has sent friends of his to discuss legal difficulties with Mr. Barcus. Mr. Barcus has helped them or referred them to someone who could help them. He has never charged them (T.95-II).

Mr. Barcus is an honest person. He is reliable. He is dependable (T.96-II).

Simply put, Mr. Barcus is a soft touch. The Referee so found:

“There is no question that his clients took advantage of the Respondent. That Mr. Mas psychologically manipulated the Respondent...” (RR 1).

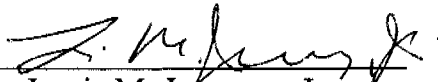
At worst, the most severe discipline that can be imposed upon Mr. Barcus is a public reprimand.

CONCLUSION

This Court must reverse the Referee's finding of guilt on Counts I, II, and V.

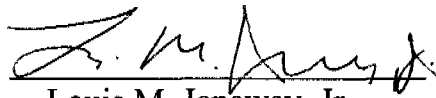
The most severe discipline, under any circumstance, that can be imposed upon Mr. Barcus is a public reprimand.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of Respondent, Gary Barcus was mailed to ARLENE K. SANKEL, Bar Counsel, The Florida Bar, Rivergate Plaza, Suite M-100, 444 Brickell Avenue, Miami, Florida 33131 this 16th day of September, 1996.

By:   
Louis M. Jepeway, Jr.