

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Petitioner,

Supreme Court Case
No. SC07-1071

v.

ANN BITTERMAN,

The Florida Bar File No.
2007-70,509(11G-OSC)

Respondent.

_____ /

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.6(a) of the Rules Regulating The Florida Bar, trial of this cause was undertaken. All of the pleadings, notices, motions, orders, and exhibits are forwarded with this report and the foregoing constitute the record in this case.

During the course of these proceedings, status conferences were held on the following dates: February 11, 2008 and May 7, 2008. On December 3, 2008, a final hearing was held in this matter.

The following attorneys appeared as counsel for the parties:

On Behalf of The Florida Bar: Jennifer R. Falcone Moore
The Florida Bar
444 Brickell Avenue

Suite M100
Miami, Florida 33131

On Behalf of the Respondent: Roy Wasson, Esq.
5901 S.W. 74th Street, Suite 205
Miami, Florida 33143

II. **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A. Jurisdictional Statement:

The Respondent is and was at all times material herein a member of The Florida Bar, albeit suspended pursuant to Florida Supreme Court Order dated September 23, 2004 in Supreme Court Case No. SC03-1370, as well as Florida Supreme Court Order dated May 22, 2008 in Supreme Court Case No. SC06-957, and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. Narrative Summary of Case: (A copy of the transcript of this Court's findings is attached as Exhibit "A" to the Report of Referee);

1. Respondent was suspended for 91 days and placed on probation for 3 years pursuant to Supreme Court Order dated September 23, 2004 in *The Florida Bar v. Ann Bitterman*, Supreme Court Case No. SC03-1370.

2. Pursuant to Rule 3-5.1(e) of the Rules of Discipline, a suspension of more than ninety (90) days requires proof of rehabilitation by the respondent. As of this date, Respondent has not petitioned for reinstatement as provided in Rule 3-7.10 of the Rules of Discipline and remains suspended. As such, Respondent remains

precluded from engaging in the practice of law, or holding herself out as a member in good standing of the Florida Bar.

3. Respondent has engaged in contemptuous conduct in connection with the events surrounding Ms. Zadis Fernandez's arrest, in violation of the Florida Supreme Court's order dated September 23, 2004 as set forth below:

A. On May 20, 2006, Respondent went to the Miami Dade County Women's Detention Center. She identified herself as an attorney, there to visit Ms. Zadis Fernandez, and presented her Florida Bar Card as identification, thereby gaining immediate access to the prisoner, in a private room, in accordance with the privileges reserved for attorneys visiting clients or witnesses in the jail.

B. Furthermore, when Ms. Fernandez was arrested, the police seized her automobile and impounded it at Diaz Towing, 760 NW 21st St., Miami, FL. During her visits at the jail, Respondent attempted to persuade Ms. Fernandez to sign a lease granting Respondent an interest in the automobile. Ms. Fernandez refused to sign over any interest in the automobile to Respondent.

C. Thereafter, Respondent went to Diaz Towing, where she represented herself to be an attorney. Respondent presented both her Florida Bar Card and Driver's License to verify her claim, upon which the vehicle was released to her.

D. Respondent testified that she then exercised a power of attorney to re-title the vehicle in her own name. Although said power of attorney was not presented in evidence, Respondent testified that she had obtained same from Ms. Fernandez a month prior to her obtaining the car. Ms. Fernandez was required to file a Replevin action against Respondent in order to re-gain possession of the automobile.

E. Respondent's acts of holding herself out as a lawyer in good standing, and proffering her Florida Bar Card to the local jail and officials at Diaz Towing, in order to gain entry, access, and possession of the vehicle, in accordance with a lawyer's privilege, constitutes contemptuous conduct by a suspended attorney.

4. In reference to the complaint made by Modesta Diaz¹, I find that Respondent did not engage in the practice of law in connection with those allegations.

A. Respondent did not agree to represent Modesta Diaz in a divorce and immigration matter in exchange for Ms. Diaz's payment for work to be performed at her home.

B. Such work was not performed at the home.

C. Ms. Diaz's absence from court due to her immigration status was considered in making this determination. The disparity in signatures attributed to

¹ In the transcript of the proceedings, Ms. Modesta Diaz's name mistakenly appears as Vanessa Diaz.

Modesta Diaz was also considered. Finally, the motive for Ms. Fernandez to instigate such allegations was also a contributing factor in reaching this determination.

5. I further find that The Florida Bar has not proven by clear and convincing evidence that Respondent gave legal advice to Claudia Bran in response to Ms. Bran's April 29, 2005, e-mail.

III. RECOMMENDATION AS TO GUILT:

Based on the foregoing, I find clear and convincing evidence that the Respondent is in contempt of the Supreme Court's order dated September 23, 2004 in Supreme Court Case No. SC03-1370, in that Respondent held herself out to be an attorney in good standing by presenting her Florida Bar identification card in order to obtain a lawyer's privileges.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Based on the foregoing, I recommend:

A. Respondent shall be suspended from the practice of law for thirty (30) days, effective upon entry of the final order of discipline by the Supreme Court of Florida.

B. Upon reinstatement to the practice of law, Respondent shall be placed on probation for a period of three years from the date of reinstatement. A special condition of the probation is that Respondent be supervised by Roy D. Wasson, Esq.,

her attorney in the instant case, during the three year probation period. It is noted that Mr. Wasson has volunteered and agreed to serve in this capacity. The supervising attorney shall provide continuous monitoring of Respondent's client case files and provide quarterly reports to the Florida Bar. Respondent shall discuss any case action with the supervising attorney prior to pursuing same, copy him on all actions taken, and thereafter discuss the outcome with him. Respondent must also meet on a monthly basis, by telephone or otherwise, with the supervising attorney. The Quarterly Reports must reflect whether there has been compliance with these special conditions.

Respondent is responsible for the timely submission of the quarterly reports to the headquarters office of the Florida Bar. Respondent will pay a quarterly monitoring fee of \$100.00 to the Florida Bar. All quarterly monitoring fees must be remitted no later than the end of each respective quarter in which the monitoring fee is due. All fees must be paid to the Bar's headquarters office. Failure to pay shall be deemed cause to seek redress from the Florida Supreme Court.

V. PERSONAL HISTORY, PAST DISCIPLINARY RECORD, AGGRAVATING FACTORS, AND MITIGATING FACTORS:

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(C) of the Rules Regulating The Florida Bar, I considered the following:

A. Personal History of the Respondent:

Age: 47

Date Admitted to Bar: December 18, 1986

Prior disciplinary record:

- Respondent was suspended for a period of 30 days and received 3 years probation by Order of the Supreme Court of Florida dated June 13, 1996 in Supreme Court Case No. SC87244, The Florida Bar File Nos. 1995-50,963(17F), 1995-51,023(17F), and 1995-51,474(17F);
- Respondent received an admonishment for minor misconduct by the Eleventh Judicial Circuit Grievance Committee “G” on April 19, 1997 in The Florida Bar File Nos. 1996-71,024(11G) and 1996-71,059(11G);
- Respondent was suspended for a period of 90 days and received 3 years probation by Order of the Supreme Court of Florida dated December 9, 1999 in Supreme Court Case No. SC94471, The Florida Bar File Nos. 1997-71,414(11G), 1997-71,775(11G), 1998-70,750(11G), and 1998-70,831(11G);
- Respondent received a public reprimand by Order of the Supreme Court of Florida dated July 5, 2001 in Supreme Court Case No. SC00-2286, The Florida Bar File No. 2000-70,548(11G);
- Respondent was suspended for a period of 91 days and received 3 years probation by Order of the Supreme Court of Florida dated September 23, 2004 in Supreme Court Case No. SC03-1370, The Florida Bar File Nos. 2002-71,017(11G) and 2002-71,311(11G); and
- Respondent was suspended for a period of 91 days, effective nunc pro tunc September 23, 2004, and received 3 years probation by Order of the Supreme Court of Florida dated January 18, 2007 in Supreme Court Case No. SC06-1592, The Florida Bar File No. 2005-70,304(11G).
- Respondent was suspended for a period of six months by Order of the Supreme Court of Florida dated May 22, 2008 in Supreme Court

Case No. SC06-957, The Florida Bar File No. 2006-90,165(OSC).

B. Aggravating Factors:

9.22(a) Prior disciplinary offenses;

9.22(b) Dishonest or selfish motive. However, the undersigned brings this comment: The Respondent and Ms. Fernandez may well have been engaged in a romantic relationship. Respondent, by recovery the subject automobile, seemed to be motivated by a need to maintain some control over Ms. Fernandez. This was not the act of an attorney against a client.

9.22(c) A pattern of misconduct. However, the undersigned brings this comment: There were only two acts of Respondent holding herself out as an attorney in this case;

9.22(g) Refusal to acknowledge wrongful nature of conduct;

9.22(h) Vulnerability of victim.

C. Mitigating Factors:

9.32(c) Personal or emotional problems;

9.32(h) Physical or mental disability or impairment;

9.32(j) Interim rehabilitation.

I further considered the personal relationship between Respondent and Ms. Fernandez as a mitigating factor, as well as Respondent's assertions that she was attempting to prevent harm to Ms. Fernandez when she retrieved the car from the towing/impound lot. If the automobile was left

in the garage it ultimately would have lost all equity due to the garage lien that was accruing, and Ms. Fernandez was in no position to stop this assessment.

VI. **STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED:**

I find the following costs were reasonably incurred by The Florida Bar in these proceedings and should be assessed against the Respondent:

Administrative costs.....	\$ 1,250.00
Staff Investigator's Costs.....	\$ 1,309.47
Court Reporter Costs at February 11, 2008 Hearing.....	\$ 80.00
Court Reporter Costs at December 3, 2008 Final Hearing...	\$ 300.00
Transcript (excerpt of proceedings from final hearing) plus delivery...	\$ 272.00
TOTAL	\$ 3,211.47

I recommend that the foregoing costs be assessed against the Respondent. It is further recommended that the execution issue with interest at the statutory rate to accrue on all costs not paid within 30 days of entry of the Supreme Court's final order.

Dated this _____ day of _____, 2008.

Honorable Edward Newman
County Court Judge
Richard E. Gerstein Justice Building
1351 N.W. 12th Street, Room 616
Miami, Florida 33125

Copies to:
Roy Wasson, Attorney for Respondent

Jennifer R. Falcone Moore, Bar Counsel
Kenneth L. Marvin, Staff Counsel