

**IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)**

THE FLORIDA BAR,

Supreme Court Case  
No. SC07-1633

Complainant,

v.

MARIO A. RUIZ DE LA TORRE,  
A/K/A MARIO COSTA

The Florida Bar File No.  
2008-70,010(11H-MFC)

Respondent.

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**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 Rules 3-7.2(h)(2) and 3-7.6(m) of the Rules Regulating The Florida Bar, a final hearing 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.

The following attorneys appeared as counsel for the parties:

On behalf of The Florida Bar: Barnaby Lee Min  
The Florida Bar  
444 Brickell Avenue, Suite M-100  
Miami, Florida 33131

On behalf of Respondent: Kevin P. Tynan  
8127 North University Drive  
Tamarac, Florida 33321

**II. JURISDICTION AND FINDINGS OF FACT:**

1. This Court finds that at all times material to this action, respondent was a member of The Florida Bar subject to the jurisdiction and disciplinary rules of The Supreme Court of Florida.

2. On or about March 10, 2000, Respondent entered a plea of nolo contendere to one felony count of Battery on a Law Enforcement Officer, one misdemeanor count of Resisting an Officer Without Violence, one felony count of Possession of Cocaine, one misdemeanor count of Unlawful Possession of Cannabis, and one misdemeanor count of Possession of Drug Paraphernalia in the Eleventh Judicial Circuit Court of Florida, under case no. F99-38473.<sup>1</sup> Adjudication was withheld as to all counts and the Respondent was placed on probation for a period of 18 months. The Respondent was granted early termination after 10 months, based on his successful completion of all the special conditions of his probation.

3. Respondent failed to notify The Florida Bar of the determination of guilt pursuant to Rule 3-7.2(c) of the Rules Regulating The Florida Bar until on or about

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<sup>1</sup> The court documents refer to the defendant as Mario Costa and reflect that on November 14, 1999, the court ordered the defendant's name corrected to Mario Ruiz De la Torre with a date of birth of [REDACTED] and a social security number of [REDACTED]. The Respondent contends that he informed the Court at his first hearing that he had been misidentified in the police reports and had asked that the records be corrected. The evidence introduced at the hearing on this matter did not conclusively show that this is true, despite the Respondent's contention. In fact, there was evidence that, shortly after the arrest, the real Mario Costa (Respondent's brother-in-law at the time) informed the police department that the Respondent had used his name. This Court finds that the Respondent may have used the name Mario Costa to hide his true identity.

August 23, 2007.

4. Without objection, The Florida Bar introduced the disposition sheet from the case styled *State of Florida v. Mario Costa*, under case number F99-38473.

**III. RECOMMENDATION AS TO GUILT:**

Pursuant to Rule 3-7.2(b), this Court recommends that Respondent be found guilty of violating Rules 4-8.4(a) (A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another) and 4-8.4 (b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects) of the Rules of Professional Conduct.

**IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:**

Based on the foregoing findings of fact, this Court hereby recommends that Respondent receive a 90 day suspension nunc pro tunc to October 4, 2007, the date of commencement of his current felony suspension, followed by 3 years of probation. It is further recommended that, within 30 the Respondent be evaluated by Florida Lawyers Assistance, Inc. (F.L.A.). If the evaluation by F.L.A. indicates that the Respondent is in need of treatment for substance abuse, that the Respondent should execute a

standard F.L.A. contract not to exceed a three-year period of time and successfully complete the recommended treatment. This recommendation is based on the Court's findings of fact and Standard 5.12 of the Florida Standards for Imposing Lawyer Sanctions which states that "[s]uspension is appropriate when a lawyer knowingly engages in criminal conduct which is not included within Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice."

**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 of Discipline, this Court considered the following:

A. Personal History of the Respondent:

The Respondent is a 53 year-old Father of three children. He was admitted to the Florida Bar on October 17, 1986, and has no disciplinary record.

B. Aggravating Factors:

1. 9.22(b) Dishonest or selfish motive – This Court did not find credible Respondent’s assertion that he did not know or think he had to report his conduct to The Florida Bar. The Respondent testified that he relied on the advice of an Assistant Public Defender that he would not have to report this conduct. The Respondent should have known and is charged with that knowledge, Rule 3-4.1, Rules of Discipline. This Court also finds that the Respondent’s assertion that he believed he was pleading only to misdemeanors is also not credible. The transcript of the plea clearly indicates that the presiding Judge informed the Respondent that he was “charged with battery on a police officer, that carries a maximum of 5 years imprisonment. Resisting an officer without violence, one year in the county jail. Possession of cocaine, 5 years, possession on cannabis, one year, possession of drug paraphernalia, one year.” Respondent’s exhibit 1, Page 7.

2. 9.22(c) Pattern of misconduct – The Respondent did not notify the Florida Bar of this incident when it occurred. The Respondent did not notify the Florida bar when it was brought to his attention 7 years later by an opposing counsel. The Respondent did not report this conduct to the Florida Bar after being notified by the Florida Bar that this conduct had

been brought to their attention.

3. 9.22(e) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the discipline agency. See comment in paragraph 2 above regarding 9.22(c)

4. 9.22(f) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process – Respondent may have given a false name to the police when being arrested.

5. 9.22(g) Refusal to acknowledge wrongful nature of conduct – Respondent tried to minimize the seriousness of events that led to his arrest and refused to take responsibility for the more serious charges that he plead to. The Respondent continually referred to the battery on a police officer charge as merely a technical battery. Further, Respondent’s explanation as to how a baggie with cocaine/cocaine residue and a straw ended up on his pocket lacked credibility.

6. 9.22(i) Substantial experience in the practice of law.

C. Mitigating Factors:

1. 9.32(a) Absence of a prior disciplinary record
2. 9.32(c) Personal or emotional problems – This Court finds that Respondent’s difficult physical rehabilitation after a slip-and-fall accident and his divorce proceedings at or around the time of his arrest were contributing factors to his behavior. Just prior to the events in question, the Respondent had recently recovered from a serious ankle injury that left him out of work and in a wheel chair for more than five months. Also, during this time frame, his wife from a long term marriage began divorce proceedings.
3. 9.32(g) Character or reputation – The Respondent presented considerable evidence of his present good character and reputation through witnesses called on his behalf. These witnesses included three individuals who have maintained a personal friendship with the Respondent since childhood. The attorneys who testified, some of whom only have a professional relationship with the Respondent, spoke of the Respondent’s high moral character and professionalism as an attorney, co-counsel and, in some cases, opposing counsel.
4. 9.32(j) Interim rehabilitation – The Respondent has maintained a seemingly exemplary record since his arrest.

5. 9.32(k) Imposition of other penalties or sanctions – The Respondent successfully completed the terms of his criminal sentence.

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

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

Administrative costs	
Rule 3-7.6(q)(1)(I) .....	\$ 1,250.00
Court Reporter's attendance at final hearing held on November 9, 2007.....	\$ 175.00
Bar Counsel's Travel Costs	\$ 22.42
Staff Investigator's Costs	\$ 455.43
Copy Costs	\$ 51.60
<b>TOTAL:</b>	<b><u>\$1,954.45</u></b>

It is recommended that the foregoing costs be assessed against Respondent. Taxation of costs of this disciplinary proceeding should be assessed against Respondent, with execution to issue plus interest at the prevailing statutory rate to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order, unless the time for payment is extended by the Board of Governors.



DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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**JOSE L. FERNANDEZ, Referee**  
Richard E. Gerstein Justice Building  
1351 Northwest 12th Street, Room 507  
Miami, Florida 33125

Copies furnished to:  
Barnaby L. Min, Bar Counsel  
Kevin P. Tynan, Attorney for Respondent  
Kenneth L. Marvin, Director of Lawyer Regulation