

IN THE SUPREME COURT OF FLORIDA
(BEFORE A REFEREE)

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THE FLORIDA BAR,	}	
	}	
<i>Complainant,</i>	}	
	}	
v.	}	CASE NO. SC08-1105
	}	Fla. Bar File 2008-51,498(15C)
MIROSLAW THOMAS LOBASZ,	}	
	}	
<i>Respondent.</i>	}	
_____	}	

REPORT OF REFEREE

Pursuant to the undersigned's being duly appointed as Referee to conduct disciplinary proceedings herein according to rule 3-7.6 of the Rules Regulating the Florida Bar, the following proceedings have occurred:

I. SUMMARY OF PROCEEDINGS

The Florida Bar commenced this action on June 9, 2008, with the filing of a petition seeking an order directing Respondent to show cause why he should not be held in contempt of the Court for continuing to engage in the practice of law while suspended. (Pet. Contempt at 1.) The Bar seeks disbarment. (*Id.* at 3–4.) The Bar's petition is predicated upon Respondent's allegedly holding himself out as

legal counsel for a defendant at two immigration-court hearings one week apart.

(*Id.* ¶ 7.)

The Court issued an order to show cause, to which Respondent responded, and the Court referred the matter for appointment of a referee to take evidence and issue a report and recommendation. The undersigned was appointed to serve as referee by order entered on September 16, 2009.

On the Bar's motion for summary judgment and with the agreement of Respondent, the Referee entered an order deeming the following as established:

Respondent's active participation in that certain hearing held on April 10, 2008, before the Honorable Denise A. Marks Lane, U.S. Immigration Judge, in *Removal Proceedings of Alberto Gaspar-Martinez*, Case No. A28 957 234, namely, his addressing and responding to the court and conducting examination of Mr. Gaspar-Martinez, constituted the practice of law.

(Agreed Order Granting Summ. J. ¶ 2 (Mar. 16, 2009).)

Final hearing was held on April 30, 2009. Respondent testified on his own behalf. All of the pleadings and other papers on file with the Referee, exhibits received in evidence, a transcript of the hearing, and this report constitute the record in this matter and are being forwarded to the Supreme Court of Florida.

II. *FINDINGS OF FACT*

A. *Jurisdictional Statement.* Respondent is and at all material times was a member of the Florida Bar, subject to the disciplinary jurisdiction of the Supreme Court of Florida.

B. *Narrative Summary of the Case*

The Referee finds the facts as follows:

1. On March 7, 2008, the Court suspended Respondent from the practice of law for three years, effective thirty days thereafter. *Fla. Bar v. Lobasz*, No. SC06-2500 (Fla. Mar. 7, 2008).

2. During the thirty-day windup period before his suspension became effective, Respondent transferred most if not all of his open cases to Linda Amy Ann Cahill, a member of the Florida Bar with whom he shared office space.

3. The suspension took effect on Monday, April 7, 2008. On April 10, 2008, Respondent accompanied Ms. Cahill to a removal (deportation) hearing in Miami in the case of *Removal Proceedings of Alberto Gaspar-Martinez*, Case No. A 028 957 234 (U.S. Dep't of Justice).

4. The defendant, Alberto Gaspar-Martinez, was one of Respondent's former clients whose matter he had transferred to Ms. Cahill.

5. Ms. Cahill had filed the appropriate administrative form to appear as counsel for Mr. Gaspar-Martinez.

6. Respondent accompanied Ms. Cahill to the hearing at her request, with the intent to assist her as needed—to “make sure that everything was done right,” “to whisper in her ear when I thought something had to be done.” (Tr. of Final Hrg. at 26.)

7. The April 10, 2008, hearing was conducted by The Honorable Denise A. Marks Lane, an Immigration Judge with the U.S. Department of Justice.

8. Ms. Cahill informed Judge Lane at the hearing on April 10, 2008, that she was representing Mr. Gaspar-Martinez. Respondent sat at counsel table with Ms. Cahill, responded to certain questions posed by Judge Lane regarding the procedural history of the case, and ultimately conduct a brief direct examination of Mr. Gaspar-Martinez when it became apparent to him that Ms. Cahill did not understand the foundation needed to qualify Mr. Gaspar-Martinez for voluntary departure.

9. At no time during the hearing on April 10, 2008, did Respondent or Ms. Cahill inform Judge Lane or opposing counsel (the lawyer for the U.S. Department of Homeland Security) that Respondent had been suspended.

10. At the time of the hearing on April 10, 2008, Respondent was suffering from post-traumatic stress syndrome, anxiety, and depression, and his father was hospitalized and dying.

11. It was not Respondent’s conscious intention to violate the suspension

order. His actions in court on April 10, 2008, were driven more by his emotional state and his desire to help a former client than by contumacious disregard for an order of the Court, and he harbored no dishonest or selfish motive.

12. Respondent did not intend and has not at any time intended to continue practicing law during his suspension.

III. *RECOMMENDATIONS AS TO GUILT*

Based on the foregoing facts as I find them and on the Agreed Order Granting Summary Judgment dated March 16, 2009, I recommend that Respondent be held in indirect contempt of the Court for technical violation of the order of suspension of March 7, 2008.

IV. *RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED*

Given the circumstances, I recommend that Respondent be suspended for a period of three years running retroactively from April 10, 2008 (the date of his appearance in immigration court), to run concurrently with the suspension imposed in Case No. SC06-2500, that his reinstatement be conditioned upon his demonstrating his fitness to practice law, and that he be required to pay the Florida Bar for its costs reasonably incurred in this proceeding.

In making this disciplinary recommendation, I have concluded that this case is most analogous to *Florida Bar v. Neckman*, 616 So. 2d 31 (Fla. 1993), in which

the respondent was given a public reprimand for one isolated incident of engaging in the practice of law after resigning. The Court noted that the respondent had caused no injury and “was not motivated by financial gain, but by a desire to help friends.” *Id.* at 32. I find that analogous to the case at bar. The recommended condition for reinstatement is based on Respondent’s emotional issues and treatment for them.

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

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following:

A. *Personal History of Respondent*

1. *Age*: 56 years (date of birth: March 7, 1953).
2. *Date admitted to the bar*: November 28, 1994.

B. *Aggravating Factors*

1. *Prior disciplinary offenses* (Fla. Std. Imposing Law.

Sancs. 9.22(a)): Respondent has been suspended for three years for trust-accounting violations. *See Fla. Bar v. Lobasz*, Case No. SC06-2500 (Fla. Mar. 7, 2008).

2. *Injury to the legal system* (*cf.* Fla. Stds. Imposing Law.

Sancs. 3.0(c), 8.1(a)): Respondent’s failure to inform the immigration judge of his

suspension disrupted a legal proceeding to the extent that it required the immigration judge to reschedule a hearing in the matter set for the following week.

3. *Obstruction of the disciplinary proceeding* (Fla. Std. Imposing Law. Sancs. 9.22(e)): The Bar contends that in his response to the Court's order to show cause, Respondent intentionally misrepresented the extent of his involvement in the April 10, 2008, hearing. The Referee rejects this contention. The representation was made in an unverified pleading signed by counsel and filed before a transcript of the proceeding before the immigration judge became available for review. After review of the transcript, Respondent agreed to a summary adjudication that his activities at that hearing constituted the practice of law.

C. Mitigating Factors

1. *Absence of conscious intent to violate prior disciplinary order* (cf. Fla. Stds. Imposing Law. Sancs. 3.0(b), 8.1(a)): It was not Respondent's conscious intention to violate the suspension order. His actions were driven more by his emotional state and his desire to help a former client than by contumacious disregard for an order of the Court

2. *Absence of a dishonest or selfish motive* (Fla. Std. Imposing Law. Sancs. 9.32(b)): Likewise, Respondent did not harbor a dishonest or selfish motive

when he appeared in court on April 10, 2008. His actions were driven by his desire to help a former client.

3. *Personal or emotional problems* (Fla. Std. Imposing Law. Sancs. 9.32(c)): At the time in question, Respondent was suffering from post-traumatic stress syndrome, anxiety, and depression, and his father was hospitalized and dying.

4. *Remorse* (Fla. Std. Imposing Law. Sancs. 9.32(l)): Respondent accepts full responsibility for his lapse in judgment, as evidenced by his agreeing to summary judgment, and is remorseful about it.

5. *Absence of injury to client* (cf. Fla. Stds. Imposing Law. Sancs. 3.0(c), 8.1(a)): No evidence of harm to Respondent's client has been shown.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find that the Florida Bar reasonably incurred the following costs:

Grievance-Committee Level:

Court Reporter's fees	0	
Bar Counsel travel	0	
Investigative costs	0	
Photocopies	0	
<i>Subtotal</i>		\$0

Referee Level:

Administrative costs	\$1,250.00	
Court Reporter's fees	1,050.50	
Bar Counsel travel	51.80	
Investigative costs	0	
Photocopies	0	
Transcription of tapes of immigration-court hearings	907.50	
<i>Subtotal</i>		\$3,259.80

<i>TOTAL:</i>	\$3,259.80
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I recommend that the foregoing costs be charged to Respondent and that interest at the statutory rate accrue and be payable beginning thirty days after judgment becomes final, unless the Florida Bar grants a waiver.

DATED June 26, 2009.

Peter B. Skolnik
County Court Judge, Broward
County, Florida
As Referee

Conformed copies furnished to following counsel:

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