

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

**Supreme Court Case No.
SC09-1012**

**Florida Bar File No. 2006-71,063
(11N)**

THE FLORIDA BAR,

Complainant,

v.

HENRY ADORNO,

Respondent.

FILED
THOMAS D. HALL
2010 MAR 29 AM 11:14
CLERK, SUPREME COURT
BY _____

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar filed two separate cases against Respondent Charles Mays and Respondent Henry Adorno alleging violations of the disciplinary code of conduct. The undersigned was appointed as Referee by the Honorable Victor Tobin, Chief Judge of the 17th Judicial Circuit to act as Referee in both cases. The cases were consolidated for discovery and later consolidated for trial. The cases against Respondents arise out of a similar set of facts and circumstances.

II. FINDINGS OF FACT RE: TFB No. 2006-71,063 & SC09-1012.

A. Jurisdictional Statement: Respondent Henry Adorno was at all times mentioned a member of The Florida Bar and subject to the jurisdiction and Disciplinary Rules of the Florida Supreme Court.

B. Narrative Summary in case SC09-1012: Henry Adorno is an attorney with the firm of Adorno and Yoss. The disciplinary proceedings against him emanate from an underlying case seeking class certification for alleged improper emergency medical assessment fees imposed by the City of Miami on residents of the City of Miami. A more detailed description of the events giving rise to this disciplinary case are recited in *Carl L. Masztal et al v The City of Miami* by the 3rd District Court of Appeal. Further, attached hereto is the Referee's Final Order on Cross Motions for Final Summary Judgment. The parties agreed there were no material issues of disputed fact and the questions before the Referee were questions of law.

Adorno was counsel for Plaintiffs in the underlying class action case. He is alleged to be subject to bar discipline for violating various provisions of Rules 4-3.3 and 4-8.4, and 4.1.7.

The Referee finds Adorno's role in this matter to be substantially different from that of Respondent Mays. Adorno announced the settlement in Judge Lopez's court on May 26, 2004. Adorn led the negotiations at

mediation with the City, and Adorno negotiated a settlement with officials from the City of Miami.

The Florida Bar alleges Adorno misled Judge Lopez during the May 26, 2004 hearing. They allege Adorno's statements were less than candid, not forthright and incomplete. As a result, they claim Judge Lopez was unaware that the announced settlement did not contemplate a resolution of claims by an undetermined class. He is also alleged to have breached a duty owed to an undetermined/putative class and accepting an excessive fee.

III. RECOMMENDATION AS TO GUILT

B. Case #SC1012 The Florida Bar v. Henry Adorno

I recommend that Respondent Henry Adorno be found not guilty of violating Rule 4-3.3 of Rules of Discipline of The Florida Bar; and that Respondent Adorno be found guilty of violating Rules 4-1.7 and 4-8.4 of the Rules of Professional Conduct.

1. As to the Bar's alleged violation of Rule 4-3.3, that Respondent Adorno misled the tribunal or was less than forthright with a court, the Referee cannot say without hesitation, under a clear and convincing standard of proof that Respondent Adorno violated this rule and recommends he be found not guilty.
2. As to the Bar's alleged violations of Rule 4-8.4, and 4-1.7, the Referee finds the Bar carried their burden of proof and as a matter of law,

Respondent Adorno breached a fiduciary duty owed to a putative/undetermined class and prejudiced said class when he settled with individual plaintiffs to the detriment of the putative/undetermined class. The Referee recommends Respondent be found guilty of violating rule 4-8.4 of the code of conduct.

3. As to the Bar's alleged violation of Rule 4-1.7, the Referee finds the Florida Bar carried their burden of proof and Respondent Adorno took an excessive attorney fee when he settled with individual plaintiffs to the detriment of the putative/undetermined class. The Referee recommends Respondent be found guilty of violating rule 4-1.7 of the code of conduct.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

A. In **SC1012**, *The Florida Bar v. Henry Adorno*, having found the Respondent not guilty of violating rule 4-3.3 and guilty of violating rules 4-1.7 and 4-8.4, the Referee recommends a Public Reprimand.

B. Costs are assessed only in **SC1012** against Respondent Adorno in favor of The Florida Bar.

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

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

A. Personal History of Respondent:

Date of Birth – December 14, 1947

Date Admitted to the Bar – October 18, 1973

Prior Disciplinary Record – Admonishment, 2003

B. Duties Violated:

Florida's Standards for Imposing Lawyer Sanctions

4.33 - Public reprimand is appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

7.3 – Public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

C. The potential or actual injury caused by the Respondent's misconduct:

The referee finds by settling with individual plaintiffs to the detriment of the undetermined/putative class the Respondent left thousands of potential plaintiffs unable to effectively pursue their claims against the City of Miami.

Further, the settlement ultimately was appealed, set aside and the litigation renewed causing unnecessary delay and expense to the parties.

D. The existence of aggravating or mitigating circumstances:

9.22 Aggravation

- (a) Prior disciplinary offenses;
- (d) Multiple offenses;
- (i) Substantial experience in the practice of law.

9.31 Mitigation

- (e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (f) Inexperience in the practice of law (although Respondent is an experienced attorney, he was not experienced in handling class actions);
- (g) Character or reputation; Respondent has a general good reputation in the legal community and has made substantial contributions to his community and the legal profession;
- (m) Remoteness of prior offense (s);
- (o) Any other factors that may justify a reduction in the degree of discipline to be imposed. On this mitigation consideration the Referee feels compelled to comment on the plethora of community leaders

who testified on behalf of the Respondent in the disciplinary phase of the trial. Numerous civic leaders, a former Florida Supreme Court justice, managing partners of Miami's leading law firms, and principals of civic organizations all came forward to testify on Respondent's behalf. Few attorneys could summon a more prestigious cross section of the community to testify on one's behalf. The Respondent exemplifies a dedication to pro bono work together with substantial contributions to those less fortunate in the Miami Dade community. The Respondent should be commended and recognized for his substantial life time dedication to pro bono work, charities, and the betterment of his community.

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

The following costs were submitted to the Court in the form of an Affidavit by The Florida Bar and the Respondent has no objection:

| | |
|--|------------|
| Administrative fee Rule 3-7.6(q)(1)(I) | \$1,250.00 |
| Attendance of Court Reporter at Hearing on August 14, 2009 | 85.00 |
| Attendance of Court Reporter at Hearing on September 25, 2009 | 125.00 |
| Transcript of Hearing on September 25, 2009 | 1045.25 |

Transcript of Hearing on
October 15, 2009 (copy) 158.75

Attendance of Court Reporter at
Hearing on November 6, 2009..... 95.00

Transcript of Videotaped Deposition on
December 1, 2009 (copy) 1,060.00

Attendance of Court Reporter at
Deposition on December 9, 2009 95.00

Transcript of Deposition on
December 9, 2009 221.80

Attendance of Court Reporter at
Hearing on December 18, 2009 118.75

Transcript of Hearing on
December 18, 2009 402.00

Attendance of Court Reporter at
Hearing on January 6, 2010 190.00

Transcript of Deposition on
January 8, 2010 (copy) 164.00

Staff Investigator's costs 85.10

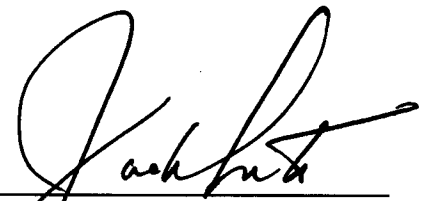
Attendance of Court Reporter at
Trial on Discipline on
January 12-13, 20101,100.00

Transcript of Trial on Discipline on
January 12-13, 20102,706.00

TOTAL: \$ 8,901.65

Manner of Payment

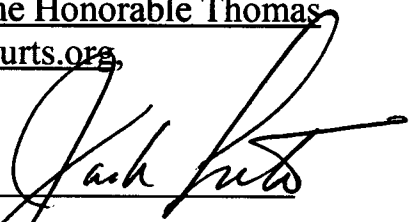
It is recommended that such costs be charged to the Respondent and that interest at statutory rate shall accrue and be payable beginning thirty (30) days after the judgment has become final unless a waiver is granted by the Board of Governors of The Florida Bar.



Jack Tuter, Circuit Court Judge, 17th
Judicial Circuit and Referee
Broward County Courthouse
201 SE 6th Street, Room 1010B
Fort Lauderdale

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this report has been mailed to Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399, Kasey L. Prato, Bar Counsel, 444 Brickell Ave., Suite 100, Miami FL 33131, Andrew S. Berman, counsel for Henry Adorno, 17071 W. Dixie Highway, North Miami Beach, FL 33160, Bruce Rogow, counsel for Henry Adorno, 500 E. Broward Blvd., Suite 1930, Fort Lauderdale, FL 33394 and George F. Knox, counsel for Charles Mays 150 SE 2nd Ave, Suite 902, Miami FL, and by email to The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, e-file@flcourts.org, this 3 day of MARCH, 2010.



Jack Tuter, Circuit Court Judge, 17th
Judicial Circuit and Referee
Broward County Courthouse
201 SE 6th Street, Room 1010B
Fort Lauderdale