

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC09-1929

[TFB Case Nos. 2009-30,456(09D);
2009-30,495(09D)]

v.

JAIME ROBERTO,

Respondent.

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REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar, a hearing was held on March 17, 2010. Since the referee found the Respondent guilty of a rule violation, a separate hearing was held telephonically on April 18, 2010 to determine the appropriate discipline. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - Keshara Darcel Davis and Patricia Ann Toro Savitz

For The Respondent - Pro se

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent Is Charged: After considering all the pleadings and evidence, pertinent portions of which are commented on below, this referee finds as follows:

These findings are made by the standard of clear and convincing evidence and establish that there are violations of the Rules Regulating The Florida Bar as further noted in this Report of Referee.

In January 2008 and February 2008 respondent began representation of two female clients, Michelle Danna and Jennifer Ragin, in separate criminal matters. The Florida Bar alleged that respondent provided both clients with financial assistance and that respondent had Ms. Danna refer prospective criminal clients to him for representation. The Bar further alleged that in lieu of collecting monetary legal fees, respondent sought or engaged in sexual relations with his clients.

The Florida Bar presented the testimony of Jennifer Ragin, testimony via affidavit and deposition of Michelle Danna, and respondent's admissions from his deposition. In addition, this referee received into evidence The Florida Bar's Exhibits 1-9, Exhibit 3 was only for identification purposes. Respondent presented testimony on his own behalf, the testimony of his former client Rosa Rosario, and the testimony of The Florida Bar Staff Investigator Walter Tuller.

Respondent has admitted to engaging in sexual relations with Ms. Danna during the time that he was handling her criminal case. Respondent further admitted that engaging in a sexual relationship with Ms. Danna during his representation was a mistake on his behalf. Respondent acknowledged that he let his guard down during this period of time, during a rough spot in his marriage.

The facts are clear that respondent had a sexual relationship with Michelle Danna while she was his client. This referee personally feels it is inappropriate for a lawyer to have a sexual relationship with a client. The Florida Bar has failed to prove by clear and convincing evidence that this relationship was in exchange for legal services or that it exploited the attorney-client relationship. However, whenever a lawyer engages in a sexual relationship with a client, there is the appearance of impropriety, and the potential for exploitation.

Based on the overall evidence that was presented, including Rosa Rosario's testimony regarding what she heard at the Osceola County jail, this referee does not find Ms. Danna's affidavit testimony regarding sex in lieu of legal fees to be credible. Ms. Rosario testified that Ms. Danna and Ms. Ragin conspired to accuse respondent of accepting sex in exchange for legal fees. Ms. Rosario's testimony appeared to be more credible than the testimony of either Ms. Danna or Ms. Ragin.

Based on the testimony and evidence presented, the referee finds credible Ms. Ragin's testimony regarding the respondent's behavior in meeting with her at restaurants and in her home. Respondent's behavior led to informality and to the appearance that respondent might be willing to exchange services for sex. In her testimony, Ms. Ragin also stated that she knew of an additional client with whom

respondent was having a sexual relationship during his representation. While this referee does not find that respondent specifically sought sexual favors from Ms. Ragin in return for legal services, there was the appearance of impropriety in the manner of the relationship surrounding his legal representation of Ms. Ragin

During the representation and the completion of legal work, respondent never collected a monetary fee from Ms. Danna or from Ms. Ragin, but instead provided funds to them. This referee finds that this conduct also led to the appearance of impropriety, and to the impression that he might be willing to exchange legal representation for sex.

Respondent admitted that he asked Ms. Danna to refer prospective criminal clients to him for representation. The referrals were at respondent's request because Ms. Danna knew many people in Osceola County, and respondent stated that he needed clients. Respondent also purchased a cellular phone for Ms. Danna's use in pursuing client referrals. There is no evidence that respondent actually received any legal fees or shared any fees with Ms. Danna based on her client referrals. It is undisputed that respondent paid money for Ms. Danna's business-purpose driver's license. The cellular phone and license are not considered to be costs of litigation.

Respondent further admitted that he provided Ms. Danna and Ms. Ragin with financial assistance. On two separate occasions during respondent's representation of Ms. Danna, respondent provided her with monetary financial assistance. Respondent deposited approximately \$130.00 into Ms. Danna's commissary account at the jail during her incarceration.

During the time that respondent was representing Ms. Ragin, respondent provided her with financial assistance. Respondent gave Ms. Ragin approximately \$250.00 to buy clothes or other personal goods. Subsequently, in or around August 2008, during a time in which Ms. Ragin was in the Osceola County Jail, respondent provided her with financial assistance. Respondent deposited approximately \$60.00 into Ms. Ragin's commissary account at the jail.

This referee finds that respondent's financial assistance to Ms. Ragin and Ms. Danna are not considered to be the costs of litigation and are in violation of the provisions of The Rules Regulating The Florida Bar. Thus, it is inappropriate for respondent to be providing money into commissary accounts for a client, existing client, or somebody who might become a client.

It is the opinion of this referee that an attorney should not have a sexual relationship with a current client and recommends that The Florida Bar review the applicable rules and consider such changes. Pursuant to the Rules Regulating The Florida Bar, respondent's conduct during his representation of Ms. Danna and Ms. Ragin did create a conflict of interest. Conduct such as that engaged in by respondent, taints how the legal profession is viewed by members of the public and by people who seek the professional services of an attorney, as evidenced by the following statements from the Supreme Court of Florida:

In The Florida Bar v. Bennett, 276 So.2d 481, 482 (Fla. 1973), the Court stated:

Some may consider it 'unfortunate' that attorneys can seldom cast off completely the mantle they enjoy in the profession and simply act with simple business acumen and not be held responsible under the high standards of our profession. It is not often, if ever, that this is the case. In a sense, 'an attorney is an attorney is an attorney', much as the military officer remains 'an officer and a gentleman' at all times.

In The Florida Bar v. Bennett, 276 So.2d 481, 482 (Fla. 1973), the Court stated that attorneys "must be on guard and act accordingly, to avoid tarnishing the professional image or damaging the public which may rely upon their professional standing."

In The Florida Bar v. Brown, 905 So.2d 76, 82 (Fla. 2005), the Court emphasized that "attorneys must be and are held to the highest of ethical standards and, unlike non-attorney citizens, are subject to discipline for a breach of those standards."

In The Florida Bar v. Valentine-Miller, 974 So. 2d 333, 338 (Fla. 2008), the Court stated that "[l]awyers are required to have high ethical standards because members of the public are asked to trust lawyers in their greatest hours of need. Without such standards, the entire legal profession would be in jeopardy as public trust would dissipate."

III. Recommendations as to Whether the Respondent Should Be Found Guilty:
This referee finds respondent guilty as set forth in this report.

IV. Rule Violations Found: This referee finds by the standard of clear and convincing evidence that respondent has violated the following Rules Regulating The Florida Bar **4-1.8(e)** A lawyer shall not provide financial assistance to a client in connection with pending or

contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and, **4-7.4(a)** Except as provided in subdivision (b) of this rule, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. A lawyer shall not permit employees or agents of the lawyer to solicit in the lawyer's behalf. A lawyer shall not enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this rule. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes (i) any written form of communication directed to a specific recipient and not meeting the requirements of subdivision (b) of this rule, and (ii) any electronic mail communication directed to a specific recipient and not meeting the requirements of subdivision (c) of rule 4-7.6.

While this Referee finds that the Respondent has violated the above rules, this Referee also finds that the financial assistance provided to the Respondents' clients was done so partially from what appears to have been a misguided sense of philanthropy.

This referee finds respondent *not guilty* of the following rules alleged in the Bar's Complaint: **4-1.5(a)** An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar; **4.1.7(a)** Except as provided in subdivision (b), a lawyer shall not represent a client if: (1) the representation of 1 client will be directly adverse to another client; or (2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; **4-5.4(a)** A lawyer or law firm shall not share legal fees with a nonlawyer, except that: (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to 1 or more specified persons; (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the

deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer; (3) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, in accordance with the provisions of rule 4-1.17, pay to the estate or other legally authorized representative of that lawyer the agreed upon purchase price; (4) bonuses may be paid to nonlawyer employees for work performed, and may be based on their extraordinary efforts on a particular case or over a specified time period. Bonus payments shall not be based on cases or clients brought to the lawyer or law firm by the actions of the nonlawyer. A lawyer shall not provide a bonus payment that is calculated as a percentage of legal fees received by the lawyer or law firm; and (5) a lawyer may share court-awarded fees with a nonprofit, pro bono legal services organization that employed, retained, or recommended employment of the lawyer in the matter; **4-8.4(d)** A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice; and, **4-8.4(i)** A lawyer shall not engage in sexual conduct with a client or a representative of a client that exploits or adversely affects the interests of the client or the lawyer-client relationship including, but not limited to: (1) requiring or demanding sexual relations with a client or a representative of a client incident to or as a condition of a legal representation; (2) employing coercion, intimidation, or undue influence in entering into sexual relations with a client or a representative of a client; or (3) continuing to represent a client if the lawyer's sexual relations with the client or a representative of the client cause the lawyer to render incompetent representation.

V. Recommendation as to Disciplinary Measures to Be Applied:

The Florida Bar seeks one year suspension of the Respondent for the violations for which he has been found guilty.

The Respondent argues the following facts in mitigation:

He has completed over 200 hours of pro bono work in 2008, and continues to provide many hours of legal representation without compensation.

The subject clients in this case suffered no legal harm due to their relationships with him.

There was no detriment to the clients in this case.

He has had no prior disciplinary action.

At the time of these allegations, he had been in private practice only 4 months, and there have been no subsequent complaints filed.

He has cooperated with the bar from the beginning of the investigation.

He has provided documentation of everything requested.

He has been very straight forward during the investigation.

He has corrected his behavior.

The Florida Bar has not disputed these facts in mitigation, and has not offered any other aggravating factors.

In recommending the above disciplinary measures, this referee considered the following Florida Standards for Imposing Lawyer Sanctions:

9.32 Mitigating Factors

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings.
- (f) inexperience in the practice of law.

Respondent's age: 40

Date admitted to the bar: October 26, 2006

This referee also considered the fact that the major allegations against the Respondent, that he traded sex for representation, was disproved. The referee found the testimony of Respondent's witness credible that the complaining witnesses conspired to get Respondent in trouble with The Florida Bar when he refused to represent them pro bono. In light of this finding, the Referee finds it appropriate to disallow a portion of the costs sought by The Florida Bar in this case. See The Florida Bar v. Rue, 643 So.2d 1080 (Fla. 1994).

As a result of the previous findings of guilt, I recommend that Respondent be disciplined by:

- A. One year probation.

- B. Initiate LOMAS within two months and comply with recommendations.
- C. Complete an ethics course.
- D. Costs of the proceedings in the amount of \$4,402.27, representing one-half of the court reporter and investigator costs, as well as 100% of the remainder of the costs incurred by The Florida Bar.

VI. Statement of Costs and Manner in Which Costs Should be Taxed: this referee finds the following costs were reasonably incurred by The Florida Bar.

A. Grievance Committee Level Costs:	
1. Court Reporter Costs	\$ 1,048.00 x 50% = \$ 524.00
2. Bar Counsel Travel Costs	\$ N/A
B. Referee Level Costs:	
1. Court Reporter Costs	\$ 682.62
2. Bar Counsel Travel Costs	\$ 141.66
C. Administrative Costs	\$ 1,250.00
D. Miscellaneous Costs:	
1. Investigator Costs	\$ 3,200.46 50% = \$ 1600.24
2. Witness Fees	\$ 80.00
3. Copy Costs	\$ <u>123.75</u>
NET ITEMIZED COSTS:	\$ 4,402.27

It is apparent that other costs have or may be incurred. It is recommended that any additional costs and expenses together with the foregoing net itemized costs be charged to the respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 19th day of April, 2010.

/S/ TONYA B. RAINWATER
TONYA B. RAINWATER, Referee

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

Keshara Darcel Davis, Bar Counsel, The Florida Bar, 1200 Edgewater Drive, Orlando, Florida 32804-6314;

Patricia Ann Toro Savitz, Bar Counsel, The Florida Bar, 1200 Edgewater Drive, Orlando, Florida 32804-6314;

Jaime Roberto, Respondent, 16877 East Colonial Drive, PMB #192, Orlando, Florida 32820-1910; and

Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300

this 19th day of April, 2010.

/S/ THERESA GODDARD
Judicial Assistant