

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v

CASE NO. SC 00-890

TFB No. 2000-71,345(11H)

JORGE LUIS CUETO,

Respondent.

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RESPONDENT'S REPLY TO THE  
BAR'S AMENDED SUPPLEMENTAL RESPONSE

Respondent, JORGE LOUIS CUETO, files this his supplemental Reply to the Bar's Amended Supplemental Response to Respondent's Motion for Rehearing and says:

1. To the best of Respondent's knowledge and belief, all eleven of the lawyers who have been disciplined to date for conduct similar to Respondent's were convicted of one count of unlawful compensation, a violation of Florida Statutes Section 838.016. Each lawyer received five years probation, no incarceration, and a provision that their probation would be reduced to three years should various payments ordered by the Court be made within the three-year period. Apparently, the first two lawyers in the disciplinary pipeline (Eusebio Fernandez and Abel Batista, resignations effective March 23, 2000 and January 11, 2001 respectively) resigned in lieu of disciplinary proceedings. The reasons for their voluntarily resigning and the Bar's acceptance of such a disproportionate discipline are not evident in the record. Perhaps, health, financial or family considerations, or simply a belief that the Bar would not

accept suspension, led to the two lawyers' agreeing to a disciplinary resignation. One wonders what they would have done had they been advised that had they waited a year, they might have been able to obtain a consent judgment for a suspension of 18 months.

2. As indicated in Respondent's reply to the Bar's response to the merits, served on July 22, 2002, Respondent tendered to the Bar on May 11, 2000 a consent judgment calling for a three-year suspension. A copy of that letter was attached to Respondent's pleading. The Bar rejected the tender (notwithstanding the fact that they subsequently accepted eight consent judgments for similar or less stringent suspensions) and required Respondent to go to final hearing. The referee in those proceedings, the Honorable Amy Steele Donner, recommended on November 20, 2000 that Respondent receive a three-year suspension. Notwithstanding the fact that this Court has held on numerous occasions that a referee's recommended discipline will be upheld unless "clearly off the mark", the Bar appealed the referee's recommendation. They did so while simultaneously accepting consent judgments from respondents for exactly the same offense, i.e., conviction of one count of unlawful compensation, for lesser sanctions than that recommended by the referee.

3. With all due respect to The Florida Bar, the record is silent as to the number of "incidents" of unlawful payment paid by the eight lawyers whose consent judgments for suspensions, ranging from 18 months to three years, were accepted by the Bar. Similarly, the record does not indicate if these lawyers stopped their improper conduct before they were arrested. It should be noted that each of those consent judgments appear to have been accepted after Judge Donner's recommendation that Respondent be suspended for three years. They

were also accepted subsequent to the Bar's decision to appeal Respondent's recommended discipline. (Final hearing was held on September 27, 2000 and the referee's report was served November 20, 2000.)

4. It appears that each of the lawyers' cases at issue before the Court today were tried pursuant to Rule 3-7.2 of the rules regulating The Florida Bar. That rule, captioned Procedures Upon Criminal or Professional Misconduct; Discipline Upon Determination or Judgment of Guilt of Criminal Misconduct, allows the Bar to bring disciplinary proceedings without the grievance committee finding probable cause upon a lawyer's being convicted of a felony or, in the instances where adjudication is withheld, upon a determination of guilt of a felony. Rule 3-7.2(i). In those instances, the conviction or withholding of adjudication is conclusive proof of guilt of the offense charged. In each of these cases before the Court, only the one count of unlawful compensation falls under the *penumbra* of Rule 3-7.2. In other words, Mr. Cueto (and all the other lawyers involved in the case at bar) comes before the Court guilty of only one offense, i.e., the one count of unlawful compensation for which he was convicted. The Bar did not charge him with misconduct for any other incidents and the facts and circumstances of those incidents were not explored in depth by the referee at final hearing. While Respondent settled approximately 35 cases with the county through Mr. Garcia and the other crooked adjusters working for the county, they were a minuscule portion of Respondent's caseload. He testified that he handled approximately 2,500 cases over the eight years or so that he was practicing. The income he derived from the claims filed with the county was not significant. TR 86,87.

5. The Bar points to various mitigation as a basis for their accepting the consent judgments tendered by respondents in the eight suspension cases before this Court. Respondent's mitigation was equally compelling. The referee specifically found that she was "impressed by the mitigation presented by Respondent." She noted that Respondent "did not initiate the conduct that led to his conviction", that none of Mr. Cueto's clients were "adversely affected by his conduct" and, perhaps most importantly, "that there was no evidence indicating that any of the claims were fraudulent or that they were overpaid." Referee Report, p. 5. As was true of several of the respondents whose consent judgments or suspensions were accepted, Respondent had been practicing only one year when he was first strong-armed by Julio Garcia in 1993. Mr. Cueto testified that he did not report Mr. Garcia's conduct to the police because he did not think Mr. Garcia's conduct was illegal (as imposed to improper) and because Mr. Garcia was himself the supervisor, there were no superiors to report to.

6. As Respondent has stated previously, he recognizes that The Florida Bar should have leeway in determining the degree of discipline to be accepted with consent judgments. The range of suspensions from 18 to three years appears to be appropriate. In fact, Respondent tendered a consent judgment for a three-year suspension. It was rejected by the Bar. After the expense, time and effort of a final hearing, Respondent's tender for a three-year suspension was the discipline recommended by the referee. The fact that her recommendation was not off the mark is made evident by the Bar's acceptance of eight consent judgments for suspensions for convictions for exactly the same offense. Simply stated, disbarment is out of the range of

acceptable disciplines for Respondent when his offense is the same as eight other lawyers receiving suspensions.

7. It appears that Respondent's case was the first to go through the pipeline as a contested matter. It appears that subsequent to Respondent's final hearing, the Bar made a policy decision to start accepting consent judgments for suspensions. Respondent should not be penalized because he was the first to take the Bar to trial and because he obtained a referee's recommendation of three years' suspension. The referee's recommendation of a three-year suspension is consistent with the Bar's consent judgments and, therefore, it should be accepted by this Court.

Respectfully submitted,

WEISS & ETKIN

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John A. Weiss  
Attorney Number 0185229  
2937 Kerry Forest Parkway, Suite B-2  
Tallahassee, Florida 32309  
(850) 893-5854  
COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Reply were mailed to William Mulligan Bar Counsel, The Florida Bar, Suite M-100, Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131 and to John Anthony Boggs, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 on this 15th day of October, 2002.

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John A. Weiss