

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC 00-890

v.

TFB File No. 2000-71,354 (11H)

JORGE LOUIS CUETO,

Respondent.

REPORT OF THE REFEREE

I. **SUMMARY OF PROCEEDINGS**

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, final hearing was held on September 27, 2000. All pleadings filed in this case, responses thereto, notices, orders, exhibits received in evidence, and this Report are hereby forwarded to the Supreme Court of Florida as the record of these proceedings.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Randolph M. Brombacher
Suite M-100
444 Brickell Avenue
Miami, Florida 33131

For The Respondent: John A. Weiss
2937 Kerry Forest Parkway
Suite B-2
Tallahassee, Florida 32308

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH

THE RESPONDENT IS CHARGED: After considering The Florida Bar's complaint this Referee finds that all factual allegations are true as stated in The Florida Bar's complaint. Specifically:

- A. Respondent is and was at all times material herein a member of The Florida Bar, albeit felony suspended by order dated April 4, 2000, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.
- B. The Respondent was one of fifteen defendants in a criminal case designated in a multiple count indictment, in the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida, Case No. 99-17765D-Levenson.
- C. The Respondent pled guilty to to one (1) count of Unlawful Compensation/Reward for Official Behavior as charged in the Information filed in this cause. The state has, in furtherance of the plea agreement, filed a nolle prosequere on the following seven (7) remaining offenses: Two (2) counts for RICO-Conduct or Participation in an Enterprise through a Pattern of Racketeering Activity, three (3) counts for Bribery, one (1) count for Grand Theft, third degree, and one remaining count of Unlawful Compensation/Reward for Official Behavior.
- D. This Complaint is being filed pursuant to Rule 3-7.2(i)(1) and (2) of the Rules of Discipline which authorizes the filing of a complaint with the Florida Supreme Court to initiate disciplinary proceedings based upon a determination of judgment of guilt and without there first having been a separate finding of probable cause.

Because this matter was filed under Rule 3-7.2, the only misconduct before this Referee is Respondent's one count of Unlawful Compensation.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating Rule 3-4.3 (Misconduct and Minor Misconduct) of the Rules of Discipline of The Florida Bar and Rule 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.

In recommending a three year suspension, the maximum suspension permitted in the Rules, I have considered numerous pronouncements from the Supreme Court of Florida. First, I have noted that the Supreme Court has stated that there is no automatic disbarment rule in Florida for the conviction of a felony. The Florida Bar v. Jahn, 509 So.2d 285, 286 (Fla. 1987). I also noted that the Court has stated that not all illegal conduct is dishonest conduct. See, e.g., The Florida Bar v. Pettie, 424 So.2d 734, 737 (Fla. 1983).

In the case before me I have been presented with absolutely no evidence indicating that any of Respondent's cases pertinent to this matter involved fraudulent claims or that any of the compensation paid for his clients' claims was unjust. Indeed, not even the criminal charges against Respondent contained any such allegations. Accordingly, I find that Respondent has not violated Rule 4-8.4(c). Pettie, *supra*.

Respondent is before this Court guilty of one act of misconduct, i.e., paying unlawful compensation in one case. (He has not been found guilty of bribery, a separate statute). In determining the discipline to recommend I have been guided by the Supreme Court's decision in The Florida Bar v. Hirsch, 342 So.2d 970, 971 (Fla. 1977). There the Court said that disbarment is reserved for only the worst offenses. In DeBock v. State, 512 So.2d 164, 166 (Fla. 1987), the Supreme Court pointed out that lawyer disciplinary proceedings are remedial not punitive. In The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970), the Supreme Court emphasized that a disciplinary sanction should protect the public, should be fair to the accused lawyer and should deter others. I believe a three year suspension will accomplish those goals.

Neither party has provided me with any cases on point. All of the cases provided by the Bar were out of state cases. Respondent's cases are more persuasive. I note that in the case of The Florida Bar v. Rosemary Arbuckle-Anderman, Case No. SC 99-172, the Bar agreed to a six month suspension for one count of Official Misconduct, a felony under section 839.25 Florida Statutes. There the Respondent was placed on probation for three years. (Unlike the case at Bar, however, Ms. Arbuckle-Anderman was not adjudicated guilty). I also note that neither lawyer in the Jahn and Pettie cases was disbarred. Finally, I note that the Respondents in The

Florida Bar v. Smith, 650 So.2d 980 (Fla. 1995) and The Florida Bar v. Klausner, 721 So.2d 720 (Fla. 1998) were not disbarred.

Finally, I am impressed by the mitigation presented by Respondent. His character witnesses make it clear that until his recent arrest Respondent had an excellent reputation in the community in which he lived and worked. He has no prior disciplinary history. I note that Respondent did not initiate the conduct that led to his conviction, rather, employees of the county approached him when he was a fledgling lawyer. I note further that none of Respondent's clients was adversely affected by his conduct and that there was no evidence indicating any of the claims were fraudulent or that they were overpaid.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

suspension from the practice of law in the State of Florida for a period of three years, *nunc pro tunc* April 27, 2000, with reinstatement conditioned upon proof of rehabilitation as well as proof of restoration of his civil rights.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following personal history of Respondent, to wit:

Age: 33 years old
Date admitted to the Bar: May 8, 1992
Prior Discipline: None

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

I find the following costs were reasonably incurred by The Florida Bar:

| | |
|------------------------|---------------|
| Administrative Costs | \$750.00 |
| Court Reporter's Costs | <u>120.00</u> |
| TOTAL: | \$870.00 |

Dated this _____ day of _____, 2000.

The Honorable Amy Steele Donner
Circuit Judge/Referee

Copies to: Randolph M. Brombacher, Esquire
John A. Boggs, Esquire
John A. Weiss, Esquire