

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Case No. SC09-1930
[TFB Case No. 2009-30,784(18A),
2010-30,093(18A)]

v.

JACK DOUGLAS KING,
Respondent.

Case No. SC10-1231
[TFB Case No. 2010-30,244(18A)]

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 August 20, 2010 . 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 - JoAnn Marie Stalcup

For The Respondent - Warren William Lindsey

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:

The above referenced cases were consolidated for purposes of final hearing and if required, any disciplinary recommendation.

The following live witnesses were presented by the bar: Walter Tuller, Staff Investigator, Mark McGrath, Terence McGrath, and respondent, Jack Douglas King. Additionally, certain portions of Barbara Ruddock's deposition testimony was read into the record.

The following documentary evidence was admitted during the proceeding: Exhibit 1: Affidavit of Lisa Chason; Exhibit 2: Deposition of Barbara Ruddock, dated September 23, 2009, with attached exhibits; Exhibit 3: Deposition of Jack Douglas King, dated October 2, 2009, with attached exhibits; Exhibit 4: Affidavit of Karen L. Varela, attorney; Exhibit 5, check stubs from the checking account of Terence McGrath; Exhibit 6; Correspondence from Jack D. King to the bar dated December 12, 2008, January 9, 2008 (sic), and August 3, 2009; Exhibit 7: Affidavit of Michelle Francis with attachment; and Exhibit 8, Affidavit of Elizabeth Clark Tarbert, with attachment.

The following expert witnesses were presented by the respondent: Catherine Henin-Clark, a Florida board certified attorney in immigration law since 1995 and Simon Tsang, an attorney licensed to practice law in New York, New Jersey, and Pennsylvania, who practices law before the immigration courts in Florida and throughout the United States.

The testimony and documentary evidence presented as to Count 1 in Case No. SC09-1930 and SC10-1231 was interwoven. Count 1 in Case No. SC09-1930 alleged misconduct on the part of the respondent due to his association with Derick Coles and New Horizons Group (hereinafter referred to as NHG) and as it related to respondent's supervision of his law office. In Case No. SC10-1231, the bar's complaint not only alleged misconduct on the part of respondent due to his association with Derick Coles/NHG and the supervision of his law office, but also alleged misconduct as it related to actions taken on behalf of one particular client and further alleged respondent shared legal fees and assisted in the unlicensed practice of law.

After hearing all the testimony and carefully reviewing the documentary evidence, I found as to Count 1 in Case No. SC09-1930 and in Case No. SC10-1231 that the respondent was associated with Derick Coles/NHG between early 2007 through approximately November 2008. Clients of NHG were referred to the respondent to process investment visa applications for United Kingdom and other English-speaking immigrants who wanted to invest in businesses and immigrate to the United States. Clients of NHG were not required to retain the respondent if they did not wish to do so.

Prior to or at approximately the same time respondent entered into his association with Derick Coles/NHG, respondent contacted the bar's Ethics Hotline and addressed the contemplated and/or newly entered association. Based upon the respondent's representation to the Ethics Hotline, he was informed that numerous

ethical issues were involved. Nevertheless, the respondent either entered into the association or chose to continue with the association.

Respondent opened a separate law office named Law Office of Jack D. King, P.A. d/b/a New Horizons Immigration Services located in Sarasota, Florida.

Respondent's office was located in the same suite of offices as that of NHG and he had no signage establishing his law firm as a separate entity from that of NHG.

Respondent employed a legal assistant/visa processor named Barbara Ruddock. Barbara Ruddock had worked with and/or for Derick Coles for approximately 8 years. During this time she became extremely proficient in the preparation of the types of visas the clients of NHG were seeking to obtain. At the time respondent became associated with NHG, respondent had no experience in immigration law and relied heavily on the experience of Barbara Ruddock and Derick Coles to ensure that all applications were properly prepared and filed.

Respondent's main law office was located in Orange County, Florida. During 2007 and 2008 respondent had a growing asylum practice which required him to be in court three to four days a week with several office appointments in the afternoon. This left respondent with little time available to properly supervise his Sarasota office. Respondent made rare trips to Sarasota to ensure that his staff's conduct comported with the Rules Regulating The Florida Bar. Respondent authorized "self-supervision" to his staff and authorized Derick Coles of NHG to handle the daily operations of the office. Barbara Ruddock believed Derick Coles, and not the respondent, was her direct supervisor during the years 2007 and 2008. This is further supported by the fact she, unbeknownst to the respondent, was also an employee of NHG during that time period. Respondent permitted Ms. Ruddock to stamp his name on completed visa applications even though respondent rarely provided direction to Ms. Ruddock or reviewed any application prior to it being filed.

In or around 2007, Terence McGrath, a British citizen, wished to immigrate to the United States. At that time he and his son, Mark, met with Derick Coles who counseled Mr. McGrath to obtain a B Visa and once that had been accomplished Mr. McGrath could then seek a Change of Status to Foreign National E-2 Treaty Investor Non-Immigrant Visa (E2 Visa). The respondent was not present during this meeting. Mr. McGrath, without assistance from NHG or the respondent's law firm, applied on two separate occasions. Both applications were rejected. After the second rejection, the McGrath family sought the assistance of Barbara Ruddock, who agreed to prepare the application for Terence McGrath for a fee,

which was paid. The application was approved and Terence McGrath entered the United States.

Thereafter, in or around April 2008, Terence and Mark McGrath met with Derick Coles and Barbara Ruddock in the offices located in Sarasota Florida. Respondent was not present for this meeting. At that time, Terence McGrath signed a representation agreement with respondent's law firm for representation in his Change of Status application and paid a portion of the retainer fee to NHG in British Sterling. An E-2 Treaty application packet, which indicated it was prepared by respondent's law firm, was provided to Terence McGrath at that time. However, the evidence established that respondent neither prepared nor reviewed this packet prior to it being provided to Mr. McGrath, in particular, or any other client.

Located within the packet was a form entitled "Escrow and Providing Evidence of Sufficient Funds." This document informed the client that it was necessary for funds to be placed in an escrow account, out of the client's control and that an escrow agreement needed to be signed. The form also informed the client that the escrow agreement was part of the Visa application as proof that the client had irrevocably committed the funds for a business. At no time did the respondent review any of the documents contained in the packet with Terence McGrath, nor did he ever have any discussion with Terence McGrath about Mr. McGrath's matter. Rather, respondent testified, not only during his deposition but during the final hearing, Mr. McGrath had already made up his mind prior to Mr. McGrath being referred to him. Based upon the information provided to him, Terence McGrath placed \$175,000.00 into an escrow account controlled by Derick Coles/NHG in or around May 2008. Thereafter, as part of the application process, Terence McGrath signed an escrow agreement in August 2008 regarding the \$175,000.00 which had already been placed in escrow. This escrow agreement was not prepared by the respondent nor did the respondent discuss the agreement with Mr. McGrath at any time.

Respondent never met, corresponded, or spoke with Terence McGrath. Ultimately, Mr. McGrath's E-2 Visa application was outsourced to attorney Karen L. Varela. The reason Mr. McGrath's matter was outsourced was because Barbara Ruddock, had an over abundance of work to complete. No evidence was presented to establish that the respondent had an over abundance of work and that he could not perform services on behalf of his client without the necessity of outsourcing the matter. Respondent did not notify Mr. McGrath at any time that he was outsourcing Mr. McGrath's case. Further, respondent had no contact with Ms.

Varela regarding Mr. McGrath's E-2 Visa application. Rather, all instructions and information were provided by Barbara Ruddock. After Ms. Varela completed the necessary work, the application was returned to respondent's law office for filing. Ms. Ruddock, with respondent's knowledge and permission, stamped respondent's signature on the application even though he had not reviewed it despite the declaration contained above his stamped signature.

After Terence McGrath's E-2 Visa application was approved in or around September 2008, notice was forwarded to respondent's Sarasota office. Barbara Ruddock notified Mr. McGrath of the approval. Thereafter, Terence McGrath sought to have the funds placed in escrow returned to him in order for him to invest in his son's business, Creative Remodeling. After numerous attempts to obtain his funds, Mr. McGrath learned that Derick Coles had absconded with the money.

The bar asserted that respondent had failed to advise Mr. McGrath that entering into an escrow agreement with NHG was not required by the United States Immigration Law and that Mr. McGrath could have simply purchased a majority of his son's business by paying the funds over to Creative Remodeling. However, the respondent's expert witnesses testified that the advice to place the funds in escrow was sound legal advice. They based their testimony on the fact that if Mr. McGrath's funds were tied up in a business and his application was denied he would be unable to get his funds back unlike if his funds were placed in an escrow account.

The respondent's experts also testified that the types of Visa applications being addressed during the bar's proceeding were "form, fill-in-the blank" type applications and ones for which legal assistants/visa processors could appropriately gather the required information and prepare the applications. Nevertheless, the experts further testified that, in their own firms, applications are not sent out prior to being reviewed by the attorney, and advice, such as that related to escrow accounts, is properly provided by an attorney rather than a nonattorney.

Based upon the testimony and evidence, I found that the bar clearly and convincingly established that the respondent failed to take reasonable steps to ensure that his firm had in effect measures giving reasonable assurances that the conduct that nonlawyers employed, retained by, or associated with his office were compatible with his professional obligations, that he failed to take reasonable steps to ensure that his staff's conduct was compatible with his professional obligations and that he failed to review and be responsible for the work prepared by his staff. I

further found that the facts and evidence clearly and convincingly established that respondent failed to abide by his client's decisions concerning the objectives of the representation and that he failed to reasonably consult with his client regarding their matter.

However, I did not find that the testimony and evidence clearly and convincingly established that the respondent was incompetent, that he shared legal fees, that he assisted his legal assistant/visa processor and/or Derick Coles in the unlicensed practice of law, or that his conduct was prejudicial to the administration of justice.

The testimony and documentary evidence presented in Count II, Case No. SC09-1930 clearly and convincingly established that respondent hired a disbarred attorney to assist respondent with his immigration cases in Orange County, Florida. The disbarred attorney helped in the preparation of briefs, acted as a runner and filed pleadings in the Immigration court. The disbarred attorney was only employed for a short period of time, approximately three to four months. Respondent neither provided the bar with notice of the employment and a detailed description of the intended services to be provided by the disbarred attorney nor did respondent submit a sworn information report as required by the rules.

III. Recommendations as to Whether the Respondent Should Be Found Guilty:
As to each count of the complaint, this referee makes the following recommendations as to guilt or innocence:

I recommend the respondent be found guilty in:

SC09-1930, [TFB File No. 2009-30,784(18A)], Count I;
SC09-1930, [TFB File No. 2010-30,093(18A)], Count II; and
SC10-1231, [TFB File NO. 2010-30,244(18A)].

IV. Rule Violations Found:

SC09-1930

[TFB File No. 2009-30,784(18A)], Count I: **4-5.3(b)(1)** for failing to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that conduct of the nonlawyer employed or retained by or associated with a lawyer is compatible with the professional obligations of the lawyer; **4-5.3b(2)** for failing to make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of

the lawyer; and **4-5.3(c)** for failing to review and be responsible for the work product of the paralegals or legal assistants.

[TFB File No. 2010-30,093(18A)], Count II: **3-6.1(d)** for failing to provide The Florida Bar with notice of employment and a detailed description of the intended services provided by a disbarred attorney; and **3-6.1(f)** for failing to submit sworn information reports, quarterly based upon a calendar year, to The Florida Bar.

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[TFB File No. 2010-30,244(18A)]: **4-1.2(a)** for failing to abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, shall reasonably consult with the client as to the means by which they are to be pursued; and **4-5.3(b)(1)** for failing to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the conduct of a nonlawyer, employed or retained by or associated with a lawyer, is compatible with the professional obligations of the lawyer.

Rule Violations Not Found:

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[TFB File No. 2009-30,784(18A)], Count I: **4-1.1** for failing to provide competent representation to a client. Competent representation requires legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

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[TFB File No. 2010-30,244(18A)]: **4-1.1** for failing to provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for representation; **4-5.4** for sharing legal fees with a nonlawyer; **4-5.5** for assisting another in practicing law in violation of the regulation of the legal profession in the lawyer's home state; and **4-8.4(d)** for engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice.

V. **Recommendation as to Disciplinary Measures to Be Applied:**

I recommend that the respondent be suspended from the practice of law for a period of 90 days, followed by 3 years probation and that respondent be required to pay the bar's costs in this matter.

My recommendation is based upon careful consideration of the facts and evidence in this case, including the following reasons stated below, the Florida Standards for Imposing Lawyer Sanctions, and the applicable case law.

- A. The Respondent was negligent in overseeing the operation of his Sarasota law office;
- B. The Respondent did not intentionally violate the Rules Regulating The Florida Bar as they relate both to the supervision of his Sarasota law office as well as to the brief hiring of Barry Roy Nager, the disbarred lawyer;
- C. The Respondent's law firm did provide meaningful legal services to the client, Terence McGrath;
- D. No evidence was presented that the Respondent knew or should have known that Derick Coles or New Horizons Group, LLC, the escrow agent, was not an honest or reliable person or entity such that they would steal the money of the client, Terence McGrath;
- E. But for the unexpected and intervening criminal act of Derick Coles, there would have been no loss to Terence McGrath. The instant case is similar to the situation when an escrow agent in a real estate transaction such as a title company or realtor steals funds in their possession without the knowledge or involvement of the lawyer or lawyers involved in the transaction. The conduct of Jack King was not the proximate cause of the loss suffered by Terence McGrath in this case.
- F. The Respondent upon learning of the criminal conduct of Derick Coles promptly contacted law enforcement and The Florida Bar;
- G. The Respondent cooperated with The Florida Bar.

Standards:

7.0 Violation of Other Duties Owed as a Professional

7.2 Suspension is appropriate when a lawyer knowingly 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.

9.2 Aggravation

9.22(b) dishonest or selfish motive (respondent received a fee and performed no services on behalf of his client);

9.22(c) a pattern on misconduct (respondent engaged in the misconduct for a period of approximately 2 years);

9.22(d) multiple offenses (numerous clients were referred to respondent's firm); and

9.22(h) vulnerability of victim (all of respondent's clients were individuals seeking to immigrate to the United States by way of investing large sums of money in US businesses).

9.3 Mitigation

9.32(a) - Absence of a prior disciplinary record.

9.32(d) - Timely good faith effort to rectify the consequences of the misconduct.

9.32(e) - Cooperative attitude towards proceedings and full and free disclosure to the disciplinary board.

9.32(f) - Inexperience in the practice of law.

9.32(g) - Character or reputation. Mr. King has no prior disciplinary records. He served for 11 years in active duty and then the reserves as an officer in the United States Marine Corps and received an honorable discharge. He has been active in his church and very supportive of his family.

9.32(j) - Interim rehabilitation. Mr. King testified at the evidentiary sanction hearing held immediately after the trial that he had learned from this experience and is taking actions to improve his office practices. A substantial period of time has elapsed since the complained of conduct.

9.32(1) - Remorse. Mr. King has displayed sincere regret for the loss that Mr. McGrath sustained as a result of the illegal conduct of Derick Coles. He reported the matter to The Florida Bar and the authorities after he learned of Mr. Coles' misconduct.

The Florida Bar v. Abrams, 919 So. 2d 425 (Fla. 2006). Respondent received a 1 year suspension for failing to provide competent representation to aliens, and for his role as "managing attorney" for a paralegal's corporation that had been formed to assist potential immigrants. The court found that his title as "Managing Attorney" was a misrepresentation of his status. Respondent provided no legal advice to the clients whatsoever. The paralegal met with the clients, conducted the interviews, and made the decisions as to the appropriate course of action for the clients. Further, the respondent only visited the office several times a month. Respondent had no prior history.

The Florida Bar v. Beach, 675 So.2d 106 (Fla. 1996). Respondent received a 90 day suspension for assisting in the unauthorized practice of law, and for sharing fees with a non-lawyer. The respondent established an independent contractor relationship with a paralegal service, and based upon factual debriefing by the paralegals, respondent provided legal advice to the paralegals who then provided the information to the client. Respondent failed to supervise the transmission of the advice and never actually met with or consulted with the client. Additionally, respondent was paid a flat rate by the non-lawyer paralegal service he was assisting. Respondent had a prior 28 day suspension.

The Florida Bar v. James, 478 So.2d 27 (Fla. 1985). Respondent received a 4 months suspension and thereafter until proof of rehabilitation for forming a partnership with a nonlawyer consisting in part of the practice of law, for misbehavior before the county court, and for causing a client to communicate with a represented party.

The Florida Bar v. Lawless, 640 So.2d 1098 (Fla. 1994). Respondent received a 90 day suspension and 3 year probation, payment of restitution to clients, prohibition on supervising paralegals, and removal of his name from referral lists for failing to adequately supervise a paralegal in an immigration matter. Respondent had received public reprimands twice before.

The Florida Bar v. Carter, 502 So.2d 904 (Fla. 1987). Respondent received a 3 month suspension for failing to properly supervise non-lawyer personnel in record keeping of estates, for failing to ensure the non-lawyer personnel complied with the rules, and for failing to examine and be responsible for the work delegated to the non-lawyer personnel. The respondent had received a public reprimand twice before.

VI. Personal History and Past Disciplinary Record: After the finding of guilt and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(m)(1)(D), this referee considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 57

Date admitted to bar: December 13, 2002

Prior disciplinary convictions and disciplinary measures imposed therein: NONE

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

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A.	Grievance Committee Level Costs	
1.	Bar Counsel Travel Costs	\$ 25.27
B.	Administrative Costs	\$ 1,250.00
C.	Miscellaneous Costs:	
1.	Investigator Costs	\$ 306.80
2.	Copy Costs	\$ 13.05

SC10-1231

A.	Grievance Committee Level Costs	
1.	Bar Counsel Travel Costs	\$ 11.00
B.	Administrative Costs	\$ 1,250.00
C.	Miscellaneous Costs:	
1.	Investigator Costs	\$ 155.00

2. Copy Costs \$ 128.85

SC09-1930 and SC10-1231 [consolidated]

A. Referee Level Costs:

1. Court Reporter Costs	\$ 360.00
2. Bar Counsel Travel Costs	\$ 153.37
3. Witness Expenses	\$ 211.85
3. Investigator Costs	<u>\$ 860.90</u>

TOTAL ITEMIZED COSTS: \$4,726.59

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing 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. It is further recommended that respondent shall be deemed delinquent and ineligible to practice law pursuant to R. Regulating Fla. Bar 1-3.6 for failure to timely pay the costs assessed in this proceeding.

Dated this _____ day of September, 2010.

Alane Cheryl Laboda
Referee

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

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