

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

OMAR JAVIER ARCIA,

Respondent.

Supreme Court Case  
No. SC2023-0413

The Florida Bar File  
No. 2021-50,275 (5B)

The Florida Bar File  
No. 2022-50,086 (171)

Received, Clerk, Supreme Court

OCT 31 2023

**AMENDED REPORT OF REFEREE ACCEPTING  
CONSENT JUDGMENT**

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, the following proceedings occurred:

On March 20, 2023, The Florida Bar filed its Complaint against respondent in these proceedings. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. **FINDINGS OF FACT**

A. **Jurisdictional Statement.** Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar,

subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. Narrative Summary Of Case.

**The Florida Bar File No. 2021-50,275 (5B)**

1. On or about August 5, 2020, in Miami-Dade Circuit Court Case Nos. 2014-CA-16769 and 2016-CA-28664, John H. Williams, Jr., filed an Emergency Motion to Disqualify respondent from continuing to represent any defendants in the lawsuit due to a conflict of interest in a foreclosure matter. After an evidentiary hearing, the trial court found that respondent had engaged in a conflict of interest by simultaneously representing both a co-lender, Arlene Rodriguez, and a borrower, John H. Williams, Jr. The trial court held that respondent had been representing both Mr. Williams and Ms. Rodriguez as defendants in the matter since February 2015.

2. In the Amended Order on Emergency Motion to Disqualify dated October 15, 2020, the court granted the motion to disqualify respondent and stated:

[Respondent] argued that there was no need to obtain a consent and waiver from Mr. Williams since his interests and those interests of the remaining defendants were aligned. However, [respondent] knew that Mr. Williams thought he was no longer part of this case and did not ensure that he was aware he still remained as personal guarantor on

these loans. Ms. Rodriguez is not a personal guarantor on these loans. There is conflict between these parties, not the least of which appears to be an alleged misrepresentation regarding Mr. Williams' status made by Ms. Rodriguez to secure the quit claim deeds which entitled her to secure control over the property in question.

The Court rejects this contention that the parties are aligned in interest. While both defendants might be served by defeating the Santibanez' claim, it is clear that if that defense does not prevail, the defendants face materially different consequences that are likely to create different motives and strategies in the handling of this case. Based upon the circumstances, and pursuant to the Rules [R]egulating the Florida Bar, [respondent] was required to obtain informed consent confirmed in writing at least in early 2017 after Mr. Williams' deposition. [Respondent] confirmed no such written consent was obtained from Mr. Williams.

The trial court also found that Ms. Rodriguez did not give any consideration for the Quit Claim Deed.

3. In the record before the court, the evidence established that: (a) Ms. Rodriguez advised Mr. Williams that by signing a Quit Claim Deed in 2013, Mr. Williams would be "out;" (b) Mr. Williams assigned the rents for the properties to Ms. Rodriguez; (c) At a deposition taken on January 26, 2017, Mr. Williams, present with respondent as counsel, testified that he understood that the quit claim deed absolved him of any liability on the promissory notes that were the subject of the action in this case; (d) Even

after the deposition of Mr. Williams, respondent continued to represent both Ms. Rodriguez and Mr. Williams in this matter through June 2020; (e) Mr. Williams testified that he had only recently learned that he could still be held liable, personally, under a personal guaranty signed for each of the promissory notes; (f) Mr. Williams testified that respondent did not explain anything to him; (g) Respondent admitted at the hearing that he did not secure a conflict waiver from Mr. Williams. The representation of both Mr. Williams, the borrower, and Ms. Rodriguez, the co-lender, in this case was an inherent conflict of interest, which respondent should have known could not be waived.

4. Additionally, respondent engaged in a pattern in which he represented both co-lenders and borrowers in other foreclosure matters that included Arlene Rodriguez without disclosing the potential conflict of interest or attempting to obtain a knowing and voluntary waiver of the conflict from those clients.

5. Moreover, respondent did not provide timely responses to the bar's Witness Subpoena Duces Tecum requesting certain records documenting his communications with these clients regarding the extent of respondent's legal representation and the discussion of any conflicts of interest.

**The Florida Bar File No. 2022-50,086 (17I)**

6. Juan Cabada, a real estate broker, hired respondent after John Lynch, a client of Cabada's, refused to remit a real estate commission to Cabada.

7. Respondent, at Cabada's request, directed his staff to prepare and file a claim of lien against the property in question. Counsel for Lynch challenged the merit of filing the claim and requested that respondent provide authority for filing the claim. Respondent provided no authority to Lynch's counsel.

8. Mediation was held in the dispute between Cabada and Lynch. After the mediation, respondent directed his staff to file a release of the improperly filed lien.

9. Respondent admitted that his lack of sufficient legal knowledge and failure to fully research the issue regarding filing the lien led to a waste of judicial resources and a delay in the sale of the property.

III. RECOMMENDATIONS AS TO GUILT

**The Florida Bar File No. 2021-50,275 (5B)**

Pursuant to the Conditional Guilty Plea for Consent Judgment entered into by the parties, I recommend that respondent be found guilty of violating the following Rules Regulating The Florida Bar: 3-4.3 [Misconduct

and Minor Misconduct]; 4-1.1 [Competence]; 4-1.2(a) [Objectives and Scope of Representation: Lawyer to Abide by Client's Decisions]; 4-1.4(a)(b) [Communication]; 4-1.6(a)(c) [Confidentiality of Information]; 4-1.7(a)(b)(c) [Conflict of Interest] 4-8.4(d)(g) [Misconduct].

**The Florida Bar File No. 2022-50,086 (17I)**

Pursuant to the Conditional Guilty Plea for Consent Judgment entered into by the parties, I recommend that respondent be found guilty of violating the following Rules Regulating The Florida Bar: 4-1.1 [Competence]; 4-3.1 [Meritorious Claims and Contentions]; and 4-8.4(d) [Misconduct].

**IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS**

I considered the following Standards prior to recommending discipline:

**4.3 Failure to Avoid Conflicts of Interest**

4.3(b) Suspension is appropriate when a lawyer knows of a conflict of interest, does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

**4.5 Lack of Competence**

4.5(b) Suspension is appropriate when a lawyer engages in an area of practice in which the lawyer knowingly lacks competence and causes injury or potential injury to a client.

3.2(b) Aggravating Factors:

- (1) prior disciplinary offenses as respondent received a three-year suspension followed by three years of probation in 2003;
- (3) a pattern of misconduct;
- (4) multiple offenses; and
- (9) substantial experience in the practice of law, admitted in 1995.

3.3(b) Mitigating Factors:

- (2) absence of a dishonest or selfish motive;
- (3) personal or emotional problems, including a contentious divorce at the time of the misconduct;
- (7) character or reputation;
- (12) remorse as respondent expressed sincere remorse for his misconduct;
- (13) remoteness of prior offenses as respondent's prior discipline was approximately 20 years ago in 2003 and 2006.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In The Florida Bar v. William Jay Motyczka, 2020 WL 1061693 (Fla. March 5, 2020), the Court suspended Motyczka for 91 days and required his attendance at Ethics School. Motyczka prepared a revocable trust to take title to a property purchased by him and his former girlfriend. The trust named him as the trustee and the sole beneficiary entitled to 100 percent interest to the trust property. Motyczka provided the bar with a document titled Amendment to Trust, which purportedly named the former girlfriend as a beneficiary entitled to 20 percent interest to the trust property. Motyczka stated that he created both the Trust and the Amendment at or around the same time and in the same location using the same computer equipment. Forensic examinations determined that the Trust and Amendment were not created and executed simultaneously or within days of each other. The bar's forensic examination determined that the Amendment was created at or around the time of the bar's investigation.

In The Florida Bar v. Marks, 173 So.3d 967 (Fla. 2014), the Court imposed a 91-day suspension nunc pro tunc to May 1, 2015, and forfeiture of \$150,000.00 payable to the Clients' Security Fund pursuant to a conditional guilty plea. In a matter related to his conduct, along with five other lawyers, Marks violated bar rules involving conflict of interest and dishonesty. Beginning in 2001, Marks' firm and two other firms pooled their

resources to provide joint seminars to solicit healthcare providers as clients for the purpose of representing them in personal injury protection claims against insurance companies. Those firms hired special counsel to assist in litigating bad faith claims. Marks' firm and the other two firms participated in a secret settlement of \$14.5 million excluding the special counsel from the settlement negotiations and proceeds.

In The Florida Bar v. Ticktin, 14 So. 3d 928 (2009), the Court sanctioned Ticktin with a 91-day suspension as the result of personal pecuniary and legal conflicts involved in representing an individual client and the client's companies.

In The Florida Bar v. Cosnow, 797 So. 2d 1255 (Fla. 2001), upon review of a referee's report, the Court affirmed the referee's findings of fact and guilt, but disapproved the referee's recommended discipline, instead imposing a 60-day suspension followed by a one-year period of probation for Cosnow's failure to provide a client with competent representation by exposing the client to potential harm in representing the client's daughter in paternity and guardianship proceedings relating to the child despite a conflict of interest. Cosnow's representation of a minor child's mother in paternity and guardianship proceedings was a conflict of interest and constituted incompetent representation. Cosnow had previously

represented the child's grandmother in the action, and knew or should have known that the grandmother's legal interests were directly and materially adverse in any action that involved the care, control, custody, or representation of the child. The mother was not qualified to supersede the grandmother as representative or guardian of the child by virtue of a prior court order that granted the grandmother legal custody.

In The Florida Bar v. Greene, 2019 WL 6114492 (Fla. Nov. 18, 2019), upon review of the report of referee and briefs filed in the case, the Court approved the referee's findings of fact and guilt, but disapproved the referee's recommended discipline, instead imposing a 60-day suspension with probation for one year upon reinstatement and attendance of The Florida Bar's Ethics School. Greene hired a nonlawyer as an independent contractor paralegal at his law firm who would refer clients to Greene and draft paperwork without reasonable supervision. Greene also represented the nonlawyer in at least nine legal matters of varying nature from approximately 2009 to 2016 and would subtract monies owed from the legal representation from his payment for services rendered. Throughout four years of representation, Greene failed to consistently communicate about the case. In a separate count, Greene, who was appointed by the

court to represent a client in a criminal matter, filed a late appeal which was dismissed with an appellate court later affirming the decision.

In The Florida Bar v. Webb, 2017 WL 5897819 (Fla. Nov. 30, 2017), following an uncontested report of referee, Webb received a 60-day suspension with probation for one year upon reinstatement. After representing a married couple in several matters over the years, Webb engaged in a conflict of interest when he sued the clients and foreclosed on three of their properties to recover owed legal fees. Webb gave no credit to the clients for the value of the first property that he foreclosed on and sold and continued to foreclose on two additional properties, one of which appeared to be the clients' homestead. Finally, Webb did not disclose to any of the courts his prior foreclosure against the clients' first property.

VI. 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:

- A. 91-day suspension from the practice of law requiring proof of rehabilitation.
- B. Payment of the bar's disciplinary costs.

During the period of suspension, respondent will eliminate all indicia of respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards, office signs or any other indicia of respondent's status as an attorney, whatsoever.

VII. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

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

Age: 52

Date admitted to the Bar: September 26, 1995

Prior Discipline:

The Florida Bar v. Arcia, 848 So. 2d 296 (Fla. 2003), by Court opinion dated May 29, 2003, Arcia was suspended for three years followed by a three-year probationary period for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and committing a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer. Arcia was employed as an associate at a firm and was paid a base salary plus bonuses. While still employed at the firm, Arcia formed Omar J. Arcia, P.A., and represented some clients for the benefit of the Arcia P.A., and not the firm, thus violating his employment agreement. He intercepted telephone calls to solicit clients, intercepted the mail to take checks made

payable to the Arcia P.A., and deposited fees into the Arcia P.A. bank account that he had obtained in representing the firm's clients. Arcia admitted to depriving the firm of approximately \$62,000 in legal fees. Among other violations, the referee concluded that Arcia stole firm funds and possibly client funds.

The Florida Bar v. Arcia, 924 So. 2d 810 (Table) (Fla. 2006), by Court order dated February 21, 2006, Arcia was felony suspended. Respondent entered a plea of nolo contendere to one felony count of Grand Theft 2nd Degree/\$20,000 or more, under \$100,000. Adjudication was withheld. This criminal case emanated from the previous disciplinary case, Supreme Court Case No. SC01-952. By Court order dated May 12, 2006, the suspension was made effective nunc pro tunc, June 28, 2003.

The Florida Bar v. Arcia, 944 So. 2d 988 (Table) (Fla. 2006), by Court order dated November 17, 2006, Arcia was reinstated to the practice of law and placed on probation for three years.

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

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

Investigative Costs	\$1,823.14
Court Reporters' Fees	\$823.25

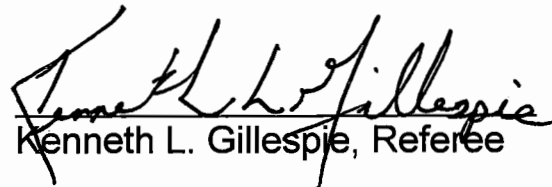
Bar Counsel Costs  
Administrative Fee

\$60.70  
\$1,250.00

TOTAL \$3,957.09

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within thirty days of said judgment becoming final, Respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 19<sup>th</sup> day of October, 2023.

  
Kenneth L. Gillespie, Referee

Original To:

Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927

Conformed Copies (via email only) to:

David Bill Rothman, Counsel for Respondent, 200 South Biscayne Boulevard, Suite 2770, Miami, Florida 33131-5300,  
[dbr@rothmanlawyers.com](mailto:dbr@rothmanlawyers.com)

Carrie Lee, Bar Counsel, The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050, at [clee@floridabar.org](mailto:clee@floridabar.org),  
[orlandooffice@floridabar.org](mailto:orlandooffice@floridabar.org), [dsullivan@floridabar.org](mailto:dsullivan@floridabar.org)

Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 East  
Jefferson Street, Tallahassee, Florida 32399; at [psavitz@floridabar.org](mailto:psavitz@floridabar.org)