

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

Supreme Court Case  
No. 67,309

CARLOS C. CRUZ,

The Florida Bar File  
No. 11H85116

Respondent.

FILED  
SID J. WHITE

DEC 18 1985

CLERK, SUPREME COURT

By ~~\_\_\_\_\_~~ was duly  
Chief Deputy Clerk *pl*

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS. The undersigned appointed referee in these proceedings on July 17, 1985. A hearing was held at the Broward County Courthouse on October 18, 1985 and the Respondent agreed to the venue being in Broward County. Bar Exhibit 1; Record, Pages 3 and 4.

The following attorneys appeared as Counsel for the parties:

For The Florida Bar - Paul A. Gross of Miami  
For the Respondent - Carlos C. Cruz, Pro Se

II. FINDINGS OF FACTS AS TO EACH ITEM OF MISCONDUCT OF WHICH RESPONDENT IS CHARGED: After considering all of the pleadings, the testimony and the evidence before me, pertinent portions of which are commented upon below, the undersigned referee finds:

a. That on June 13, 1983, the Respondent was adjudicated guilty by a U. S. District Court of conspiracy to bribe a U.S. Government Official and bribery of a U.S. Government Official. Also, he was sentenced to prison for one year and one day. Bar Exhibits 2 and 3; Record, Pages 4-6.

b. Because of the felony convictions, the Respondent was suspended from practicing law in Florida, effective August 29, 1983. Bar Exhibit 4; Record, Page 8.

c. Although the Respondent admitted that he was convicted (Record, Page 12), he denied that he had "done anything involving bribery." Record, Pages 11 and 12.

d. According to The Florida Bar v. Vernell, 374 So.2d 473 (Fla. 1979), a referee is not empowered to "go behind the convictions". Also, the Vernell decision states that a respondent is not entitled to a trial de novo before a referee for the purpose of showing that his convictions were erroneous.

e. That Carlos E. Cruz, the Respondent, is the former United States Marshall for the Southern District of Florida. Bar Exhibit 3.

III. RECOMMENDATION AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY: The undersigned referee recommends that Carlos C. Cruz, the Respondent, be found guilty of all allegations made in the Complaint. Specifically, it is recommended Respondent be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility: DR 1-102(A)(3), engaging in illegal conduct involving moral turpitude; DR 1-102(A)(5), engaging in conduct that is prejudicial to the administration of justice; and DR 1-102(A)(6), engaging in other conduct that adversely reflects on his fitness to practice law.

The undersigned referee originally wanted to listen to certain tapes that were involved in this case. Record, Pages 95-99. However, after due consideration, this referee changed her mind and decided not to listen to said tapes. After reading The Florida Bar v. Vernell, 374 So.2d 473, supra, it is apparant that this referee cannot "go behind the convictions". Therefore, no useful purpose would be served by listening to the tapes.

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED: Although the Respondent was suspended from practicing law in Florida pursuant to article XI, Rule 11.07(3) of the Florida Bar Integration Rule (Bar Exhibit 4), the Complainant requests that Carlos C. Cruz be disbarred. The Respondent believes he should not be disbarred.

The following witnesses gave favorable testimony on behalf of Carlos C. Cruz:

William M. Hoeveler, the U.S. District Court Judge who presided over the criminal trial concerning Mr. Cruz. Record, Pages 26-46.

George Thompson, former Probation Officer. Record, Pages 46-59.

Armando Leon, Bishop in the Church of Jesus Christ - Latter Day Saints. Record, Pages 59-63.

The undersigned referee realizes that disbarment should be reserved for extreme cases and this referee understands that Mr. Cruz has served his prison sentence, and suffered personal misfortunes. Although Mr. Cruz contends he was really not guilty of bribery, this referee cannot "go behind the convictions". Therefore, the undersigned referee must assume that Mr. Cruz was guilty of the charges of which he was convicted.

The offense of bribery is extremely serious, especially when committed by a United States Marshal, who is also an attorney and an officer of the court. In the case of The Florida Bar v. Riccardi, 264 So.2d 5 (Fla. 1972), the Supreme Court of Florida stated, "it was not inclined to leniency in bribery matters..." Also, the court said, "bribery was a particularly noxious ethical failure..." and "such conduct strikes at the very heart of the attorney's responsibility to the public and the profession." Furthermore, in The Florida Bar v. Craig, 238 So.2d 78 (Fla. 1970), the Supreme Court stated, "there are few offenses which a lawyer could commit which would more dramatically shake the public confidence in the profession."

Accordingly, it is recommended that Carlos C. Cruz, the Respondent, be disbarred, nunc pro tunc commencing on the day he was suspended from practicing law because his felony convictions (Bar Exhibit 4), to wit: August 29, 1983.

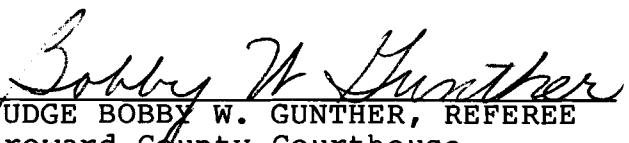
V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD: The Bar Counsel reports that Carlos C. Cruz has no prior disciplinary record. He is 42 years of age and was admitted to The Florida Bar during 1978. Prior to Mr. Cruz' conviction, he was the U.S. Marshal for the Southern District of Florida. He is married and has five children. Record, Page 77.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COST SHOULD BE TAXED: The undersigned finds the following costs, as reported by Bar Counsel, were reasonably incurred by The Florida Bar:

Court Reporter Costs for Grievance Committee Hearing 6/16/85 . . . . .	\$ 36.85
Court Reporter Costs for Referee Hearing 10/18/85 . . . . .	320.00
Administrative Costs for Grievance Committee level (\$150) and Referee level (\$150). Fla. Bar Integr. Rule, art. XI, Rule 11.06(9)(a)(5). . . . .	300.00
Travel Costs for Bar Counsel . . . . .	<u>14.25</u>
TOTAL COSTS	\$ 671.10

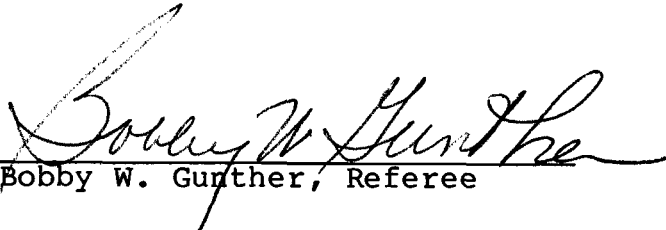
The undersigned referee recommends the costs, amounting to \$671.10 be assessed against the Respondent. It is further recommended that execution issue, with interest at the rate of 12% per year on all costs not paid within thirty (30) days of entry of this court's order, unless the time for such payment is extended by the Board of Governors of The Florida Bar.

Dated this 27 day of November, 1985.

  
JUDGE BOBBY W. GUNTHER, REFEREE  
Broward County Courthouse  
Room 530  
201 S.E. 6th Street  
Ft. Lauderdale, Florida 33301  
(305)765-4736

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that conformed copies of the foregoing Report of Referee were mailed this 27 day of November 1985 to Paul A. Gross, Bar Counsel, 211 Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131; Carlos C. Cruz, Respondent, 3611 S.W. 126th Avenue, Miami, Florida 33175, and John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301-8226.

  
Bobby W. Gunther, Referee