

BAR GRIEVANCES AND PINTALUGA

Donald A. Smith, Jr., Esquire

Smith, Tozian, Daniel & Davis, P.A.

THE FLORIDA BAR / PINTALUGA

- ✘ The Florida Bar v. Pintaluga, 130 So.3d 1278 (Fla. 2013); Florida Supreme Court Case No. SC13-1021

- ✘ Consent Judgment:
 - + Violation of Rules Regulating The Florida Bar 5-1.1(e) and 5-1.1(f), concerning receipt, ownership and disbursement of trust funds.

- ✘ Discipline:
 - + (1) Public Reprimand by publication; and
 - + (2) Payment of The Florida Bar's costs.

REPORT OF REFEREE AND COURT ORDER

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

ERIC ANDRES PINTALUGA,

Respondent.

Supreme Court Case
No. SC13-1021

The Florida Bar File
No. 2013-50,648 (15C)

Supreme Court of Florida

THURSDAY, NOVEMBER 21, 2013

CASE NO.: SC13-1021
Lower Tribunal No(s): 2013-50,648 (15C)

THE FLORIDA BAR

vs. ERIC ANDRES PINTALUGA

Complainant(s)

Respondent(s)

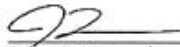
The Court approves the uncontested referee's report and consent judgment and reprimands respondent.

Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from Eric Andres Pinaluga in the amount of \$1,286.90, for which sum let execution issue.

Not final until time expires to file motion for rehearing, and if filed, determined.

POLSTON, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, LABARGA, and PERRY, JJ., concur.

A True Copy
Test:


John A. Tomasino
Clerk, Supreme Court



kb
Served:

MICHAEL C. GREENBERG
JUAN CARLOS ARIAS
KENNETH LAWRENCE MARVIN
HON. OLGA MARIA GONZALEZ-LEVINE

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 June 11, 2013, The Florida Bar filed its Complaint against respondent. All pleadings, responses thereto, exhibits received in evidence, and this Report constitute the record in this case and are forwarded to the Supreme Court of

THE FLORIDA BAR V. PINTALUGA (NOV. 21, 2013)

- I. Uncontested Referee Report and Consent Judgment
- II. Discipline: Public Reprimand and Costs (\$1,286.90)
- III. Violations of Rules 5-1.1(e) and 5-1.1(f)

THE FLORIDA BAR V. PINTALUGA (NOV. 21, 2013)

- IV. Facts:
- A. PI case
 - B. Client signed "Authorization for Payment & Protections" for services by doctor
 - C. Pinaluga did not sign Authorization and was not a party to it
 - D. Pinaluga never issued an LOP
 - E. Authorization provided that any money owed doctor would be paid from PI settlement
 - F. Pinaluga aware of Authorization
 - G. PI settled
 - H. Pinaluga attempted to negotiate a reduction of the charges, but was unsuccessful
 - I. Client instructed Pinaluga not to pay doctor
 - J. Client agreed to negotiate directly with doctor
 - K. Pinaluga disbursed funds to client
 - L. He did not hold funds in trust; did not interplead funds
 - M. Pinaluga explained to client his rights, obligations & risks

THE FLORIDA BAR V. PINTALUGA

(NOV. 21, 2013)

- V. Factors:
 - A. Aggravating: Substantial experience in the practice of law
 - B. Absence of prior discipline
Absence of a dishonest or selfish motive
Full and free disclosure and cooperation
Remorse
 - C. Standards For Imposing/Lawyers Sanctions
Standard 7.3 – Public Reprimand
 - negligently engages in conduct
 - causes injury or potential injury for client, public, legal system

RULE REGULATING THE FLORIDA BAR 5-1.1

(e) Notice of Receipt of Trust Funds; Delivery; Accounting. Upon receiving funds or other property in which a client or **third person has an interest**, a lawyer **shall promptly notify** the client or **third person**. **Except** as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer **shall promptly deliver** to the **client or third person** any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render **a full accounting** regarding such property.

(f) Disputed Ownership of Trust Funds. When in the course of representation a lawyer is in possession of property in which 2 or more persons (1 of whom may be the lawyer) claim interests, the property shall be treated by the lawyer as trust property, but the portion belonging to the lawyer or law firm shall be withdrawn within a reasonable time after it becomes due unless the right of the lawyer or law firm to receive it is disputed, in which event the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. **The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.**

THE FLORIDA BAR V. SILVER (JUNE 21, 2001)

The Florida Bar v. Silver, 788 So.2d 958 (Fla. 2001); Florida Supreme Court Case No. SC00-689

I. Contested case – Referee Trial and Review by Supreme Court

II. Discipline: Public Reprimand and Costs (\$3,843.00)

III. Violation of Rules:

4-1.15(b) (safekeeping property)

(now – Rule: 4-1.15) ("A lawyer shall comply with TFB Rules Reg. Trust Accts") and 5-1.16 ("Notice of Receipt of Trust Funds; Delivery; Accounting") and 5.1.1(f) ("Disputed Ownership of Trust Funds")

(4-8.4 – *not guilty – dishonesty, fraud, deceit, misrepresentation*)

THE FLORIDA BAR V. SILVER (JUNE 21, 2001)

IV. Facts:

- A. PI case
- B. Silver issued several LOPs to doctors
 - some included medical assignment signed by client
- C. Silver received MedPay settlement
- D. Silver did not notify any doctors of MedPay settlement
- E. No MedPay funds to doctors
- F. Later, Silver and client signed LOP / Lien from Ramaden (clinic)
- G. Silver modified client LOP and signed and client signed
- H. PI case settled
- I. Silver reduced fees and agreed to negotiate with doctors
- J. Silver sent letters to doctors – except Ramaden
- K. Send checks to Ramaden as settlement – rejected
- L. Apparently – disbursed all funds without settlement with Ramaden
- M. Silver claimed his fee contract gave him superior lien

V. Analysis:

- A. Silver had a duty to notify of receipt of funds – failed to notify of MedPay
 - violation of 4-1.15(b)
- B. Failed to notify Ramaden of PI settlement

THE FLORIDA BAR V. SILVER (JUNE 21, 2001)

VI. Factors:

A. Standard 7.3

B. Aggravation

Refused to acknowledge wrongful
conduct

Substantial experience (28 years)

C. Mitigation

Lack of disciplinary record

Absence of dishonest motive

Absence of fraud

Cooperative attitude

ETHICS OPINION 02-4 (APRIL 2, 2004)

"Letters of Protection"

- A. No clear legal definition of a "letter of protection"
- B. The Critical Issues:
 - 1. Is the lawyer a party to LOP?
 - a) As client's agent
 - b) As direct party
 - 2. If only the client signed an LOP – is it enforceable?
 - does the client contest it?
 - 3. Is there a conflict of interest because both the lawyer and client are parties to the LOP?
 - must the lawyer withdraw (Rule 4-1.16)

ETHICS OPINION 02-4 (APRIL 2, 2004)

"Letters of Protection" (continued)

4. If there is a dispute between client and medical provider
 - what to do?
- a. If medical provider has a legal claim – to disburse to the client
 - may be wrongful interference by lawyer
 - i. But lawyer cannot arbitrate the dispute
 - ii. Where appropriate – interplead
 - iii. Retain in trust
 - iv. Comment - Rule 5-1.1
 - v. Must notify the client and medical provider of funds
(Rule 5-1.1(e) and (f))
 - vi. May need partial closing statement
 - vii. Must advise client of rights/obligations
 - viii. May need to advise client to seek legal advice

ETHICS OPINION 67-36 (MAY 28, 1968)

- If the client and medical provider cannot agree – the lawyer should interplead
- But EO 02-4 – interpleader is not the only alternative

FLORIDA ETHICS OPINIONS – INTERPLEADER ACTIONS

- ✘ 02-6: Attorney must hold funds in trust until dispute is resolved, or may file an interpleader and deposit the funds into the court's registry.
- ✘ 02-4: No bright line rule. Disputed funds must be held in trust.
- ✘ 67-36: Attorney holding settlement or judgment funds in trust who assigned and thereafter repudiated the assignment of funds should institute an appropriate interpleader action.

FACTORS TO CONSIDER BEFORE DISBURSEMENT OF FUNDS

1. Did the lawyer sign a document obligating the lawyer or the client to pay a third party from the funds?
2. Did the client sign a document promising to pay the third party from the funds?
3. Did the lawyer (client) rely upon the third party's work/assistance/consideration in obtaining the funds?
4. Did the lawyer negotiate with the third party?
5. Did the lawyer evaluate the third party's claim and make an informal, good-faith determination of the legal basis for the claim? Is the decision documented?
6. Did the lawyer advise the parties that an interpleader action may become necessary if unable to resolve?
7. Did the lawyer promptly notify the third party of receipt of funds?

FLORIDA RULE OF CIVIL PROCEDURE 1.240 - INTERPLEADER

- ✗ Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claim of the several claimants or the titles on which their claims depend do not have common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of crossclaim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties otherwise permitted.

RESOURCES

- ✧ Florida Bar Website:
www.FloridaBar.org
 - Ethics Hotline: 1-800-235-8619
 - LOMAS: 1-866-730-2020
 - Fee Arbitration: 1-850-561-5719
- + F.L.A.: 1-800-282-8981 or
www.Fla-Lap.org
- ✧ Note: You can always consult an attorney with experience and whose practice includes analysis of ethics issues and Bar rules and defense of Bar discipline complaints.



WHY AVOID BAR GRIEVANCES?



Reputation . . . Time . . . Money . . .

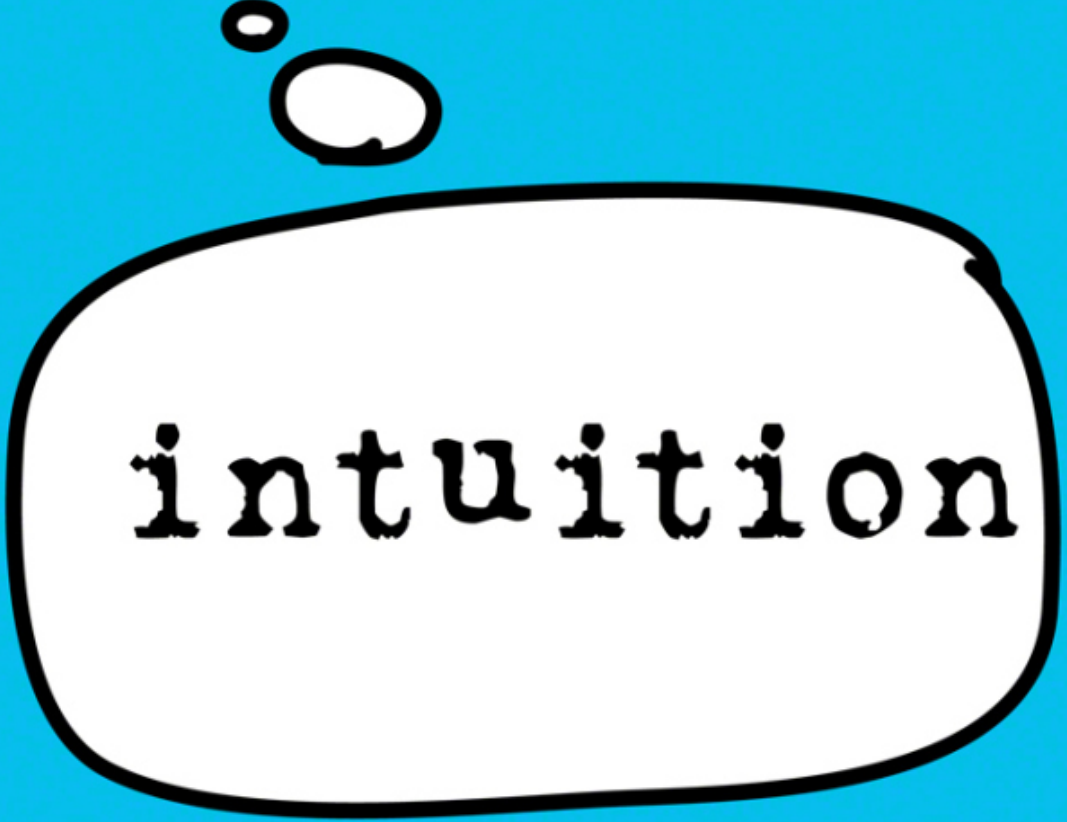


Doing what's
right isn't the
problem. It is
knowing what's
right.

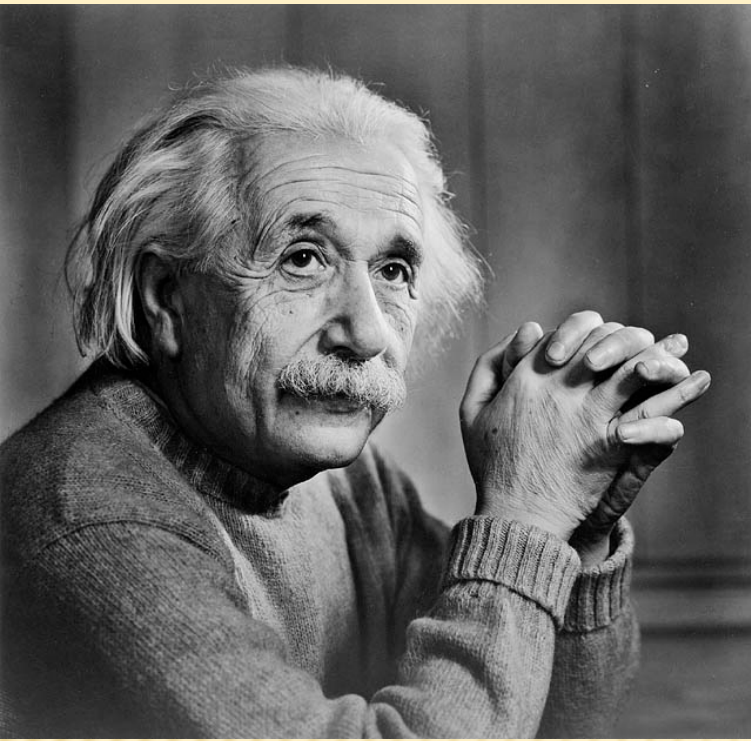
Lyndon B. Johnson, 36th
U.S. President (1963-
69) (1908-1973)



Trust
your gut



intuition

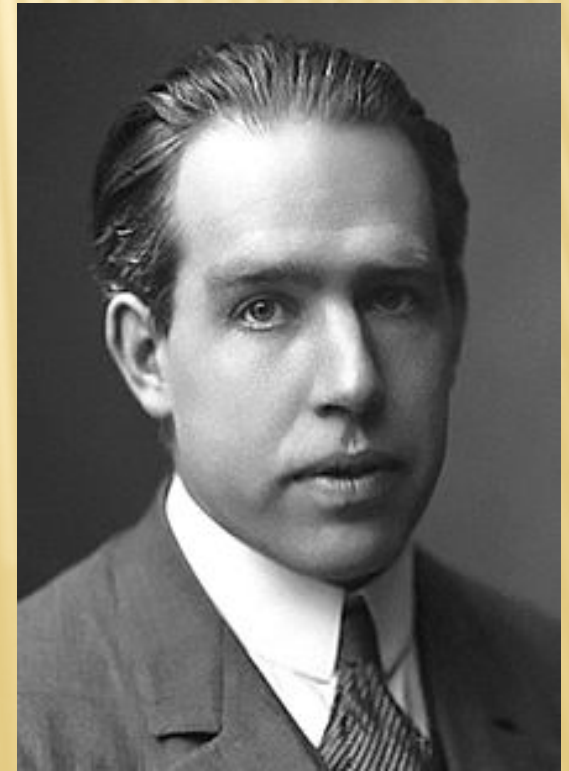


Anyone who has never
made a mistake has never
tried anything new.

Albert Einstein

An expert is a man who has
made all the mistakes which can
be made, in a narrow field.

Niels Bohr



Mistakes are manageable.
Misrepresentations are not.



OATH OF ADMISSION TO THE FLORIDA BAR (EXCERPT)

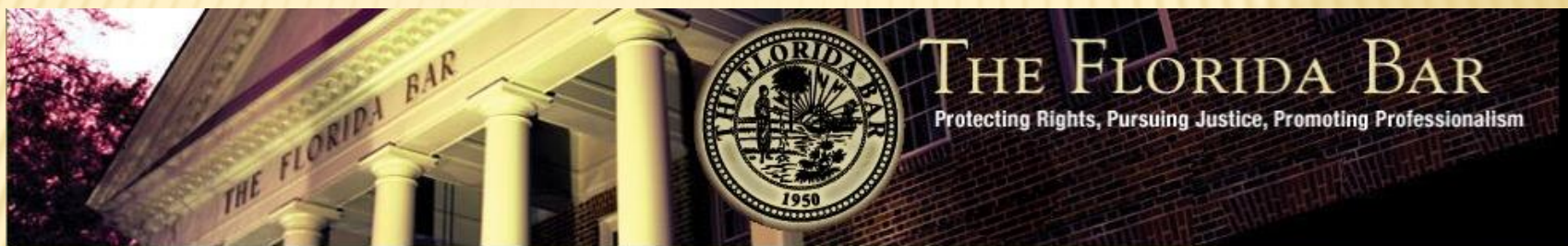
. . .

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

. . .

KNOW THE TRUST ACCOUNTING RULES.

Chapter 5 of the Rules Regulating The Florida Bar.



THE FLORIDA BAR
Protecting Rights, Pursuing Justice, Promoting Professionalism

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Maintaining a TRUSTworthy Trust Account

Credit(s): 1 CLE; all of which may be applied towards Ethics

Course Number: 0793D

Original Program Date: May 1, 2008

Duration: 54 minutes

Access: Available for 3 months after purchase

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IOTA Trust Accounts

- A lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation.
- If client pays for set (earned) fee and advance costs in one payment, lawyer must initially deposit the funds into trust account and immediately move the fee to the operating account. Ethics Op. 93-2.
- Funds held in trust should be short term.
- Disputed funds must remain in trust until dispute is adjudicated.
- With clients, consider the Bar's fee arbitration program.

RESPONSIBLE TRUST ACCOUNTING

- ✗ Temporary or permanent use of trust funds is theft and the sanction is presumptive disbarment.
- ✗ Trusted employees may steal.
 - + Attorney should review unopened bank statement.
 - + Review the checks – signatures and payees.
 - + Review closing statements.
 - + Checks and balances.
 - + Avoid non-lawyer signatories.
- ✗ Verify any C.P.A. is familiar with Chapter 5.
 - + Reconcile trust account bank statement.
 - + Confirm reconciled bank balance = journal balance and total client ledger balance.

OVERVIEW: FLORIDA LAWYER REGULATION AND DISCIPLINE

Complaints may be filed by ANYONE

If ACAP calls or Bar requests, RESPOND

5 Branch Offices, Investigators and Auditors

Grievance Committees

Referee and Supreme Court of Florida

FLORIDA BAR STATISTICS

Annual Average Fiscal Years 2008-2013:

Cases Opened	7,591
Disbarments	80
Suspensions	142
Felony Suspensions	21
Public Reprimands	40
Admonishments	41
Probation	40
Diversion orders	112

RULE REGULATING THE FLORIDA BAR 3-7 PROCEDURE

3-4 Standards Of Conduct

3-5 Types Of Discipline

3-6 Employment Of Certain Lawyers Or Former Lawyers

3-7 Procedures

3-7.1 Confidentiality

3-7.2 Procedures Upon Criminal Or Professional Misconduct; Discipline Upon Determination Or Judgment of Guilt Of Criminal Misconduct

3-7.3 Review Of Inquiries, Complaint Processing, And Initial Investigatory Procedures

3-7.4 Grievance Committee Procedures

3-7.5 Procedures Before The Board Of Governors

3-7.6 Procedures Before A Referee

3-7.7 Procedures Before Supreme Court Of Florida

3-7.8 Procedures Before A Circuit Court

3-7.9 Consent Judgment

3-7.10 Reinstatement And Readmission Procedures

3-7.11 General Rules Of Procedure

3-7.12 Disciplinary Revocation Of Admission To The Florida Bar

3-7.13 Incapacity Not Related To Misconduct

3-7.14 Florida Statutes Superseded

3-7.15 Amendments

3-7.16 Limitation On Time To Bring Complaint

3-7.17 Vexatious Conduct And Limitation On Filings

4 Rules Of Professional Conduct

5 Rules Regulating Trust Accounts

ATTORNEY CONSUMER ASSISTANCE AND INTAKE SCREENING PROCESS

- ✗ Telephone Inquires



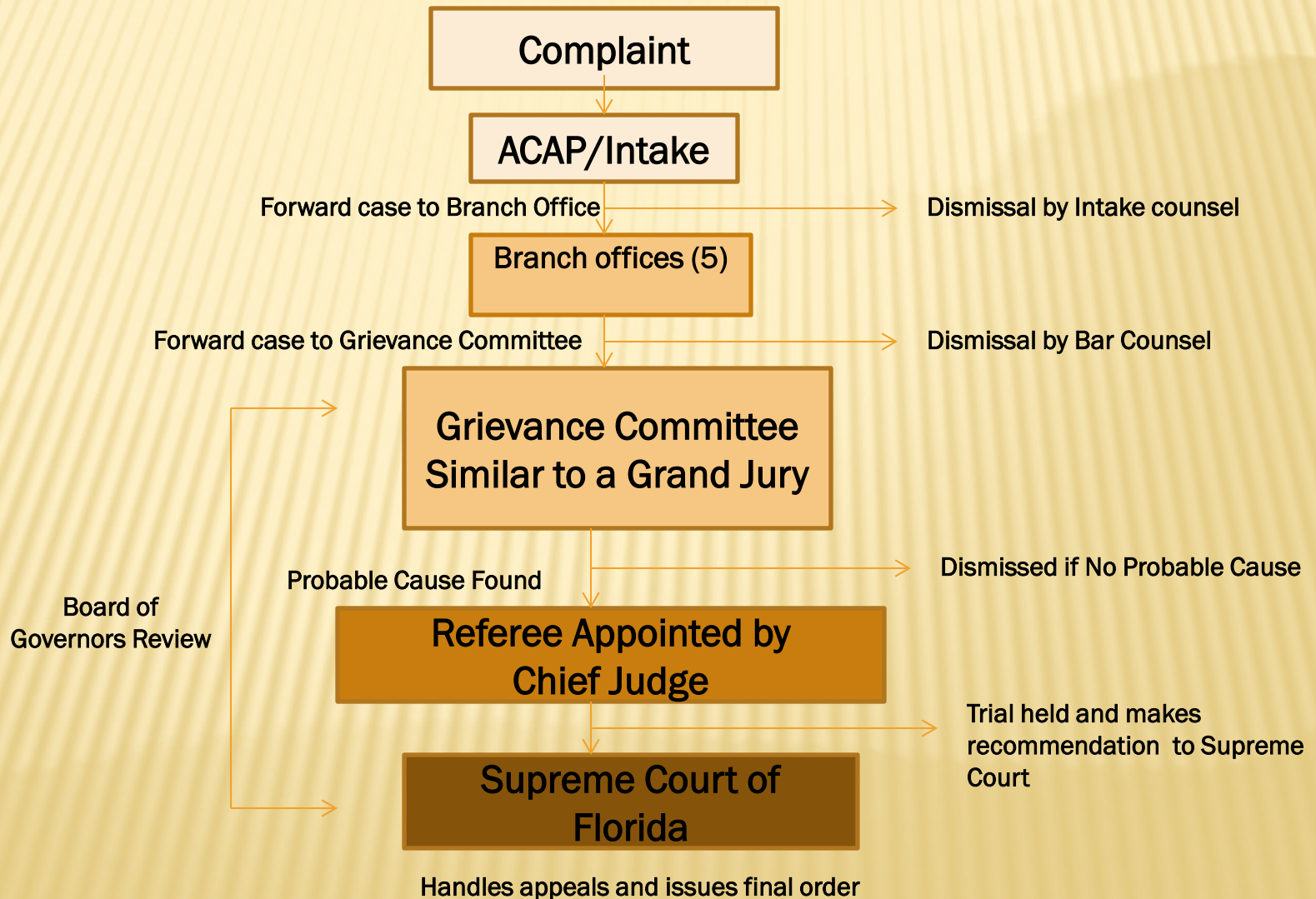
- ✗ Written Inquires



- ✗ ACAP Processing/Intake Process

 - + More Lawyer/Public Friendly

DISCIPLINARY PROCESS



INQUIRY/COMPLAINT



THE FLORIDA BAR

651 EAST JEFFERSON STREET
TALLAHASSEE, FL 32399-2300

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

850/561-5600
WWW.FLORIDABAR.ORG

February 15, 2011

Ms. Responding Attorney

Tampa, FL

Re: Robert, The Florida Bar File No. 2011-10 (13F)

Dear Ms. :

Enclosed is a copy of an inquiry/complaint and any supporting documents submitted by the above referenced complainant(s). Your response to this complaint is required under the provisions of Rule 4-8.4(g), Rules of Professional Conduct of the Rules Regulating The Florida Bar, and is due in our office by **March 1, 2011**. Responses should not exceed 25 pages and may refer to any additional documents or exhibits that are available on request. Failure to provide a written response to this complaint is in itself a violation of Rule 4-8.4(g). You are **further requested to furnish the complainant with a complete copy of your written response, including any documents submitted therewith.**

Please note that pursuant to Rule 3-7.1(b), Rules of Discipline, any reports, correspondence, papers, recordings and/or transcripts of hearings received from either you or the complainant(s) shall become a part of the public record in this matter and thus accessible to the public upon a disposition of this file. It should be noted that The Florida Bar is required to acknowledge the status of proceedings during the pendency of an investigation, if a specific inquiry is made and the matter is deemed to be in the public domain. Pursuant to Rule 3-7.1(f), Rules of Discipline, you are further required to complete and return the enclosed Certificate of Disclosure form.

Finally, the filing of this complaint does not preclude communication between the attorney and the complainant(s). Please review the enclosed Notice for information on submitting your response.

Sincerely,

Shane L. Clark

Shane L. Clark, Bar Counsel
Attorney Consumer Assistance Program
ACAP Hotline 866-352-0707

Enclosures (Certificate of Disclosure, Notice of Grievance Procedures, Copy of Complaint, Notice - Mailing Instructions)

cc: Robert Complainant

The Florida Bar Inquiry/Complaint Form



Mr. Robert

PART ONE: (Read instructions on reverse side.)

Your Name:	Attorney's Name:
Address: 1330	Address:
City: ARLINGTON State: VA	City: Tampa State: FL
Phone:	Phone:
ACAP Reference No.	Code:

PART TWO: The specific thing or things I am complaining about are:

- Lack of communication following letter sent to agency 8 Nov 2010
- Excessive over charging based on billing
- Double billing based on Billing statements
- Failure to quickly resolve a non contested divorce
- Failure to adequately represent me
- Failure to properly notify myself of change of agency attorneys 5 times
- Failure to properly prepare for car work/contested, on 12-13 May 2009
- Failure to resolve complaint prior to my call to Florida Bar
- Failure to obey judges order on 28 Aug 2008

PART THREE: The witnesses in support of my allegations are: [see attached sheet].

- KELLY Esq. Joann
- JESQ Joann ATTORNEY

PART FOUR: Under penalty of perjury, I declare the foregoing facts are true, correct and complete.

Signature: *[Signature]* Date: 30 Nov 2011

Return Completed Form to:
Attorney/Consumer Assistance Program
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
Toll Free - 866-352-0707

ACAP DISMISSAL



AUG 04 2011

THE FLORIDA BAR

651 EAST JEFFERSON STREET
TALLAHASSEE, FLORIDA 32399-2300

JOHN F. HARNNESS, JR.
EXECUTIVE DIRECTOR

(850) 561-5600
WWW.FLORIDABAR.ORG

August 2, 2011

Ms. Erika *Complainant*

Re: Melissa *Attorney*; The Florida Bar File No. 2011-11, (13E)

Dear Ms.

We have carefully considered your inquiry/complaint with all of the information available, and find no basis for further action by this office. Your inquiry/complaint involves a fee dispute. This office has no jurisdiction over fee disputes unless the amount demanded is clearly excessive, extortionate, or fraudulent. Your inquiry/complaint does not fall into any of those categories.

Further questions regarding fee disputes may be directed to the Program Administrator in our Tallahassee office at 850/561-5719, should you desire to arbitrate this matter.

The Florida Bar cannot give you legal advice, and our disposition of this inquiry/complaint has no effect on any legal remedy that you may have. If you have further concerns about any legal issue, please consult with legal counsel of your choice.

Our file on this matter is now closed. Pursuant to the Bar's records retention schedule, the computer record and file will be disposed of one year from the date of closing.

Sincerely,

A handwritten signature in dark ink, appearing to read "Francisco-Javier P. Digon-Greer".

Francisco-Javier P. Digon-Greer, Bar Counsel
Attorney Consumer Assistance Program
ACAP Hotline 866-352-0707
cc: Mr. Scott Kevork Tozian

Responding
attorney and
Complainant
are notified.

REFERRAL TO BRANCH OFFICE



THE FLORIDA BAR

651 EAST JEFFERSON STREET
TALLAHASSEE, FL 32399-2300

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

JUN 07 2011

850/561-5600
WWW.FLORIDABAR.ORG

June 1, 2011

Ms. Responding Attorney

Tampa, FL

Re: The Florida Bar File No. 2011-11, (13F)

Dear Ms. [redacted]:

The above-referenced matter has been forwarded to The Florida Bar's Tampa Branch Office for consideration. You may expect to hear from Bar Counsel (in that office) in the near future. Please forward your response to the complaint and all further correspondence directly to the Tampa office.

Sincerely,

Shanéé L. Clark, Bar Counsel
Attorney Consumer Assistance Program
ACAP Hotline 866-352-0707

cc: Ms. Complainant

STAFF LEVEL INVESTIGATIONS

- ✖ Inquiry
 - + Jurisdiction?
 - + If true, is it a violation?
- ✖ Complaint
 - + Response requested
 - + Rebuttal allowed
 - + Analysis of facts
- ✖ Options
 - + Mediation/Fee Arbitration
 - + Referral to Grievance Committee
 - + Closure



REFERRAL TO GRIEVANCE COMMITTEE



THE FLORIDA BAR

TAMPA BRANCH OFFICE
4200 GEORGE J. BEAN PARKWAY, SUITE 2580
TAMPA, FLORIDA 33607-1496

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

(813) 875-9821
WWW.FLBAR.ORG

AUG 25 2011

August 24, 2011

Mr. Benjamin Charles Older, Chair
Older, Lundy & Weisman, Attorneys at Law
3014 W Palmira Ave Ste 301
Tampa, FL 336297204

RE: Inquiry/Complaint of _____ against
The Florida Bar File No. 2011-11, 13F)

Dear Mr. Older:

The above-referenced matter is being forwarded to your committee for investigation and appropriate action. Potential violations include but are not limited to **Rule 4-1.3** (Diligence); and **Rule 5-1.1** (Trust Accounts).

Please advise as to whom you wish to assign the file.

OMK
Sincerely,

Jodi Anderson Thompson
Bar Counsel

cc: Ms. Responding Attorney
Ms. Complainant

JUN 13 2007

IN THE SUPREME COURT OF FLORIDA (Before a Grievance Committee)

JUSTIN
Complainant,

v.

TFB File No. 2007-70, (13B)

Respondent.

NOTICE OF ASSIGNMENT OF INVESTIGATING MEMBER AND/OR PANEL

To Complainant:	To Respondent:
Justin	
	c/o Gwendolyn H. Hinkle Smith Tozian & Hinkle, PA 109 N. Brush Street, Suite 200 Tampa, Florida 33602-4163

The above-referenced Inquiry/Complaint has been assigned to the following member of the committee for investigation:

Helene L. Daniel
Gallagher Daniel & Keenan, PA
505 E. Jackson Street, Suite 302
Tampa, Florida 33602-4935
Phone 813-277-0003

The Respondent and complainant should contact the investigating member within ten days from the date of this notice to discuss investigation and disposition of this complaint as well as his or her rights in such proceedings.

Dated this 12 day of June 2007.

Henry Lee Paul
Henry Lee Paul, Assistant Staff Counsel, for
Celene Humphries, Chair
Thirteenth Judicial Circuit
Grievance Committee "B"

Copies furnished to:
Timon V. Sullivan, Designated Reviewer
Celene Humphries, Chair
Helene Daniel, Investigating Member (with copy of file)

GRIEVANCE COMMITTEE PROCESS

- ✖ Investigating Member Assigned
- ✖ Additional Investigation
- ✖ Hearing or Review
- ✖ Grievance Committee Action



GRIEVANCE COMMITTEE HEARINGS: SUMMARY AND EVIDENTIARY



THE FLORIDA BAR

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

MAILING ADDRESS:
4200 GEORGE J. BEAN PKWY
SUITE 2580
TAMPA, FL 33607

PHYSICAL ADDRESS:
AIRPORT MARRIOTT HOTEL
SUITE 2580
TAMPA, FL 33607

813/875-9821
www.FLABAR.org

December 30, 2009

AMENDED NOTICE AS TO RULES ONLY

c/o Donald A. Smith, Jr., Esquire
Smith, Tozian & Hinkle, P.A.
109 N. Brush Street, Suite 200
Tampa, Florida 33602

Re: Inquiry/Complaint of The Florida Bar
TFB File No. 2009-10 7 (13B)
Notice Under Rule 3-7.4 Summary Procedures

Dear Mr. Smith:

This letter is to advise you that the Thirteenth Judicial Circuit Grievance Committee "B" will consider the above-referenced case on January 8, 2010, pursuant to Rule 3-7.4, Rules Regulating The Florida Bar.

The Committee may find either probable cause, no probable cause, minor misconduct or may refer the matter to a Practice and Professionalism Enhancement Program. Under Rule 3-7.4(h), no testimony will be taken. There also will be no appearances by either party or by any witnesses in the case. However, you may make a written statement, sworn or unsworn, explaining, refuting, or admitting the alleged misconduct. If you wish to make a written statement, it must be received by the Investigating Members, Mark Greene and Pablo Caceres, at least five (5) working days in advance of the date noted in paragraph one. Please provide copies of your statement to bar counsel and the committee chair as well.

The Committee has discretion to schedule a live hearing prior to making a decision about this proceeding. In this case, the Committee has determined that a live hearing would not be of assistance in its consideration of the matter. **No live hearing has been scheduled nor is expected.** If you believe that a live hearing would be useful to the Committee's deliberations, you may request that the Committee revisit its decision. You may do so by sending a written request for a live hearing to the Chair of the Committee, with copies to the Investigating Members and to the Bar's counsel. Your request should include an explanation of why a live hearing is needed to supplement the written record, including a description of the evidence and issues you would expect to be presented at such a hearing. Your request should be received by

RECEIVED MAY 16 2008
.....
IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

In Re: A disciplinary matter
conducted under authority of
the Rules of Discipline of
The Florida Bar

The Florida Bar v.
TFB File No. 2006-10, 1 (12B)

NOTICE OF HEARING

To:

Law Office of
Sarasota, Florida

Date of Hearing: June 26, 2006

Time of Hearing: 2:00 p.m.

Place of Hearing: Manatee County Administration Complex
1112 Manatee Avenue West
9th Floor - Conference Room
Bradenton, Florida 34205
Phone 941-745-3717

Subject of Hearing: Complaint of Lisa

You will please take notice that the Twelfth Judicial Circuit Grievance Committee "B" will sit at the time and place mentioned for the purpose of investigating the complaint of Lisa

Upon initial investigation of the instant complaints, it appears that your conduct may have violated the following Rules Regulating The Florida Bar:

Rule 4-1.1 (competence);
Rule 4-1.3 (diligence); and
Rule 4-1.4 (communication)

You are required to attend and give testimony.

Rules 3-7.4(h) and (i) and Rule 3-7.11(d)(7) of the Rules of Discipline of The Florida Bar are enclosed for your information. Pursuant to the requirements of Rule 3-7.4(a) of the Rules of Discipline of The Florida Bar, enclosed is a list of the members of this grievance committee.

GRIEVANCE COMMITTEE OPTIONS

- ✗ No Probable Cause
- ✗ No Probable Cause with Letter of Advice
- ✗ Diversion
 - + Ethics School
 - + Trust Accounting Workshop
 - + Florida Lawyers Assistance, Inc.
 - + Advertising Workshop
 - + Professionalism Workshop
 - + Stress Management Workshop
 - + LOMAS
 - + Additional CLE Hours
- ✗ Minor Misconduct
- ✗ Probable Cause



GRIEVANCE COMMITTEE RESOLUTIONS: NO PROBABLE CAUSE

AUG 03 2005

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

In Re: The Matter of TFB No.: 2004-11, (13B)
JERRY *Responding Attorney* Complaint of: Torres

LETTER REPORT OF NO PROBABLE CAUSE

The Grievance Committee found no probable cause in the above-referenced matter.

Complainant alleged that Respondent improperly withdrew from representing him in a personal injury case after Complainant refused a proposed settlement offer of \$5,000.00. Complainant also alleged that Respondent should be responsible for the cost of his surgery, \$7,231.00, because Respondent had issued a letter of protection.

Respondent's partner was primarily responsible for the litigation, which was stayed for a time when the defendant's insurance company filed for Chapter 11 bankruptcy. In response to this inquiry/complaint, Respondent detailed the significant adverse facts relative to Complainant's case. Respondent also stated that Complainant's failure to cooperate forced the ultimate withdrawal.

Based on a thorough review of all documents presented, the committee found no probable cause that Respondent had failed to protect his client's interest as required under Rule 4-1.16(b), or that he otherwise violated the Rules of Professional Conduct in this case. The committee also noted that Respondent may have had a duty to withdraw under Rule 4-3.1.

Pursuant to the provisions of Rule 3-7.4(k), Rules Regulating The Florida Bar, the undersigned signify a finding of no probable cause by the grievance committee as to the referenced complaint. No right to appeal this decision exists (Rule 3-7.4(i)). The designated reviewer has authority to seek review of the grievance committee's decision within thirty (30) days of this date by referral to the disciplinary review committee. A decision by the designated reviewer not to seek review or expiration of the time in which to do so shall preclude further proceedings in this matter. The records regarding this matter may be destroyed one (1) year from the date of the committee's action.

Dated this 2nd day of August, 2005.

Joy Ann Demas
Joy Ann Demas
Assistant Staff Counsel

A. Frank Russo
Andrew Frank Russo, Chair
Thirteenth Judicial Circuit
Grievance Committee "B"

Copies to: Timon V. Sullivan, Designated Reviewer
Dana Allyn Friedlander, Investigating Member
Torres, Complainant
Scott K. Tozian, Counsel for Respondent

JUL 09 2007

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

THE FLORIDA BAR,
Complainant,
v. TFB File No. 2007-90, (02S)

Respondent.

NOTICE OF NO PROBABLE CAUSE AND LETTER OF ADVICE

The Florida Bar's Statewide Advertising Grievance Committee, comprised of both non-lawyer and lawyer members, has found no probable cause in the referenced cause against you and the complaint has been dismissed.

The committee wants to stress that its finding does not condone your actions. The committee found that you had been accepting referrals from _____, which acts as a lawyer referral service that is not registered with The Florida Bar and whose advertisements do not comply with Rule 4-7.10, Rules Regulating The Florida Bar. The committee recommends that you immediately cease accepting referrals or clients from _____, and cease taking any referrals or clients from 1st _____ Inc. and _____ Group LLC, companies marketed by

The Florida Bar's advertising rules are to be interpreted strictly and followed precisely. While your conduct in this instance did not warrant formal discipline, the committee wanted to make you aware of its high expectations of all attorneys who advertise.

This letter of advice does not constitute a disciplinary record against you for any purpose, and it is not subject to appeal by you.

Dated this 22nd day of June, 2007.

STATEWIDE ADVERTISING GRIEVANCE
COMMITTEE

Don L. Horn
Don L. Horn, Chair

cc: Kenneth L. Marvin, Staff Counsel

GRIEVANCE COMMITTEE RESOLUTIONS: DIVERSION RECOMMENDATION



THE FLORIDA BAR

FT. LAUDERDALE BRANCH OFFICE
LAKE SHORE PLAZA II
1300 CONCORD TERRACE, SUITE 130
SUNRISE, FLORIDA 33323

(954) 835-0233
WWW.FLORIDABAR.ORG

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

August 30, 2011

Mr. Scott Kevork Tozian
Smith, Tozian & Hinkle P. A.
109 N. Brush Street, Ste. 200
Tampa, FL 33602-4157

Re: Complaint by _____ against Daniel
The Florida Bar File No. 2011-10, _____, 171)

Dear Mr. Tozian:

On June 17, 2011, the grievance committee voted to recommend diversion of this matter to a Practice and Professionalism Enhancement Program. A copy of the grievance committee's recommendation is enclosed.

Your client's options are to accept the recommendation *or* reject the recommendation.

If your client accepts this recommendation, the disciplinary file shall be closed without any action against your client. The file will remain closed unless your client fails to successfully complete the requirements of the recommendation, including the payment of costs. Costs associated with this recommendation are \$750.00 and if you accept, you will receive further instructions regarding payment of the fees and costs.

Pursuant to Rules 3-5.1(b)(3) and 3-5.3(f) of The Rules Regulating The Florida Bar, your client has until September 14, 2011, to reject this recommendation. This recommendation will become final unless we receive the rejection, in writing, on or before September 14, 2011.

Sincerely,

Joel M. Klaitz
Bar Counsel

Enclosure

JMK/es

SEP 01 2011

In Re: Daniel
The Florida Bar File No. 2011-10, _____, 171)

GRIEVANCE COMMITTEE RECOMMENDATION OF DIVERSION

I. **GRIEVANCE COMMITTEE RECOMMENDATION OF DIVERSION:** Pursuant to Rules Regulating The Florida Bar 3-5.3, the grievance committee recommends diversion of this matter to a practice and professionalism enhancement program under the terms and conditions stated herein.

II. **PURPOSE AND PROGRAMS WHICH ARE RECOMMENDED:** The purpose of the diversion is to assist the respondent in the future avoidance of the situations summarized below.

The following program(s) are recommended:

Professionalism Workshop

III. **NARRATIVE SUMMARY:**

REDACTED

GRIEVANCE COMMITTEE RESOLUTIONS: FINDING OF PROBABLE CAUSE

JUL 10 2006

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

THE FLORIDA BAR,
Complainant,

TFB No. 2006-10, (12B)

v.

Respondent.

NOTICE OF FINDING OF PROBABLE CAUSE FOR
FURTHER DISCIPLINARY PROCEEDINGS

TO:

c/o Scott K. Tozian
Smith Tozian & Hinkle, PA
109 N. Brush Street, Suite 200
Tampa, Florida 33602-4163

Certified Mail Return Receipt
No. 7005 3110 0002

You are hereby notified that the Twelfth Judicial Circuit Grievance Committee "B", on the 26th day of June, 2006, found probable cause for the violation of:

Rule 4-1.1 (competence);
Rule 4-1.3 (diligence); and
Rule 4-1.4 (communication)

The record of proceedings before the Grievance Committee has been referred to the undersigned staff lawyer for the drafting and filing of a formal complaint pursuant to Rule 3-7.4(l).

Dated this 7th day of July 2006.


Susan V. Bloemendaal
Chief Branch Discipline Counsel
The Florida Bar
5521 W. Spruce Street, Suite C-49
Tampa, Florida 33607-5958
(813) 875-9821
Florida Bar No. 347175

cc: Director of Lawyer Regulation
Thomas Patrick Flynn, Chair
Kimberly A. Bald, Designated Reviewer
Mary Fabre LeVine, Investigating Member
Lisa , Complainant
Linda , Branch Office Manager

GRIEVANCE COMMITTEE RESOLUTIONS: COMPLAINT OF MINOR MISCONDUCT

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Case No.

Complainant,

TFB No. 2007-10, (13A)

v.

Respondent.

COMPLAINT OF MINOR MISCONDUCT

Complainant, THE FLORIDA BAR, files this Complaint against

, Respondent, pursuant to Rule 3-3.2(b) and Rule 3-5.1(b)(3) and

(4), Rules Regulating The Florida Bar, and alleges:

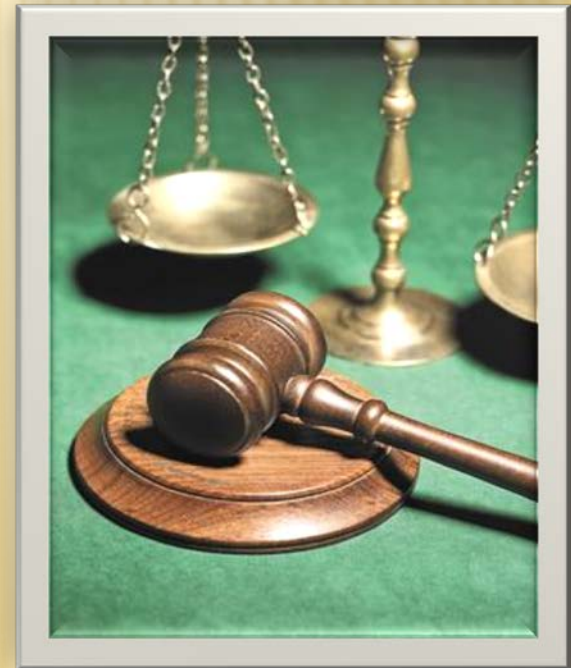
1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.
2. On or about January 2005, Respondent represented a client in estate planning matters and prepared several documents.
3. When Respondent and her client had a communication issue concerning the client's request for copies of the documents, the client indicated to Respondent that a claim would be filed with The Florida Bar, if the documents were

SUPREME COURT OF FLORIDA PRETRIAL PROCESS

- ✖ Complaint Drafting and Filing
- ✖ Guilty Plea
- ✖ Appointment of Judicial Review
- ✖ Discovery (Fla. R. Civ. P.)

SUPREME COURT OF FLORIDA TRIAL PROCESS

- ✗ Complaint & Answer
- ✗ Final Hearing
- ✗ Hearing on Sanctions
- ✗ Report of Referee
- ✗ Supreme Court Review
- ✗ Issues Final Order



COMPLAINT AND ACKNOWLEDGMENT OF NEW FLORIDA SUPREME COURT CASE

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

THOMAS

Respondent.

CASE NO.

TFB NO. 2005-11, (13A)
2005-11, (13A)
2005-11, (13A)

COMPLAINT

THE FLORIDA BAR, Complainant, files this Complaint against THOMAS

-, Respondent, pursuant to Rule 3-3.2(b), Rules Regulating

The Florida Bar, and alleges:

COUNT I (TFB# 2005-11, (13A))

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.
2. On or about August 27, 2004, Peña ("Peña") retained the services of Respondent to represent Peña in a criminal matter.
3. On or about August 27, 2004, Peña caused \$2,900 to be paid to Respondent toward Respondent's fee for the matter.
4. On or about October 20, 2004, Peña caused an additional \$1,000 to be paid to Respondent toward Respondent's fee for the matter.



Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

THOMAS D. HALL
CLERK
DEBBIE CAUSSEAU
CHIEF DEPUTY CLERK
GREGORY J. PHILIP
STAFF ATTORNEY

PHONE NUMBER (850) 488-0125
www.flcourts.org/clerk.htm

ACKNOWLEDGMENT OF NEW CASE

December 30, 2005

RE: THE FLORIDA BAR vs. THOMAS

CASE NUMBER: SC05-

Lower Tribunal Case Numbers : 2005-11, (13A), 2005-11, (13A),
2005-11, (13A)

The Florida Supreme Court has received the following documents reflecting a filing date of 12/22/2005.

Complaint (Original and one copy)

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

Please review and comply with any handouts, if any, enclosed with this acknowledgment.

kd
cc:
JOSEPH H.
GWYNNE ALICE YOUNG
JOHN ANTHONY BOGGS
TROY MATTHEW LOVELL
THOMAS

ORDERS DESIGNATING JURISDICTION AND REFEREE

Supreme Court of Florida

WHEREAS, it officially has been made known to me that it is necessary to appoint a referee for the Court pursuant to rule 3-7.6(a), Rules Regulating The Florida Bar, to preside in a disciplinary action brought by The Florida Bar pursuant to Chapter 3 of the Rules Regulating The Florida Bar in the matter of:

The Florida Bar vs. Thomas
Supreme Court Case No. SC05-

NOW, THEREFORE, I, Barbara J. Pariente, under authority vested in me as Chief Justice of the Supreme Court of Florida, do hereby designate the Honorable David A. Demers, Chief Judge of the Sixth Judicial Circuit Court of Florida, to appoint a referee for the Court in the above matter and, within fourteen (14) days of this order, to notify the Clerk of the Florida Supreme Court as to the judge appointed as referee. The referee shall conduct a case management conference, to be held no later than sixty (60) days from the date of appointment, at which the schedule for the proceedings, including the final hearing date, shall be set. The referee shall have the option of holding the required case management conference either in person or telephonically. The referee shall thereafter hear, conduct, try, and determine the matters presented at the final hearing, and submit findings of fact and recommendations to the Supreme Court of Florida as provided in rule 3-7.6(k). Except in cases where the ninety (90) day time limit provided by rule 3-5.2(f) applies, the referee's report shall be filed within 180 days of his or her appointment, unless there are substantial reasons requiring delay.

IN THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO AND PINELLAS COUNTIES, FLORIDA

ADMINISTRATIVE ORDER NO. 2006-

RE: APPOINTMENT OF REFEREE

It has been officially made known to me that it is necessary to appoint a referee for the Court pursuant to the provisions of Rule 3-7.6(a), Rules Regulating The Florida Bar, to preside in a disciplinary action, and

Therefore, The Honorable Barbara J. Pariente, Chief Justice of the Supreme Court of Florida, by Order dated December 30, 2005, designated the Chief Judge of the Sixth Judicial Circuit to appoint a referee for the Supreme Court of Florida in that proceeding, it is hereby

ORDERED:

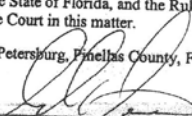
The Honorable J. Thomas McGrady, Circuit Court Judge, in and for the Sixth Judicial Circuit, State of Florida, is hereby designated and appointed as referee for the Supreme Court of Florida, in the matter of:

The Florida Bar v. Thomas
Supreme Court Case No. SC05-

The Honorable J. Thomas McGrady, as referee shall hear, conduct, try, and determine matters presented and shall submit findings of fact and recommendations to the Supreme Court of the State of Florida as provided in Rule 3-7.6(m) and in accordance with the December 30, 2005 order of Chief Justice Pariente. The referee's report shall be filed in accordance with said order.

The Honorable J. Thomas McGrady, is hereby vested with all and singular the powers and prerogatives conferred by the Constitution, laws of the State of Florida, and the Rules Regulating The Florida Bar, concerning a referee for the Supreme Court in this matter.

6/2 **DONE AND ORDERED** in Chambers at St. Petersburg, Pinellas County, Florida, this day of January 2006.


David A. Demers, Chief Judge

cc: The Honorable J. Thomas McGrady
The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida
John F. Harkness, Jr., Executive Director, The Florida Bar
Joseph H. Varner, III, Chair, Grievance Committee "A"
Troy Matthew Lovell, Assistant Staff Counsel, The Florida Bar
John Anthony Boggs, Staff Counsel, The Florida Bar
Gwynne Alice Young, Designated Reviewer
Respondent
Gay Inskeep, Trial Courts Administrator
Pasco and Pinellas County Law Libraries

Please note: Judge McGrady's address is: 14250 49th Street N., Room 7, Clearwater FL 33762

RULE REGULATING THE FLORIDA BAR 3-7.6(F)

✖ (f) Nature of Proceedings.

(1) *Administrative in Character.* A disciplinary proceeding is neither civil nor criminal but is a quasi-judicial administrative proceeding. The Florida Rules of Civil Procedure apply except as otherwise provided in this rule.

(2) *Discovery.* Discovery shall be available to the parties in accordance with the Florida Rules of Civil Procedure.

SUPREME COURT OF FLORIDA ORDER

Supreme Court of Florida

THURSDAY, OCTOBER 5, 2006

OCT 10 2006

CASE NOS.: SC05-____ & SC06-____
Lower Tribunal Nos.: 2005-11, (13A)
2005-11, (13A)
2005-11, (13A)
2006-10, (13A)

THE FLORIDA BAR

vs. THOMAS

Complainant(s)

Respondent(s)

The uncontested report of the referee is approved and respondent is suspended from the practice of law for thirty days, effective thirty days from the date of this order so that respondent can close out his practice and protect the interests of existing clients. If respondent notifies this Court in writing that he is no longer practicing and does not need the thirty days to protect existing clients, this Court will enter an order making the suspension effective immediately. Respondent shall accept no new business from the date this order is filed until the suspension expires. Respondent is further directed to comply with all other terms and conditions of the report and the consent judgment.

Upon reinstatement, respondent is further placed on probation for two years under the terms and conditions set forth in the report and the consent judgment.

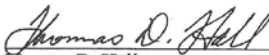
Respondent shall pay restitution in the amount of \$750.00 to Glenn, and in the amount of \$3,900.00 to Pena, and in the amount of \$4,300.00 to Garcia, and in the amount of \$2,700.00 to Mejia, under the terms and conditions set forth in the report and the consent judgment.

Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from Thomas in the amount of \$1,696.48, for which sum let execution issue.

Case Nos. SC05- & SC06-
Page Two

Not final until time expires to file motion for rehearing, and if filed, determined. The filing of a motion for rehearing shall not alter the effective date of this suspension.

A True Copy
Test:


Thomas D. Hall
Clerk, Supreme Court



bhp
Served:

JOSEPH H. VARNER, III
KENNETH LAWRENCE MARVIN
GWYNNE ALICE YOUNG
TROY MATTHEW LOVELL
SCOTT K. TOZIAN
HON. J. THOMAS MCGRADY, JUDGE

APPELLATE PROCESS AT SUPREME COURT

- ✗ Petition for Review
- ✗ Rules of Appellate Procedure apply



ADDITIONAL RESOURCES

Walker, David J. “How Not to Respond to a Disciplinary Inquiry: Eight Ways to Make a Bad Situation Worse.” *ABA Journal*. December 1992: p. 99-100. Print.

[How Not to Respond to a Disciplinary Inquiry \(via Google Books\)](#)

Lundberg, Donald R. “In the Solution: Dealing with an Ethics Complaint.” *GPSOLO*. October/November 2010. Print.

[Dealing with an Ethics Complaint \(via americanbar.org\)](#)

Florida Lawyers Assistance, Inc.



2335 E. Atlantic Blvd., Suite 410
Pompano Beach, FL 33062
www.fla-lap.org
(800) 282-8981

FLA Toll-Free Hotline: (800) 282-8981 (National)

FLA Judges' Hotline: (888) 972-4040 (National)

Pompano Beach Office: (954) 566-9040

Fax: (954) 568-0803

E-Mail: mail@fla-lap.org

Michael Cohen, Esq., CEAP, Executive Director: michael@fla-lap.org or 305-790-4207 (Cell)

Judy Rushlow, Esq., CAAP, Assistant Director: judy@fla-lap.org or 954-646-8169 (Cell)

Scott Weinstein, Ph.D., Clinical Director: scott@fla-lap.org or 954-818-0888 (Cell)

THANK YOU FOR ATTENDING!

Donald A. Smith, Jr., Esquire
Smith, Tozian, Daniel & Davis, P.A.
109 N. Brush Street, Suite 200
Tampa, Florida 33602

www.floridabardefense.com

813-273-0063
813-221-8832 (fax)

dsmith@smithtozian.com



THE FLORIDA BAR

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JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

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Certificate of Accreditation for Continuing Legal Education

227809
Tampa Bay Trial Lawyers Association
Margaret Schumacher
PO Box 26091
Tampa, FL 33623-6091

December 30, 2014

Reference Number: 1409969N
Title: Unsigned LOP - What Does Pinaluga Really Mean?
Level: Intermediate
Approval Period: 01/29/2015 - 07/29/2016

CLE Credits

General

2.0

Certification Credits

Ethics

Alikiza Wilson

1/30/15

nwilson@flabar.org

Please provide the attendees the above reference number so they may go online to www.floridabar.org to report their completion of this program.