HAWKINS COMMISSION ON REVIEW
OF DISCIPLINE SYSTEM
REPORT AND RECOMMENDATIONS
A REPORT AND ANALYSIS OF TARGETED ASPECTS OF
THE ATTORNEY DISCIPLINE SYSTEM

CO-CHAIRS:  EDWARD K. CHEFFY
             MILES A. MCGRANE, III
             EUGENE K. PETTIS

VICE CHAIRS:  GREGORY W. COLEMAN
              JOHN “JAKE” SCHICKEL
              RENEE E. THOMPSON
TABLE OF CONTENTS

I.  Introduction, Methodology, and Charge

II.  Membership List

III.  Outline of Issues Considered

IV.  Report

V.  Final Recommendations of the Commission

Appendix A:  Biographies of Commission Members

Appendix B:  Presidential Charge

Appendix C:  Bar Counsel Analysis of Discipline Decisions

Appendix D:  Recidivism Study by The Florida Bar

Appendix E:  Results of Survey to Judges (State)

Appendix F:  Results of Survey to Judges (Federal)
I. Introduction, Methodology, and Charge

In June 2011, incoming Florida Bar President Scott G. Hawkins appointed the Hawkins Commission on Review of the Discipline System. His vision for this Commission was stated in his 2011 video message to Bar members: “The grievance commission will study the Bar’s regulation of lawyer conduct, with an eye on the rapidly growing number of Bar members and in view of some recent high-profile matters involving broad-scale misconduct. The goal is to make sure the Bar is fully responsive and vigilant in regulating our nearly 100,000 members. The Bar has faced some large-scale problems in recent years, such as mass frauds and improper filings in foreclosures, and we must be prepared to handle such large problems in the future.”

The Commission was appointed to encompass a wide mix of public and private sector lawyers as well as encompass diversity in race, gender, practice area, geographic location and firm size. The Commission also includes retired judges and lay members. Appendix A further details the diverse background of the Commission members.

The Commission’s focus was not an omnibus examination of the disciplinary system, as was conducted by the Coxe Commission from 2003-2005. Instead, the group was given specific tasks to study. (See Appendix B).

The Commission was divided into three subcommittees. The first subcommittee, chaired by Florida Bar President-Elect-Designate Eugene K. Pettis and Vice-Chaired by Renee E. Thompson, immediate past President of the Florida Bar Young Lawyers Division, focused on the Standards for Imposing Lawyer Sanctions, Alternatives to Discipline, and issues related to Aging Lawyers. The second subcommittee, chaired by Edward K. Cheffy and vice chaired by former Florida Bar Board of Governors member John “Jake” Schickel, examined the Bar’s Attorney Consumer Assistance Program, as well as frivolous or retaliatory complaints and complaints against lawyers made by judges. The third subcommittee, chaired by former Florida Bar
President Miles A. McGrane, III and vice-chaired by Board of Governor member Gregory W. Coleman, studied complex discipline or widespread impact cases, as well as communication with the public and bar members about the grievance program.

The group largely conducted its work through subcommittee meetings held in person, telephonically, and electronically. In January 2012, the entire Commission met in person to work through larger issues. At that meeting, President Hawkins reiterated that the Bar “…is a regulatory body. Perhaps our most important function is to self-regulate; and it is a privilege we have to self-regulate, and it is a responsibility we have to do as well as we can, and that is what this effort is about.” At this meeting, preliminary recommendations were shared for feedback with all members, as well as the three Florida Supreme Court Justices who attended and gave their input. These recommendations were further refined by the subcommittees and presented in this report.
II. Hawkins Commission on Review of Discipline System Membership List

Edward K. Cheffy, Chair (Member, The Florida Bar)
Miles A. McGrane, III Chair (Past-President, The Florida Bar)
Eugene K. Pettis, Chair (President-Elect, Designate, The Florida Bar)
Al Alsobrook (Citizens Forum Member)
David Atkinson (Member, The Florida Bar)
Tom Bateman (Former Circuit Court Judge)
Kenneth B. Bell (Former Supreme Court Justice)
Odette Bendeck (Member, The Florida Bar)
Linda Drane Burdick (Chief Asst. State Attorney 9th Judicial Circuit)
Brian Burgoon (Member, Board of Governors)
Gregory Coleman, Vice Chair (Member, Board of Governors)
Joseph Corsmeier (Member, The Florida Bar)
Mark Criser (Member, The Florida Bar)
Charles Curtis (Member, The Florida Bar)
Debra Moss Curtis (Member, The Florida Bar)
Joanna Garcia (Member, The Florida Bar)
Courtney Grimm (Member, The Florida Bar)
Carlos Halley (Citizens Forum Member)
Michael Higer (Member, Board of Governors)
Dennis Kainen (Member, Board of Governors)
George Knox (Member, The Florida Bar)
Michael Lax (Member, The Florida Bar)
Christopher Marquardt (Member, The Florida Bar)
Victoria Mendez (Member, The Florida Bar)
Keith W. Rizzardi (Member, The Florida Bar)
Alan Sakowitz (Member, The Florida Bar)
John “Jake” Schickel, Vice Chair (Member, The Florida Bar)
Stacey Scott (Public Defender, 8th Judicial Circuit)
Grasford Smith (Member, The Florida Bar)
Culver “Skip” Smith (Member, Board of Governors)
Julie Sneed (Member, The Florida Bar)
Marni Stahlman (Citizen Forum Member)
Renee E. Thompson, Vice Chair (Past-President, YLD, Board of Governors)
Rob Vargas (Member, The Florida Bar)
Grier Wells (Member, Board of Governors)
Jewel White (Past-President, YLD, Board of Governors)

From The Florida Bar: John T. Berry, Director, Legal Division
Kenneth L. Marvin, Director, Lawyer Regulation, Staff Counsel
Arne Vanstrum, Associate Director, Lawyer Regulation
Melissa M. Mara, Administrative Assistant, Legal Division
Jan Wichrowski, Orlando Chief Branch Discipline Counsel
Francine Walker, Director, Public Information
III. Issues Considered by the Commission

I. Subcommittee One, Eugene K. Pettis, Chair
   A. Standards for Imposing Lawyer Sanctions
   B. Alternatives to Discipline
   C. Aging Lawyers

II. Subcommittee Two, Edward K. Cheffy, Chair
   A. Attorney Consumer Assistance Program and Discipline Intake
   B. Judges
   C. Frivolous and Retaliatory Complaints

III. Subcommittee Three, Miles A. McGrane, III, Chair
   A. Handling of the Extraordinarily Complex or Widespread Violation
   B. Communication with our Members and Public about Discipline System
IV. Report and Recommendations

I. Subcommittee One, Eugene K. Pettis, Chair

A. Standards for Imposing Lawyer Sanctions

Although the subcommittee noted that there has been no review of this topic since the initial formulation of the Standards for Imposing Lawyer Sanctions, it also agreed that a line by line review of the Standards neither was needed at this time nor was feasible. The purpose of this analysis and research by bar staff was to make proposed recommendations to the Florida Supreme Court developing precedent and to enable the Board of Governors to articulate and advocate its positions most effectively in the development of any proposed new or revised standards.

Issue 1: Are There Trends in Discipline Cases Demonstrating Disparity Between Recommendations Made by The Florida Bar and Opinions of the Florida Supreme Court?

Do the recent decisions of the Florida Supreme Court, where greater discipline was imposed than what was sought by the Bar, require changes to the Standards for Imposing Lawyer Sanctions?

Recommendation 1: Directly Addressing Discipline Views Between The Florida Bar and the Florida Supreme Court Through Better Communication

The subcommittee examined trends between recommendations made by The Florida Bar (TFB) and the actual discipline imposed by the Florida Supreme Court as the makeup of the Florida Supreme Court has changed in recent years with the addition of four new Justices. The subcommittee sought to analyze where the Court now stands on discipline matters, as related to the Standards for Discipline and case law precedent. Based on the analysis, the subcommittee is recommending a dialogue between Bar leadership and the Court.
Chief Discipline Bar Counsel in Orlando provided to the subcommittee with research outlining 36 cases from January 2008 through May 2011. (See Appendix C). While the vast majority of decisions outlined showed the discipline imposed was not contrary to the Bar’s recommendation, there were exceptions. The subcommittee reviewed in detail a number cases, wherein the Court increased the discipline imposed without the Bar requesting same. The subcommittee examined trends in discipline imposed by the Florida Supreme Court, as compared to recommendations made by the Bar. These cases were compared with respect to the nature of the violation, the accused lawyer’s intent, and the aggravating and mitigating factors considered by the Court.

The subcommittee acknowledged that the Court does not favor lawyers who will not own up to their problems, who engage in spurious arguments, or who are not engaging in serious rehabilitative efforts. The subcommittee agreed that the cases which have been reviewed and analyzed suggested that the Court is moving toward stronger sanctions for attorney misconduct. The Florida Bar has also demonstrated its awareness of this dynamic, and as explained below, frequently and successfully has appealed disciplinary rulings by the referee that it found to be inadequate. The Court and The Florida Bar have a duty to protect the public from harm by lawyers and it may be that holding lawyers to a higher standard may increase the reputation of all lawyers in the eyes of the public.

While the Bar derives its ability to regulate attorneys from the Florida Supreme Court’s delegation of authority, when the sanctions imposed differ from those sought by the Bar, confusion may result. Bar counsel may be unsure as to what case law precedent to rely upon before a referee. The Board of Governor’s Disciplinary Review Committee (DRC) may be unsure as to what to recommend or appeal. The comments of Debra Moss Curtis of Nova Southeastern Law School, a consultant to the Commission were discussed with regard to public
perception of offenses in the context of “broader” wrong-doing as opposed to a “mere” rule violation. She believed that the Court has imposed more severe discipline in matters which affect public perception of the self-regulation of attorneys. Florida Supreme Court Justice Barbara Pariente noted at the full Commission meeting that the discrepancies between the recommendations and the Court’s ultimate decision were a small percentage of cases and are naturally part of the discipline process.

Based on the analysis by the Orlando Chief Disciplinary Bar Counsel, there were 45 cases between January 2008 and May 2011 where appeals were filed or the Court issued Orders to Show Cause on its own. In 22 cases, the Bar appealed and succeeded in getting greater discipline than what had been recommended. In two cases where the Bar appealed, the Court imposed less discipline than that requested by the Bar. In one case, the accused attorney appealed and succeeded in getting less discipline than what had been recommended. In 15 cases, the accused attorney appealed but did not succeed in getting a lesser disciplinary sanction. In 14 cases, the Court increased discipline beyond that recommended by the referee or requested by the Bar. Combined, in 36 out of 45 cases, the sanctioned attorney received greater discipline than that originally recommended by the referee.

Keeping in mind that discrepancies between recommendation and the Court’s ultimate decision are a natural part of the discipline process, while also wanting to ensure that The Florida Bar remains cognizant of the views of the Florida Supreme Court, the subcommittee members are recommending a dialogue between the Bar leadership and the Court. This dialogue is recommended so that differing views in discipline cases, chiefly where the Court seeks a more severe sanction than recommended by the Bar, can be discussed. The hope is that this dialogue will lessen confusion by bar counsel and the DRC and will lessen the risk that the public may interpret The Florida Bar as protecting lawyers.
Issue 2: What are Concerns Regarding Conditional Admissions?

Should there be any changes to the handling of conditional admission cases where the conditionally admitted lawyer misses one or more check-ins for substance testing?

Recommendation 2: Clearer Board Policy Regarding Remedies for Noncompliance

Those admitted conditionally to The Florida Bar on a probationary status must meet certain criteria, as set forth by contract, in order to maintain their Bar licenses. This can include a treatment plan for substance abuse or psychiatric issues which is monitored by Florida Lawyers Assistance, Inc. (FLA, Inc). When such a contract is not strictly adhered to with regard to daily check-ins, the Bar issues a warning letter to the lawyer for a first offense. After repeated instances of non-compliance, the probationary period can be extended in some cases, while in others, the lawyer may be held in contempt, making his or her conditional status public.

To give the Court and the Florida Bar the full picture on the conditional admittee at issue, the subcommittee members emphasized the need for more factual information as to:

- the regularity of the lawyer’s adherence with check-ins pursuant to his or her FLA, Inc. contract;
- the professional background information of the lawyer including the type of practice environment (solo/large firm, etc.);
- the types of problems experienced including any history or length of usage;
- the work experience outside the practice of law;
- history with FLA, Inc. including the lawyer’s attitude towards rehabilitation efforts and staff; and
- support networks available to the individual lawyer.

In addition, the subcommittee encouraged careful consideration of whether the non-compliant lawyer was a threat to the public whenever non-adherence occurred. Subcommittee
members noted that in some instances where a conditionally admitted lawyer missed a daily check-in, but tested negative the following day, compliance with the language of the FLA, Inc. contract could be determined to exist, despite the missed check-in.

To encourage consistency in result, subcommittee members recommend that the Board of Governors’ Disciplinary Procedure Committee (DPC) consider a Board policy outlining the criteria to be considered in determining those instances where probation should be enhanced or where contempt should be recommended to the Court, taking into account what type of adherence was required by the FLA, Inc. contract.

**Issue 3: Should Changes be Made Regarding Imposing Rehabilitative Suspensions?**

Is there a need to increase the minimum period for a rehabilitative suspension from 91 days when the actual suspension period will usually be longer?

**Recommendation 3: Change Reinstatement Rule for Rehabilitative Suspension Period**

Previously, The Honorable Thomas D. Hall, Clerk of the Florida Supreme Court, had discussed with The Florida Bar staff the possibility of changing the current minimum rehabilitative suspension period of 91 days to a 6-month time period. The origin of this suggestion was a concern that the current characterization of such a disciplinary sanction as being a “91-day suspension” was misleading given the fact, that typically it takes 3 to 6 months, at a minimum, to complete the investigation and the petition for reinstatement process. As a result, a suspended lawyer’s license is affected for a significantly longer period of time than a 91-day suspension suggests.

Subcommittee members and staff discussed the inherent difficulty in creating standards which would be applicable to every scenario. Therefore, it was determined that the best approach was to review each case on its individual merits rather attempt to create a new standard. Subcommittee members further confirmed that the imposition of a “91-day
“suspension” is not representative of the actual amount of time required to achieve reinstatement but were concerned that changing the name of the suspension imposed could have unintended consequences affecting time periods for reinstatement. The DPC also has had preliminary discussions concerning this issue.

Subcommittee members agreed that to streamline the reinstatement process and avoid the prospect of misleading information as to time frames when a “91-day suspension” is imposed by a referee or agreed to by consent judgment, the Board of Governors should consider a rule change allowing a respondent to petition for reinstatement prior to the expiration of the suspension. Subcommittee members and bar staff discussed the possibility of formulating standards for imposing rehabilitative suspensions. Ultimately, it was determined that this was not a feasible course of action. It also was determined that the Bar has received no indication from lawyers who have been suspended for 91 days or more indicating that they did not understand the process of reinstatement and the circumstances accompanying that process.

Subcommittee members recommend a rule change for suspensions imposed for a time period lasting less than one year. Under the proposal, a disciplined attorney may apply for reinstatement after one-half of the suspension has been served. If a suspension is longer than one year, then a disciplined attorney may apply for reinstatement up to six months before the suspension period is completed. It is hoped that such a provision would limit the delay of reinstatement once a person has completed his or her suspension and has shown rehabilitation. During the time period after one applies for reinstatement, a duty to keep the Bar updated also would be imposed on the suspended lawyer.
B. Alternatives to Discipline

Over the years many Practice and Professional Enhancement Programs (PPEP) have been developed in conjunction with or as alternative to lower level disciplines administered. The basis for referral to such programs is conditioned on three criteria: the deferred attorney did not intentionally disregard the Rules Regulating The Florida Bar; the harm that occurred was minimal or none; and there is a greater likelihood that the education and self-reflection generated by the referral will be more beneficial to the lawyer’s future competent, ethical and professional service than the results of other disciplinary means.

Subcommittee members identified the current Practice and Professional Enhancement Programs which are also used for diversion, and occasionally for discipline as well:

- Ethics School
- Trust Accounting Workshop
- Florida Lawyers Assistance, Inc. (FLA, Inc.)
- Anger Management Workshop
- Professionalism Workshop
- Advertising Workshop
- Law Office Management Assistance Service (LOMAS)
- Fee Arbitration/Mediation

Ethics School is a compilation of most of the diversion programs, as well as the most common program scheduled by the Bar. Bar staff gathered comments received from attendees at Ethics School offered around the state, which were reviewed by subcommittee members. Subcommittee members agreed that an additional six month follow-up evaluation with participants might be a useful way to evaluate overall effectiveness and track usefulness of the program after the participants have resumed the practice of law. Overall, the attendee’s comments were very positive. Additionally, subcommittee members contacted staff members who present portions of the Ethics School for their opinions of the programs offered, ideas for CLEs and ideas for improvement overall.  

---

1 The subcommittee members who contacted staff include: Brian Burgoon contacting Kenneth Bryk and Sheila Tuma; Joe Corsmeier contacting Michael Cohen, Judy Equals, and Carl Totaro; Chuck Curtis contacting Carl Zahner, Ken Marvin, and Bill Lowe; and Renee Thompson contacting Elizabeth Tarbert and Carlos Ruga
Issue 1: What is the Recidivism Rate?

What is the recidivism rate of attorneys going through the program? How is it working?

Recommendation 1: Expand the Eligibility for Diversion

A study conducted recently determined that 90% of those in these programs have no subsequent history of discipline. While 10% overall recidivism seems to occur by those sent to diversion, it is not necessarily in the same subject areas each time, and thus not a cause of concern regarding the effectiveness of these programs. The results of this study are included as Appendix D to this report.

By rule, those attorneys sent to diversion programs are not eligible to be sent back to diversion for seven years. The subcommittee members recommend that this length of time imposed by rule be reviewed by DPC to examine if a 3-5 year rule would be more beneficial, especially if the member needs diversion in an alternate area than first sent (i.e. Trust Accounting, Advertising issues often fluctuate).

Issue 2: Should There Be More Use of Programs for CLE Purposes?

Are the PPEP working so well that we should consider more widespread use of similar programs for CLE purposes?

Recommendation 2: Use Programs for CLE Purposes

Subcommittee members favored using topics from the diversion programs for general CLE courses. CLE curriculums designed for solo practitioners, such as Trust Accounting, Advertising and Time/Stress Management, were favored areas for general membership CLEs. Specific targeting of Young Lawyers and law students regarding Trust Accounting and Advertising issues was favored. Possibly this could be implemented through a speaker series at the law school level and CLEs for Young Lawyers via the Bar website.
One consideration regarding using CLE programs is the cost of production. CLE production costs are related to the administrative expenses incurred which are fixed at $750.00 regardless of the number of credit hours that could be earned. It is believed that attorneys seeking general CLE courses would use other CLE providers with more competitive pricing. Perhaps it would be helpful to utilize the Bar sections to help produce and promote those topic areas.

**Issue 3: Are the Factors for Entering the Diversion Program Appropriate?**

How many attorneys are going through these programs? Are the determining factors of who enters the diversion program appropriate?

**Recommendation 3: Review Factors more closely**

A recent bar study over a seven year period indicated there were 939 diversions imposed during that time frame. Rule 3-5.3(b) specifies that that only those disciplinary cases which otherwise would be disposed of by a finding of minor misconduct or by a finding of no probable cause with a letter of advice are eligible for diversion to practice and professionalism enhancement programs. Additionally, under Rule 3-5.3(c), an attorney who has been the subject of a prior diversion within seven years is not eligible. Cases may be diverted by recommendation of the Bar Staff and Grievance Committee recommendation early in the process based on the similar case precedent and with approval under Rule 3-5.3 (d), or later in the process by recommendation, including at the trial level under Rule 3-5.3(h).

**RULE 3-5.3 DIVERSION OF DISCIPLINARY CASES TO PRACTICE AND PROFESSIONALISM ENHANCEMENT PROGRAMS**

(a) Authority of Board. The board of governors is hereby authorized to establish practice and professionalism enhancement programs to which eligible disciplinary cases may be diverted as an alternative to disciplinary sanction.

(b) Types of Disciplinary Cases Eligible for Diversion. Disciplinary cases that otherwise would be disposed of by a finding of minor misconduct or by a finding
of no probable cause with a letter of advice are eligible for diversion to practice and professionalism enhancement programs.

(c) Limitation on Diversion. A respondent who has been the subject of a prior diversion within 7 years shall not be eligible for diversion.

(d) Approval of Diversion of Cases at Staff or Grievance Committee Level Investigations. The bar shall not offer a respondent the opportunity to divert a disciplinary case that is pending at staff or grievance committee level investigations to a practice and professionalism enhancement program unless staff counsel, the grievance committee chair, and the designated reviewer concur.

(e) Contents of Diversion Recommendation. If a diversion recommendation is approved as provided in subdivision (d), the recommendation shall state the practice and professionalism enhancement program(s) to which the respondent shall be diverted, shall state the general purpose for the diversion, and the costs thereof to be paid by the respondent.

(f) Service of Recommendation on and Review by Respondent. If a diversion recommendation is approved as provided in subdivision (d), the recommendation shall be served on the respondent who may accept or reject a diversion recommendation in the same manner as provided for review of recommendations of minor misconduct. The respondent shall not have the right to reject any specific requirement of a practice and professionalism enhancement program.

(g) Effect of Rejection of Recommendation by Respondent. In the event that a respondent rejects a diversion recommendation the matter shall be returned for further proceedings under these rules.

(h) Diversion at Trial Level.

(1) Agreement of the Parties. A referee may recommend diversion of a disciplinary case to a practice and professionalism enhancement program if the bar approves diversion and the respondent agrees. The procedures for approval of conditional pleas provided elsewhere in these rules shall apply to diversion at the trial level. (2) After Submission of Evidence. A referee may recommend diversion of a disciplinary case to a practice and professionalism enhancement program if, after submission of evidence, but before a finding of guilt, the referee determines that, if proven, the conduct alleged to have been committed by the respondent is not more serious than minor misconduct. (3) Costs of Practice and Professionalism Enhancement Program. A referee’s recommendation of diversion to a practice and professionalism enhancement program shall state the costs thereof to be paid by the respondent. (4) Appeal of Diversion Recommendation. The respondent and the bar shall have the right to appeal a referee’s recommendation of diversion, except in the case of diversion agreed to under subdivision (h)(1). (5) Authority of Referee to Refer a Matter to a Practice and Professionalism Enhancement Program. Nothing in this rule shall preclude a
referee from referring a disciplinary matter to a practice and professionalism enhancement program as a part of a disciplinary sanction.

(i) Effect of Diversion. When the recommendation of diversion becomes final, the respondent shall enter the practice and professionalism enhancement program(s) and complete the requirements thereof. Upon respondent’s entry into a practice and professionalism enhancement program, the bar shall terminate its investigation into the matter and its disciplinary files shall be closed indicating the diversion. Diversion into the practice and professionalism enhancement program shall not constitute a disciplinary sanction.

(j) Effect of Completion of the Practice and Professionalism Enhancement Program. If a respondent successfully completes all requirements of the practice and professionalism enhancement program(s) to which the respondent was diverted, the bar’s file shall remain closed.

(k) Effect of Failure to Complete the Practice and Professionalism Enhancement Program. If a respondent fails to fully complete all requirements of the practice and professionalism enhancement program(s) to which the respondent was diverted, including the payment of costs thereof, the bar may reopen its disciplinary file and conduct further proceedings under these rules. Failure to complete the practice and professionalism enhancement program shall be considered as a matter of aggravation when imposing a disciplinary sanction.

(l) Costs of Practice and Professionalism Enhancement Programs. The Florida Bar shall annually determine the costs of practice and professionalism enhancement programs and publish the amount of the costs thereof that shall be assessed against and paid by a respondent.

It is important to note that the standard of minor misconduct may be found under Bar Rule 3-5.1 (b) and does NOT include the following behaviors if any of these conditions exist:

(A) the misconduct involves misappropriation of a client's funds or property;
(B) the misconduct resulted in or is likely to result in actual prejudice (loss of money, legal rights, or valuable property rights) to a client or other person;
(C) the respondent has been publicly disciplined in the past 3 years;
(D) the misconduct involved is of the same nature as misconduct for which the respondent has been disciplined in the past 5 years;
(E) the misconduct includes dishonesty, misrepresentation, deceit, or fraud on the part of the respondent; or
(F) the misconduct constitutes the commission of a felony under applicable law.

Subcommittee members did not find any of these factors or standards inappropriate, and acknowledged that the alternatives to the discipline process should not apply in these circumstances.
**Issue 4: Is the Use of the Program Fair and Consistent?**

How are we making sure the opportunity to use the programs is consistent and fair to all respondents?

**Recommendation 4: Adequate Safeguards in Place to Ensure Consistency**

The subcommittee believes that since all diversions must be overseen by Bar Staff Counsel, there are sufficient due process safeguards in place within the system to ensure that these alternatives are being used fairly and consistently with precedent.

**Issue 5: Should Additional Programs be Developed?**

Are there additional programs that should be developed or issues to consider?

**Recommendation 5: Additional Considerations**

1. Subcommittee members recommend renaming the “Anger Management” Workshop to be called “Stress Management” Workshop instead.

2. Subcommittee members recommend videotaping the Grievance Committee Institute periodically taught by Bar counsel for use by new Grievance Committee members appointed during times when the Institute is not being taught. While videotaping Ethics School is possible, it is not preferred as it does not provide the one-on-one personal experience.

3. A scheduled time or retreat for Bar staff to update content and review materials discussed at PPEPs would be beneficial to ensure that the substance of the courses remains updated and interesting. All PPEP speakers are volunteers who have full-time jobs such as full-time Bar employees, mediators, and other professionals who generously donate their time to making these presentations around the state.
C. Aging Lawyers

The Florida Bar’s Committee on Professionalism has been looking at this issue in depth and this subcommittee sought to brainstorm topics for utilization and review by the Committee on Professionalism and ultimately the Commission on Professionalism in that regard. There are two general categories of lawyers that are touched by the issue of Aging Lawyers. First, there are many instances where some lawyers work past their point of effectiveness to a period of life where they develop mental and physical problems. This can lead a lawyer who has had a stellar career to lose his or her reputation, practice and resources during the twilight years of his or her career.

Second, there is the group of lawyers who are aging but still very healthy and have many years of productive work life ahead of them. These individuals can be engaged in various Bar programs, including mentorships and committees. The Bar could benefit from the wealth of knowledge and experience that they have at a period when they probably could offer more time to service.

A starting point for this analysis included a report being used by the Florida Supreme Court Commission on Professionalism, "Joint Report of National Organization of Bar Counsel and Association of Professional Responsibility Lawyers on Aging Lawyers." The report outlines many of the issues, provides guidance on existing approaches, and is a focused call for action in this important area.

Issue 1: Are Aging Lawyers Working Past the Point of Effectiveness?

All one has to do is look at demographics to recognize it is past time to prepare for ever increasing issues surrounding an aging lawyer population. The issues involved in solving this problem include identifying these demographics, identifying ways to protect the public from lawyers who are no longer capable of practicing law and helping fellow lawyers, through
education and other methods, to more readily see the dangers of allowing continued practice of certain lawyers incapable of competently practicing law.

This is a very important issue and the timing for action is immediate. An important sub-issue is how to deal with the needs of the client of an incapacitated or deceased lawyer. Inventory issues usurp Bar time and resources and can remain a constant frustration to all concerned.

**Recommendation 1A: Long Term Programs to Change the Culture**

Subcommittee members agreed that there should be some long-term programs to help change the culture surrounding this issue, and to make it more acceptable and less offensive to accept the fact that at some point in life it is in the best interest of all to move out of the active practice of law with a smooth and predictable transition. Better utilization of communication tools which are geared towards the Bar as a whole is needed to target a demographic age group, to target defense lawyers who represent these lawyers once they may have an issue of potential violation, and provide better utilization of programs such as LOMAS. It is important to note that FLA, Inc. and LOMAS issues are a component of this topic and coordination with those programs is suggested.

**Recommendation 1B: Special Membership Services Targeted for Population**

Subcommittee members also discussed creating membership services targeted to this demographic group. These communications can be integrated into the Bar’s communication plans so that, at a certain age, i.e. 55, a member starts receiving information that is pertinent to his or her practice, both professionally and personally, at this stage of life. It was discussed that if these types of communications are automatically triggered, such as what happens with AARP, then people will eventually become accustomed to this phase and transition.
Recommendation 1C: A Checklist to Spot Early Warning Signs

Subcommittee members recommend developing a checklist as to what one should look for as early signs that a lawyer is becoming incapacitated. One of the models examined was the ongoing project at the University of Florida called “Florida Care.” This is the project at the College of Medicine which developed a guide for identifying individual doctors who are having problems and getting them help. This model provides various ideas of intervention and diversion in an effort to help these individuals and hopefully avoid the discipline process at this late stage of their career.

Recommendation 1D: Alternative Discipline in Aged Lawyer Violations

When discipline is at issue, subcommittee members discussed offering permanent retirement options versus discipline. This option has been used to a limited extent in the past, and could be reviewed in greater detail.

Issue 2: How Best to Engage Healthy Aging Lawyers in the Bar?

How can we, as a Bar, in a caring and appropriate way, find better opportunities to utilize long-earned experience in new ways when transition to a new method of service is needed and additional training may be required?

Recommendation 2: Special Membership Status

Special membership categories such as Emeritus Status may need to be explored, as well as other ways to better include this growing resource group.
II. Subcommittee Two, Edward K. Cheffy, Chair

A. Attorney Consumer Assistance Program and Discipline Intake

When a complaint is made about a lawyer, The Rules Regulating The Florida Bar allow for an initial screening process, stating that:

Prior to opening a disciplinary file, bar counsel shall review the inquiry made and determine whether the alleged conduct, if proven, would constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline.

Rule 3-7.3(a) of The Rules Regulating The Florida Bar. That initial process is administered through the Attorney Consumers Assistance Program (ACAP), as explained by The Florida Bar in its Inquiry Concerning a Florida Lawyer Pamphlet:

When your inquiry is received it will be reviewed by a staff lawyer in the intake and ACAP department. That Bar lawyer's first responsibility is to review the inquiry to determine if jurisdiction exists over the lawyer involved and, if true, are the issues raised in the inquiry violations of Supreme Court rules governing Florida lawyer conduct. If jurisdiction over the lawyer does not exist or if the circumstances of the inquiry do not raise an issue concerning disciplinary misconduct, the inquiry will be forwarded to ACAP for a determination as to whether other ways to resolve concerns are available.

The Florida Bar’s Inquiry Concerning a Florida Lawyer Pamphlet is available at: http://www.floridabar.org/tfb/TFBConsm.nsf/48e76203493b82ad852567090070c9b9/c5b7d247a0c9e45a85256b2f006c6186?OpenDocument

Issue 1: Does ACAP Have Sufficient Resources?

Are appropriate resources available to accomplish all of the goals of the ACAP and Discipline Intake?

Recommendation 1: Adequate Resources

ACAP is a uniform intake system that is used throughout the State of Florida. Twenty-five thousand (25,000) initial calls and/or writings come in through the ACAP system and are directed to eight attorneys, opening approximately 8,500 discipline files. These attorneys quickly identify problem complainants, problem lawyers and develop consistent and uniform
methodologies in handling individuals and their various complaints. Prior to the ACAP system, there was no such mechanism for resolving issues in this manner. Potential complainants were told that the only means to being heard was to file a written sworn complaint. Simple questions were often left unanswered. Additionally, when these often unnecessary complaints were filed, experienced lawyers’ valuable time was spent handling these filings, diluting necessary resources. With ACAP in place, the system both quickly resolves many ongoing issues between the lawyer and client and answers questions about the discipline system to better educate the public.

The intake system, only part of the ACAP program as a whole, is one of the most sophisticated in all of the Bars in the United States. When a complaint is received, the bar intake attorney evaluates the information for their factual basis and for a potential rule violation. If bar counsel determines allegations to be a rule violation, an inquiry then turns into a complaint, according to Rule 3-7.3 (a). At this point with a complaint created, the ACAP program sends a letter to the attorney requesting a response within 15 days. The complainant is copied with the response and both the lawyer and complainant are allowed a chance to send rebuttals to ACAP. At the conclusion of this process, if questions remain as to whether misconduct exists then the matter is referred to one of the five branch offices located throughout the state. Approximately 2,500 cases per year are referred to branches, including the automatic referral of all cases involving criminal charges against a lawyer or trust account violations (ACAP maintains no auditors.)

The system of integrating the discipline intake with ACAP has been fully in effect for three and a half years. Clearly it is meeting the goals of the program including quickly determining the appropriate cases for investigation, helping work out minor disagreements
between attorney and client and preventing the filing of complaints which ultimately would end in dismissal, thus preserving bar resources for meritorious grievances.

The subcommittee believes the system as a whole is working as designed and as a result, there are no major recommendations to make concerning ACAP. Due to the ever increasing Bar membership, the subcommittee suggests planning in the near future for an additional program assistant, a non-attorney personnel position involving the initial data intake. Additionally, The Florida Bar should work to consolidate multiple complaints against individual lawyers whenever possible. The Florida Bar is working to accomplish this and does so when large scale events occur that result in multiple complaints against individual lawyers.

**Issue 2: Is the Training of Intake Personnel for ACAP Sufficient?**

Do intake personnel receive adequate training in dealing with difficult callers?

**Recommendation 2: ACAP Training is Adequate**

On the job training of ACAP attorneys and program assistants appears to be adequate and appropriate. As with any position that involves dealing with the public, periodic training on speaking to people who are seeking help with problems is useful.

**Issue 3: Is There Fairness and Consistency of Sanctions?**

President Hawkins raised the concern of fairness and consistency in the exercise of lawyer regulation sanctions, particularly among the different regions of the state. It seems this issue can be considered at the beginning of the process by ACAP/INTAKE and in the ultimate consistent application of sanctions.

This issue has two subparts, recommended separately. Part A deals with the role of ACAP in sanctions. Part B discusses consistency of sanction among the regions.
Recommendation 3A: ACAP is Not Part of This Issue

ACAP/Intake has no involvement in the ultimate sanction. It can dismiss a complaint, but if ACAP believes that the complaint has merit, then the most it can do is refer the case to a branch office. The branch office then conducts additional investigation if necessary and either dismiss the case or refer the matter to a grievance committee. ACAP/INTAKE was deliberately designed this way, so that the more experienced branch lawyers would be able to spend more of their time investigating/prosecuting cases that have merit and would not have to spend their time dealing with cases that have little or no merit. (The ACAP lawyers are experienced but not in the areas of sanctions).

Recommendation 3B: The Process for Ensuring Consistency Works

According to Rule 3-5.1 of The Rules Regulating The Florida Bar, if a lawyer is found to be guilty of misconduct, the appropriate discipline may include a range of sanctions, from admonishments for minor misconduct, probation, public reprimands, fee forfeitures, restitution, suspensions, or disbarment.

Aside from the ACAP/INTAKE aspect of the charge, the consistency of sanctions is an appropriate area for review. The narrower question is: “What procedures are in place to ensure consistent sanctions throughout the state?”

Rule 3-7.9 requires that every Consent Judgment be approved by both Staff Counsel and the Designated Reviewer. The Designated Reviewer, as defined in Rule 3-2.1 (p), “is a member of the board of governors responsible for review and other specific duties as assigned with respect to a particular grievance committee or matter.” Therefore, Staff Counsel is involved in all Consent Judgments disciplines occurring throughout the state and is in a position to ensure consistency.
3-2 DEFINITIONS
RULE 3-2.1 GENERALLY
Wherever used in these rules the following words or terms shall have the meaning herein set forth unless the use thereof shall clearly indicate a different meaning:

(n) Staff Counsel. A lawyer employee of The Florida Bar designated by the executive director and authorized by these Rules Regulating The Florida Bar to approve formal complaints, conditional guilty pleas for consent judgments, and diversion recommendations and to make appointment of bar counsel.

If a Consent Judgment is not reached between the Bar and the respondent, the case proceeds to trial. Bar counsel then confers with the Designated Reviewer and together they decide what disciplinary sanction should be sought before the referee. Bar counsel is required to disclose similar case law to the Designated Reviewer. Once the referee issues the Report of Referee, the matter is then presented to the Board to determine if review will be sought. The relevant case law is part of that presentation.

The only discipline that is not imposed by the Supreme Court is when a grievance committee finds Minor Misconduct. If not rejected by the Designated Reviewer or the respondent, the minor misconduct (which results in the discipline of admonishment) becomes final. Neither the Board nor the Court sees the case, but Staff Counsel is required to ensure the form of the Minor Misconduct Report is proper as laid out in Rule 3-5.1(b)(3):

Recommendation of Minor Misconduct. If a grievance committee finds the respondent guilty of minor misconduct or if the respondent shall admit guilt of minor misconduct and the committee concurs, the grievance committee shall file its report recommending an admonishment, the manner of administration, the taxing of costs, and an assessment or administrative fee in the amount of $1,250 against the respondent. The report recommending an admonishment shall be forwarded to staff counsel and the designated reviewer for review. If staff counsel does not return the report to the grievance committee to remedy a defect therein, or if the report is not referred to the disciplinary review committee by the designated reviewer [as provided in rule 3-7.5(b)], the report shall then be served on the respondent by bar counsel. The report and finding of minor misconduct shall become final unless rejected by the respondent within 15 days after service of the report. If rejected by the respondent, the report shall be referred to bar counsel and referee for trial on complaint of minor misconduct to be prepared by bar counsel as in the case of a finding of probable cause. If the report of minor
misconduct is not rejected by the respondent, notice of the finding of minor misconduct shall be given, in writing, to the complainant.

Sometimes, there might be two cases that seem very similar in terms of the allegations, but are resolved with different disciplines. This apparent inconsistency can be explained by the specific facts of the case and by the intangible circumstances involved with each of the respondents. Aggravating or mitigating circumstances may have significant effect upon the ultimate sanctions imposed.

9.1 GENERALLY
After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.

9.2 AGGRAVATION

9.21 Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.

9.22 Factors which may be considered in aggravation. Aggravating factors include:
(a) prior disciplinary offenses; provided that after 7 or more years in which no disciplinary sanction has been imposed, a finding of minor misconduct shall not be considered as an aggravating factor;
(b) dishonest or selfish motive;
(c) a pattern of misconduct;
(d) multiple offenses;
(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
(g) refusal to acknowledge wrongful nature of conduct;
(h) vulnerability of victim;
(i) substantial experience in the practice of law;
(j) indifference to making restitution;
(k) obstruction of fee arbitration awards by refusing or intentionally failing to comply with a final award.

9.3 MITIGATION

9.31 Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.
9.32 Factors which may be considered in mitigation. Mitigating factors include:
(a) absence of a prior disciplinary record;
(b) absence of a dishonest or selfish motive;
(c) personal or emotional problems;
(d) timely good faith effort to make restitution or to rectify consequences of misconduct;
(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
(f) inexperience in the practice of law;
(g) character or reputation;
(h) physical or mental disability or impairment;
(i) unreasonable delay in disciplinary proceeding provided that the respondent did not substantially contribute to the delay and provided further that the respondent has demonstrated specific prejudice resulting from that delay;
(j) interim rehabilitation;
(k) imposition of other penalties or sanctions;
(l) remorse;
(m) remoteness of prior offenses;
(n) prompt compliance with a fee arbitration award.

The application of these different aggravating and mitigating factors will vary from case to case. However, although no two disciplinary cases are alike, Bar Counsel, the referees, and the courts routinely include citations to other disciplinary cases involving similar misconduct and aggravating and mitigating circumstances in an effort to ensure consistency of treatment.

In summation, it appears that the Bar has appropriate mechanisms in place to ensure consistent sanctions on a state-wide basis.

Issue 4: Are Improvements Needed in the Use of Technology by the Legal Division and Lawyer Regulation Department?

How can the Legal Division and Lawyer Regulation Department best utilize technology to serve the lawyers and public better and to make the Bar’s service more efficient?

Recommendation 4: The Existing System is Sufficient

Over the past three years, The Florida Bar has made tremendous strides in case management tracking and technological advances. The case management system, known as CAMFI, allows each of the Bar’s lawyers and their staff to view all active and closed case files,
calls to the ACAP hotline, Grievance Mediations, Fee Arbitrations, and Clients’ Security Fund Claims. Correspondingly, CAMFI provides headquarters with access to view cases pending in any branch office at every stage of the discipline process, from Intake to Grievance Committee and on to formal proceedings before a referee and final disposition by the Supreme Court.

CAMFI is an integrated database that shares information with the Bar’s mainframe computer and has the ability to “push” and “pull” information to the Bar’s website. It enables bar counsel and staff to respond electronically to requests for status updates or copies of correspondence through e-mail. It allows for documents to be marked “non-public” in order to secure confidential or exempt information from public dissemination. In accordance with the Supreme Court’s record retention policy, the system is set to dispose of records automatically after one year in those cases where no probable cause was found. Furthermore, the data maintained in CAMFI complies with Americans with Disabilities Act requirements.

CAMFI provides a wealth of information to bar counsel insofar as the system is a searchable database that allows branch offices the ability to review the types of discipline imposed on attorneys for similar rule violations across the state. The result is a more consistent approach to discipline.

CAMFI allows the Bar to take advantage of the paperless files technology. Bar counsel’s desktop computers have been replaced with laptops and docking stations, which allows bar counsel to utilize the paperless function when travelling to referee hearings and grievance committee meetings.

Because any case closed by a determination of no probable cause is disposed of after one year, the system does not have any issues regarding adequate size to handle the caseload. While new cases constantly are being added to the system, cases also are constantly being deleted. There are no issues regarding future capabilities.
Additionally, the computer system allows easier case communication via dedicated and secure web pages for access to information on files. This system has eliminated the time and expense associate with mailing documents to the various grievance committees and branch offices.

Also, in addition to CAMFI, the Bar has purchased video conferencing equipment for each branch as well as the Headquarters office which allows face to face meetings with bar counsel around the state without the expense and wasted time of travelling to the branch. The video conferencing equipment also has been used for bar wide training programs.

B. Judges

Issue: Is There Adequate Communication with Judges Who Refer Complaints?

When a judge refers a matter to the Florida Bar, does the Bar adequately communicate with the referring judge and comply with the “Policy on Judicial Referrals” in the Bar Counsel Manual and Standing Board Policy 15.91? Additionally, what can the Bar do improve compliance with these policies and the perception that judges have of the disciplinary system?

Based on a survey sent to 982 state court judges and 31 federal court judges, it was revealed that an unacceptable level of dissatisfaction exists with regard to the judges’ perception of the disciplinary system. While the full results of the survey sent to state judges and federal judges appear at the end of this report as Appendices E and F, a summary of these results follows here.

On December 13, 2011, a link to an online survey was e-mailed to 982 Florida Circuit Court, County Court, and District Court of Appeals Judges. By the cut-off date of December 23, 2011, 297 completed questionnaires had been received for a response rate of 30%. Similarly, 25 of 31 completed questionnaires were received by the same cutoff date from federal judges, for a response rate of 81%.
For this survey, the error of estimation rate is approximately plus or minus 5% at the 95% level of confidence. This signifies that we can be 95% sure that if judges were interviewed, the results would be within plus or minus 5% of what this sample found. In reporting the results, all percentages were rounded to the nearest whole percent.

Approximately 50% of state court judges who responded to the survey, and who had referred at least one lawyer to the Bar in the last five years, expressed dissatisfaction with the communication he or she received from the Bar after making the referral. Moreover, approximately 58% of those judges expressed dissatisfaction with the disposition of the matter, and the results displayed even more dissatisfaction by federal court judges.

It should be noted, however, that the actual number of responding judges who expressed dissatisfaction is relatively modest. Of the 297 state court judges who responded, 92 of those judges had made at least one referral to the Bar with in the last five years. Therefore only 46 state court judges expressed dissatisfaction. The subcommittee decided that this level of dissatisfaction requires improvement. Additionally, Bar staff estimated that judges refer approximately 40-50 matters to the Bar each year, essentially averaging less than one referral per week. Because of these relatively low numbers, a goal of 100% compliance with SBP 15.91 is desirable, manageable, and achievable.

**Recommendation 1: The Standing Board Policy is Sufficient**

The subcommittee recommends that Standing Board Policy (SBP) 15.91 as written is sufficient, although there are problems with its execution and compliance.

**15.91 Policy on Judicial Referrals and Complaints**

Issues of professional misconduct are brought to the attention of the bar from judicial officers by specific complaint executed in the form required by rule 3-7.3, by referral required or permitted by rule 4-8.3, or by language included in court orders or opinions. Regardless of how judicial referrals come to the attention of the bar, this policy codifies how the information should be handled.
Upon receipt of this information, bar records should reflect the name of the judicial officer as the complaining witness if the formal requirements of rule 3-7.3 are met. If this information is brought to the bar's attention by referral under rule 4-8.3 or by language in a court order or opinion, bar records should reflect the name of the complaining witness as "The Florida Bar referral of [name of judicial officer]."

In these matters The Florida Bar shall send an acknowledgement of receipt of the information to the judicial officer and should keep the judicial officer informed as to the progress of the case. Specifically, the judicial officer should be:

(a) informed when bar counsel is assigned;

(b) given a copy of the respondent's replies to bar counsel's inquiries, with the opportunity to respond thereto;

(c) informed if the matter is closed by staff and the reasons the file was closed;

(d) informed if the case is assigned to a grievance committee and provided with the name of the investigating member;

(e) given a copy of the respondent's replies to inquiries from the grievance committee, with the opportunity to respond thereto;

(f) given notice of any grievance committee hearing or review;

(g) informed if the matter is closed by the grievance committee and the reasons the file was closed;

(h) informed as to other action disposing of the matter by the grievance committee;

(i) given a copy of all pleadings filed at the referee level;

(j) given a copy of the referee's report;

(k) advised as to what action, if any, will be taken by the bar on appeal; and

(l) given a copy of the order or opinion of the Supreme Court of Florida concluding the matter.

Recommendation 2: Staff Training Regarding Judicial Referrals

The subcommittee recommends that all members of The Florida Bar staff should receive additional training regarding judicial referrals. This training should include sharing the results of this survey with an emphasis on the importance of strictly complying with SBP 15.91.

Recommendation 3: Education of Judges

A significant majority of judges responding to the survey stated that they would be interested in having the disciplinary system explained to them at judicial education programs. The Florida Bar should accept this invitation and plan a significant education program. In
addition to explaining the system and the communication that should be occurring throughout the
disciplinary process, the judges should be given the name and telephone number of a dedicated
contact person at the Bar who may be called at any time for an update or to answer questions
about any matter referred to the Bar.

**Recommendation 4: Initial Contact with Judges**

After a referral from a judge has been received, the Director of ACAP shall make the
initial telephonic contact to the judge as required by the Policy on Judicial Referrals in the Bar
Counsel Manual. A follow up letter should be sent to the judge along with a copy of SBP 15.91.
If the matter is referred to a branch office, the follow up letter should include the names and
telephone numbers of the Bar Counsel assigned to the case, the Chief Branch Disciplinary
Counsel (CBDC) who will be responsible for supervising the file and a “judicial liaison” as
identified by the Executive Director of the Bar (see Recommendation F). Additionally, the letter
should invite the referring judge to call any of the named individuals if he or she has questions at
any time.

**Recommendation 5: A Checklist to Ensure Consistency in Dealing with Judicial Referrals**

A checklist should be created and used in every file involving a judicial referral. The Bar
Counsel assigned to investigate the matter should be required to complete the checklist showing
that communication with the referring judge, as required by SBP 15.91, occurred at each stage of
the proceeding. The file should not be closed until the CBDC has confirmed that the checklist
has been completed. When each staff lawyer receives his or her annual review by a supervisor,
topics of discussion should include compliance with SBP 15.91 and completion of the checklist
for each file.
Recommendation 6: Additional Matters in the Discretion of the Executive Director

1. The Executive Director should determine the best manner to supervise communication in cases referred by judges.

2. The Executive Director shall designate a “Judicial Liaison” on the statewide level, to ensure that the various branch offices are handling judicial referrals consistently and to provide all referring judges with a common point of contact in the event that the referring judge has a question or complaint, as well as maintain a current list of all judicial referrals and assure compliance with all policies and procedures before a file is closed.

3. The Executive Director should determine how to handle communication with all judges which describe the results of the survey, the work of the Hawkins Commission, and how the Bar plans to improve communication with the Judiciary.

C. Frivolous and Retaliatory Complaints

Members of The Florida Bar have a professional duty to help maintain the integrity of the profession, and in some circumstances, must report misconduct by other lawyers:

4-8.3 (a) Reporting Misconduct of Other Lawyers. A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate professional authority.

In reporting misconduct, however, those lawyers must themselves adhere to these same rules. See, e.g. Rule 4-8.4(c) (“A lawyer shall not… engage in conduct involving dishonesty, fraud, deceit, or misrepresentation…”); Rule 4-3.3 (duty of candor to the tribunal), The Rules Regulating The Florida Bar.

Issue: Is Action Needed Regarding Meritless Complaints Filed for Improper Purposes?

How should the Bar deal with repetitive and meritless complaints that are filed by or at the direction of Florida Bar members against opposing counsel for improper purpose?
Examination of this issue includes whether any new remedies should be provided to deal with the harm caused by these complaints, whether lawyers should be restricted in their ability to file complaints, and how to balance the concern of harassment with the possible chilling effect on legitimate complaints.

**Recommendations: Revision of Complaint Form to Include More Information**

After review by the subcommittee and bar staff, it was concluded that retaliatory complaints are not a real concern. However, as they exist, these complaints may disproportionately affect those attorneys practicing law at certain government entities, particularly the state attorney’s office and the public defender’s office, as well as private practice attorneys in the areas of criminal law and family law.

Because all records of complaints closed due to a finding of no probable cause are disposed of after one year, there is no mechanism for determining in the long run who may be filing repeated complaints against attorneys. If probable cause is found for a complaint, that file is kept in perpetuity.

The subcommittee recommends that The Florida Bar should revise its initial complaint form in two ways: first, to ask whether the filer has filed a bar complaint previously where no probable cause was found, and if so, to the best of the filer’s knowledge, how many times has this occurred; and second, to ask whether the complaint pertains to a matter that currently is in litigation.

Additionally, the Florida Bar should retain the following information:

a) the number of complaints filed by the complainant;

b) the case filed; and

c) whether the case currently is in litigation.

The Florida Bar should continue to retain these types of complaints for one year.
III. Subcommittee Three, Miles A. McGrane, III, Chair

A. Handling of the Extraordinarily Complex or Widespread Violation

Issue: Is the System Adequate for Complex or Widespread Violations?

Cases like *The Florida Bar v. Scott W. Rothstein*\(^2\) or the myriad of cases involving mortgage fraud, loan modifications and foreclosure fraud illustrate a changing profession and the need for a lawyer regulation system able to adapt to such cases. Additionally, these types of cases demonstrate a need to provide information to the public about the steps that the Bar already has taken, currently is taking, and is planning to take to handle these cases in order to continue to ensure public confidence.

The Florida Bar and the Florida legal community have a responsibility to assure that its regulations are conceived in the public interest. As stated in the Rules Regulating the Florida Bar, “The purpose of The Florida Bar shall be to inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence.” R. Reg. Fla. Bar 1-2.

Regrettably, there have been incidents of professional misconduct involving extraordinarily complex or widespread violations. Such incidents include situations where a lawyer or law firm’s conduct affects a large number of clients, the public at large, and/or the reputation and standing of the Florida Bar and the Florida legal profession. At times, these incidents have harmed the public, harmed large numbers of clients, affected the administration of justice and brought criticism and dishonor to the Florida Bar and Florida legal profession. Although these incidents are rare, history has shown that extraordinary violations will occur from

---

\(^2\) In 2009, Scott W. Rothstein, the shareholder, chairman, and chief executive officer of the now-defunct Rothstein Rosenfeldt Adler law firm, turned himself in to authorities and was subsequently arrested on charges related to the Racketeer Influenced and Corrupt Organizations Act. Admitting his role in a $1.2 billion Ponzi scheme, Mr. Rothstein had abused his law license and fabricated documents to sell fraudulent investments involving the sale of "structured settlements" for lump sums of cash. *See, The Florida Bar v. Scott W. Rothstein*, Case No.: SC09-2146, Lower Tribunal No(s): 2010-50,656(09B)
time to time. Therefore, the Bar must ensure its ability to respond adequately and quickly to these incidents, as well as its ability to communicate its response to the public and media in order to instill public confidence and trust that the violation is being handled appropriately.

An essential component of our lawyer regulation system is each lawyer’s obligation to report the misconduct of other lawyers. R. Reg. Fla. Bar 4-8.3(a). As the preamble to the ABA Model Rules of Professional Conduct states, “Every lawyer is responsible for observance of the rules of professional conduct. A lawyer should also aid in securing the observance by other lawyers.” In addition, the public must have confidence that the legal profession will not look the other way when its members break the law or violate the Rules of Professional Conduct. Accordingly, the Bar not only must ensure that it is fully responsive and vigilant in regulating its nearly 100,000 members, but also must communicate effectively this regulation to the public.

**Recommendations Overview:**

The objective of these recommendations is to provide the rationale and manner in which the Florida Bar should respond to extraordinarily complex or widespread violations (“extraordinary violations”). The plan outlines various procedures to be followed in:

- Determining the nature and scope of the extraordinary violation;
- Notifying key Bar leaders and staff regarding the extraordinary violation;
- Determining the Bar’s response to the extraordinary violation;
- Implementing the Bar’s response to the extraordinary violation; and
- Communicating the Bar’s response to the public and media (where appropriate).

In addition, the plan calls for the development of a proactive educational program (or series of programs) to better educate and inform the public and Bar membership on the lawyer regulation system in general, as specifically, (i) a lawyer’s duty to report misconduct, (ii) the
confidentiality and due process considerations at issue in a disciplinary proceeding, and (iii) the
actions of the Bar in responding to extraordinary violations.

**Recommendation 1: Emphasis on Reporting Professional Misconduct**

Rule 4-8.3(a) requires any lawyer “who knows that another lawyer has committed a
violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer’s
honesty and trustworthiness, or fitness as a lawyer in other respect” to report that misconduct to
the appropriate authorities. This is a mandate; lawyers should not overlook it or take this
obligation lightly. To the contrary, it is essential to the Bar’s (and each lawyer’s) obligation to
protect the public and uphold the integrity of the profession.

The reliability of information also is essential to the effective regulation of lawyer
conduct. In situations involving extraordinary violations, rumors often abound and information
is provided to various bar leaders and staff. However, in some situations this information is
neither reliable, nor provided to the individuals needing it the most. The Bar counsel handling
the case, as well as key Bar leadership (where appropriate), must receive the reliable information
as soon as possible. This requires all lawyers to fulfill their Rule 4-8.3(a) obligation, and
requires the Bar staff to efficiently and effectively process the information and communicate it
through the appropriate channels.

The subcommittee recommends that the Bar leadership emphasize this reporting
obligation to Florida lawyers and to the public at large. For the legal community, this emphasis
can be accomplished through CLE and other programs on professional conduct. For the non-
legal community, a network of presentations or speeches to groups to outline the Bar’s approach
and how the lawyer regulation system works may be necessary. Information can also be
provided to lawyer and non-lawyers alike via the Florida Bar website. By emphasizing this
reporting obligation, the Bar can accomplish two important goals: maintain effective lawyer regulation, and increase public confidence in the integrity of the profession.

**Recommendation 2: Education on Confidentiality and Due Process Considerations**

The subcommittee further recommends that the education programs provide an emphasis on the confidentiality and due process considerations at issue in disciplinary proceedings. Rule 3-7.1 defines the scope and limitations of confidentiality in a disciplinary proceeding. The subcommittee is mindful that this confidentiality serves multiple objectives, including encouraging the filing of complaints and cooperation of witnesses, as well as protecting innocent lawyers from the injury that would result from the filing of frivolous complaints. However, these confidentiality requirements naturally create limitations on what can be discussed, and when, with respect to disciplinary investigations. When dealing with an extraordinary violation that is receiving significant media attention, these confidentiality limitations can create the false impression that the Bar is not acting, or is not doing enough, with respect to the violation. The subcommittee believes that these false impressions can be avoided, or at least mitigated, with better education on the front end regarding the confidentiality requirements at issue and the rationale behind those requirements. Increased education on these issues will help to serve the purpose of promoting greater public confidence and trust that violations are being appropriately investigated and handled.

**Recommendation 3: Process for Responding to an Extraordinary Violation**

Any member of the Bar, staff, or leadership, recognizing a developing extraordinary violation, should immediately contact Staff Counsel. Staff Counsel will be responsible for notifying appropriate individuals at the Bar, including the Executive Director who will oversee notification to the President and the Board of Governors. The President and Board of Governors Executive Director will determine the nature and scope of the extraordinary violation, and assess
the need to notify the Executive Committee members and key support staff through a telephone conference call.

A. Communications Plan.

By utilizing a telephone conference call, the Executive Committee determines whether an extraordinary violation exists and if so, what action should be taken. According to the needs dictated by the situation, the staff will gather data prior to the call, assess the situation, determine potential impact upon segments of the public and the Bar, identify third parties to be mobilized if needed, and disseminate all available information “out front” immediately, revealing only as much detail as needed for understanding.

After determining the extent of the extraordinary violation and pooling all available information, the role of the Executive Committee is to develop an initial statement (with the assistance of the Public Information Director) as part of an overall action response and then approve an ongoing communications plan. The committee should designate primary and secondary spokespersons. The spokesperson(s) must be briefed and otherwise prepared.

With respect to the communications plan, the Executive Committee should develop messages relating to the violation at hand. In turn, staff will prepare fact sheets, statements or press releases for the public and/or electronic communications for dissemination to bar leadership. Issues and options to consider include:

(i) the status of the violation and any confidentiality limitations;

(ii) the appropriateness of communication to additional key bar leadership or staff, including Bar leaders in the geographic area(s) most greatly affected (if applicable);

(iii) the appropriateness of communication to non-Bar leaders in the communities impacted regarding the nature of the violation and the Bar’s action plan; and
(iv) the appropriateness of news releases, news conference and/or mailgram or faxes to local bar leaders, using Board of Governor members(s) as local spokesperson, etc.

The Executive Committee will designate the primary spokesperson and an alternate. Most properly, the primary spokesperson will be the President, with the President-Elect or Executive Director as the backup. Generally, these are the persons the media are interested in quoting and interviewing for necessary background information. Generally, if the spokesperson is available to handle phone traffic, the Public Information Director will route incoming calls to the spokesperson and provide necessary factual “background” information to reporters. It is also possible -- if the situation dictates and the primary spokesperson is available -- to set up a Capital Press Corps news conference in Tallahassee that would be covered by statewide print and broadcast media.

In summary, the role of the Executive Committee and pertinent staff is to:

a) Determine the nature and scope of the extraordinary violation;

b) Share perceptions of the extent of the violation;

c) Discern the potential impact on the public, the profession and the Bar;

d) Discern who can and should be notified of the violation:

e) Devise the “message” of The Florida Bar;

f) Designate primary spokesperson(s); and

g) Authorize an action plan.

B. Key Bar Leader Notification

The Executive Director will be responsible for notification of Board of Governors members and local bar leaders as deemed appropriate. Bar leaders would be informed of the
Bar’s action, reasons for such action, and contact person for updates or additional background.

The following methods can be used:

a) Personal telephone calls;

b) Conference calls;

c) Activate e-mail alert network;

d) Fax transmission.

C. Report on Results

The Executive Director will convene (as soon as possible) a meeting to be attended by as many groups as were involved in the extraordinary violation to obtain input regarding the effectiveness of the plan in that particular situation. The Public Information Director will participate in the meeting, and at its conclusion, prepare a report regarding the extraordinary violation, the Bar’s response, and the effectiveness of that response. The Executive Director will present the written report to the Board of Governors.

B. Communication with our Members and Public about Discipline System

Issues: How to Improve Communication from and to Bar and Coordinate Information Flow?

Can The Florida Bar better communicate with the public and its members concerning the disciplinary process and improve communication as well as from Bar members to The Florida Bar? Additionally, how can there be better coordination by The Florida Bar with outside groups and regarding statements made by The Florida Bar and use of its resources?

Recommendation 1: Website Improvement

It is recommended that The Florida Bar create a single page on the website accessible from the homepage and via the direct URL www.floridabar.org/lawyer discipline that will consolidate all the information about discipline that currently is available on the site in multiple
locations. Additionally it is recommended the following new items be added:

--A Power Point presentation with audio on how the grievance process works (using an edited version, this presentation was sent to all commission members),

--A section regarding public reprimands with an explanation of what they are, a video of a reprimand (or a mock reprimand) and the text of all reprimands as delivered,

--A link to a free one-hour CLE on the discipline system for bar members (the subcommittee recommends that a new video be produced). It is important to note that a free CLE on the discipline system was produced to fulfill one of the recommendations of the Coxe Commission in 2007. That course has been completed for credit more than 6,800 times by Bar members,

--Frequently asked questions (to be composed with the assistance of ACAP staff).

**Recommendation 2: Consistent Media Reporting**

The Florida Bar public information staff should work to have more Florida media publish/report the monthly disciplinary releases. Looking at the list of newspapers clippings resulting from a recent release, it was noted that the stories concerned local attorneys and that a variety of newspapers were publishing the monthly disciplinary releases. The subcommittee discussed whether the Bar should consider purchasing advertising in daily newspapers to ensure that 100% of the contents of the releases are made public. It was felt, however, that the expense would be greater than the impact.

Additionally, the subcommittee recommends that The Florida Bar Communications Division (Public Information & Bar Services and Journal & News departments) seek additional ways to communicate the good things that the great majority of lawyers are doing around the state.
V. Final Recommendations of the Commission

The Commission, upon review, adopts each of the recommendations of the subcommittees.
Appendix A
Hawkins Commission Review of Discipline System
Membership List

Edward K. Cheffy, Chair

Miles A. McGrane, III, Chair
Member, The Florida Bar. McGran, Nosich & Ganz, PA, Coral Gables, Florida (10 lawyers). Practicing in the areas of medical malpractice and general liability defense. Former President of The Florida Bar, Former Chair of The Judicial Qualifications Committee.

Eugene K. Petits, Chair
Member, The Florida Bar. Co-founder of Haliczer, Pettis & Schwamm, PA, Fort Lauderdale, Florida (Small firm). Practicing in the areas of medical malpractice, personal injury, commercial litigation and employment law. President elect designate of The Florida Bar; Board of Trustees at the University of Florida's Levin College of Law.

Alvin Alsobrook
Public member of The Florida Bar's Board of Governors, Citizens Forum Member, self-employed in public relations, served as Vice President for University and Government Relations at the University of Florida, former President of Rotary, the Heart Association and United Way of Gainesville.

David Atkinson
Member, The Florida Bar. In house ethics counsel and shareholder for Gunster Yoakley, West Palm Beach, Florida (Large firm). Member of American Bar Association Center for Professionalism Responsibility.
Thomas Bateman  
Member, The Florida Bar. Messer, Caparello & Self, PA, Tallahassee, Florida (Medium size law firm). Former Circuit Judge, Supreme Court Committee Task Force on Management of Cases Involving Complex Civil Litigation, former Chair of the Professional Ethics Committee, former member of the Florida Supreme Court’s Committee on Professionalism, former chair of 2nd Judicial Circuit’s Bench-Bar Committee, former member of Second Circuit Grievance Committee and former Referee in Florida Bar disciplinary and reinstatement proceedings. Volunteer Bar Counsel in two cases resulting in disbarment.

Kenneth B. Bell  
Member, The Florida Bar. Clark, Partington & Hart, Pensacola, Florida (35 lawyers). Former Supreme Court Justice, practicing in the area of appellate practice and Alternate Dispute Resolution.

Odette Bendeck  
Member, The Florida Bar. Fisher & Bendeck, PA, West Palm Beach, Florida (5 lawyers). Board Certified in marital and family law.

Linda Drane Burdick  
Member, The Florida Bar. Chief Assistant State Attorney 9th Judicial Circuit, Orlando, Florida (Approximately 130 lawyers).

Brian Burgoon  
Member, The Florida Bar and State Bar of Georgia. The Burgoon Law Firm, LLC, Atlanta, Georgia (Solo practice). Practicing in the area of civil and commercial litigation. Member of The Florida Board of Governors; and Co-Chair of The Florida Bar Disciplinary Review Committee and member of the Board of Directors of the University of Florida Alumni Association.

Jewel White  
Member, The Florida Bar. Assistant County Attorney, Pinellas County (20 lawyers). Representing Pinellas county, the Clerk of Court, and the Supervisor of Elections. Former President of the Young Lawyers Division; Member of Board of Directors, The Florida Bar Foundation.
Gregory W. Coleman, Vice-Chair

Member, The Florida Bar. Burman, Critton, Luttier & Coleman, West Palm Beach, Florida (11 lawyers). Practicing primarily in the area of complex commercial litigation. Member of The Florida Bar Board of Governors.

Joseph Corsmeier

Member, The Florida Bar. Law Offices of Joseph A. Corsmeier, PA, Clearwater, Florida (Solo practice). Practice focuses on lawyer ethics. Member of The Florida Bar's Professional Ethics Committee, former President of the Clearwater Bar Association, and former Bar Counsel.

Mark Criser

Member, The Florida Bar. Hill, Ward & Henderson, Tampa, Florida (Medium size firm). Practicing in the areas of professional liability defense, first party insurance defense and general commercial litigation. Chairman Elect of AMI Kids, Inc., and Chairman of the Board of Trustees of AMIkids - Tampa. AMIkids, Inc. - a nationally recognized non-profit organization that provides troubled teens with an opportunity to transform into responsible, productive young adults.

Charles Curtis


Joanna Garcia

Member, The Florida Bar. Shareholder with Carlton Fields, Tampa, Florida (large firm). Practicing in the areas of commercial and real property litigation and class action defense.

Courtney Grimm


Carlos Halley

Non-lawyer. Senior Vice President of Sabadell United Bank, Miami, Florida, Member of the Citizens Forum. Past Chairperson of the Kiwanis Club of Little Havana Foundation.
| Name                    | Bar Membership          | Firm/Practice Details                                                                                   | Professional Background                                                                 |
|-------------------------|-------------------------|--------------------------------------------------------------------------------------------------------|
| Michael Higer           | Member, The Florida Bar | Higer, Lichter & Givner, LLP, Aventura, Florida (12 lawyers). Practicing in the area of commercial litigation. Member of The Florida Bar's Board of Governors, past Chair of the Business Law Section and helped create complex litigation divisions in several courts in Florida. |
| Dennis Kainen           | Member, The Florida Bar | Weisberg & Kainen, P.L., Miami, Florida (3 lawyers). Practices in the areas of criminal defense and tax controversy. Member of The Florida Bar's Board of Governors, Vice Chair of the Disciplinary Procedures Committee. |
| George F. Knox          | Member, The Florida Bar | Visiting lecturer, Florida International University College of Law, Miami, Florida for the Center for Professionalism and Ethics. Former City Attorney for the City of Miami, Florida. |
| Michael Lax             | Member, The Florida Bar | Michael H. Lax, PA, Miami, Florida (Solo practice). Practicing in areas of civil litigation, insurance coverage, mediation and arbitration. Authoring the 11th Circuit Code of Civility and Professionalism as the Chairman of the Miami Dade County Bar's Professionalism Committee. |
| Christopher Marquardt   | Member, The Florida and Georgia Bar | Altston & Bird, L.L.P. (Large firm). Practicing in the areas of labor, employment and complex commercial litigation. Former Law Clerk to the Chief Judge of the United States District Court for the Northern District of Florida. |
| Victoria Mendez         | Member, The Florida Bar | Supervising Assistant City Attorney for the General Government, Quality of Life, and Administration Division of the Office of the City Attorney, City of Miami. Main areas of practice are land use and environmental law. Former Prosecutor, Miami-Dade State Attorney's Office; President of the Cuban American Bar Association. President of the CABA Foundation and on the Board of the League of Prosecutors. Trustee for the Miami-Dade County Law Library and former Chair for a Florida Bar Grievance Committee. |
Alan Sakowitz

Member, The Florida Bar. Sakowitz and Sakowitz, Miami, Florida (Small firm). President and Chief Executive Officer of Pointe Development Company. Exposed Scott Rothstein to the F.B.I. and Author of Miles Away…Worlds Apart.

John "Jake" Schickel, Vice Chair

Member, The Florida Bar. Coker, Schickel, Sorenson & Posgay, PA, Jacksonville, Florida (6 lawyers). Board Certified Trial Lawyer and Board Certified Workers' Compensation Lawyer. Lawyer of the Year, Jacksonville, Florida; former member of The Florida Bar Board of Governors.

Stacy Scott

Member, The Florida Bar. Public Defender in the 8th Judicial Circuit (35 lawyers). Coach at the University of Florida, Levin College of Law, Trial Team (two championships) and Member of Local Grievance Committee.

Grasford Smith

Member, The Florida Bar. Richman Greer, West Palm Beach, Florida (Large firm). Practicing in Complex Commercial Litigation. National Bar Association's 40 Under 40 Best Advocate Award. F. Malcolm Cunningham, Sr. Bar Association's Member of the Year.

Culver "Skip" Smith, III

Member, The Florida Bar. Culver Smith, III, PA, West Palm Beach, Florida (Solo practice). Practicing in the area of lawyer ethics and professional discipline. Former member of The Florida Board of Governors, successful mentor.

Julie Simone Sneed

Member, The Florida Bar. Partner with Fowler, White & Boggs, PA, Tampa, Florida (Large firm). Practicing in the areas of business and commercial litigation and class action defense in state and federal courts and throughout the state of Florida. AV rated, Former Board Member and President, Tampa Bay Chapter of the Federal Bar Association.

Marni Stahlman

Non-lawyer. Citizen Forum Member, Senior Director of Development at United Cerebral Palsy of Central Florida, Winter Park, Florida. 25 years advocacy for Mental Illness Awareness and Member of a The Florida Bar Grievance Committee.
Renee E. Thompson, Vice Chair  
Member, The Florida Bar. Mateer Harbert, Ocala, Florida (Medium sized firm). Former President of the Young Lawyers Division, former member, Florida Supreme Court Commission on Professionalism.

Rob Vargas  
Member, The Florida Bar. Partner with Jones, Foster, Johnson & Stubbs, PA, West Palm Beach, Florida (37 lawyers). Practicing in the areas of complex commercial litigation, business torts, and lawyers and law firm defense. General Counsel, Leadership Palm Beach County; Emeritus Member, Craig S. Barnard American Inns of Court.

S. Grier Wells  
Member, The Florida Bar. Gray Robinson, PA, Jacksonville, Florida (250 lawyers). Practicing in the areas of civil trial litigation and employment law. Member of The Florida Bar Board of Governors, pro bono work as attorney ad litem for child AIDS patient in dependency litigation.

Debra Moss Curtis  
Member, The Florida Bar. Fully Tenured Professor of Law, Shepard Broad Law Center, Nova Southeastern University. Author of numerous publications including three articles on attorney discipline. Past Chair, Judicial Independence Committee.

Keith W. Rizzardi  
Member, The Florida Bar. Visiting Assistant Professor of Law, St. Thomas University, Miami Gardens, Florida, and Special Counsel, Jones, Foster, Johnston & Stubbs, P.A., West Palm Beach, Florida (37 lawyers). Board Certified in State and Federal Government and Administrative Practice. Chair, U.S. Marine Fisheries Advisory Committee.

Florida Bar Staff

John T. Berry  
Director, Legal Division
Kenneth L. Marvin  
Director, Lawyer Regulation
Arne C. Vanstrum  
Associate Director, Lawyer Regulation
Melissa M. Mara  
Administrative Assistant, Legal Division
Jan K. Wichrowski  
Orlando Chief Branch Discipline Counsel
Francine A. Walker  
Department Head, Public Information
Appendix B
The Hawkins’ Commission on Review of Discipline System

Group One

A. Standards for Imposing Lawyer Sanctions
   1. It was noted that there has been no review of this topic since the initial formulation of the Standards for Imposing Lawyer Sanctions.
   2. It was thought that a line by line review of the Standards was not needed or feasible; however, it was agreed that it was very important to target the important ideas of either needed debate or areas of noted change in the Supreme Court’s position.
   3. Research begun by bar staff will be utilized by both DRC and this Commission. The research will record all cases appealed to the Supreme Court by either The Florida Bar or the respondent and the resulting discipline imposed. Trends will be sought.
   4. The purpose of this analysis and research will be to conform to Supreme Court developing precedent, but also to allow the Board to articulate and advocate its positions most effectively in development of those new standards.
   5. Certain Board members have expressed concern that the Supreme Court may be viewing the Bar’s positions as being too often inconsistent with the Court’s outlook/trends.
   6. This issue will require fact finding and research to confirm the existing case law as compared to the past and also offer an opportunity for an articulation of desired future positions of the Supreme Court.
   7. It is anticipated that the Commission may target specific types of behavior and how the Court now is reacting to it and how it might in the future. Examples might include how should the discipline system deal with minor misdemeanors not involving the practice of law? Looking at not just sanctions for minor misdemeanors but whether we should prosecute at all.

B. Alternatives to Discipline
   1. Over the years many Professional Enhancement Programs have been developed in conjunction with or as alternative to lower level disciplines. They include Ethics School, Anger Management Workshop, Trust Accounting Workshop, Professionalism Workshop, Advertising Workshop, among others.
   2. The theory to such classes is the intent that the deferred attorney is not evil and the harm is minimal or none and that education and self reflection is likely more beneficial to the lawyer’s future competent, ethical and professional service.
   3. Several aspects of the use of these diversion programs need to be explored:
      (a) What is the recidivism rate of attorneys going through the program? Is it working?
      (b) Is it working so well that we should consider more widespread use of similar programs for CLE purposes?
      (c) How many attorneys are going through these programs? Are the determining factors of who enters the diversion program appropriate? (Explore the barriers to permitting these programs: should they remain the same or should we add flexibility to expand eligibility?)
(d) How are we making sure the opportunity to use the programs is consistent and fair to all respondents?
(e) Are there additional programs that should be developed?

C. Aging Lawyers

1. All one has to do is look at demographics to recognize it is past time to prepare for ever increasing issues surrounding an aging lawyer population. So what are those demographics?
2. How can we protect the public from lawyers who are no longer capable of practicing law?
3. How can we, through education and other methods, help fellow lawyers to more readily see the dangers of allowing continued practice of certain lawyers incapable of competently practicing law?
4. How can we, as a bar, in a caring and appropriate way, find better opportunities to utilize long-earned experience in new ways when transition to a new method of service is needed and additional training may be needed?
5. This is a very important issue and timing for action is immediate. An important sub-issue is how to deal with an incapacitated lawyer or deceased lawyer’s clients’ needs. Inventory issues eat up bar time and resources and remain a constant frustration to all concerned. One possibility is involving local bar associations to spread the workload and to provide it as a public service opportunity to the community. Good idea or bad? Better ideas are needed.
6. The Florida Bar’s Standing Committee on Professionalism is also looking at this, but all three of us felt that the added support and ideas of this Committee would be useful.
7. Fla. Inc. and law office management issues are a component of this issue and the Commission may wish to coordinate suggestions with those entities.
8. Special membership categories such as Emeritus Status may need to be explored.
9. A starting point for this analysis may be a report being used by the Supreme Court Professionalism Commission, "Joint Report of National Organization of Bar Counsel and Association of Professional Responsibility Lawyers on Aging Lawyers." It outlines many of the issues, provides guidance of existing approaches, and is a focused call for action in this important area.
Group Two

A. Attorney Consumer Assistance Program and Discipline Intake
1. This system was set up with the four roles of determining appropriate cases for investigation, helping to work out minor disagreements between the attorney and client, preventing frivolous complaints which will only end up in dismissal and finally to bring consistency to the system of lawyer regulation.
2. Are appropriate resources available to accomplish all the goals, and if not, should adjustments be made either in amount, kind or use of resources?
3. President-Elect Hawkins raised the concern of fairness and consistency in the exercise of lawyer regulation sanctions, particularly among the different regions of the state. It seems that issue can be considered in the beginning of the process ACAP/INTAKE and in the ultimate consistent application of sanctions.
4. Over 25,000 calls come in a year in addition to the complaints. The Bar has begun to analyze those calls for not only ethics, but professionalism. Can we improve on use of that information?
5. Are we doing an adequate job in training of these intake attorneys in how to deal with difficult callers?
6. How, both in the Legal Division and Lawyer Regulation Department, are we best to utilize technology to serve the lawyers and public better and to make our service more efficient?

B. Judges
1. Despite great efforts to improve our credibility with judges, both in substance and reality, in regard to complaints they file with the bar, there is a perception of some long lasting discontent by some judges over how we handle the cases and how they are kept informed.
2. How are judges complaints or concerns handled by The Florida Bar?
3. How are judges supposed to be informed of progress of the cases and is this in fact occurring? And is the current process sufficient?
4. Are there a significant number of cases referred by judges which do not result in action the judges expected from the bar?
5. If the answer to “4” is yes, then what is that reason and how can we either better communicate the likely results or help in assuring an appropriate outcome?
6. Should more regular and comprehensive speaking opportunities be sought with the judges groups?

C. Frivolous and Retaliatory Complaints
1. How should the bar deal with repetitive and meritless complaints? In particular, complaints filed by or at the direction of Florida Bar members against opposing counsel for improper purpose such as to seek an improper advantage in a legal matter.
2. Should any new remedies be provided to deal with the harm caused by such complaints?
3. Can lawyer complainants or others be prohibited from filing additional complaints without another lawyer or person’s submission?

4. How do we balance concern over harassment versus the possible chilling effect?
Group Three

A. Handling of the Extraordinarily Complex or Widespread Violation
1. Cases like the Rothstein case or the myriad of cases involving mortgage fraud, loan modifications and foreclosure fraud illustrate a changing profession and the need for a lawyer regulation system to adapt to such cases.
2. Every bar leader and staff member gets confronted with such questions as “Where is the Bar” or “When are we Going to Do Something” or “If we do not do something we will Lose all our Credibility.” In reality much is being done, but it is hard to communicate that without a focused plan of communication.
3. With massive rumors abounding, information is produced to lots of people; but many times not to the one needing it the most. The bar counsel handling the case must receive the legitimate information as soon as possible.
4. At times resources may be stretched or not adequate over a short period of time.
5. Consideration should be explored of something similar to a Mass Disaster Plan of The Florida Bar or other bar associations with names of individuals to be contacted, press release formats to be released, structured communication including immediate use of bar leaders to cover the area most greatly impacted.
6. Special investigative techniques or coordination with other agencies is vital and though a “given” it may be wise to memorialize our approach and the people to be contacted. Is “preparation of an extraordinarily complex case” handbook necessary?
7. A spin-off to this issue is the ever increasing sophistication of respondent's defenses. I am not sure it needs to be a part of a review, but it may be important in the education effort of the Commission to recognize the great strides the bar has made in case management tracking and technological advances.
8. Opinion leaders in the communities impacted may be contacted to inform them, to the extent possible, of actions being taken.

B. Communication with our Members and Public about Discipline System
1. How can there be better communication by The Florida Bar with the public over the disciplinary process?
2. How can there be better communication by The Florida Bar with its members over the disciplinary process?
3. How can there be better communication from Bar members to The Florida Bar concerning the disciplinary process?
4. How can The Florida Bar be better prepared to react to statements made by respondents and others over specific cases or the system as a whole?
5. How can The Florida Bar better coordinate with local bars, consumer groups, Chambers of Commerce, etc.?
6. How can we better utilize bar publications (Bar News, Journal) to communicate processes, statistics, trends, etc. to the membership?
Appendix C
Memorandum

To: John Berry, Ken Marvin

From: Jan Wichrowski

Date: May 16, 2011

Re: A brief analysis of Supreme Court of Florida decisions where opinions were issued from January 1, 2008 through May 19, 2011

Overall Summary
36 cases were found in this time period where appeals were filed or the Court issued Orders to Show Cause on its own. Where opinions were not issued, the appeals were known to me. There are likely to be other cases not mentioned here where appeals were undertaken and no opinion resulted which were not found given the limited parameters of this assignment. For this purpose, denials of reinstatements were considered as discipline. Cross-appeals are included in the summary data.

Bar
Bar appealed and succeeded in getting greater discipline: 22
Bar appealed and the Court imposed less discipline than requested by the bar: 2

Respondent
Respondent appealed and succeeded in getting less discipline: 1
Respondent appealed and did not succeed in getting less discipline: 15

Court
Court increased discipline beyond that recommended by referee or requested by bar: 12

2008

2008 Summary: 8 cases with appeals; greater discipline was imposed in every instance where the bar made this request.

Bar
Bar appealed and succeeded in getting greater discipline: 6; Valentine-Miller, Brown, Dove, Glueck, Bevan, and Ruiz De La Torre aka Costa
Bar appealed and the Court imposed less discipline than requested by the bar: 0

Respondent
Respondent appealed and succeeded in getting less discipline: 0
Respondent appealed and did not succeed in getting less discipline: 4: Brown (Cross-Appeal), Glueck(Cross-Appeal), Sibley, and Varner

Court
Court increased discipline beyond that recommended by referee or requested by bar: 3
Dove, Ruiz De La Torre aka Costa, and Varner


Facts: The Court considered a ROR which recommended a 3 year suspension based upon numerous trust account violations involving misappropriation of client funds, faulty record keeping, neglect of clients, clearly excessive fees, and failing to timely respond to the bar’s inquiries. The referee relied upon numerous mitigating factors in relation to respondent’s personal problems and addictions in recommending suspension rather than disbarment.

Nature of Appeal: The Florida Bar appealed and sought disbarment.

Court: Disbarment, finding that the facts reflected intentional misconduct contrary to the mitigation found by the referee. Anstead, J., dissented with an opinion, in which Cantero, J., concurred, stating that the referee’s report should have been upheld as to both facts and discipline.


Facts: The referee recommended a public reprimand and ethics education where respondent represented 2 clients who had adverse interests in related criminal defense matters. Due to respondent’s actions in arranging for another attorney to represent 1 of the clients, dishonesty was also present. The referee made a not guilty finding as to conflict of interest.

Nature of Appeal: The bar appealed the referee’s not guilty recommendation as to the conflict rule and sought a 90 day suspension. The respondent cross appealed the guilty findings and the recommendation to pay the bar’s costs.

Court: Found respondent guilty of conflict of interest and imposed a 90 day suspension, noting the public reprimand was not supported by either the standards or the case law.
3. **Joyce Sibson Dove** - SC05-302 and SC05-1157

   **Facts:** The referee recommended a public reprimand, 2 years of probation, and forfeiture of fees to The Florida Bar Foundation where respondent made false statements of material fact to a tribunal regarding termination of parental rights by the parents of a child for whom Dove was handling the adoption.

   **Nature of Appeal:** The bar appealed and sought a 1 year suspension.

   **Court:** Imposed 3 year suspension, noting this was a unique case of first impression. Lewis, J. and Pariente, J. dissented, stating that disbarment was appropriate.

4. **Alan S. Glueck** - SC06-1101 and SC07-1

   **Facts:** The referee recommended a 3 year suspension where respondent engaged in a complex pattern of misconduct by forming a misleading business relationship with a non-lawyer and practicing law through that business, making false statements to the bar and the public, and failing to competently and diligently represent clients.

   **Nature of Appeal:** The bar appealed and sought disbarment. Respondent cross appealed the referee’s findings and discipline recommendations.

   **Court:** Disbarred respondent.

5. **Andrew Arthur Bevan** - SC07-679

   **Facts:** The referee recommended reinstatement despite a violation of a court order in a federal case during his suspension as well as a lack of showing by the respondent that he had maintained or enhanced his professional ability.

   **Nature of Appeal:** The bar appealed, seeking denial of the reinstatement.

   **Court:** Denied reinstatement, finding that the referee’s finding that Bevan had not violated the court order was erroneous and that respondent had failed to demonstrate evidence of rehabilitation, noting: “Particularly, the Court finds that Bevan's showing of positive action is insufficient as he has not meaningfully engaged in community or civic service. See R. Regulating Fla. Bar 3-7.10(f)(2)(H), (f)(3)(G).”

6. **Montgomery Blair Sibley** - SC06-1387

   **Facts:** The referee recommended a 3 year suspension for respondent’s failure to pay child support and pattern of frivolous litigation.
Nature of Appeal: The respondent appealed the findings and recommendations.

Court: Suspended respondent for 3 years without an opinion. The September 25, 2008 order addressed respondent’s allegations that the Court and referee were without authority to act, finding them without merit.


Facts: The referee recommended a 91 day suspension where respondent engaged in a pattern of dishonesty in dismissing clients’ cases.

Nature of Appeal: Respondent appealed the findings of fact and recommended discipline. The bar supported the 91 day recommendation.

Court: Imposed a 1 year suspension due to the cumulative and serious nature of the misconduct.

8.  **Mario A. Ruiz De La Torre a/k/a Mario Costa - SC07-1633....Oct 16, 2008**

Facts: The referee recommended a 90 day suspension where respondent pled no contest to 5 criminal charges, including 2 felonies and failed to notify the bar of the determinations of guilt as required by rule. Respondent’s criminal probation was terminated early as a result of his early completion of all probation requirements.

Nature of Appeal: The bar appealed the suspension, seeking a 1 year suspension.

Court: Imposed an 18 month suspension.

---

**2009**

2009 Summary: 5 cases with appeals; all but 1 resulting in more discipline than recommended by referee and in that case, the referee recommended disbarment so the discipline could not be increased. The Court did not increase discipline on its own in any case.

Bar
Bar appealed and succeeded in getting greater discipline: 4; Abramson, Herman, Ticktin, and Wolf

Bar appealed and the Court imposed less discipline than requested by the bar: 1; Herman.
Respondent appealed and succeeded in getting less discipline: 0
Respondent appealed and did not succeed: 3. In Herman the Court imposed less than the 2 year suspension requested by the bar but more than the 90 day suspension recommended by the Referee (Cross-Appeal), Ticktin (Cross-Appeal), and D’Ambrosio

Court increased discipline beyond that recommended by referee or requested by bar: 0 (In Ticktin, bar requested at least a 60 day suspension).

9. William Abramson - SC07-713…………………………January 8, 2009

Facts: The Court considered a ROR which recommended a public reprimand with probation for an attorney who was disrespectful and confrontational with the presiding judge in an ongoing criminal courtroom proceeding in the presence of the pool of prospective jurors. In an order dated December 18, 2008, the Court suspended Abramson from the practice of law for 91 days, which took effect on January 2, 2009. The subsequent opinion articulated the Court’s reasoning so that other members of The Florida Bar could avoid Abramson’s misconduct. The Court emphasized Abramson’s prior disciplinary history of 2 public reprimands for serious misconduct and expressed that his ethical alternative, if he believed the trial court had erred, was by writ or appeal.

Nature of Appeal: The Florida Bar appealed seeking a 91 day suspension and attendance at The Florida Bar’s Professionalism Workshop.

Court: Ninety-one day suspension. Lewis, J., concurred in part and dissented in part with an opinion, in which Anstead, Senior Justice, concurred. The dissent recommended accepting the public reprimand and probation due to the referee’s finding of extensive mitigation and the referee’s finding that both the judge and the respondent became frustrated and that “both fueled the fire.”

10. Jeffrey Marc Herman - SC07-363…………………February 19, 2009

Facts: The Court considered a ROR which recommended a 90 day suspension, 2 years probation (requiring 200 hours of pro bono work), and a public reprimand for an attorney who engaged in a conflict of interest by representing his own company at the same time he was representing a competing company. Both companies performed the same services and functions and had the same pools of potential customers and potential suppliers. Herman also engaged in dishonest conduct by concealing the conflict from his client. The Court noted that the referee found 4 aggravating factors and only one mitigating factor. The attorney had no prior disciplinary history.
Nature of appeal: The Florida Bar appealed seeking a 2 year suspension. The respondent cross appealed and sought, at most, a public reprimand.

Court: Eighteen month suspension. Canady, J., concurred in result only and Labarga, J., did not participate.

Interesting Note: As for the recommendation that Herman be required to perform 200 hours of pro bono legal services during the two year probation, the Court noted that this is not a type of disciplinary sanction identified in Rule Regulating The Florida Bar 3-5.1. The Court further stated that, as a practical matter, probation is usually imposed when the respondent suffers from some kind of drug or alcohol addiction or mental illness, such that ongoing monitoring of the respondent’s condition is desirable.

11. Peter David Ticktin - SC07-369………………………………..May 21, 2009

Facts: The Court considered a ROR which recommended an admonishment for an attorney who engaged in business deals that constituted serious conflicts of interest. When Ticktin’s client was incarcerated, Ticktin took over the client’s company without the proper disclosures and without obtaining a written waiver of conflict. The referee found Ticktin not guilty of a second count involving his alleged disclosure of confidential information about his client. The referee found 1 aggravating factor and 6 mitigating factors. The bar maintained that the referee should have found 4 additional aggravating factors, but the Court rejected the bar’s arguments related to aggravation and found that merely because there is some evidence pertaining to an aggravating factor does not mean that the evidence rises to the level necessary to support a finding of that aggravator. The bar further challenged 4 mitigating factors found by the referee. The Court overturned one mitigating factor, stating that the personal economic losses that Ticktin suffered should not be considered as the imposition of other penalties or sanctions under standard 9.32(k). The Court found Ticktin’s eventual financial circumstances and embarrassment to be sympathetic factors but determined there was no authority for a finding of imposition of other penalties or sanctions as mitigation.

Nature of Appeal: The Florida Bar appealed the not guilty finding in Count II and sought at least a 60 day suspension. The respondent cross appealed and challenged the guilty finding in Count I.

Court: The Court upheld the guilty finding in Count I as well as the not guilty finding in Count II. The Court recommended a 91 day suspension “to emphasize to the Bar and the public that misconduct like Ticktin’s will result in severe disciplinary consequences.” Perry J., did not participate.
12. Michael Howard Wolf - SC08-250……………………………….July 9, 2009

**Facts:** The Court considered a ROR which recommended reinstatement to the practice of law. In 2006, Wolf was suspended for two years for negligently misappropriating client funds. While he was suspended, Wolf gave advice on opening arcades, reported on changes in the law applicable to this area, reviewed leases, researched ordinances applicable to new arcade sites, and consulted with a representative of a state attorney’s office on the proper interpretation of gaming law for an attorney’s criminal client. The referee found that the conduct Wolf’s conduct while suspended did not amount to the practice of law, but the Court disagreed. Wolf also demonstrated financial irresponsibility during the period of suspension.

**Nature of Appeal:** The Florida Bar appealed, seeking denial of reinstatement.

**Court:** Denied reinstatement and prohibited Wolf from reapplying for reinstatement until at least one year after the date of the opinion.


**Facts:** The Court considered a ROR which recommended disbarment for an attorney who engaged in contempt by practicing law while suspended and assisted in filing a false court pleading. The referee found no mitigating factors and 5 aggravating factors. The Court also noted that D’Ambrosio had an extensive disciplinary history which demonstrated that his conduct was not improving. D’Ambrosio presented arguments concerning 1) the referee’s failure to grant his motion to dismiss; and, 2) respondent’s assertion that the referee abused his discretion by *sua sponte* taking judicial notice of an Illinois rule regarding the unlicensed practice of law. After consideration, the Court found D’Ambrosio’s arguments to be without merit.

**Nature of Appeal:** The respondent appealed, seeking review of the referee’s findings of fact, recommendations of guilt, and recommended sanction. Respondent argued that he was not guilty but if he was found guilty, nothing more than a public reprimand was appropriate.

**Court:** Disbarment.

---

**Summary 2010:** 15 cases; greater discipline was imposed in each instance where the bar made this request except for 1, Ratiner. The Court imposed greater discipline on their own in 7 cases.
Bar appealed and succeeded in getting greater discipline: 6; Head, Bitterman, Hines, Shankman (Cross Appeal), Baraque, and Hall
Bar appealed and the Court imposed less discipline than requested by the bar: 1; Ratiner

Respondent appealed and succeeded in getting less discipline than recommended by the referee: 1; Ratiner
Respondent appealed and did not succeed: 4; Head (Cross-Appeal), Doane, Behm, Scott, Shankman, and Irish

Court increased discipline beyond that recommended by referee or requested by bar: 7; Temmer, Thompson, Manson, Doane, Behm, Hall, and Liberman

14. John Vernon Head - SC07-2398…………………………January 7, 2010

Facts: The Court considered a ROR which recommended a 60 day suspension for an attorney who engaged in a conflict of interest, made misrepresentations, and filed a frivolous court proceeding. Head took a portion of his clients’ refinancing loan money for his fee, which placed them at a disadvantage by rendering them unable to pay off a creditor. Head then made misrepresentations to the court and to the bankruptcy trustee. Head also knowingly filed a Suggestion of Bankruptcy with the bankruptcy court when no petition for bankruptcy had been filed. The bankruptcy court sanctioned him for this misconduct by prohibiting him from practicing before that court for ninety days. Head was previously admonished in 2005 for bringing a lawsuit that was “lacking in merit” and “frivolous,” which was similar to his filing the Suggestion of Bankruptcy in this case.

Nature of appeal: The Florida Bar appealed seeking a 3 year suspension. The respondent cross appealed and challenged several aspects of the referee’s report.

Court: One-year suspension.


Facts: The bar and the respondent stipulated, and the ROR approved, respondent’s reinstatement to the practice of law on a part time basis. Respondent had not completed the ordered restitution to the Clients Security Fund prior to reinstatement, but the stipulation and ROR called for her to make payments after reinstatement.

Nature of Appeal: None. The Court issued an Order to Show Cause as to what precedent existed for reinstatement where restitution had not been completed and also as
to the terms of the payment plan and further as to the terms and standards for enforcement of the part-time work.

**Court:** Denied reinstatement.

### 16. Linda Thompson - SC09-263……………………………February 18, 2010

**Facts:** The Court considered a ROR which presented approval of the parties’ stipulation to reinstatement. Prior to petitioning for reinstatement, Thompson failed to pay any of the restitution ordered ($1600 to one client and $800 to another client) and to pay any of the costs, which were assessed in the amount of $4,694.84. The bar, after determining the petitioner’s financial inability to pay, reimbursed the clients, and thus the petitioner now owed The Florida Bar Client Security Fund. The bar agreed to a payment plan, approved by the Board of Governors and the referee, and the repayment would be a condition of her probation.

**Nature of appeal:** In this matter, the Court disapproved the ROR on its own with no appeal and issued an Order to Show Cause to the parties as to why reinstatement should not be denied.

**Court:** Denied reinstatement. Pariente, J., dissented with an opinion, in which Perry, J., concurred. The dissent stated that Thompson did not show bad faith in failing to pay restitution and costs. The dissent would grant the petition for reinstatement and require compliance with the payment plan to be a condition of probation. Justice Pariente stated that “[i]f the Court is going to require either full repayment or at least a certain amount to be repaid, even where there are no financial means, we should set forth those requirements in a clearly enunciated rule rather than on an ad hoc basis without prior notice or explanation.”

### 17. Ann Bitterman - SC07-1071……………………………February 25, 2010

**Facts:** The Court considered a ROR which recommended a 30 day suspension and a 3 year period of probation for an attorney who engaged in contempt by practicing law while suspended. Furthermore, Bitterman used her Florida Bar identification card to misrepresent her status as an attorney, both to enter a jail and obtain immediate and private access to a prisoner and to obtain the prisoner’s vehicle from the impound lot. Bitterman had an extensive disciplinary history, and the aggravation in this matter outweighed the mitigation. The Court found that, the only evidence presented at the hearing to support the referee’s findings of mitigation, particularly of interim rehabilitation, was Bitterman’s own subjective, self-interested testimony.

**Nature of appeal:** The Florida Bar appealed and sought disbarment.
**Court:** Disbarment. The Court specifically found that the referee did not expressly consider the Standards for determining the appropriate sanction to recommend, or cite existing case law to support a 30 day suspension.

18.  
*Keith Alan Michael Manson – SC10-1187...................March 19, 2010 (Final disposition still pending at S Ct of Fl)*

**Facts:** The bar filed a petition against this conditional admittee requesting a 90 day suspension for contempt in regard to respondent’s 2nd positive test for alcohol and 15 missed required daily check-ins for FLA. The respondent responded to the Court and admitted the violations and provided excuses for his conduct. The Court suspended respondent for 90 days and forwarded the case to a referee for a recommendation, noting that revocation was being considered, and the case remains pending before the Court. (Respondent allegedly practiced law while suspended and a referee has recommended revocation/disbarment in that case, which is now consolidated with the above case and pending review at the Court.)

**Nature of Appeal:** The Court issued an OSC as to why greater discipline should not be imposed. Later the respondent appealed the disbarment recommendation of the referee.

**Court:** Initial 90 day suspension and further disposition currently under review at Court.

19.  
*Gary Elvin Doane - SC08-1278……….May 20, 1010 (Reh den August 26, 2010)*

**Facts:** The referee recommended an admonishment of minor misconduct, 1 year probation requiring trust account workshop, 1 year non reporting probation requiring pre-filing of all advertisements, and costs. Respondent advertised and practiced under the trade name of Legal Experts without clarifying that he was board certified in only one area of law and that during the period in question his firm consisted of only one lawyer. Respondent had received repeated warnings from the bar that the name was improper. Respondent rejected a minor misconduct finding, resulting in this case.

**Nature of Appeal:** Respondent appealed the Referee’s findings of facts and recommendation of guilt. The bar’s Answer Brief urged the Court to accept the referee’s recommendations.

**Court:** After briefing was concluded, the Court issued an Order to Show Cause as to why the Court should not impose a sanction greater than that recommended by the referee. After hearing from the respondent and the bar, the Court imposed a public reprimand along with the referee’s recommendations as to probation. On its own, the Court also enjoined respondent from ever using any trade name or in using the term “experts” in his firm name. Pariente, J., Perry, J., and Canady, J. specifically concurred, noting that the
trade name was misleading to the public. Lewis, J., specifically dissented, taking issue with the rules as to designation and use of the term, “expert”.

20. William Sumner Scott - SC05-1145 …………………………June 10, 2010

**Facts:** The referee recommended a 3 year suspension where respondent misled an adverse party in his client’s business deal by telling them that his client was “an honest man” and failed to reveal pertinent adverse information otherwise in violation of 4-4.3. Further, Respondent represented a party with adverse interests in violation of 4-1.7.

**Nature of Appeal:** Respondent sought relief pursuant to a statute of limitations argument which resulted in the Court remanding the case to the referee for determination. The Referee determined no statute of limitations violations were present. Respondent thereafter appealed the findings of fact and discipline recommended by the referee.

**Court:** The Court ultimately accepted the referee’s findings of fact and recommendations of discipline, as urged by the bar, and suspended the respondent for 3 years.

21. Shari Nicole Hines - SC08-2297…June 10, 2010 (opinion resulting in remand) & March 22, 2011 (no opinion-sanction only)

**Facts:** The Court considered a ROR which recommended a not guilty finding as to all rule violations where respondent permitted a nonlawyer, whom the attorney neither employed, supervised, nor controlled, to have signatory authority over an escrow account she opened to handle real estate closings, resulting in misappropriation by that nonlawyer of funds held in trust in the escrow account.

**Nature of appeal:** The Florida Bar appealed, seeking a guilty finding on all alleged rule violations and a rehabilitative suspension. This appeal resulted in remand.

**Court:** Guilty as to Rule 4-5.3(b) only. Because the referee did not reach the issue of sanctions, the Court remanded this case to the referee for a hearing and recommendation as to the appropriate sanction, including consideration of a rehabilitative suspension. Ultimately, a public reprimand with trust account workshop was entered.

**Interesting Note:** The Court made the following statement concerning its finding of guilt in this matter: “when it comes to the area of funds held in trust by a lawyer, we conclude that a reading of rule 4-5.3 in its entirety leads to only one reasonable conclusion. A lawyer may permit a nonlawyer to have authority or control over such funds only if that nonlawyer is employed by or under the direct supervision and control of the lawyer.”
22. **Robert Joseph Ratiner - SC08-689 ……………………………June 24, 2010**  

**Facts:** Respondent, as counsel for the plaintiff in a civil suit, was extremely obstreperous at a deposition and his conduct was captured on video. He had a prior history of similar misconduct. The referee recommended 2 alternative sanctions for the Court to consider; either disbarment or a 2 year suspension followed by 2 years of probation despite the bar's support of a 2 year suspension.

**Nature of Appeal:** Respondent appealed seeking the Court recognize additional mitigation and impose either a public reprimand or a short suspension and oral argument was held. The bar cross appealed and sought review of the referee’s alternative discipline recommendations, seeking a 2 year suspension.

**Court:** Sixty day suspension, public reprimand, 2 years probation, noting that it was proper to consider a pattern of misconduct as an aggravating factor even where it had not been specifically charged as a part of the probable cause finding.

**Interesting Note:** In footnote 4, the Court suggests that the bar and law schools use the deposition video in teaching professionalism courses as an example of how *not* to conduct oneself.

23. **Charles Behm - SC07-661………………………………………July 1, 2010**

**Facts:** In a 2 count complaint, respondent was charged with failure to maintain required trust records and failure to file or pay income tax. The respondent had a prior discipline record, including a 91 day suspension. The Court rejected a CJ for a 90 day suspension and remanded the case to the referee, who then recommended a 90 day suspension on the trust violations followed consecutively by a 91 day suspension on the income tax issues.

**Nature of Appeal:** Respondent sought review as to findings and discipline. The bar argued that the referee’s recommendations were appropriate. The Court issued an OSC to the parties as to why more significant discipline, up to and including disbarment, was not warranted.

**Court:** Disbarred respondent.

24. **Richard Stuart Shankman - SC08-1107…………………………July 8, 2010**

**Facts:** The referee recommended a 90 day suspension where respondent displayed dishonesty and lack of competence and self-dealing in a fee situation where he continually sought fee percentages from a series of attorneys in his client’s federal civil lawsuit.
**Nature of appeal:** Respondent appealed the ROR as to the referee’s decision on an evidentiary objection as well as to both guilt and discipline. The bar cross appealed, seeking review of the not guilty finding as to Rule 4-8.4(d), the finding of no aggravating factors, and sought a 6 month suspension.

**Court:** Six month suspension, finding that the referee should have found aggravating conduct and giving great weight to the Standards.

25. **George Juan Baraque** - SC08-2411 (no opinion issued) ...........August 11, 2010

**Facts:** The respondent sought reinstatement and the ROR recommended reinstatement over the bar’s opposition. The referee found that respondent had not engaged in any disqualifying conduct and had led a positive life by caring for his family during his suspension.

**Nature of Appeal:** The bar appealed the ROR recommending reinstatement, arguing that respondent failed to show that he had engaged in positive action beyond that required of any member of society or that he would be an exemplary attorney if reinstated.

**Court:** The Court, without an opinion, concurred with the bar and rejected the referee's recommendation to reinstate a respondent who had been suspended for a felony conviction involving insurance fraud.

26. **Sherry Grant Hall** - SC07-863 ................................................August 26, 2010

**Facts:** Respondent engaged in fraud and conflict of interest in connection with a personal real estate purchase, resulting in being charged with 2 felonies related to forging purchase documents for which she received deferred prosecution agreements. The referee recommended a 90 day suspension.

**Nature of Appeal:** The bar appealed, seeking a 3 year suspension. The Court, on its own, suspended the respondent during the pendency of the appeal and directed the parties to be prepared at oral argument to discuss why disbarment was not warranted.

**Court:** Disbarment. The Court specifically disapproved the referee’s reliance on Standard 7.0 and said 5.0 should apply. Pariente, J. and Quince, J., concurred in the facts but disagreed with disbarment, suggesting a 3 year suspension was more appropriate.

**Interesting note:** The Court originally denied oral argument but later changed its mind and granted it after it suspended respondent on its own motion after the Reply Brief was filed.
27. Noah Daniel Liberman - SC06-1874…………………………August 26, 2010

Facts: This was a follow up complaint to a felony conviction suspension for illegal drug trafficking.

Nature of Appeal: Neither party appealed, this was an Order to Show Cause. The bar and the respondent filed a joint response to the Court’s Order to Show Cause as to why respondent should not be disbarred and stated a 3 year suspension was appropriate.

Court: Disbarred respondent. Pariente, J. and Quince, J., dissented as to disbarment in favor of a 3 year suspension.

Interesting Note: The Court disapproved 1st guilty plea (for minor misconduct) and remanded back to referee. The Court also disapproved 2nd guilty plea and directed parties to show cause as to why disbarment was not appropriate.

28. Philip David Irish - SC08-1375, 08-1552, 08-1891, 08-2398…Nov. 4, 2010

Facts: (4 consolidated cases) Respondent used illegal substances for approximately six years, committed numerous felonies, including drug trafficking, injured multiple clients, and engaged in professional misconduct that extended over a three year period. The referee recommended disbarment.

Nature of Appeal: Respondent appealed, seeking a long term suspension rather than disbarment on the premise that respondent’s conduct was a result of his addiction to illegal drugs and respondent was in recovery from that addiction.

Court: In this 22 page opinion, the Court upheld the referee's recommendation of disbarment and restitution in 4 separate cases. Respondent had 6 felony convictions, misused client's money in order to purchase illegal drugs, and neglected clients as well. The Court, like the referee, discounted the claims of interim rehabilitation and other mitigation. The Court agreed with the referee that addiction to GHB (steroids) was not proven. There is a detailed discussion of several mitigating and aggravating factors.

2011

2011 Summary: 8 cases to date; The Court imposed either the discipline requested or more discipline in every case (Manson not yet final, however).

Bar
Bar appealed and succeeded in getting greater discipline: 4; Lobasz, Roberto, Adorno, and Sweeting.
Bar appealed and the court imposed less discipline than requested by the bar: 0

Respondent
Respondent appealed and succeeded in getting less discipline: 0
Respondent appealed and did not succeed: 4; Mirk, Adorno, Knowles, and Kivisto

Court
Court increased discipline beyond that recommended by referee or requested by bar: 2;
Adorno and Kivisto

29.  Miroslaw Thomas Lobasz - SC08-1105-----------------------February 3, 2011

Facts: Where the bar filed an Order to Show Cause alleging respondent had practiced law while suspended in 2 different hearings in 1 client’s immigration case, the referee recommended a 3 year suspension, nunc pro tunc to the original suspension.

Nature of Appeal: The bar appealed the referee’s recommendation of a 3 year suspension and sought disbarment.

Court: Disbarred respondent. Pariente, J., Canady, J., and Polston, J., concurred and noted their concern with bar counsel’s representations at oral argument.

Interesting Note: The Court's opinion seems to suggest that timely evidentiary objections must be made in order to preserve issues for review on appeal by the Court. However, the majority opinion seems somewhat contradictory as it also states that the referee has wide latitude to consider any relevant evidence, adding, "...we must emphasize that 'trial by ambush' tactics will not be condoned', referring to respondent's failure to update his responses to the bar's discovery requests to address the fact that he would present testimony as to his mental issues. The majority opinion suggests that there is an obligation by parties to update responses to discovery requests while the concurring opinion states there is no obligation under the Fl R Civ P 1.340 to supplement interrogatory answers.


Facts: Respondent, an inexperienced lawyer, was charged with conflict of interest (sex with clients), improper solicitation, improper fees, and other violations in connection with his conduct in representing 2 female clients in criminal matters and having sex with them. He also purchased a cell phone for one of the client’s use in soliciting clients for him and bought personal items for the clients. The referee recommended probation.

Nature of Appeal: The bar appealed and sought a 1 year suspension, arguing that the referee had erred as to the not guilty finding on Rule 4-1.7 and the referee’s recommendation of probation only as a discipline, arguing that the referee erred in
failing to consider certain aggravating factors. The respondent initially sought review but his appeal was dismissed for failure to file a timely and proper brief.

**Court:** 1 year suspension, noting that respondent was probably guilty of the sex with clients rule as well even though the bar had not sought appeal on that issue. The Court further found in favor of the bar’s arguments as to the aggravating factors and the additional rule violation as to 4-1.7. Again, the Court seemed to give great weight to the Florida Standards for Imposing Discipline.

**Interesting Note:** The Court dismissed the respondent's petition for review on its own motion for failure to timely file an initial brief. Respondent had filed an initial brief which did not comply with the rules (no statement of the case and facts, no summary of argument) on May 12, 2010 and the Court struck the brief and treated it as a Petition for Review and directed respondent to file an Initial Brief which complied with the rules by May 15, 2010. On June 23, 2010 the Court issued an order warning respondent that he had failed to file the brief and thus his petition for review was subject to dismissal. The bar had cross appealed and was ordered to file an Initial Brief on or before Sept. 15, 2010.

31. **R. Patrick Mirk - SC08-1423** ……………………………………April 7, 2011

**Facts:** 2 counts of trust account misappropriation. Count 1: Respondent deposited a $750 unearned fee into his operating account rather than his trust account. Count 2: Respondent took a $40,000 flat fee from his trust account without a valid fee agreement. The referee recommended disbarment in view of several aggravating factors, including the prior disciplinary record.

**Nature of Appeal:** Respondent sought review of the guilty recommendations and the recommended discipline of disbarment and restitution.

**Court:** Disbarment. Respondent maintained that he had valid fees and the funds were due him but the referee and the Court disagreed, noting, “When lawyers do face disputes over fees with their clients, the Bar Rules certainly do not permit attorneys to resolve such disputes in this manner. There is never a valid reason for misappropriating client funds held in trust.”

32. **Henry Nissim Adorno - SC09-1012** ……………………………………April 21, 2011

**Facts:** The referee recommended a public reprimand where respondent engaged in conflict of interest and attorney fees violations in regard to a high profile class action case involving millions of dollars in attorney fees.

**Nature of Appeal:** Respondent appealed the finding of guilt and the bar cross-appealed the referee’s recommendation of a public reprimand, seeking a 6 month suspension.
**Court:** Issued an OSC as to why more significant discipline, including disbarment, was not warranted. Imposed a 3 year suspension, noting respondent’s conduct was intentional and egregious.

**Interesting Note:** Court’s quote: “As the number of lawyers increases to an unprecedented level, the responsibility of ensuring that all lawyers conduct themselves within the ethical bounds required by the Rules Regulating the Florida Bar continues to be a top priority for this Court.”

33. **Petria Dimitrova Knowles - SC09-403………………………………April 28, 2011**

**Facts:** In her own divorce case, respondent threatened criminal prosecution to gain a civil advantage and also held herself out as a “specialist” despite the fact that she was not certified. She had no prior discipline record and the referee recommended a public reprimand.

**Nature of Appeal:** Respondent sought appeal of the ROR as to both discipline and the costs sought by the bar. The bar’s answer brief was in support of the ROR.

**Court:** Upheld the ROR recommending public reprimand. Canady, J., concurred in the findings of fact but suggested a 90 day suspension was more appropriate under the Standards in view of the harm caused to the legal system by a threat of criminal prosecution to gain advantage in a civil matter.

34. **Jussi Kustaa Kivisto - SC07-2281………………………………May 12, 2011**

(May 12, 2011 as to prohibiting further filings from R; (R was disbarred earlier in this same case)

**Facts:** Where a default was entered against respondent regarding his dishonest conduct and violations in regard to taking clearly excessive fees, the referee recommended disbarment in view of respondent's conduct before him in filing repetitive and frivolous filings and the totality of the circumstances, which included filing federal lawsuit(s) against the bar.

**Nature of Appeal:** Respondent attempted to seek review of the ROR but never succeeded in filing a timely and proper brief. The Court issued an OSC directing respondent to respond on the issue of why it should not direct the Clerk of Court to reject his future filings. In his response, respondent continued to interject improper arguments and filings which, the Court noted, should have been addressed in a brief.

**Court:** Suspended respondent on its own motion during the pendency of appeal. Disbarred respondent and instructed the Clerk of Court to reject any future filings submitted by respondent that challenge the disciplinary proceeding or relate to his
potential readmission to the bar unless the filings are signed by a member in good standing.

35. **Linda Sweeting** - SC09-1117 (no opinion issued)………………May 12, 2011

**Facts:** This was a complaint of minor misconduct as to fee issues where the referee found respondent not guilty and recommended no discipline, assessing respondent’s costs against the bar.

**Nature of Appeal:** The bar appealed the referee’s findings as well as the referee’s failure to allow the bar to present evidence of misconduct not pled in the bar’s complaint.

**Court:** Without an opinion, the Court adopted the referee’s findings and recommendations which assessed costs against the bar.


**Facts:** Respondent missed a total of 4 missed check-ins with FLA while on conditional admission. The bar filed a contempt petition and requested that respondent receive a public reprimand and pay costs.

**Nature of Appeal:** None, the case was not referred to a referee.

**Court:** Issued public reprimand and ordered payment of costs.

*Earl Mayberry Johnson SC06-789
This case is from March 22, 2007 and is provided for contrast. Where Respondent was placed on 3 years probation pursuant to reinstatement after a disciplinary suspension, the bar filed a contempt petition due to his failure to: comply with FLA check-ins, pay required monthly monitoring fees, file required quarterly mentor reports, and provide required quarterly reports on his trust account. The bar noted respondent was sober and had not failed any FLA drug and alcohol screenings and requested a 91 day suspension. The referee did not recommend a suspension, recommending only a 1 year extension of the probation with 30 days to achieve full compliance with all probation requirements. The bar did not seek review and the court approved the report of referee.
Appendix D
## DIVERSION RECIDIVISM RATE

Number of Diversions from 6/13/04 through 6/13/11 is 939.  
Number of Members disciplined after the completion of the Diversion is 83.  
Number of Members where Diversion was accepted but was not completed is 10.

<table>
<thead>
<tr>
<th>Diversion Program Recommended and Date Completed</th>
<th>Discipline Received and Date</th>
<th>Nature Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ethics School 6/18/04</td>
<td>Admonishment 12/08/04</td>
<td>Inadequate Comm.</td>
</tr>
<tr>
<td></td>
<td>Admonishment 11/29/04</td>
<td>Fees/Excessive</td>
</tr>
<tr>
<td></td>
<td>Admonishment 1/30/06</td>
<td>Criminal Charge</td>
</tr>
<tr>
<td></td>
<td>91-Day Suspension 5/18/07</td>
<td>Fees/Excessive</td>
</tr>
<tr>
<td></td>
<td>Disbarment 3/06/08</td>
<td>Inadequate Comm.</td>
</tr>
<tr>
<td>Advertising Workshop 6/17/04</td>
<td>Admonishment 8/13/04</td>
<td>Neglect</td>
</tr>
<tr>
<td></td>
<td>Admonishment 8/28/08</td>
<td>Funds/TA</td>
</tr>
<tr>
<td>Advertising Workshop 7/27/06</td>
<td>15-Day Suspension 9/24/09</td>
<td>Advertising Loan Mod.</td>
</tr>
<tr>
<td></td>
<td>Probable Cause 2/7/11</td>
<td>Neglect</td>
</tr>
<tr>
<td>Ethic School 10/18/04</td>
<td>Admonishment 3/7/06</td>
<td>Interference with Justice</td>
</tr>
<tr>
<td>LOMAS 10/13/04</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Professionalism Wkshop. 8/4/04</td>
<td>Admonishment 5/18/06</td>
<td>CLER Delinquent</td>
</tr>
<tr>
<td>LOMAS 4/25/05 CLE 1/4/07</td>
<td>Admonishment 11/30/06</td>
<td>CLER Delinquent</td>
</tr>
<tr>
<td>Ethics School 2/11/05</td>
<td>Admonishment 9/12/06</td>
<td>Advertising</td>
</tr>
<tr>
<td></td>
<td>Public Rep. &amp; Probation 3/14/08</td>
<td>Neglect</td>
</tr>
<tr>
<td>Trust Accounting Workshop 1/13/06</td>
<td>Admonishment 12/28/06</td>
<td>Neglect</td>
</tr>
<tr>
<td></td>
<td>Admonishment 3/20/08</td>
<td>Misrepresentation</td>
</tr>
<tr>
<td></td>
<td>Admonishment 12/28/09</td>
<td>Funds/TA</td>
</tr>
<tr>
<td>Restitution 1/3/05</td>
<td>Admonishment 4/02/07</td>
<td>Neglect</td>
</tr>
<tr>
<td>LOMAS 3/22/05</td>
<td>Emer. Susp. 10/23/07</td>
<td>Funds/TA</td>
</tr>
<tr>
<td></td>
<td>Disbarment 2/24/09</td>
<td>Funds/TA</td>
</tr>
<tr>
<td>Advertising Workshop 4/27/06</td>
<td>Admonishment 4/27/07</td>
<td>Fees/Excessive</td>
</tr>
<tr>
<td></td>
<td>1-Yr Suspension 9/03/09</td>
<td>Misrepresentation</td>
</tr>
<tr>
<td>LOMAS 5/16/05 CLE 3/8/06</td>
<td>Admonishment 5/14/08</td>
<td>Fees/Excessive 3/18/09</td>
</tr>
<tr>
<td>------------------------</td>
<td>---------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Trust Accounting Workshop 3/15/07</td>
<td>Admonishment 5/28/08</td>
<td>Funds/TA 8/28/08</td>
</tr>
<tr>
<td>Ethics School 7/28/06 LOMAS 5/23/06</td>
<td>Admonishment 8/28/08</td>
<td>Misrepresentation 7/16/08</td>
</tr>
<tr>
<td>Ethics School 6/17/05</td>
<td>Admonishment 7/06/09</td>
<td>Advertising 7/06/09</td>
</tr>
<tr>
<td>LOMAS 3/5/09</td>
<td>Admonishment 10/19/09</td>
<td>Neglect 10/19/09</td>
</tr>
<tr>
<td>Ethics School 2/3/06 FLA, Inc. 5/19/09</td>
<td>Admonishment 11/30/09</td>
<td>Funds/TA Contempt 12/16/10</td>
</tr>
<tr>
<td>Advertising Workshop 7/9/09</td>
<td>Admonishment 12/03/09</td>
<td>Advertising 12/03/09</td>
</tr>
<tr>
<td>Ethics School 9/28/07</td>
<td>Admonishment 2/04/10</td>
<td>Funds/TA 2/04/10</td>
</tr>
<tr>
<td>Ethics School 5/4/07</td>
<td>Admonishment 5/05/10</td>
<td>Funds/TA 5/05/10</td>
</tr>
<tr>
<td>LOMAS 10/28/05</td>
<td>Admonishment 6/21/10</td>
<td>Inadequate Communication 6/21/10</td>
</tr>
<tr>
<td>Advertising Workshop 6/28/08</td>
<td>Admonishment 5/06/11</td>
<td>Personal Behavior 5/06/11</td>
</tr>
<tr>
<td>Event Description</td>
<td>Date</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------------------------------------------</td>
<td>------------</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>Advertising Workshop 11/19/04</td>
<td></td>
<td>91-Day Suspension</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6-Month Suspension</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Disbarment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inadequate Communication</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contempt</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Neglect</td>
</tr>
<tr>
<td>Trust Accounting Workshop 1/13/06</td>
<td></td>
<td>Public Rep. &amp; Probation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Neglect</td>
</tr>
<tr>
<td>CLE in Family Law 3/13/04 FLA, Inc. – Never completed</td>
<td></td>
<td>Disciplinary Resignation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inadequate Communication</td>
</tr>
<tr>
<td>FLA, Inc. 1/20/05</td>
<td></td>
<td>Suspension &amp; Probation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Admon. &amp; Probation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Public Rep. &amp; Probation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Neglect</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contempt</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contempt</td>
</tr>
<tr>
<td>Advertising Workshop 7/26/06</td>
<td></td>
<td>Public Reprimand</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Fees/Excessive</td>
</tr>
<tr>
<td>FLA, Inc. (no treatment recommended) 10/8/04</td>
<td></td>
<td>Felony Suspension</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3-Year Suspension</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Criminal Charge</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Criminal Charge</td>
</tr>
<tr>
<td>Ethics School 4/22/05</td>
<td></td>
<td>Emergency Suspension</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Disbarment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Neglect</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Neglect</td>
</tr>
<tr>
<td>FLA, Inc. (no treatment recommended) 9/13/04</td>
<td></td>
<td>90-Day Suspension</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Criminal Charge</td>
</tr>
<tr>
<td>LOMAS 4/21/05</td>
<td></td>
<td>1-Year Suspension</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6-Month Suspension</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Neglect</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contempt</td>
</tr>
<tr>
<td>Anger Management 10/7/04 Professionalism Workshop 12/2/04</td>
<td></td>
<td>30-Day Suspension &amp; 2 Years Probation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Non-Cooperation</td>
</tr>
<tr>
<td>Professionalism Workshop 8/27/04</td>
<td></td>
<td>Admonitions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Public Reprimand</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Disbarment on Consent</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Neglect</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Incompetence</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Fees/Excessive</td>
</tr>
<tr>
<td>FLA, Inc. 1/20/05 (terminated to be monitored in discipline file)</td>
<td></td>
<td>90-Day Suspension &amp; Probation &amp; Admonishment &amp; Probation Public Rep. &amp; Probation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Misrepresentation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Neglect</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contempt</td>
</tr>
<tr>
<td>Ethics School 4/28/06 CLE 2/14/07</td>
<td></td>
<td>Admonitions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Public Reprimand</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Public Reprimand</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Misrepresentation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Neglect</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Neglect</td>
</tr>
<tr>
<td>Advertising Workshop 6/26/08</td>
<td></td>
<td>10-Day Suspension</td>
</tr>
<tr>
<td></td>
<td></td>
<td>30-Day Suspension</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Indefinite Suspension</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Fees/Excessive</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contempt</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contempt</td>
</tr>
<tr>
<td>Case Study</td>
<td>Date</td>
<td>Action Taken</td>
</tr>
<tr>
<td>------------</td>
<td>------</td>
<td>--------------</td>
</tr>
<tr>
<td>Anger Management</td>
<td>10/7/04</td>
<td>Public Reprimand &amp; 3 Years Probation 7/05/2007</td>
</tr>
<tr>
<td>Restitution</td>
<td>4/8/05</td>
<td>2-Year Suspension 4/12/07, 3-Year Suspension 5/27/10</td>
</tr>
<tr>
<td>Ethics School</td>
<td>4/22/05</td>
<td>Public Reprimand 4/12/07, Disbarment 8/05/10</td>
</tr>
<tr>
<td>LOMAS</td>
<td>9/17/04</td>
<td>Public Reprimand 7/12/07</td>
</tr>
<tr>
<td>Ethics School</td>
<td>7/28/06</td>
<td>2-Year Probation 12/20/07</td>
</tr>
<tr>
<td>Ethics School</td>
<td>2/11/05</td>
<td>Admonition 1/10/08</td>
</tr>
<tr>
<td>Ethics School</td>
<td>10/8/04</td>
<td>36-Month Suspension 1/10/08, Disbarment on Consent 5/08/08</td>
</tr>
<tr>
<td>Restitution</td>
<td>4/6/05</td>
<td>Public Reprimand 1/24/08</td>
</tr>
<tr>
<td>Advertising Workshop</td>
<td>5/3/07</td>
<td>Emergency Suspension 3/18/08, Follow-up was dismissed due to R’s death</td>
</tr>
<tr>
<td>Ethics School</td>
<td>9/28/07</td>
<td>Disbarment on Consent 4/10/08</td>
</tr>
<tr>
<td>FLA, Inc.</td>
<td>11/20/03</td>
<td>Public Reprimand and 1-Year Probation 10/16/08</td>
</tr>
<tr>
<td>Trust Accounting Workshop</td>
<td>6/17/04</td>
<td>3-Year Suspension 10/23/08, Disbarment 10/29/09</td>
</tr>
<tr>
<td>Advertising Workshop</td>
<td>12/8/05</td>
<td>Admonitions 10/30/08</td>
</tr>
<tr>
<td>Advertising Workshop</td>
<td>4/21/05</td>
<td>Admonitions 12/04/08</td>
</tr>
<tr>
<td>LOMAS</td>
<td>7/27/07</td>
<td>1-Year Suspension 1/29/09, Disbarment 7/02/09</td>
</tr>
<tr>
<td>Ethics School</td>
<td>4/22/05</td>
<td>Public Reprimand and 2-Year Probation 2/12/09</td>
</tr>
<tr>
<td>Advertising Workshop</td>
<td>5/3/07</td>
<td>Public Reprimand 2/12/09</td>
</tr>
<tr>
<td>Event Type</td>
<td>Date</td>
<td>Description</td>
</tr>
<tr>
<td>------------------------------------</td>
<td>---------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>Ethics School Emergency Suspension</td>
<td>2/25/09</td>
<td>Funds/Trust Account</td>
</tr>
<tr>
<td>Ethics School Disbarment</td>
<td>4/09/09</td>
<td>Fees/Excessive</td>
</tr>
<tr>
<td>Community Service Disbarment on Consent</td>
<td>4/23/09</td>
<td>Funds/Trust Account</td>
</tr>
<tr>
<td>Ethics School Disbarment on Consent</td>
<td>7/2/09</td>
<td>Mortgage Fraud</td>
</tr>
<tr>
<td>Trust Accounting Workshop Public Reprimand</td>
<td>7/02/09</td>
<td>Neglect</td>
</tr>
<tr>
<td>FLA, Inc. Admonition &amp; 3-Years Probation</td>
<td>7/02/09</td>
<td>Criminal Charge</td>
</tr>
<tr>
<td>Professionalism Workshop Admonitions</td>
<td>10/29/09</td>
<td>Inadequate Communication</td>
</tr>
<tr>
<td>Ethics School 1-Year Suspension</td>
<td>12/03/09</td>
<td>Interference with justice</td>
</tr>
<tr>
<td>Advertising Workshop 30-Day Suspension &amp; 3-Year Probation</td>
<td>1/07/10</td>
<td>Funds/Trust Accounting</td>
</tr>
<tr>
<td>LOMAS 1-Year Suspension</td>
<td>2/25/10</td>
<td>Relationship with Client</td>
</tr>
<tr>
<td>LOMAS Emergency Suspension</td>
<td>4/27/10</td>
<td>Funds/Trust Account</td>
</tr>
<tr>
<td>Trust Accounting Workshop Public Reprimand</td>
<td>6/24/10</td>
<td>Neglect</td>
</tr>
<tr>
<td>Advertising Workshop Admonition &amp; 2-Year Probation</td>
<td>6/24/10</td>
<td>Funds/Trust Account</td>
</tr>
<tr>
<td>Professionalism Workshop Public Reprimand and 60-Day Suspension</td>
<td>6/24/10</td>
<td>Personal Behavior</td>
</tr>
<tr>
<td>Ethics School 90-Day Suspension and 3-Year Probation</td>
<td>7/14/10</td>
<td>Funds/Trust Account</td>
</tr>
<tr>
<td>Ethics School Public Reprimand</td>
<td>7/26/10</td>
<td>Misrepresentation</td>
</tr>
<tr>
<td>Ethics School 5/15/09</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Event Type</td>
<td>Date</td>
<td>Date Duration</td>
</tr>
<tr>
<td>--------------------</td>
<td>------------</td>
<td>---------------</td>
</tr>
<tr>
<td>CLE</td>
<td>3/11/08</td>
<td>30-Month Suspension</td>
</tr>
<tr>
<td>LOMAS</td>
<td>3/5/09</td>
<td>91-Day Suspension</td>
</tr>
<tr>
<td>Ethics School</td>
<td>2/3/06</td>
<td>Emergency Suspension</td>
</tr>
<tr>
<td>Ethics School</td>
<td>2/3/06</td>
<td>Permanent Disbarment</td>
</tr>
<tr>
<td>Ethics School</td>
<td>9/24/10</td>
<td>Admonitions</td>
</tr>
<tr>
<td>Ethics School</td>
<td>9/29/05</td>
<td>Public Reprimand &amp; 1-Year Probation</td>
</tr>
<tr>
<td>Ethics School</td>
<td>6/18/10</td>
<td>Emergency Suspension</td>
</tr>
<tr>
<td>Ethics School</td>
<td>9/27/10</td>
<td>Suspension</td>
</tr>
<tr>
<td>Trust Accounting Workshop</td>
<td>8/7/08</td>
<td>Public Reprimand</td>
</tr>
<tr>
<td>Advertising Workshop</td>
<td>5/14/09</td>
<td>Public Reprimand</td>
</tr>
</tbody>
</table>
Appendix E
Results of the Survey on
The Florida Bar’s
Disciplinary System

(Circuit, County, and District Courts of Appeal Judges)

January 2012
BACKGROUND

Upon the request of Subcommittee Two of the Commission on the Review of The Florida Bar’s Disciplinary System, a survey was developed to determine judges’ levels of satisfaction regarding various elements of communication within the Bar’s disciplinary process.

Chair Edward Cheffy, vice-chair Jake Schickel, and subcommittee members Courtney Grimm, Tom Bateman, Julie Simone Sneed, Michael Higer, Alvin Alsobrook, Linda Burdick, Stacy Scott, Michael Lax, and Jewel White created the questionnaire while working with Florida Bar staff members John Berry, Mike Garcia, Ken Marvin, and Arne Vanstrum.

The primary purpose for the survey was to ascertain the judiciary’s perceptions and experiences in order to determine whether the Bar’s disciplinary process is fulfilling its expectations in regards to efficient and effective communication with judges who refer cases to the Bar involving lawyer conduct. The survey will assist the Commission in its overall effort to study the Bar’s regulation of lawyer conduct.

It is important to note that the survey was intentionally limited to matters that may have occurred in the past five years because a change in The Bar’s policy for handling complaints received from judicial officers was recommended after a previous Commission’s study concluded in 2006. The new policy became effective July 1, 2007.
The Survey on The Florida Bar’s Disciplinary System was conducted in December 2011. A link to an electronic survey was sent through an email by the Office of the State Courts Administrator to each Chief Judge in Florida (with a copy to the trial court administrators and DCA marshals) requesting that the Chief Judges distribute the email and survey link information to all judges in their respective courts.

A total of 982 judges (599 Circuit Court, 322 County Court, and 61 DCA) would be invited to participate. By the cutoff date of December 23, 2011, **297 completed questionnaires had been received for a response rate of 30%**.

The Florida Bar's Department of Research, Planning & Evaluation coded and categorized all qualitative questions in the survey, verified data for accuracy and completeness, and applied the appropriate statistical tests to the data.

In reporting the results, all percentages were rounded to the nearest whole percent (example: 74.5% equals 75%). For this reason, totals will vary from 99% to 101%.

Several measures of central tendency are mentioned throughout this report:

Mean: The average for all values given for the total sample of each question.

The mean is calculated by adding the values of all responses, then dividing by the number of responses. Example: Five responses (10, 1, 2, 2, 20) are reported. The average, or mean is calculated by adding $10 + 1 + 2 + 2 + 20 = 35$ and then by dividing by the number of responses (5). Thus the average is $35$ divided by $5 = 7$.

Median: The median is the middle value in a series, or distribution of values which is initially rank-ordered (from low to high, or vice-versa). By definition, half the numbers are greater, and half the numbers are less than the median. Example: Five responses (10,
1, 2, 2, 20) are reported. The median is the middle number of the order of distribution (1, 2, 2, 10, 20), or, 2. By comparison, the average of this same distribution, as shown above, is 7.

Range: the highest and lowest values provided by the total sample for a particular question.

In reporting the results, all percentages were rounded to the nearest whole percent (example: 74.5% equals 75%). For this reason, totals will vary from 99% to 101%.
Results of the Survey on The Florida Bar’s Disciplinary System
(Circuit, County and District Court of Appeals Judges)

1. Have you referred any cases involving lawyer conduct to The Florida Bar in the last five years?

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=297)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
<td>31</td>
</tr>
<tr>
<td>No</td>
<td></td>
<td>69</td>
</tr>
</tbody>
</table>

* Nearly one-third (31%) of all respondents have referred a case involving lawyer conduct to The Florida Bar in the last five years.

2. Please indicate the total number of cases that you have referred over the past five years.

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=95)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>48</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>32</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>16</td>
</tr>
<tr>
<td>4 or 5</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>6 to 10</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>More than 10</td>
<td></td>
<td>1</td>
</tr>
</tbody>
</table>

Mean = 2
Median = 2
Range = 1 to 20

3. After you referred the matter(s) to The Florida Bar, did you ever receive a phone call from an attorney handling the case for the Bar?

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=91)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, in all instances</td>
<td></td>
<td>39</td>
</tr>
<tr>
<td>Yes, in some instances</td>
<td></td>
<td>26</td>
</tr>
<tr>
<td>No</td>
<td></td>
<td>35</td>
</tr>
</tbody>
</table>

* Just under two-fifths (39%) of respondents who have filed a case report that, in all instances, they received a phone call from a Florida Bar attorney who was handling the case. Slightly over one-quarter (26%) report that they received a call in some instances, while just over one-third (35%) report that they never received a phone call.
4. If the case(s) did advance beyond the Intake level (to a Grievance Committee or further), were you asked by The Florida Bar’s attorney whether you wanted to receive updates or copies of the documents?

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=62)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, in all instances</td>
<td></td>
<td>44</td>
</tr>
<tr>
<td>Yes, in some instances</td>
<td></td>
<td>24</td>
</tr>
<tr>
<td>No</td>
<td></td>
<td>32</td>
</tr>
</tbody>
</table>

* When considering only those cases that went beyond the Intake level, over two-fifths (44%) of respondents report that, in all instances, The Florida Bar’s attorney asked whether they wanted to receive updates or copies of documents. Nearly one-quarter (24%) report that The Florida Bar attorney asked in some instances, while about one-third (32%) report that the Bar’s attorney did not ask.

5. If you asked for updates or copies of documents, did you receive them?

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=41)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, in all instances</td>
<td></td>
<td>68</td>
</tr>
<tr>
<td>Yes, in some instances</td>
<td></td>
<td>15</td>
</tr>
<tr>
<td>No</td>
<td></td>
<td>17</td>
</tr>
</tbody>
</table>

* Approximately two-thirds (68%) of respondents who asked for updates or copies of documents report that they received them in all instances. Almost one-third (32%) report that they either received copies or documents in some instances, or not at all.

6. If the Supreme Court issued an Order or Opinion on the case(s) you referred, were you given a copy of the Order or Opinion?

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=26)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, in all instances</td>
<td></td>
<td>31</td>
</tr>
<tr>
<td>Yes, in some instances</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>No</td>
<td></td>
<td>69</td>
</tr>
</tbody>
</table>

* When considering only those respondents who report that the Supreme Court issued an order or opinion on the case they referred, over two-thirds (69%) report that they were not provided with a copy of that order or opinion.
Please indicate your overall perception of how courteous and professional Florida Bar attorneys were during any communications.

<table>
<thead>
<tr>
<th>Category</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very courteous/professional</td>
<td>45</td>
</tr>
<tr>
<td>Somewhat courteous/professional</td>
<td>16</td>
</tr>
<tr>
<td>Neutral</td>
<td>6</td>
</tr>
<tr>
<td>Somewhat discourteous/unprofessional</td>
<td>1</td>
</tr>
<tr>
<td>Very discourteous/unprofessional</td>
<td>0</td>
</tr>
<tr>
<td>I did not communicate with a Florida Bar attorney</td>
<td>32</td>
</tr>
</tbody>
</table>

* Just over three-fifths (61%) of respondents report that Florida Bar attorneys were courteous and professional, compared to only 1% who report that they were discourteous and unprofessional. Nearly one-third (32%) of all respondents report that they never communicated with a Florida Bar attorney.

Please indicate your overall perception of how courteous and professional Florida Bar attorneys were during any communications. (INCLUDES ONLY THOSE RESPONDENTS WHO REPORT THAT THEY COMMUNICATED WITH A FLORIDA BAR ATTORNEY)

<table>
<thead>
<tr>
<th>Category</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very courteous/professional</td>
<td>67</td>
</tr>
<tr>
<td>Somewhat courteous/professional</td>
<td>23</td>
</tr>
<tr>
<td>Neutral</td>
<td>8</td>
</tr>
<tr>
<td>Somewhat discourteous/unprofessional</td>
<td>2</td>
</tr>
<tr>
<td>Very discourteous/unprofessional</td>
<td>0</td>
</tr>
</tbody>
</table>

* When considering only those respondents who report that they communicated with a Florida Bar attorney, 90% indicate that the Bar’s attorney was courteous or professional, compared to only 2% who indicate that the Bar’s attorney was discourteous or unprofessional.
8. Please indicate your overall level of satisfaction with the amount of communications that you received from The Florida Bar.

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=86)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very satisfied</td>
<td></td>
<td>31</td>
</tr>
<tr>
<td>Somewhat satisfied</td>
<td></td>
<td>11</td>
</tr>
<tr>
<td>Neutral</td>
<td></td>
<td>11</td>
</tr>
<tr>
<td>Somewhat dissatisfied</td>
<td></td>
<td>21</td>
</tr>
<tr>
<td>Very dissatisfied</td>
<td></td>
<td>26</td>
</tr>
</tbody>
</table>

* A slightly higher percentage of respondents report that they are dissatisfied (47%) with the amount of communication received from The Florida Bar, as compared to those who report that they are satisfied (42%) with the amount of communication received.

8a. Please indicate your overall level of satisfaction with the amount of communications that you received from The Florida Bar – BY THE LOCATION WHERE A JUDGE SERVES

<table>
<thead>
<tr>
<th>Category</th>
<th>Serves in 1st DCA (n=10)</th>
<th>Serves in 2nd DCA (n=16)</th>
<th>Serves in 3rd DCA (n=17)</th>
<th>Serves in 4th DCA (n=21)</th>
<th>Serves in 5th DCA (n=19)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satisfied</td>
<td>60</td>
<td>32</td>
<td>6</td>
<td>43</td>
<td>68</td>
</tr>
<tr>
<td>Neutral</td>
<td>0</td>
<td>6</td>
<td>6</td>
<td>19</td>
<td>11</td>
</tr>
<tr>
<td>Dissatisfied</td>
<td>40</td>
<td>62</td>
<td>88</td>
<td>38</td>
<td>21</td>
</tr>
</tbody>
</table>

* Judges who serve within the Fifth District Court of Appeal (Judicial Circuits 5, 7, 9 and 18) have a higher level of satisfaction with the amount of communications received from The Florida Bar, while judges who serve within the Third District Court of Appeal (Judicial Circuits 11 and 16) have a higher level of dissatisfaction with the amount of communications received from The Florida Bar.
8b. If dissatisfied with the amount of communications that you received from The Florida Bar, please explain:

A total of 27 respondents provided reasons as to why they are dissatisfied with the amount of communications they received from The Florida Bar. Each response was reviewed and categorized. The table below lists the three categories. A complete listing of all responses for this question can be found on Pages 13-14 located in Appendix A.

<table>
<thead>
<tr>
<th>Category</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very little or no communication received</td>
<td>23</td>
</tr>
<tr>
<td>Counsel’s handling of the case</td>
<td>3</td>
</tr>
<tr>
<td>Referral recently made/case still pending</td>
<td>1</td>
</tr>
</tbody>
</table>

9. Please indicate your overall level of satisfaction with the quality of communications that you received from The Florida Bar.

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=85)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very satisfied</td>
<td>32</td>
<td></td>
</tr>
<tr>
<td>Somewhat satisfied</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Neutral</td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>Somewhat dissatisfied</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td>Very dissatisfied</td>
<td>26</td>
<td></td>
</tr>
</tbody>
</table>

* Half (50%) of respondents report they are dissatisfied with the quality of communications received from The Florida Bar, compared to two-fifths (40%) of respondents who report they are satisfied.

9a. Please indicate your overall level of satisfaction with the quality of communications that you received from The Florida Bar – BY THE LOCATION WHERE A JUDGE SERVES

<table>
<thead>
<tr>
<th>Category</th>
<th>Serves in 1st DCA</th>
<th>Serves in 2nd DCA</th>
<th>Serves in 3rd DCA</th>
<th>Serves in 4th DCA</th>
<th>Serves in 5th DCA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Percent (n=10)</td>
<td>Percent (n=16)</td>
<td>Percent (n=17)</td>
<td>Percent (n=20)</td>
<td>Percent (n=19)</td>
</tr>
<tr>
<td>Satisfied</td>
<td>50</td>
<td>31</td>
<td>6</td>
<td>40</td>
<td>68</td>
</tr>
<tr>
<td>Neutral</td>
<td>10</td>
<td>13</td>
<td>6</td>
<td>15</td>
<td>11</td>
</tr>
<tr>
<td>Dissatisfied</td>
<td>40</td>
<td>56</td>
<td>88</td>
<td>45</td>
<td>21</td>
</tr>
</tbody>
</table>

* Judges who serve within the Fifth District Court of Appeal (Judicial Circuits 5, 7, 9 and 18) have a higher level of satisfaction with the quality of communications received.
from The Florida Bar, while judges who serve within the Third District Court of Appeal (Judicial Circuits 11 and 16) have a higher level of dissatisfaction with the quality of communications received from The Florida Bar.

9b. If dissatisfied with the quality of communications that you received from The Florida Bar, please explain:

A total of 26 respondents provided reasons as to why they were dissatisfied with the quality of communications they received from The Florida Bar. Each response was reviewed and categorized. The table below lists the three categories. A complete listing of all responses to this question can be found on Pages 15-16 located in Appendix A.

<table>
<thead>
<tr>
<th>Category</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very little or no communication received</td>
<td>22</td>
</tr>
<tr>
<td>Counsel’s handling of the case</td>
<td>3</td>
</tr>
<tr>
<td>Referral recently made/case still pending</td>
<td>1</td>
</tr>
</tbody>
</table>

10. Were you satisfied with the disposition of the referred case(s)?

<table>
<thead>
<tr>
<th>Category</th>
<th>Percent (n=83)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, in all cases</td>
<td>26</td>
</tr>
<tr>
<td>Yes, in some cases</td>
<td>16</td>
</tr>
<tr>
<td>No</td>
<td>58</td>
</tr>
</tbody>
</table>

* Just over one-quarter (26%) of respondents report they are satisfied, in all instances, with the disposition of their referred cases, compared to nearly three-fifths (58%) of respondents who report that they are not satisfied.

10a. Were you satisfied with the disposition of the referred case(s) – BY THE LOCATION WHERE A JUDGE SERVES

<table>
<thead>
<tr>
<th>Category</th>
<th>Serves in 1st DCA (n=10)</th>
<th>Serves in 2nd DCA (n=15)</th>
<th>Serves in 3rd DCA (n=17)</th>
<th>Serves in 4th DCA (n=20)</th>
<th>Serves in 5th DCA (n=18)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, in all cases</td>
<td>60</td>
<td>13</td>
<td>6</td>
<td>15</td>
<td>39</td>
</tr>
<tr>
<td>Yes, in some cases</td>
<td>0</td>
<td>20</td>
<td>12</td>
<td>20</td>
<td>22</td>
</tr>
<tr>
<td>No</td>
<td>40</td>
<td>67</td>
<td>82</td>
<td>65</td>
<td>39</td>
</tr>
</tbody>
</table>
* Judges who serve within the First District Court of Appeal (Judicial Circuits, 1, 2, 3, 4, 8 and 14) have a higher level of satisfaction with the disposition of referred cases, while judges who serve within the Third District Court of Appeal (Judicial Circuits 11 and 16) have a higher level of dissatisfaction with the disposition of referred cases.

10a. **If dissatisfied with the disposition of the referred case(s), please explain:**

A total of 40 respondents provided reasons as to why they were dissatisfied with the disposition of the referred case(s). Each response was reviewed and categorized. The table below lists the five categories. A complete listing of all responses to this question can be found on Pages 17-19 located in Appendix A.

<table>
<thead>
<tr>
<th>Category</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Action taken was not adequate/strong enough</td>
<td>21</td>
</tr>
<tr>
<td>Lack of communication</td>
<td>13</td>
</tr>
<tr>
<td>Referral recently made; case still pending</td>
<td>3</td>
</tr>
<tr>
<td>Process takes too long</td>
<td>2</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>1</td>
</tr>
</tbody>
</table>

11. **How interested would you be in having The Florida Bar’s personnel discuss Bar procedures and the discipline system at judicial education programs?**

<table>
<thead>
<tr>
<th>Category</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very interested</td>
<td>30</td>
</tr>
<tr>
<td>Somewhat interested</td>
<td>38</td>
</tr>
<tr>
<td>Neutral</td>
<td>11</td>
</tr>
<tr>
<td>Somewhat uninterested</td>
<td>8</td>
</tr>
<tr>
<td>Very uninterested</td>
<td>13</td>
</tr>
</tbody>
</table>

* Over two-thirds (68%) of respondents would be interested in having The Florida Bar’s personnel discuss Bar procedures and the discipline system at judicial education programs, compared to just over one-fifth (21%) who report they would not be interested.
12. The Commission is very interested in any comments that you may have about The Florida Bar’s discipline system and your experience(s) with it. Please utilize the space below to provide us with your comments.

A total of 87 respondents provided comments about The Florida Bar’s discipline system and their experience with it. Each response was reviewed and categorized. The table below lists the eight categories. A complete listing of all responses to this question can be found on Pages 20-28 located in Appendix A.

<table>
<thead>
<tr>
<th>Category</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of confidence in the process/system</td>
<td>26</td>
</tr>
<tr>
<td>Action taken is not adequate</td>
<td>17</td>
</tr>
<tr>
<td>Slow process</td>
<td>10</td>
</tr>
<tr>
<td>Education about disciplinary process/procedures</td>
<td>9</td>
</tr>
<tr>
<td>Positive commentary about the process</td>
<td>9</td>
</tr>
<tr>
<td>Lack of communication</td>
<td>6</td>
</tr>
<tr>
<td>Never referred a case</td>
<td>2</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>8</td>
</tr>
</tbody>
</table>

13. Within which of the following District Courts of Appeal do you serve as a judge?

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=276) Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>First DCA (Judicial Circuits, 1, 2, 3, 4, 8 and 14)</td>
<td>19</td>
</tr>
<tr>
<td>Second DCA (Judicial Circuits 6, 10, 12, 13 and 20)</td>
<td>24</td>
</tr>
<tr>
<td>Third DCA (Judicial Circuits 11 and 16)</td>
<td>13</td>
</tr>
<tr>
<td>Fourth DCA (Judicial Circuits 15, 17 and 19)</td>
<td>21</td>
</tr>
<tr>
<td>Fifth DCA (Judicial Circuits 5, 7, 9 and 18)</td>
<td>23</td>
</tr>
</tbody>
</table>
APPENDIX A:

RESPONSES TO OPEN-ENDED QUESTIONS
8. Please indicate your overall level of satisfaction with the amount of communications that you received from The Florida Bar. If dissatisfied, please explain:

(OPEN-ENDED QUESTION RESPONSES)

**Very Little or No Communication Received**  (23 Responses)

* Each complaint was accompanied by written proof in the form of affidavits signed by the offending lawyer showing the inherently perjurious statement by the lawyer. In one instance I received a single phone call requesting that I withdraw the complaint because the lawyer "made a mistake in his sworn statement." I declined and I never heard another word. In the second instance, I never heard anything from anyone. Both were simply buried or ignored by the Bar. I don't waste time with the Bar anymore.

* Extremely poor communication – never heard anything about it.

* Had no contact or updates.

* I don't want to say I was dissatisfied because I do not know if the Bar attorney knew which judges at our court referred particular attorneys. If the attorney was aware of who made the referrals I would have expected some form of communication from them regarding the matter.

* I never heard a word about the so-called investigation.

* It would have been nice to hear about how the case was disposed. I had to follow up on my own and I still don't know the extent of the investigation.

* Never got any response from The Florida Bar after filing a grievance. The designated reviewer of the grievance committee was in contact and was very professional, however, there was no contact made from Bar counsel directly.

* Never heard back.

* Never heard how case was disposed and why.

* Never learned how the case was investigated or disposed.

* No communications received.

* No contact was made.

* No information was conveyed.

* No one bothered to return my phone calls.
* No one called to request additional documentation or information. NPC was found in both cases without any communication to me. It is a slap in the face.

* No returned calls.

* There was no discussion.

* There was very little communication. My Judicial Assistant had to call in one instance and, in a UPL, we never heard anything.

* Too few. I was never updated.

* Very little communication and my Judicial Assistant had to follow up numerous times.

* Was never contacted or told the outcome.

* We did not speak.

* Would have been nice to hear back from someone.

**Counsel’s Handling of the Case  (3 Responses)**

* Counsel didn't take the case seriously. It seemed like she just went through the motions and quickly found no cause.

* One case was handled and the lawyer was disciplined. I was kept informed the entire time. The second case was against a lawyer with several prior (and similar) complaints in which he was disciplined. I have no idea what happened with my complaint and I don't think any action was ever taken against the lawyer. I believe the Florida Bar lawyer did not pursue my complaint purely due to race.

* The lawyer was a chronic offender and no one in The Florida Bar’s office tried to determine the chronicity and severity of the behavior. In fact, there was mitigation as a result of his "contributions" to the court. The resulting discipline was an injustice.

**Referral Recently Made/Case Still Pending  (1 Response)**

* I only recently submitted a copy of the order as a recommendation/referral so there has not yet been any communication, which is understandable.
9. Please indicate your overall level of satisfaction with the quality of communications that you received from The Florida Bar. If dissatisfied, please explain:

(OPEN-ENDED QUESTION RESPONSES)

**Very Little or No Communication Received**  (22 Responses)

* Each complaint was accompanied by written proof in the form of affidavits signed by the offending lawyer showing the inherently perjurious statement by the lawyer. In one instance I received a single phone call requesting that I withdraw the complaint because the lawyer "made a mistake in his sworn statement." I declined and I never heard another word. In the second instance I never heard anything from anyone. Both were simply buried or ignored by the Bar. I don't waste time with the Bar anymore.

* I did not receive communication.

* I never heard back.

* In two cases, I received no information until the final disposition; which, itself, was very disappointing.

* Lack of communications.

* Needed more communications.

* Never heard back.

* No communications received.

* No communications were received.

* No contact was made.

* No information exchanged.

* No one called to request additional documentation or information. NPC was found in both cases without any communication to me. It is a slap in the face.

* No one seemed to care enough to return calls.

* One would think the judiciary would be advised as to what was happening. We are not.

* Poor communication.

* The designated reviewer of the grievance committee was in contact and was very professional. There was no contact from Bar counsel directly.
* There wasn't any communication at all.

* There wasn't any communication.

* There were no communications at all.

* There were no communications.

* Voice mails were exchanged and nothing else.

* With no returned call, there was no communication to rate.

**Counsel’s Handling of the Case**  (3 Responses)

* Counsel was disinterested.

* One Florida Bar attorney was borderline rude and showed little respect to my Judicial Assistant.

* The counsel I spoke with appeared to have his mind made up that unprofessionalism behavior is not worth pursuing for the Bar.

**Referral Recently Made; Case Still Pending**  (1 Response)

* Again, referral was just recently made.
10. Were you satisfied with the disposition of the referred case(s)? If dissatisfied, please explain: (OPEN-ENDED QUESTION RESPONSES)

Action Taken Was Not Adequate/Strong Enough  (21 Responses)

* An unauthorized practice of law complaint resulted in nothing more than a "don't do it again" admonition.

* Disappointed how the grievance committee process is used. Although there may be probable cause, the process will forgive a certain violation and deem it as "no probable cause." In one case, the attorney representing the referred violator approached me later to apologize for the situation, and that the violator "owed him one" for using his influence with the committee to get a finding of no probable cause. The Bar attorney likewise apologized.

* Egregious behavior goes unpunished.

* Everything is dismissed. The system doesn't work.

* I am batting a thousand. The Bar decided the attorneys did nothing wrong. We refer cases and you throw them out the window.

* I conducted an evidentiary hearing over three or four days and was regrettably required to find a lawyer had suborned perjury. After finding the lawyer guilty of contempt, I referred this matter to the Bar. I used to Chair a Grievance Committee when I practiced law, so I am very familiar with the process. The grievance committee assigned a lawyer/member to investigate. This lawyer failed to investigate properly. She never spoke to me, she never spoke to any of the other lawyers in the case, and she never reviewed any transcripts. She merely called the lawyer whom I found in contempt; he denied suborning perjury and that's all she did. She recommended a finding of no probable cause. Her investigation was a joke and embarrassed the legal system and The Florida Bar.

* I didn't feel the case was handled well by counsel.

* I don't think the attorney learned a thing.

* I learned that it was merely a slap on the wrist. I won't be sending any more cases.

* I see a lot of unprofessional behavior in the courtroom and only refer the most egregious of matters. Yet, you take these two cases and find NPC without even contacting me. I am very dissatisfied and feel like I received a blow to the face.

* It was a lawyer with a long history. The result did nothing to solve the problem and it has become a "joke" within the judiciary.
It was a slap on the hand for a serious offense.

My complaint was not pursued and there was no reasonable explanation for it since the lawyer had been disciplined for similar complaints previously. The Bar assigned a different lawyer to my complaint than the attorney who handled all of the other complaints. Both the investigating attorney and attorney being investigated were the same race. I never heard anything regarding the complaint and I’ve checked and the attorney was never disciplined as a result of my complaint.

No strong action was taken.

Results are always the same for the judges.

The attorney was 10 days away from going on probation in a prior incident wherein he had stipulated to a probation period. The event in front of me occurred 10 days prior to his probation and while he was on probation he had another incident in front of another Judge. Both incidents were tried together by the Bar. He received 10 days of suspension for both incidents concurrent to each other. This punishment was far too lax for the grossly unprofessional conduct exhibited by this attorney to two judges with his prior actions already resolved in probation.

The case was dismissed without a thorough review. Referring cases to you is a waste of time.

The Florida Bar only slaps the wrists of lawyers who violate the rules of professional conduct.

The particular issue was not adequately addressed.

While I understood the rationale for the resolution of the case, I believe the outcome was something short of a soft slap on the wrist.

You are way too lenient.

Lack of Communication  (13 Responses)

Case was dismissed without anyone contacting me.

Disposed of quickly and with no explanation to me.

Do not know what happened, or if it is ongoing.

I have not heard anything.
* I never heard back.
* I never knew what happened.
* I was disappointed that no contact was ever made.
* I was not made aware of the disposition.
* I was very surprised at the result and no explanation was ever offered to me.
* I would have liked to know why Bar counsel instantly disposed of my case.
* Never had any contact with The Florida Bar and therefore, I don't know how the case was resolved.
* No one ever told me the disposition. The cases simply disappeared.
* No one had the decency to tell me how the matter was handled.

**Referral Recently Made; Case Still Pending**  (3 Responses)
* No communicated received yet in recent pending case.
* Still pending; satisfied up to this point.
* Two of the cases are still pending.

**Process Takes Too Long**  (2 Responses)
* Process simply takes too long.
* Process took too long.

**Miscellaneous**  (1 Response)
* I say no only because the one I sent looked to be disciplined for other reasons and my referral seemed to be icing on the cake. The other is still pending.
12. The Commission is very interested in any comments that you may have about The Florida Bar's discipline system and your experience(s) with it. Please utilize the space below to provide us with your comments.

(OPEN-ENDED QUESTION RESPONSES)

**Lack of Confidence in the Process/System** (26 Responses)

* I am new to the bench but other judges have told me that they have had poor experiences with the Bar's discipline system and I will avoid it until things change.

* I do not know of a single judge who has confidence in the disciplinary process.

* I have always found Bar staff lawyers to be courteous. But I have a HUGE problem with the way matters are investigated by grievance committees. The investigating attorney was sloppy and failed to protect the public. And when I tried to bring this to her attention, after the fact, so we wouldn't make mistakes in the future, she was incredibly rude. I do not have a problem with a finding of NPC. I have a problem with an incompetent investigation.

* I have dealt with several Bar counsel and some have been very qualified, while others have not and have carried forth shoddy investigations. The system needs some repair. I wish I could tell you at what level, however, I hear it is broken across most levels. This survey is a good start.

* I have heard of such terrible experiences from other judges that I just won't refer any attorneys to the Bar for discipline. I just counsel them on my own.

* I have not heard good things about it from other judges.

* I heard of several bad experiences by judges but still decided to try a referral first hand. I won't be duped again. Unless a serious crime is committed, nothing is pursued.

* I sat on the Board of Governors for several years. While on the Board I served on the Disciplinary Review Committee. I had heard rumors that the judges were not using the referral process because of a lack of confidence in the system. I have seen some of that first hand. As a judge, I am the present director of our statewide judicial mentoring program. One of my responsibilities is to work with new judges as they learn how to become effective judges. An area we discuss is Bar referrals. Unfortunately, the overall experience appears not to have been good. Several judges with whom I have spoken with refuse to, to use their terminology, "waste" [their] time on a referral when nothing will become of it."

* I will never refer any attorney to the Bar again. When you do, most attorneys will file a JQC case in retaliation.
* Inconsistencies and incompetency reign supreme.

* It is perceived by some judges that we should not bother making the time and effort to refer cases because the Bar does not do anything substantial and meaningful with them.

* It is very rare when I need the Bar but, when I do, I want them right away and I want to move the front of the line. By that, I mean referrals from judges should be treated with priority as the Bar is all a judge has left. The appellate courts have taken away all contempt enforcement power and the word has spread that judges can do nothing to you so you may as well act the way you want to. Additionally, my state attorney will not follow the rules which allow a judge to refer the matter to the state attorney and then to the Chief Judge for proceedings in Circuit Court. So I can refer them but it goes nowhere when the state attorney ignores the referral. Maybe I am old fashioned, but there was a day when a judge did not ask for help -- the judge just handled the matter and it was quick and effective.

* It's a crap shoot. You never know what you're going to get and, most times, the attorneys will walk away laughing at the system. New policies should be developed and applied consistently.

* Most judges do not believe in The Florida Bar's system as it just doesn't work.

* My experience has been: why bother to report a lawyer? If I did, nothing resembling justice would occur.

* Quite frankly, I have had two other instances where I have elected not to refer because of the lack of productivity of such a referral.

* Referring any case to the Bar is an utter waste of time and effort. Why bother?

* The Bar talks the talk but is virtually a waste of time unless a lawyer has stolen $$$$$$$$$$$$$$$.

* The Grievance Committee process needs revision. It appears to be a conflict that peers who work with these members then evaluate their conduct. I continue to have little faith and confidence in this process.

* The judges do not take this system seriously because we keep referring the same lawyers to you and then we see them right back in our courtroom performing the same unprofessional behavior over and over. I'm done referring cases. It's a bit of a mockery right now and lawyers know it.

* The system as it is right now is an embarrassment to the judiciary.
There is a general perception that disciplinary referrals are often an exercise in futility and, for that reason, I am concerned that judges may not make future referrals in cases warranting disciplinary action.

There is very little adeptness and justice within your process.

They have been overwhelmed with the number of foreclosure related complaints so I don't think it is fair to address the response to that; although somewhat discouraging at times. The different committees have failed to be able to see the whole picture and continuity of actions, based on one single complaint or incident. From what I hear from many judges, they don't bother to report attorneys because nothing ever happens. Thus, the problem is exacerbated and the attorneys get comfortable with their shoddy and unethical practices.

Those on the bench have no confidence in referring unprofessionalism behavior as nothing ever gets done about it.

Two cases referred. Two “NPC”. No communication. I'm done and so are the other judges. Until you put some substance into your system, the judges will not be using your vehicle.

We as judges have so little faith in Florida Bar counsel and the disciplinary process.

While it is understandable that trust fund violations and thefts from clients deserve top priority, the instances of dishonesty with the tribunal and false attacks on tribunals are increasing in frequency due to a perception that the Bar does not have the resources to investigate or prosecute cases of that nature.

**Action Taken is Not Adequate/Strong Enough** (17 Responses)

In over 10 years on the bench, I have seen it all. I only refer the most unprofessional of matters to the Bar and yet the Bar continuously sends the attorneys back out there with a slap on the wrist or less.

Didn't seem like justice was served in my case.

Friends and relatives tell me the public lacks faith in the Bar's discipline system because it seems attorneys get away with things that the "ordinary" persons do not. The public seems not to know how to report violations or considers it a waste of their time. The discipline seems to have no teeth, when compared to the alleged violation.

I don't believe that sufficient punishment is provided to many of the attorneys and feel that it is almost a waste of time to report possible violations by attorneys.
I have practiced law for over 30 years and served over 20 as a judge. But for a few exceptions, the lawyers in this area are ethical and qualified. However, the same disreputable lawyers continue their practices and, despite past Bar investigations and disciplinary actions, these disreputable lawyers are still here practicing law. I have had discussions with several other judges and our conclusion is always the same. There is no need to refer the incompetent, unethical lawyer to the Bar since the disciplinary actions are too little and too late. Good luck.

I honestly believe racism had a role in not pursuing my complaint. However, I have no proof but there really is no reasonable explanation for my complaint going nowhere. I only filed it once I learned that this lawyer had prior similar complaints and he was using his poor behavior as a reason to recuse judges in the circuit. I could not stand by and let forum shopping occur.

It is my perception, and a lot of my colleagues that I have spoken with, that it is useless to report low to mid level type ethical violations to the Bar because the blow back from the referral is worse than the punishment imposed.

Judges have the perception that The Florida Bar will not sanction lawyers for violating the rules of professional conduct and, if they do sanction, then it is de minimis. No real sanctions.

Much too lenient process.

On two of the matters I referred to the Bar, no action was taken. It seems the Bar only goes after the low hanging fruit.

The Bar is full of hot air and does little to support the bench. As long as theft is not involved, a slap on the wrist is all a lawyer will ever receive. So it turns out lawyers act even more unprofessional because they know they can get away with it.

The Bar needs to pay more attention to issues of professional conduct between attorneys and the judges and their staff.

The last time I sat as a referee in a disciplinary proceeding, I refused to accept a stipulated outcome in a VERY serious grievance matter involving a Federal felony conviction of a Florida attorney convicted in a scheme to launder drug money...and The Florida Bar dismissed the complaint. It left a bad taste in my mouth and I requested not to be assigned as a referee for any more Bar disciplinary matters.

The only time I referred a disciplinary matter to the Bar, my impression was that the Bar totally dropped the ball.

The reputation this profession enjoys in the eyes of the public is directly related to lawyer misconduct and our failure to control that misconduct with an effective disciplinary system. It is past time for the Bar and the Courts to get serious and support a strong
disciplinary system that enforces our Rules with tough measures meant to either change unethical/unprofessional behavior or put an end to it by removing lawyers from the practice of law in appropriate cases. My sense is that our current system is simply too lenient in addressing complaints and conduct.

* Way too lenient. It is no wonder why attorneys behave so inappropriately and do some of the unbelievable things I have seen and heard attorneys do.

* You are too lenient on unethical acts.

**Slow Process**  (10 Responses)

* As a judge, the system is long in reacting.

* Delays by respondents in complying with proceedings.

* Florida is fortunate to have such a fine system for dealing with lawyer discipline and, while recognizing that resources are limited, speeding up the investigatory process would enhance the system.

* I think the Bar is too slow.

* My perception is that the system could run more quickly without prejudicing the respondents.

* Process takes so long.

* The Bar discipline program sometimes is slow to act.

* The length of complaint to resolution takes too long.

* The process needs to be streamlined as it takes an extremely long time.

* The process seems way too slow for serious cases.

**Education About Disciplinary Process/Procedures**  (9 Responses)

* County Court Conference had a representative help present a program several years ago with a judge and an attorney who represents attorneys charged with misconduct. The program dealt with ethics and used movie clips as a means of showing examples of lawyer conduct. The program was well received.

* How to deal with attorneys who have issues with drugs or alcohol dependence.
I was appointed to one of the several grievance committees and served as chair for a year. I am very familiar with the Bar's grievance procedures, however, I recently addressed the annual meeting of the FPAA on ethics and professionalism and was very, very surprised to learn that only a handful of attendees out of a group of 100 was familiar with the Bar's grievance procedures.

It would be helpful to have The Florida Bar enumerate specific categories within which a sitting judge is mandated to report attorney misconduct and to identify those areas of attorney misconduct in which a judge has discretion not to refer the matter to the Bar. Many judges realize the serious impact which a judge's referral carries and, I believe, decline to take any action for perceived violations of the Code of Professional Conduct. I have personally not had to make any such referral during six years on the bench, but have found other effective means by which to address any problems presented by counsel.

It would be helpful to understand the discipline procedures, and perhaps have the court system and the Bar work together to develop a streamlined, uniform system for referrals.

It would be nice to have a 1-800 hotline system, or a confidential website, perhaps just for judges, to report not only disciplinary lapses, but also unprofessional conduct. Frankly, I have no idea what the current procedure is for reporting a disciplinary violation.

Often, I have been tempted to overlook conduct which I perceived as unprofessional, in order to move the docket, or to give the attorney room to grow while counseling them. There is also the unfortunate specter of retaliation by lawyers encouraging an opponent to challenge the judge during the judge's next election cycle. This circuit is currently experiencing more challenges in judicial races in recent years. The individual judge uses primarily his or her own financial resources to deal with challengers and maintain the integrity and independence of the judicial office. There is an inherent risk as these challenges become more common, that judges will become more lenient with lawyers so as to not incur hard feelings and election opponents. I don't know if the Bar can help individual judges with that problem. However, it would help to know the disciplinary procedures very clearly, and also to know that referrals for disciplinary conduct problems will be dealt with in a manner which clearly supports the judiciary's role in monitoring attorney conduct.

The level of professionalism in newer members of the Bar is appalling. The level of understanding of basic rules and statutes is equally appalling. As a judge, I am often in a quandary about how to handle the matters where the lawyers are clearly over their heads, not truly assisting the client in any way because they are either unable or just want to run up fees. A seminar as to what the judiciary could, and/or should, do in these instances would be most helpful!

We have had sessions on the Bar discipline system at judicial conferences over the years. It is always helpful to remain up to date.
Positive Commentary About the Process  (9 Responses)

* I am very grateful for the support provided to judges who are appointed as referees. Anything that the Bar can do to make our procedural handling of these "out of the routine" matters is appreciated.

* I have always been impressed with the Bar's disciplinary system.

* I have both referred a matter to the Bar, and been a referee in a lawyer discipline matter. The same Bar counsel handled both matters with the utmost professionalism. She kept me up to date, and made the whole process a pleasure. That person has been a speaker for our local Bars and our Inn of Court, and is always well received. If the rest of the Bar counsel handle their matters like she does, we are in good hands.

* I have never had any problems with Florida Bar members and your procedure for discipline. Having sat on one hearing, I have found the staff to be professional and having the knowledge to perform their duties.

* I really don't have any comments. They do a good job.

* I was satisfied. Everything was handled very professionally.

* Most Bar grievance matters that I have personally handled as a Referee have been necessary and warranted for the effective enforcement of the Florida Bar Rules of Professional Responsibility. I have found the professionalism of The Florida Bar's prosecutors to be of the finest order. I would not change a thing with the manner of current Florida Bar discipline which is the benchmark for state Bar associations nationwide.

* My experience with the discipline system has been fine. I may not agree with the outcome but it is not my place to determine the outcome.

* Of the two cases that I have referred, one case was just submitted so no action by the Bar has taken place. I am satisfied that appropriate action was taken in the other case.

Lack of Communication  (6 Responses)

* A suggested standard operating procedure should include providing feedback to a judge who has referred an attorney to The Florida Bar's discipline system (if not already SOP). I have often heard judges lament that they have referred an attorney to the Bar and then never heard anything as to the outcome of their referral. If the Bar keeps statistics on judicial referrals, could that information be provided?

* After I took the time to file a grievance, I would expect the Bar to at least speak to me.
Candidly, I think your discipline system is a joke. I once filed a very detailed complaint with the Bar against a lawyer. It took me over a month to draft the complaint and obtain the necessary paperwork to document the complaint. The Bar lawyer never spoke with me about the case, never consulted me about the disposition, and would not return phone calls. I heard the disposition that she worked out from some lawyers at the local State Attorney's Office. I have never filed one since. I would not waste my time again.

I am not sure why the Bar never notified me about what transpired with the case.

I referred an attorney for outrageous behavior and then never heard a word back. Six months later I had my Judicial Assistant check and I found out that no action was taken. I am quite taken back by this.

My lone experience was not a good one because of poor communication.

**Never Referred a Case**  (2 Responses)

Fortunately, I have not had to refer anyone for discipline.

Never had to utilize the discipline system.

**Miscellaneous**  (8 Responses)

Discipline system seems to run well in cases I have been involved with but the one area where I think there is a deficiency is the referee's inability in appropriate cases to appoint an Independent Medical Examiner (in situations where lawyer has a serious health issue such as a heart condition) and an Independent Psychological Evaluation and the funds necessary to pay the expert.

I believe that most issues of professionalism can be handled at the local level with a frank discussion with the lawyer(s), usually behind closed doors. If this method is ineffective or inappropriate, I prefer to see the matter dealt with in our local bench-bar committee. I think the Bar's involvement should be more limited so as to be able to focus more effectively on the more serious allegations.

I understand that there is now a mediation process available. I think this is a good idea.

In addition to complaints, I have had concerns about attorney competence. Age, mental health, and personal stress, have each been issues I took into account in forgiving some past attorney misconduct. It would be helpful if the Bar had an office that would reach out to individuals who might not recognize the need to retire, seek help or take a break.
* It still seems to be the hardest part of all is getting in. Our lawyers seem to have issues
that need to be addressed, and can't be until things have gotten vastly out of hand.
In large part, that is because lawyers are what they are and tend to be defensive about
their own actions, critical of others. It is a shame to watch a lawyer failing to address his
or her particular issues until they have reached rock bottom and have no choice but to
crawl up from the bottom of the well... but I have no suggestion or solution on how to fix
this problem.

* The discipline system is very difficult to use. It should be simplified and a more
streamlined process substituted for the one in place.

* The main problem with a referral (for instance a letter to the attorney with Bar carbon
copy) is the Judge is subject to deposition & trial, as opposed to a simple order which
suggests an investigation. This needs to be addressed.

* Typical of the discipline system is conversion of Trust Account funds and inadequate
communication with a client. While appropriate in most Trust Account matters, the
penalties can be too harsh in certain instances. Jurists are becoming reluctant to report
known litigation misconduct for several reasons. Paramount is the lawyer that will use the
process to recuse the reporting judge - in effect to gain the advantage of judge shopping.
Increasingly, counsel will fail to timely comply with court orders intended to manage and
advance litigation in timely fashion. Bar referrals simply further delay the litigation,
present tools for judicial correction via sanctions of further delay proceedings to the
prejudice of at least the opposing side as well as operating to cause added costs to the
non-compliant party. While a general "dumbing down" of trial practice has become
manifest in the past decade; there seems to be no viable rule/Bar enforcement of counsel
'try their case' in the hallway or the media. In that connection, use of Facebook to criticize
the legal process or a jurist has become rampant.
Appendix F
Results of the Survey on The Florida Bar’s Disciplinary System

(U.S. District Court and Bankruptcy Judges)

January 2012
SAMPLE

In addition to the survey that went to Circuit Court, County Court, and District Court of Appeal Judges, a separate survey was sent to Federal Judges (U.S. District Court and U.S. Bankruptcy Court). With the exception of one question being slightly different, the questionnaire was almost identical to the one sent to the other judges.

This survey was sent via a Florida Bar email that contained a link to the electronic survey. A total of 31 U.S. District and U.S. Bankruptcy Judges would be invited to participate. By the cutoff date of December 23, 2011, 25 completed questionnaires had been received for a response rate of 81%.

The Florida Bar's Department of Research, Planning & Evaluation coded and categorized all qualitative questions in the survey, verified data for accuracy and completeness, and applied the appropriate statistical tests to the data.

In reporting the results, all percentages were rounded to the nearest whole percent (example: 74.5% equals 75%). For this reason, totals will vary from 99% to 101%.

Several measures of central tendency are mentioned throughout this report:

Mean: The average for all values given for the total sample of each question.

The mean is calculated by adding the values of all responses, then dividing by the number of responses. Example: Five responses (10, 1, 2, 2, 20) are reported. The average, or mean is calculated by adding $10 + 1 + 2 + 2 + 20 = 35$ and then by dividing by the number of responses (5). Thus the average is 35 divided by $5 = 7$. 
Range: the highest and lowest values provided by the total sample for a particular question.

In reporting the results, all percentages were rounded to the nearest whole percent (example: 74.5% equals 75%). For this reason, totals will vary from 99% to 101%.
Results of the Survey on The Florida Bar’s Disciplinary System
(U.S. District Court and Bankruptcy Judges)

1. Have you referred any cases involving lawyer conduct to The Florida Bar in the last five years?

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=25)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
<td>32</td>
</tr>
<tr>
<td>No</td>
<td></td>
<td>68</td>
</tr>
</tbody>
</table>

* Nearly one-third (32%) of all respondents have referred a case involving lawyer conduct to The Florida Bar in the last five years.

2. Please indicate the total number of cases that you have referred over the past five years.

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=7)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>43</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>29</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>14</td>
</tr>
<tr>
<td>4 or 5</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>6 to 10</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>More than 10</td>
<td></td>
<td>14</td>
</tr>
</tbody>
</table>

Mean = 3
Median = 2
Range = 1 to 15

3. After you referred the matter(s) to The Florida Bar, did you ever receive a phone call from an attorney handling the case for the Bar?

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=7)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, in all instances</td>
<td></td>
<td>43</td>
</tr>
<tr>
<td>Yes, in some instances</td>
<td></td>
<td>14</td>
</tr>
<tr>
<td>No</td>
<td></td>
<td>43</td>
</tr>
</tbody>
</table>

* Over two-fifths (43%) of respondents who have filed a case report that, in all instances, they received a phone call from a Florida Bar attorney who was handling the case. Over two-fifths (43%) report that they never received a phone call.
4. If the case(s) did advance beyond the Intake level (to a Grievance Committee or further), were you asked by The Florida Bar’s attorney whether you wanted to receive updates or copies of the documents?

<table>
<thead>
<tr>
<th>Category</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, in all instances</td>
<td>20</td>
</tr>
<tr>
<td>Yes, in some instances</td>
<td>40</td>
</tr>
<tr>
<td>No</td>
<td>40</td>
</tr>
</tbody>
</table>

* When considering only those cases that went beyond the Intake level, one-fifth (20%) of respondents report that, in all instances, The Florida Bar’s attorney asked whether they wanted to receive updates or copies of documents. Two-fifths (40%) report that The Florida Bar attorney asked in some instances, while two-fifths (40%) report that the Bar’s attorney did not ask.

5. If you asked for updates or copies of documents, did you receive them?

<table>
<thead>
<tr>
<th>Category</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, in all instances</td>
<td>67</td>
</tr>
<tr>
<td>Yes, in some instances</td>
<td>0</td>
</tr>
<tr>
<td>No</td>
<td>33</td>
</tr>
</tbody>
</table>

* Two-thirds (67%) of respondents who asked for updates or copies of documents report that they received them in all instances, while one-third (33%) report that they did not receive updates or copies.

6. If the Supreme Court issued an Order or Opinion on the case(s) you referred, were you given a copy of the Order or Opinion?

<table>
<thead>
<tr>
<th>Category</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, in all instances</td>
<td>50</td>
</tr>
<tr>
<td>Yes, in some instances</td>
<td>0</td>
</tr>
<tr>
<td>No</td>
<td>50</td>
</tr>
</tbody>
</table>
7. Please indicate your overall perception of how courteous and professional Florida Bar attorneys were during any communications.

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=7)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very courteous/professional</td>
<td></td>
<td>57</td>
</tr>
<tr>
<td>Somewhat courteous/professional</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Neutral</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Somewhat discourteous/unprofessional</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Very discourteous/unprofessional</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>I did not communicate with a Florida Bar attorney</td>
<td></td>
<td>43</td>
</tr>
</tbody>
</table>

8. Please indicate your overall level of satisfaction with the amount of communications that you received from The Florida Bar.

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=7)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very satisfied</td>
<td></td>
<td>29</td>
</tr>
<tr>
<td>Somewhat satisfied</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Neutral</td>
<td></td>
<td>14</td>
</tr>
<tr>
<td>Somewhat dissatisfied</td>
<td></td>
<td>43</td>
</tr>
<tr>
<td>Very dissatisfied</td>
<td></td>
<td>14</td>
</tr>
</tbody>
</table>

* A higher percentage of respondents report that they are dissatisfied (57%) with the amount of communications received from The Florida Bar, as compared to those who report that they are satisfied (29%).

8a. If dissatisfied with the amount of communications that you received from The Florida Bar, please explain:

A total of two responses were received:

* Nothing received.

* There was extremely little communication.
9. Please indicate your overall level of satisfaction with the quality of communications that you received from The Florida Bar.

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=7)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very satisfied</td>
<td></td>
<td>29</td>
</tr>
<tr>
<td>Somewhat satisfied</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Neutral</td>
<td></td>
<td>14</td>
</tr>
<tr>
<td>Somewhat dissatisfied</td>
<td></td>
<td>43</td>
</tr>
<tr>
<td>Very dissatisfied</td>
<td></td>
<td>14</td>
</tr>
</tbody>
</table>

* A higher percentage of respondents report that they are dissatisfied (57%) with the quality of communications received from The Florida Bar, as compared to those who report that they are satisfied (29%).

9a. If dissatisfied with the quality of communications that you received from The Florida Bar, please explain:

A total of two responses were received:

* I really didn't hear much back about the case.
* Nothing received.

10. Were you satisfied with the disposition of the referred case(s)?

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=7)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, in all cases</td>
<td></td>
<td>14</td>
</tr>
<tr>
<td>Yes, in some cases</td>
<td></td>
<td>14</td>
</tr>
<tr>
<td>No</td>
<td></td>
<td>71</td>
</tr>
</tbody>
</table>

* Fourteen percent of respondents are satisfied, in all instances, with the disposition of their referred cases, while nearly three-quarters (71%) of respondents report that they are not satisfied.

10a. If dissatisfied with the disposition of the referred case(s), please explain:

A total of three responses were received:

* I wasn't advised regarding the disposition.
In only one case, on reviewing the referee's opinion, he appeared to miss the key issue which was whether the lawyer should be sanctioned for misrepresentations before the magistrate judge. However, I do not know what was presented to him so I cannot say if the problem was in the presentation of the case or the referee's understanding and application of the law, or that my own review of the magistrate's report the and recommendation was erroneous.

No one ever got back with me on one case and I don't know why no cause was found.

11. **How interested would you be in having The Florida Bar’s personnel discuss Bar procedures and the discipline system at judicial education programs?**

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=24)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very interested</td>
<td></td>
<td>13</td>
</tr>
<tr>
<td>Somewhat interested</td>
<td></td>
<td>42</td>
</tr>
<tr>
<td>Neutral</td>
<td></td>
<td>21</td>
</tr>
<tr>
<td>Somewhat uninterested</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Very uninterested</td>
<td></td>
<td>21</td>
</tr>
</tbody>
</table>

Over half (55%) of respondents would be interested in having The Florida Bar’s personnel discuss Bar procedures and the discipline system at Judicial education programs, while one-quarter (25%) report they would not be interested.

12. **The Commission is very interested in any comments that you may have about The Florida Bar’s discipline system and your experience(s) with it. Please utilize the space below to provide us with your comments.**

**A total of seven responses were received:**

* A better job needs to be done at the investigatory level. While counsel was professional and courteous, I did not feel that they were responsible in conducting the investigation.

* I have had no experience with The Florida Bar's discipline system in the past five years, so I cannot comment.

* I have not had any experience but would be very interested in learning more about it.

* I have not referred any matters to The Florida Bar but I have referred attorneys to our Grievance Committee in the Southern District of Florida. Often times it is for remedial training.
* I know that the debtors and creditors who appear before me have had bad experiences with lawyers and have uniformly expressed dissatisfaction with the way the Bar handled their complaints. This is something we need to work on. Perception is so important.

* It would be useful to have interactive programs where practitioners could learn first-hand the type of professional behavior expected and required of lawyers appearing in federal court.

* Would like to compliment the Bar’s staff for their dedication and professionalism.

13. **Within which of the following districts do you serve as a federal judge?**

<table>
<thead>
<tr>
<th>Category</th>
<th>(n=23)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Southern District</td>
<td></td>
<td>30</td>
</tr>
<tr>
<td>Middle District</td>
<td></td>
<td>30</td>
</tr>
<tr>
<td>Northern District</td>
<td></td>
<td>39</td>
</tr>
</tbody>
</table>