STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL
JAMES E. TOWERY, No. 74058
CHIEF TRIAL COUNSEL
RUSSELL G. WEINER, No. 94504
DEPUTY CHIEF TRIAL COUNSEL
NANCY J. WATSON, No. 89753
ASSISTANT CHIEF TRIAL COUNSEL
DANE C. DAUPHINE, No. 121606
SUPERVISING TRIAL COUNSEL
1149 South Hill Street
Los Angeles, California 90015-2299
Telephone: (213) 765-1293

FILED
APR 11 2011
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:	) Case No. 09-J-12252
JAMES HARVEY TIPLER, No. 80748,	) NOTICE OF DISCIPLINARY CHARGES
A Member of the State Bar	) (Bus. & Prof. Code, § 6049.1; Rules Proc. Of State Bar, rules 5.350 to 5.354)

NOTICE - FAILURE TO RESPOND!

IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:

(1) YOUR DEFAULT WILL BE ENTERED;
(2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
(3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE, AND;
(4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE. SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN ORDER RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ., RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

///

///

///

1 The State Bar of California alleges:

2 JURISDICTION

3 1. James Harvey Tipler ("Respondent") was admitted to the practice of law in the State
4 of California on June 23, 1978, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6 PROFESSIONAL MISCONDUCT IN A FOREIGN JURISDICTION

7 2. On or about December 22, 2008, the Supreme Court of the State of Florida ordered in
8 case no. SC06-1775 that Respondent be disbarred, noting that an opinion would follow. On or
9 about April 30, 2009, the Florida Supreme Court filed it Opinion finding that Respondent had
10 committed violations of 3-4.3, 4-1.2(a), 4-1.3, 4-1.4, 4-1.5(a), 4-1.7, 4-1.15, 4.1-16(d), 4-8.4(a),
11 4-8.4(b), 4-8.4(c), 4-8.4(d), 4-8.4(g)(1), 4-8.4(g)(2), 5-1.1(a), 5-1.1(b), 5-1.1(e), and 5-1.1(f) of
12 the Rules Regulating the Florida Bar and consolidated the case with two other cases concerning
13 Respondent. Thereafter, the decision of the Florida Supreme Court became final.

14 3. The Opinion of the Florida Supreme Court consolidated the case with case nos. SC03-
15 149 and SC05-1014 which concern Respondent's criminal conviction and discipline in the State
16 of Alabama, but that misconduct was previously the basis for discipline of Respondent by the
17 California Supreme Court in consolidated case nos. 03-C-02219, 03-J-02524, and 05-J-01274
18 and is not the subject of this Notice of Disciplinary Charges.

19 4. Certified copies of the Opinion filed April 30, 2009, the Order filed December 22,
20 2008, and the Report of the Referee filed January 11, 2008, are attached, as Exhibits 1, 2, and 3,
21 respectively, and incorporated by reference.

22 5. Copies of the Rules Regulating the Florida Bar found to have been violated by
23 Respondent are attached, as Exhibit 4, and incorporated by reference.

24 6. Respondent's culpability as determined by the Supreme Court of Florida would
25 warrant the imposition of discipline in California as violations of rules 3-110(A), 3-310(C)(3),
26 3-500, 3-700(A)(2), 3-700(D)(1)&(2), 4-100(A), 4-100(B)(3)&(4) and 4-200 of the Rules of
27 Professional Conduct, and sections 6068(i), 6068(m) and 6106 of the Business and Professions
28 Code.

ISSUES FOR DISCIPLINARY PROCEEDINGS

7. The attached findings and final order are conclusive evidence that Respondent is culpable of professional misconduct in this state subject only to the following issues:

A. The degree of discipline to impose;

B. Whether, as a matter of law, Respondent's culpability determined in the proceeding in the other jurisdiction would not warrant the imposition of discipline in the State of California under the laws or rules binding upon members of the State Bar at the time the member committed misconduct in such other jurisdiction; and

C. Whether the proceedings of the other jurisdiction lacked fundamental constitutional protection.

8. Respondent shall bear the burden of proof with regard to the issues set forth in subparagraphs B and C of the preceding paragraph.

NOTICE - INACTIVE ENROLLMENT!

YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.

NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: April 11, 2011 By: Dane C. Dauphine

Dane C. Dauphine
Supervising Trial Counsel

Supreme Court of Florida

COPY

No. SC03-149

THE FLORIDA BAR,
Complainant,

vs.

JAMES HARVEY TIPLER,
Respondent.

No. SC05-1014

THE FLORIDA BAR,
Complainant,

vs.

JAMES HARVEY TIPLER,
Respondent.

No. SC06-1775

THE FLORIDA BAR,
Complainant,

vs.

JAMES HARVEY TIPLER,
Respondent.

[April 30, 2009]

PER CURIAM.

We have for review referees' reports from three Bar discipline cases recommending that respondent, James Harvey Tipler, be found guilty of various acts of professional misconduct and subjected to various sanctions, including disbarment. We have jurisdiction. See art. V, § 15, Fla. Const. In an order previously entered in Florida Bar v. Tipler, No. SC06-1775 (Fla. Dec. 22, 2008), we disbarred Tipler and noted that this opinion was to follow. We now consolidate that case with Florida Bar v. Tipler, No. SC03-149, and Florida Bar v. Tipler, No. SC05-1014, for purposes of review. For the reasons expressed below, Tipler is disbarred.

FACTS

Case No. SC03-149

In Case No. SC03-149, the referee found that Tipler represented a client, an eighteen-year-old mother, in Bay County, Florida, on a charge of aggravated assault. Tipler charged his client a fee of $2,300 and entered into a fee agreement with her that allowed a "credit of $200 for each time she engaged in sex with Respondent" and a "$400 credit if she arranged for other females to have sex with him." For his misdeeds, Tipler was charged with racketeering and four counts of prostitution. He ultimately pleaded guilty to one count of solicitation of prostitution.

The Florida Bar filed a complaint against Tipler, and the matter was stayed pending the resolution of a disciplinary case in Alabama arising out of the same incident. Tipler admitted that the agreement existed and that he engaged in sex with his client and another woman in exchange for credits toward the amount the client owed Tipler in attorney fees. Tipler also admitted that his actions were morally and ethically wrong. After the disciplinary case worked its way through the three levels in the Alabama disciplinary system, the Supreme Court of Alabama suspended Tipler for fifteen months. Tipler failed to file a copy of the suspension order with this Court within thirty days of the effective date of the suspension. Nevertheless, after the matter in Alabama was completed, The Florida Bar filed an

amended complaint and moved for summary judgment. The referee granted summary judgment in favor of the Bar.

Based on the foregoing, the referee recommended that Tipler be found guilty of violating Rules Regulating the Florida Bar 3-4.3 ("The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline."); 3-4.4 (indicating that criminal misconduct is a cause for discipline); 3-7.2(l)(1) ("A member of The Florida Bar who . . . has been . . . suspended from the practice of law by a court or other authorized disciplinary agency of another state . . . shall within 30 days . . . [notify] the Supreme Court of Florida and the executive director of The Florida Bar . . . ."); 4-1.2(d) ("A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent."); 4-1.5(a) ("An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost . . . ."); 4-8.4(a) ("A lawyer shall not . . . violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another."); 4-8.4(b) ("A lawyer shall not . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a

lawyer in other respects."); 4-8.4(d) ("A lawyer shall not . . . engage in conduct . . . that is prejudicial to the administration of justice . . . ."); and 4-8.4(i) ("A lawyer shall not . . . engage in sexual conduct with a client that exploits . . . the lawyer-client relationship . . . .").

The referee found the following aggravating factors: (1) Tipler had a prior disciplinary history; (2) his motives were dishonest and selfish; (3) he exhibited a pattern of misconduct; (4) he committed multiple offenses; (5) the victims were vulnerable; and (6) he had substantial experience in the practice of law.

In mitigation, the referee found that Tipler (1) had personal and emotional problems; (2) had a physical or mental impairment or disability; (3) received only minimal penalties or sanctions for being found guilty of a misdemeanor; and (4) expressed remorse for his actions.

For Tipler's misconduct in Case No. SC03-149, the referee recommended that Tipler be suspended for eighteen months, placed on probation for two years following reinstatement, and required to contact Florida Lawyers Assistance, Inc. (FLA), within thirty days of the final judgment in this case and sign a three-year FLA rehabilitation contract under the terms and conditions recommended by FLA. The referee further recommended that Tipler be charged with the Bar's costs in the amount of $3,734.50.

Case No. SC05-1014

In Case No. SC05-1014, the referee found that in Alabama, Tipler represented a plaintiff in a medical malpractice case arising out of a patient's death. Tipler attempted to submit into evidence a videotape depicting the patient on the day before the surgery that allegedly resulted in his death. To authenticate the tape, Tipler questioned the patient's son as to whether the tape was accurate. The videotape Tipler attempted to submit was edited from the original version to delete or move scenes that would have been harmful to the plaintiff's case. Further, the patient's son had never viewed the edited tape and, thus, unknowingly gave false answers concerning the authenticity of the tape during Tipler's questioning.

Upon objection by the defense, the trial court conducted an inquiry and disallowed the entry of either the original or edited tape. Additionally, based on Tipler's answers to questions posed to him during the inquiry, the trial court held Tipler in criminal contempt after a show-cause hearing. A grand jury indicted Tipler for perjury, a first-degree felony. Tipler eventually pleaded guilty to interference with judicial proceedings, a misdemeanor.

After a successful first appeal by Tipler within the Alabama disciplinary system, the Supreme Court of Alabama ultimately determined that Tipler's conviction was a "serious crime" and reversed and remanded the case for further

proceedings. See Ala. State Bar v. Tipler, 904 So. 2d 1237 (Ala. 2004). Thereafter, Tipler was suspended for 120 days in Alabama. Tipler failed to file a copy of the suspension order with this Court within thirty days of the effective date of the Alabama suspension. Nevertheless, the Bar filed a complaint against Tipler. Tipler did not file an answer to the complaint or respond to the Bar's requests for admission. The Bar moved for summary judgment, and Tipler eventually consented to summary judgment on guilt. Accordingly, summary judgment was granted on all the factual allegations and rule violations.

In addition to his Alabama disciplinary proceedings, Tipler has disciplinary proceedings pending in California. Tipler testified before the referee that a stipulation submitted to the referee and entered into evidence was a final stipulation with the State Bar of California. In fact, the stipulation was not final. Rather, Tipler was referred to California's Alternate Discipline Program (ADP) by the disciplinary judge. The disciplinary judge noted that if Tipler was not accepted into the ADP, the stipulation would be final, subject to the approval of the California Supreme Court. At the time of the proceedings before the referee, the California case was pending before the ADP judge. Hence, there was not yet a final disposition in the California proceedings.

Based on the foregoing, the referee recommended that Tipler be found guilty of violating Rules Regulating the Florida Bar 3-4.3 ("The commission by a lawyer

of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline."); 3-4.4 (indicating that criminal misconduct is a cause for discipline); 3-7.2(l)(1) ("[A] member of The Florida Bar who . . . has been . . . suspended from the practice of law by a court or other authorized disciplinary agency of another state . . . shall within thirty days . . . [notify] the Supreme Court of Florida and the executive director of The Florida Bar . . . ."); 4-3.3(a) ("A lawyer shall not knowingly . . . make a false statement of material fact or law to a tribunal."); 4-3.4(a)-(b) (lawyer shall not unlawfully alter or conceal documents or fabricate evidence); 4-8.4(b) ("A lawyer shall not . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects."); 4-8.4(c) ("A lawyer shall not . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation . . . ."); and 4-8.4(d) ("A lawyer shall not . . . engage in conduct . . . that is prejudicial to the administration of justice . . . .").

The referee found the following aggravating factors: (1) Tipler had a prior disciplinary history; (2) his motives were dishonest and selfish; (3) he had substantial experience in the practice of law; (4) he exhibited a pattern of misconduct; (5) he committed multiple offenses; and (6) he submitted false

evidence during the disciplinary process. The referee found the following mitigating factors: (1) minimal penalties or sanctions were imposed on Tipler for being found in criminal contempt and being convicted of a misdemeanor conviction; and (2) Tipler expressed remorse for his conduct.

For Tipler's misconduct in Case No. SC05-1014, the referee recommended that the Court suspend Tipler for three years and that he be taxed the Bar's costs in the amount of $2,212.32.

Case No. SC06-1775

On August 31, 2006, the Bar filed its complaint against Tipler in Case No. SC06-1775. The Bar mailed its complaint by certified mail, return receipt requested, to Tipler at his record Bar address; the complaint was returned as unclaimed, prompting the Bar to mail Tipler a second copy of the complaint by regular mail. The second copy was not returned.

Tipler failed to answer the complaint. After a referee was appointed, Tipler filed a motion to disqualify the referee on November 21, 2006, which was denied on November 29, 2006. The Bar filed a notice of application for default on February 8, 2007, and a motion for default on March 7, 2007. The referee entered a default against Tipler on March 12, 2007. After Tipler unsuccessfully moved to overturn the default, a final sanction hearing was held on September 26, 2007. At the hearing, Tipler did not present any evidence in mitigation.

In Case No. SC06-1775, the referee found seven instances of misconduct, wherein Tipler misused over $57,000 in funds received from various clients and failed to diligently prosecute the clients' cases or even communicate with the clients. The case types ranged from dissolution of marriage to real estate to copyright infringement. In addition, Tipler secured fees based on intentional misrepresentation and fraud. In most of the cases, Tipler charged an excessive fee, failed to comply with the Bar rules governing trust accounts, and failed to protect the clients' interests by refunding unearned fees. Further, Tipler committed conversion and criminal theft in many of the instances. In one instance, Tipler labored under a conflict of interest. In some instances, Tipler failed to respond to inquiry letters sent by the Bar to his record address.

For example, in one of the charged cases, two clients hired Tipler to represent them in filing two separate personal injury claims for two different accidents. Tipler filed two separate personal injury complaints on behalf of the clients. Tipler failed to provide a copy of the signed contingency fee agreement and statement of clients' rights to the clients in either lawsuit. After discovery, both lawsuits proceeded to a settlement in which two checks for $4,750 were issued, payable to the clients and Tipler.

The clients came to Tipler's office to sign the checks; Tipler told them he would provide them with copies of the checks and the written closing statements

the next business day. The settlement funds were paid out after the checks were endorsed. The checks were cashed by Tipler, but the funds were not deposited into Tipler's trust account.

There were outstanding medical bills associated with the accidents totaling approximately $2,500. Tipler paid the clients what he alleged to be the balance of the settlement funds after his fees and the medical bills were paid. However, Tipler paid none of the medical bills. From November 2004 through March 2005, the clients attempted to communicate on numerous occasions with Tipler, who told them that he would provide them with a copy of the closing statements and also copies of the checks that he had mailed to the medical providers to verify payment of the bills. Despite numerous requests from his clients, however, Tipler did not provide the clients with a written closing statement for either of the personal injury cases or copies of the checks for the alleged medical payments. Due to Tipler's failure to pay a $1,924 hospital bill, one of the clients was sued and a judgment entered against him for $2,481.15 in February 2005. Although a large sum of money was not involved, this particular instance demonstrates Tipler's complete lack of probity.

Additionally, to exacerbate matters, Case No. SC06-1775 also includes an instance in which Tipler attempted to defraud his creditors with respect to a $487,714.81 judgment before a federal bankruptcy court. The bankruptcy court

specifically found that Tipler's actions indicated that he intended to hinder, delay, or defraud his creditors, and that his failure to file income tax returns for four years, as well as his failure to maintain and preserve adequate records, made it impossible for the creditors to ascertain Tipler's true financial condition. In particular, the bankruptcy court found that Tipler "made numerous false and conflicting statements under oath" and "knowingly and fraudulently made a false oath or account in connection with his bankruptcy case." In re Tipler, 360 B.R. 333, 354-55 (Bankr. N.D. Fla. 2005).

For the foregoing reasons, the referee recommended that Tipler be found guilty of violating Rules Regulating the Florida Bar 3-4.3 ("The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.") (two counts); 4-1.2(a) ("[A] lawyer shall abide by a client's decisions concerning the objectives of representation . . . .") (two counts); 4-1.3 ("A lawyer shall act with reasonable diligence and promptness in representing a client.") (six counts); 4-1.4 ("A lawyer shall . . . keep [a] client reasonably informed about the status of the matter [and] promptly comply with reasonable requests for information.") (five counts); 4-1.5(a) ("An attorney shall not enter into an agreement for, charge, or

collect an illegal, prohibited, or clearly excessive fee or cost . . . .") (six counts); 4-1.7 (prohibiting representation of adverse interests); 4-1.15 ("A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts.") (two counts); 4-1.16(d) ("Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest . . . .") (six counts); 4-8.4(a) ("A lawyer shall not . . . violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another."); 4-8.4(b) ("A lawyer shall not . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.") (three counts); 4-8.4(c) ("A lawyer shall not . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation . . . .") (three counts); 4-8.4(d) ("A lawyer shall not . . . engage in conduct . . . that is prejudicial to the administration of justice . . . .") (four counts); 4-8.4(g)(1) ("A lawyer shall not . . . fail to respond in writing to any . . . initial written investigative inquiry by bar counsel [or a disciplinary agency].") (six counts); 4-8.4(g)(2) ("A lawyer shall not . . . fail to respond [to] any follow-up written investigative inquiries by bar counsel [or a disciplinary agency].") (two counts); 5-1.1(a) ("A lawyer shall hold in trust funds and property of clients or third persons that are in a lawyer's possession in connection with representation.") (two counts); 5-1.1(b) ("Money or other property entrusted to an attorney for a specific purpose, including advances

for fees, costs, and expenses, is held in trust and must be applied only to that purpose.") (four counts); 5-1.1(e) ("[A] lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.") (three counts); and 5-1.1(f) (requiring a lawyer to treat disputed funds as trust property) (two counts).

The referee found the following aggravating factors: (1) Tipler had a prior disciplinary history; (2) his motives were dishonest and selfish; (3) he exhibited a pattern of misconduct; (4) he committed multiple offenses; (5) his victims were vulnerable; (6) he had substantial experience in the practice of law; and (7) he was indifferent to making restitution. The referee found no mitigating factors.

For his misconduct in Case No. SC06-1775, the referee recommended that Tipler be disbarred, ordered to pay restitution, and taxed with the Bar's costs. As stated above, we have already issued an order approving in its entirety the referee's report in Case No. SC06-1775. See Fla. Bar v. Tipler, 999 So. 2d 646 (Fla. 2008) (table).

ANALYSIS

In all three cases, Tipler petitioned for review of the referees' reports, challenging their findings and recommendations on due process grounds; he also challenged the referees' recommendations as to discipline.

Tipler primarily argues that he was denied due process in all three of the proceedings against him. None of his due process arguments have merit. With regard to Case No. SC03-149, Tipler argues that the findings in the Alabama disciplinary system should not be considered conclusive proof of guilt because the Alabama proceedings were defective in that he was not allowed to call witnesses, and since the incidents transpired in Florida, the disciplinary proceedings should have been held in Florida.[1] Accordingly, Tipler argues that the referee should not have granted summary judgment in Case No. SC03-149.

Rule 3-4.6(a) provides in pertinent part:[2]

---

1. With regard to Case Nos. SC03-149 and SC05-1014, Tipler also argues that the referee should have been disqualified and alleges that there is a motion to disqualify pending before the referee. In the motion, Tipler argues that the referee should be disqualified because he failed to consider as mitigating evidence the treatment that Tipler underwent as part of California's ADP. Tipler complains that the referee instead considered inadmissible evidence and found in aggravation that Tipler misrepresented the finality of the California stipulation as to discipline. On review, Tipler also directly challenges the referee's findings with regard to the California stipulation.

However, the motion to disqualify, which the referee denied as moot, was filed two months after the referee issued his reports in those cases and was therefore untimely. See Fischer v. Knuck, 497 So. 2d 240, 243 (Fla. 1986). Additionally, as there is competent, substantial evidence in the record to support the referee's findings with respect to the California disciplinary proceedings, we approve those findings without further comment.

2. Rule 3-4.6 has been amended since Case No. SC03-149 was initiated. See In re Amendments to Rules Regulating Fla. Bar & Fla. Rules of Jud. Admin., 907 So. 2d 1138 (Fla. 2005). Quoted here is the entire text of the rule as it existed at the time Case No. SC03-149 was initiated.

> A final adjudication in a disciplinary proceeding by a court or other authorized disciplinary agency of another jurisdiction, state or federal, that an attorney licensed to practice in that jurisdiction is guilty of misconduct justifying disciplinary action shall be considered as conclusive proof of such misconduct in a disciplinary proceeding under this rule.

Based on the rule, the Florida referee properly relied on the records of the Alabama disciplinary proceedings. See Fla. Bar v. Wilkes, 179 So. 2d 193 (Fla. 1965); see also Fla. Bar v. Kandekore, 766 So. 2d 1004, 1007 (Fla. 2000). However, as stated in Wilkes, there is a limited exception to the rule:

> [R]ight and justice require that when the accused attorney shows that the proceeding in the foreign state was so deficient or lacking in notice or opportunity to be heard, that there was such a paucity of proof, or that there was some other grave reason which would make it unjust to accept the foreign judgment as conclusive proof of guilt of the misconduct involved Florida can elect not to be bound thereby. . . . [T]he burden of showing why a foreign judgment should not operate as conclusive proof of guilt in a Florida disciplinary proceeding is on the accused attorney.

179 So. 2d at 198 (emphasis added). Tipler's claim that the Alabama proceedings were deficient in due process fails because (1) he was afforded a full opportunity to conduct discovery; (2) he was afforded a full opportunity to confront witnesses; and (3) he was represented by competent counsel. Indeed, the very fact that Tipler was afforded two appeals to contest his discipline in Alabama negates his claim that he was denied due process there. Further, Tipler's argument that the case should have been litigated in Florida is disingenuous. Tipler failed to object to any of six motions for extension of time to file the referee's report filed by Bar counsel

pending the resolution of the Alabama proceedings. Moreover, the record of the Alabama proceedings before the referee supported the Bar's position. Finally, Tipler failed to present any documents to support his position. The referee correctly granted summary judgment and used the Alabama findings to support a conclusion that Tipler is guilty of the rule violations charged. See Fla. Bar v. Mogil, 763 So. 2d 303, 307 (Fla. 2000) ("It is not enough for the [party opposing summary judgment] merely to assert that an issue does exist." (emphasis omitted) (quoting Landers v. Milton, 370 So. 2d 368, 370 (Fla. 1979))).[3]

With regard to Cases No. SC05-1014 and SC06-1775, Tipler argues that he received inadequate notice and opportunity to be heard, in violation of his right to due process. Due process is satisfied in Bar disciplinary proceedings where the attorney is served with notice of the Bar's charges and is afforded an opportunity in the disciplinary hearing to be heard and defend himself. Fla. Bar v. Committe, 916 So. 2d 741, 745 (Fla. 2005). Further, this Court has defined due process in this regard as follows:

> [D]ue process requires the giving of reasonable notice and such shall be effective by the service of the complaint upon the respondent by mailing a copy thereof by registered or certified mail return receipt requested to the last-known address of the respondent according to the records of The Florida Bar or such later address as may be known to the person effecting the service.

---

3. Similarly, the referee correctly found that the Alabama disciplinary findings constituted conclusive proof of guilt in Case No. SC05-1014.

R. Regulating Fla. Bar 3-7.11(c).

As to Case No. SC05-1014, Tipler argues that although his counsel for Case No. SC03-149 was served with papers for Case No. SC05-1014, she was not his counsel for the latter case, Tipler was never personally served, and he therefore was denied an opportunity to answer the charges against him. Tipler's argument is disingenuous. Five days before the scheduled hearing on summary judgment, Tipler's counsel filed a "Motion for Order Allowing Withdrawal of Counsel" in which she stated that she did not intend to make an appearance in the matter. A letter attached to the motion to withdraw indicates that months earlier, Tipler's counsel informed Bar counsel that she had forwarded the documents to Tipler and requested that he accept service. Hence, Tipler actually received the documents filed in the case. Additionally, Tipler faxed a letter to the referee stating that his counsel was representing him in various Bar matters and was withdrawing from representation in Case No. SC05-1014. It is impossible for counsel to withdraw from representation in a matter in which she did not represent Tipler. Further, in the same letter, Tipler consented to the entry of a summary judgment in that case. Tipler was represented by counsel, who was served with copies of all filings, actually received notice, had an opportunity to respond, and, in fact, consented to summary judgment. The process afforded him in Case No. SC05-1014 was sufficient.

As to Case No. SC06-1775, Tipler argues that the referee should not have granted default judgment because (1) Tipler was not properly served with a copy of the Bar's formal complaint; and (2) justice favors deciding issues on the merits rather than by default. Tipler first argues that the practice of law is akin to a property right and comes with the same due process protections applicable to deprivation of property claims. Tipler compares the "right" to practice law to a parent's fundamental right to raise a child. Tipler is incorrect. The Bar rules, as adopted by this Court, clearly state that "[a] license to practice law confers no vested right to the holder thereof but is a conditional privilege that is revocable for cause." R. Regulating Fla. Bar 3-1.1.

The Bar mailed its complaint by certified mail, return receipt requested, to Tipler at his record Bar address. This satisfied due process. Although not required to do so, the Bar further satisfied due process by mailing another copy of the complaint to Tipler after the first one was returned as unclaimed.

Tipler misperceives our holding in Florida Bar v. Porter, 684 So. 2d 810 (Fla. 1996). He argues that pursuant to Porter, he was entitled as a matter of due process to an evidentiary hearing to determine whether he knowingly ignored his mail. However, in Porter, we did not state that an evidentiary hearing was ever held. In fact, the opinion recites facts remarkably similar to the case at bar:

> The Bar then filed a formal complaint against Porter and sent this complaint by certified mail to Porter's record Bar address on

> January 30, 1996. After three attempts to deliver this complaint to Porter, the post office sent the complaint back to the Bar on February 19, 1996. On February 22, 1996, Porter spoke with counsel from the Bar, who informed him that a complaint was coming in the mail. The Bar received the unclaimed complaint on February 27, 1996. Thereafter, the Bar sent Porter a notice of default by certified mail, and he again failed to retrieve the mailing. Based on these facts, the referee granted the Bar's motion for default and scheduled a hearing limited solely to the issue of appropriate sanctions for the misconduct. After a hearing which Porter attended, the referee found Porter guilty of violating [various Bar rules].

Id. at 812. Based on these facts, we concluded that we could not "endorse Porter's knowing decision to ignore his mail." Id. at 813 (citing Fla. Bar v. Santiago, 521 So. 2d 1111 (Fla. 1988)). Porter does not support Tipler's argument that he is entitled to an evidentiary hearing to determine whether his conduct was knowingly done.

Tipler attempts to distinguish Porter by asserting that he did not know that the Bar mailed the complaint. Once again, Tipler is being disingenuous. At oral argument, Tipler stated that he was unable to retrieve the Bar's complaint from his record Bar address because he was under treatment and doing business in California at the time. But he admitted that he did not change his record address or notify Bar counsel of his temporary change of address. Further, Tipler knew that the complaint had been filed. On November 21, 2006, Tipler moved to disqualify the referee in this case, and it was not until February 8, 2007, that the Bar filed its notice of application for default; the Bar filed its motion for default a month later

on March 7, 2008. Accordingly, it appears that in addition to being properly served with the complaint (and thus being provided with due process), Tipler was dilatory in his actions to prevent the entry of a default judgment.

Tipler's final due process argument with regard to Case No. SC06-1775 is that justice favors hearing cases on the merits, especially in cases where disbarment is a possible disciplinary sanction. It is true that justice generally favors deciding issues on the merits rather than by default. See generally Asset Mgmt. Consultants of Va., Inc. v. City of Tamarac, 913 So. 2d 1179 (Fla. 4th DCA 2005); Allied Roofing Indus., Inc. v. Venegas, 862 So. 2d 6 (Fla. 3d DCA 2003). However, as noted above, in Porter we upheld a referee's decision to enter default judgment and disbarred a lawyer based on facts strikingly similar to those in the case at bar. We stated: "By this default, the allegations in the Bar's complaint were deemed admitted, and the default thereby provided the referee with competent, substantial evidence upon which to base the findings. Porter is precluded from now complaining about any factual findings deemed admitted." Porter, 684 So. 2d at 813 (citations omitted); see also Fla. Bar v. Shoureas, 892 So. 2d 1002 (Fla. 2004) (approving default judgment based on Porter and imposing three-year suspension); Fla. Bar v. Nunes, 734 So. 2d 393 (Fla. 1999) (same). Hence, we did not see fit to vacate the default judgment entered in Porter even though disbarment was a possible sanction, which we actually imposed. Likewise,

we see no reason to vacate the default judgment entered in Case No. SC06-1775. Instead, we approve the referee's decision.

Finally, Tipler challenges the referees' recommendations as to discipline. Although Tipler presents some inappropriate mitigation arguments, Tipler provides little analysis as to why he should not be disbarred. First, Tipler argues that the sexual relationship in Case No. SC03-149 was preexisting[4] and consensual, distinguishing it from cases where harsh sanctions were imposed for coercive sexual relationships with clients. As to Case No. SC05-1014, Tipler argues that the recommended discipline is inconsistent with the discipline imposed in Alabama and California for the same misconduct and that because lawyers are in court more often and are therefore more likely to be convicted for contempt, they should not be disciplined harshly for such a conviction. As to Case No. SC06-1775, Tipler argues that disbarment is unfair in light of the default judgment.

In reviewing a referee's recommended discipline, the Court's scope of review is broader than that afforded to the referee's findings of fact because, ultimately, it is the Court's responsibility to order the appropriate sanction. See Fla. Bar v. Anderson, 538 So. 2d 852, 854 (Fla. 1989); see also art. V, § 15, Fla.

---

4. There is no indication in the record that the sexual relationship was in fact preexisting. Tipler states that he would have established this fact had summary judgment not been entered against him, but he failed to raise the issue in his affidavit in opposition to summary judgment. In any event, Tipler is guilty of multiple other rule violations in Case No. SC03-149.

Const. However, generally speaking, the Court will not second-guess the referee's recommended discipline as long as it has a reasonable basis in existing caselaw and the Florida Standards for Imposing Lawyer Sanctions. See Fla. Bar v. Temmer, 753 So. 2d 555, 558 (Fla. 1999). "Further, this Court views cumulative misconduct more seriously than an isolated instance of misconduct." Fla. Bar v. Carlon, 820 So. 2d 891, 899 (Fla. 2002) (citing Fla. Bar v. Vining, 761 So. 2d 1044 (Fla. 2000)). In the reciprocal discipline cases, we are free to impose a sanction greater than that imposed in other states. See Fla. Bar v. Hagendorf, 921 So. 2d 611, 614 (Fla. 2006).

Considered in conjunction, Tipler's violations in Cases No. SC03-149 and SC05-1014 warrant disbarment. In Florida Bar v. Scott, 810 So. 2d 893 (Fla. 2002), we considered two cases involving the same lawyer. In the first case, Scott coerced a vulnerable, unwilling female client faced with the termination of her parental rights to engage in sexual relations in exchange for a reduction in attorney fees. Id. at 900. In the second case, Scott was found to have been held in criminal contempt for failing to attend the first day of a criminal trial and was dishonest in stating the reason for his inability to attend. Id. at 896. Other than an admonishment for minor misconduct, Scott had no prior discipline. Id. at 900. Nonetheless, we held that disbarment was the appropriate sanction.

Although we specifically noted that the sexual coercion present in Scott—but not immediately apparent in the instant cases—was a determining factor, Scott provides useful guidance here. Like the respondent in Scott, Tipler, in Case No. SC03-149, engaged in a sexual relationship with a vulnerable client. In addition, Tipler was convicted of solicitation of prostitution. Further, in contrast to Scott, Tipler has not just one additional pending case, but two—Cases No. SC05-1014 and SC06-1775.[5]

In Case No. SC05-1014, Tipler essentially manufactured evidence and elicited false testimony from an innocent witness in an attempt to authenticate that evidence. For his misconduct, Tipler was held in criminal contempt and pleaded guilty to a misdemeanor charge of interference with judicial proceedings, which the Alabama Supreme Court held to be a "serious crime." Additionally, in the proceedings before the referee, Tipler misrepresented the status of his disciplinary proceedings in California. Moreover, Tipler is currently suspended from the practice of law in Florida for misconduct in earlier proceedings and has in the past received two public reprimands and an admonishment.

5. The Court is also currently awaiting referee reports in an additional three disciplinary cases pending against Tipler. See Fla. Bar v. Tipler, No. SC07-1752 (Fla. filed Sep. 14, 2007); Fla. Bar v. Tipler, No. SC07-915 (Fla. filed May 17, 2007); Fla. Bar v. Tipler, No. SC06-2318 (Fla. filed Nov. 27, 2006).

In Florida Bar v. Klausner, 721 So. 2d 720, 721 (Fla. 1998), we reiterated that lawyers who knowingly and deliberately seek to corrupt the legal process will be excluded from the process. In Klausner, an inexperienced and remorseful attorney with no prior disciplinary history received a three-year suspension for submitting forged stipulations and misrepresenting the authenticity of the documents. Id. Additionally, although the attorney was criminally charged with felonies and misdemeanors, he was only adjudicated guilty of the misdemeanors. Id. Unlike the situation in Klausner, where we heavily considered the attorney's inexperience and lack of a prior disciplinary history, Tipler, in the present cases, has substantial experience in the practice of law and an extensive disciplinary history in three states.

We have already determined that, standing alone, Tipler's misconduct in Case No. SC06-1775, which involved multiple misuses of client funds, warrants disbarment. We have recognized that the overwhelming majority of cases involving the misuse of client funds have resulted in disbarment. See Fla. Bar v. Valentine-Miller, 974 So. 2d 333, 338 (Fla. 2008) ("There is never a valid reason for taking client funds held in trust or for completely abandoning clients."). Case No. SC06-1775 involves seven instances of misuse of an aggregate of $57,680.44 in client funds and an instance in which Tipler attempted to defraud his creditors in the amount of $487,714.81 by misrepresenting facts to a federal bankruptcy court.

Further, the fact that a default was entered against Tipler does not mitigate the discipline that should be imposed. As pointed out above, in Porter the Court disbarred an attorney despite the fact that the recommended discipline was based on a default judgment. Unlike the present case, however, the lawyer in Porter engaged in just one instance of misuse of client funds. In Case No. SC06-1775, Tipler stole money from seven clients and perpetrated a fraud on a federal court. Clearly, this type of misconduct warrants disbarment.

Tipler has broken numerous Bar rules. He satisfied his own sexual appetite with a client as part of a sex-for-fees arrangement. He altered evidence and caused a witness to unknowingly give false testimony. He has charged his clients excessive fees and stolen their money. He has failed to maintain a trust account. He has broken public confidence in the profession of the practice of law by neglecting his clients and failing to prosecute their cases. He has labored under a conflict of interest. He has prejudiced the administration of justice by misrepresenting facts to multiple courts. And, throughout the disciplinary process in these cases, he has been dilatory, deceitful, and evasive. Tipler has thus engaged in an ongoing pattern of egregious misconduct. Although we question whether Tipler is truly amenable to rehabilitation, we take into account the mitigating factors found by the referee in Case No. SC03-149 and choose not to permanently disbar Tipler at this time. See Fla. Bar v. Bailey, 803 So. 2d 683, 695

n.4 (Fla. 2001) (declining to impose permanent disbarment). Based on the foregoing, there is no appropriate sanction for Tipler in these cases other than disbarment.

CONCLUSION

James Harvey Tipler is disbarred, effective nunc pro tunc February 23, 2006.

In addition to the award of restitution and costs in our prior order in Case No. SC06-1775, judgment in Cases No. SC03-149 and SC05-1014 is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from James Harvey Tipler, in the amount of $5,946.82, for which sum let execution issue.

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, and POLSTON, JJ., concur.
LABARGA and PERRY, JJ., did not participate.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS DISBARMENT.

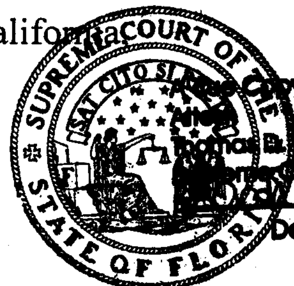
Three Cases Consolidated:
Original Proceeding – The Florida Bar

John F. Harkness, Jr., Executive Director, Kenneth L. Marvin, Director of Lawyer Regulation, and Olivia Paiva Klein, Bar Counsel, The Florida Bar, Tallahassee, Florida,

for Complainant

James Harvey Tipler, pro se, Beverly Hills, Califo

for Respondent



Supreme Court of Florida

MONDAY, DECEMBER 22, 2008

CASE NO.: SC06-1775
Lower Tribunal No(s).: 2004-01,318(1B),
2005-00,311(1B),
2005-00,457(1B),
2005-00,481(1B),
2005-01,037(1B),
2006-00,301(1B),
2006-00,429(1B),
2006-00,591(1B)

THE FLORIDA BAR vs. JAMES HARVEY TIPLER

Complainant(s) Respondent(s)

The report of the referee is approved and respondent is disbarred, effective nunc pro tunc, February 23, 2006.

Respondent shall pay restitution in the amount of $19,000.00 to Carol Stout, in the amount of $20,000.00, sending the money to Robert Lee Mudd, to Kid Songs for You, LLC, in the amount of $4,000.00 to Marion Schlachter, in the amount of $4,250.00 to Dana Keeney, in the amount of $2,933.44 plus interest at 7% on the outstanding judgment against Ronnie Terry to Stokes & Clinton, P.A., in the amount of $470.00 to Okaloosa County EMS, in the amount of $482.00 to Dr. Marcene F. Kreifels, in the amount of $45.00 to Johnson Chiropractic Clinic, in the amount of $2,250.00 to Bob Delaney, and in the amount of $4,250.00 to Sharon Santisteven, under the terms and conditions set forth in the report of referee.

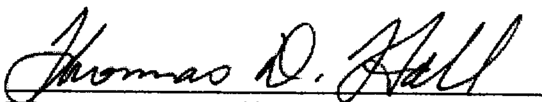
Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from James Harvey Tipler in the amount of $8,576.97, for which sum let execution issue.

Opinion to follow.

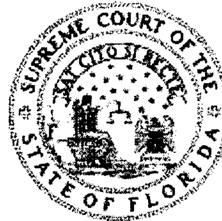
Not final until time expires to file motion for rehearing, and if filed, determined. <u>The filing of a motion for rehearing shall not alter the effective date of this disbarment</u>.

QUINCE, C.J., and WELLS, ANSTEAD, PARIENTE, LEWIS, CANADY, and POLSTON, JJ., concur.

A True Copy
Test:

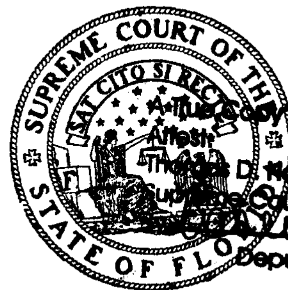


Thomas D. Hall
Clerk, Supreme Court



cic
Served:

HON. JAMES KEVIN GROVER, JUDGE
KENNETH LAWRENCE MARVIN
OLIVIA PAIVA KLEIN
JAMES HARVEY TIPLER



IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
THOMAS D. HALL
2009 JAN 11 P 1:53
CLERK, SUPREME COURT

THE FLORIDA BAR,

Complainant,

v.

Case No. SC06-1775

TFB File Nos.
2004-01,318(1B), 2005-00,311(1B)
2005-00,457(1B), 2005-00,481(1B)
2005-01,037(1B), 2006-00,301(1B)
2006-00,429(1B), 2006-00,591(1B)

JAMES HARVEY TIPLER,

Respondent.
_______________________________/

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to R. Regulating Fla. Bar 3-7.6, the following proceedings occurred:

On August 31, 2006, The Florida Bar filed its Complaint against Respondent in these proceedings. After a referee was appointed on September 19, 2006, Respondent filed a Motion to Disqualify on November 21, 2006, which was denied on November 29, 2006. The Florida Bar filed a Notice of Application for Default on February 8, 2007, and a Motion for Default on March 7, 2007. The Referee entered a Default

against Respondent on March 12, 2007, and a final penalty hearing was scheduled for April 18, 2007.

Respondent filed a Motion from Relief from Default on March 21, 2007. The Florida Bar submitted an Amended Notice of Final Penalty Hearing setting the final penalty hearing for June 29, 2007. On April 30, 2007, Respondent filed a Corrected Motion to Disqualify, which was denied on May 7, 2007.

The Florida Bar served Respondent with a Request for Admissions, a Request for Production of Documents and a First Set of Interrogatories on May 9, 2007, in reference to the penalty hearing. Respondent filed a Motion for Rehearing on his Motion to Disqualify on May 15, 2007, which the Referee denied on May 29, 2007. The Florida Bar filed its Objection to Respondent's Motion for Relief from Default on May 18, 2007.

On June 5, 2007, Respondent submitted a third Motion to Disqualify to which The Florida Bar filed its Reply on June 11, 2007. On June 11, 2007, Respondent also filed his Response to The Florida Bar's Request for Admissions, but failed to respond to any other discovery requests.

After a second Referee was appointed to this case, The Florida Bar set down the final penalty hearing for September 29, 2007. Respondent filed a Notice of Hearing on Motion to Overturn Default on September 4, 2007. Respondent subsequently filed on September 17, 2007, a Motion for Continuance and Motion for Mediation as well as a

Notice of Hearing on these two motions and his default motion. After the hearing on September 19, 2007, the Referee denied Respondent's Motion to Overturn Default, reserving a final decision on Respondent's Motion for Continuance and for Mediation, as well as The Florida Bar's Motion in Limine, until the final hearing date. On September 26, 2007, a final penalty hearing was held. At the hearing, Respondent did not present any mitigation evidence, and the motions became moot.

All of the aforementioned pleadings, responses thereto, transcripts, affidavits, exhibits in evidence, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida, and the Rules Regulating the Florida Bar.

B. Narrative Summary Of Case.

Based on the allegations in the Florida Bar's Complaint that were deemed admitted pursuant to the Order Granting the Florida Bar's Motion for Default, I would make the following findings of fact:

As to TFB File No. 2004-01,318(1B)-Carol K. Stout

1. On or about August 1, 2002, Respondent was hired by Carol Stout to represent her on a first offense DUI case.

2. Respondent orally represented to Ms. Stout that his attorney's fee was $5,000 which she paid in full via cashier's check dated August 7, 2002.

3. In September 2002, Respondent advised his client that she needed to immediately overnight an additional $10,000 to him to hire experts to assist him in the defense of her DUI charge.

4. On September 25, 2002, Ms. Stout sent a cashier's check for costs, in the amount of $10,000, to Respondent for the specific purpose of paying experts to attack the Intoxilizer machine results in her DUI case.

5. Respondent met with Ms. Stout in October 2002, and informed her that he needed another $10,000 in costs for the specific purpose of posting a cash bond so that he could have the Intoxilizer machine inspected by experts.

6. Respondent assured Ms. Stout that the $10,000 would be refunded after the inspection was completed.

7. Relying on his assurances that the $10,000 cash bond would be refunded, Ms. Stout gave Respondent a personal check for $10,000 on October 18, 2002.

8. After October 2002, despite numerous attempts by Ms. Stout and her Tennessee lawyer, Charles C. Drennon III, Esq., Respondent failed to communicate with his client or her attorney to keep her informed on the status of her case.

9. On February 10, 2003, Mr. Drennon wrote to Respondent requesting the return of the cash bond to Ms. Stout.

10. On February 13, 2003, Respondent sent a letter via facsimile to Mr. Drennon, indicating that he was going to meet with an expert witness to discuss the case, and requested another $10,000 for additional expert fees from Ms. Stout.

11. On February 14, 2003, Mr. Drennon sent an email to Respondent advising him not to engage an expert witness in Ms. Stout's DUI case.

12. Respondent filed a Motion to Inspect the Intoxilizer Machine on February 14, 2003, and, after a hearing on February 18, 2003, it was denied by the court.

13. On February 27, 2003, Mr. Drennon, sent a letter to Respondent via facsimile advising that Ms. Stout had decided to terminate Respondent's legal services, requesting again the refund of the $10,000 cash bond, and the balance of the $15,000 attributable to unearned fees and unexpended costs.

14. When Respondent failed to return the cash bond or the balance of the unearned fees and unexpended costs to Ms. Stout, Mr. Drennon sent a second letter dated May 1, 2003, requesting a reply by May 5, 2003.

15. In a letter dated May 1, 2003, to Mr. Drennon, Respondent claimed that he had used the $10,000 for the cash bond to pay expert fees, but, to date, has provided no documentation to The Florida Bar to substantiate his claim.

16. On June 30, 2003, Ms. Stout appeared in court with another attorney who was paid $2,500 to try her DUI case, and who was successful in having her first offense DUI charges dismissed.

17. The Florida Bar's auditor conducted an audit of Respondent's trust account for the period November 1, 1999, through December 31, 2003.

18. The Florida Bar's auditor concluded that the $10,000 for the expert fees and the $10,000 for the cash bond paid by Ms. Stout were trust funds and should have been deposited into Respondent's trust account.

19. After examining the bank statements and other financial documents presented by Respondent, The Florida Bar's auditor found no deposits into Respondent's trust account from September 2002 through December 2003 on behalf of Ms. Stout.

20. Respondent failed to deposit the $10,000 in costs for the expert fees and the $10,000 in costs for the cash bond into his trust account.

21. Contrary to the representations he made to his client, Respondent failed to use the $10,000 for the specific purpose of posting a cash bond relating to the Intoxilizer machine.

22. Further, documentation provided to The Florida Bar by Respondent indicated that only $1,000 of the $10,000 in costs was paid by Respondent to an expert witness for his review of Ms. Stout's case.

23. If, as Respondent claimed in his response to The Florida Bar, the $25,000 paid by Ms. Stout was for his attorney fees, then Respondent charged and collected a clearly excessive fee, because the fee for a first offense DUI exceeded a reasonable fee for services provided to such a degree as to constitute clear overreaching or an unconscionable demand.

24. Respondent also charged and collected a clearly excessive fee because the fee was sought and secured by means of intentional misrepresentation or fraud upon his client.

25. Respondent had not represented Ms. Stout in the past, and failed to communicate to her his total fee before or within a reasonable time after commencing his legal representation.

26. Respondent did not protect his client's interests by failing to return any unearned fees and unexpended costs, and to promptly turn over her file to substitute counsel.

27. Respondent's failure to account for and deliver over the unexpended costs and unearned fees to Ms. Stout is a conversion.

28. By converting Ms. Stout's costs and unearned fees to his own benefit and use, Respondent knew, or should have known, that he engaged in criminal activity, namely theft, in violation of § 814.014(1), Fla. Stat.

29. Respondent failed to apply the monies to the specific purposes

for which Ms. Stout entrusted the funds to him.

30. Subsequent to February 10, 2003, despite numerous demands by Mr. Drennon for the return of Ms. Stout's costs and unearned fees, Respondent failed to promptly render an accounting and to promptly deliver over Ms. Stout's funds to which she was entitled.

31. To date, Respondent has failed to refund the $10,000 cash bond, the unexpended costs, and the unearned fees paid by Ms. Stout.

32. Respondent failed to diligently pursue his client's DUI case as reflected by the court docket sheet.

33. Respondent failed to respond to The Florida Bar's inquiry letter dated May 13, 2004, and mailed to his record Bar address of 4460 Legendary Drive, Suite 190, Destin, FL 32541.

As to TFB File No. 2005-00,311(1B)-Scott E. Schutzman, Esq.

34. Respondent was hired in November 2002 by Robert Ogden Mudd and Charles Lawless who paid him an initial retainer of $3,000 to represent them in a copyright infringement dispute against Charles and June Sublett.

35. Respondent negotiated a settlement of the copyright dispute which called for an initial good faith payment of $20,000 to be held in trust by Respondent until the settlement agreement was finalized.

36. On December 16, 2002, Respondent sent a letter to his clients

confirming their agreement that, out of the $20,000 payment, he would receive one-half to be credited against hours worked on the litigation, and receive fifteen per cent of gross revenues from the settlement agreement with the Subletts.

37. Respondent received from the Subletts three checks in the amounts of $10,000, $5,000, and $5,000, delivered to him on December 18, 2002, December 23, 2002, and December 31, 2002, respectively.

38. Respondent failed to inform his clients, however, that he had received and deposited the entire $20,000 escrow payment in his personal bank account by the end of December 2002.

39. Respondent engaged in further negotiations on behalf of his clients in January and February 2003, informing Mr. Mudd in an email dated February 18, 2003, that a final agreement was forthcoming.

40. On February 20, 2003, opposing counsel sent a draft of a Memorandum of Agreement stipulating to a settlement for the $20,000 payment that had been delivered to Respondent in December 2002, and a percentage of future royalty payments. The terms of the Memorandum provided that the $20,000 payment would become non-refundable upon execution of a definitive agreement, and, if no agreement was reached, then the $20,000 was to be refunded to the Subletts. The Memorandum had an expiration date of March 14, 2003.

41. On March 10, 2003, Respondent sent a counteroffer to the

Subletts' counsel that was also faxed to his client, Mr. Mudd. In this letter, Respondent admitted that the Subletts had previously paid to him the $20,000 escrow payment per the original settlement agreement.

42. On March 17, 2003, the Subletts' counsel rejected Respondent's counteroffer, cited terms of a new proposal, and demanded the return of the $20,000 paid to Respondent in escrow if no release was executed by March 28, 2003, by his clients.

43. Respondent failed to forward a copy of the March 17, 2003, letter with the new counteroffer to his clients.

44. After March 10, 2003, Respondent abandoned his clients' legal case and did not engage in any further settlement negotiations.

45. Mr. Mudd attempted to contact Respondent on numerous occasions to inquire as to why the copyright infringement action was not moving forward, but Respondent failed to return his client's telephone calls to keep him advised on the status of his case.

46. In June 2003, Mr. Mudd sent an additional $2,000 in fees to Respondent to "motivate him to move forward" with his legal action.

47. With the statute of limitations running and no action in his lawsuit, in July 2003, Mr. Mudd terminated Respondent's services and requested that he return the case file so that he could proceed with the litigation with Scott

Schutzman, Esq., a California attorney.

48. Respondent responded to Mr. Mudd's request to return the case file by returning a single CD. Despite numerous requests, neither Mr. Mudd nor Mr. Schutzman ever received the case file from Respondent.

49. Subsequently, Mr. Schutzman filed a copyright infringement lawsuit in the U.S. District Court, Central District of California, on behalf of Mr. Mudd and Mr. Lawless against the Subletts. After the lawsuit was filed, the Subletts filed a counterclaim for breach of contract and fraud against Mr. Mudd and Mr. Lawless claiming that they had fraudulently induced the Subletts to pay the $20,000. For the first time, Mr. Mudd learned that Respondent had not returned the $20,000 escrow deposit to the Subletts.

50. After receiving notice of the Subletts' lawsuit, Mr. Mudd contacted Respondent who claimed that he had the $20,000 escrow payment.

51. Despite being instructed by Mr. Mudd to return the $20,000 escrow payment immediately to the Subletts, to date, Respondent has failed to do so.

52. The Florida Bar's auditor conducted an audit of Respondent's trust account for the period November 1, 1999 through December 31, 2003.

53. The Florida Bar's auditor concluded that the $20,000 escrow payment by the Subletts were trust funds and should have been deposited into

Respondent's trust account.

54. After examining the bank statements and other financial documents presented by Respondent, however, The Florida Bar's auditor found no $20,000 was deposited into Respondent's trust account from September 2002 through December 2003 on behalf of his clients.

55. Respondent failed to comply with The Florida Bar rules governing trust accounts because he failed to hold the $20,000 escrow payment in his trust account and to apply the monies to the specific purpose for which the funds were entrusted to him.

56. Respondent failed to diligently pursue his clients' legal case for copyright infringement, abandoned the settlement negotiations, and retained the $20,000 escrow payment for his own benefit and use to the detriment of his clients.

57. Respondent failed to consult with his client regarding counteroffers between him and opposing counsel, and failed to follow his clients' instruction to return the $20,000 escrow payment to the Subletts.

58. Upon termination of his representation, Respondent did not protect his clients' interest by failing to provide a copy of the case file to the clients or their new attorney.

59. Respondent also failed to protect his clients' interests by not returning the $20,000 good faith payment that he was required to hold in escrow

thereby generating a counterclaim for breach of contract and fraud against his clients in their copyright infringement lawsuit in a California federal district court.

60. Respondent's failure to account for and deliver over the $20,000 escrow payment to the Subletts is a conversion.

61. By converting the $20,000 escrow payment to his own benefit and use, Respondent knew, or should have known, that he engaged in theft in violation of § 814.014(1), Fla. Stat. by failing to refund to the Subletts the $20,000 escrow payment.

62. Respondent engaged in misrepresentation, fraud, and deceit, by failing, *inter alia*, to notify his clients of the Subletts $20,000 escrow payment to him in December 2002, to deposit the $20,000 escrow payment into his trust account, the Subletts' counteroffer in March 2003, and his retention of the $20,000 escrow payment after the termination of his legal services.

63. Respondent failed to promptly notify his client in December 2002 that he had been paid the $20,000 by the Subletts as an initial good faith payment.

64. Respondent failed to respond to The Florida Bar's inquiry letters dated October 1, 2004, and December 8, 2004, that were mailed to his record Bar address of 4460 Legendary Drive, Suite 190, Destin, FL 32541.

65. Respondent failed to respond in writing to the grievance

committee's investigating member who sent him a letter dated August 16, 2005.

As to TFB File No. 2005-00,457(1B)-Marion Schlachter

66. Respondent was hired by Marion Schlachter on October 12, 2004, to represent her in a dissolution action that included obtaining a domestic violence injunction and an immigration green card so that she could remain in this country after her dissolution was final.

67. On that same date, Ms. Schlachter paid Respondent $4,500 of the $5,000 flat fee that he requested for his legal services.

68. After accepting his client's money, Respondent failed to diligently pursue any further action on behalf of Ms. Schlachter.

69. Despite many attempts by Ms. Schlachter to speak with him about the status of her legal case, Respondent refused to communicate with his client regarding the basis of his fee, the payment of costs of suit, or any legal action he intended to take on her behalf.

70. Unable to communicate with Respondent or to get him to take any immediate action to protect her legal rights in the dissolution, Ms. Schlachter terminated Respondent's legal services and demanded a refund of her fees on November 16, 2004.

71. To date, Respondent has failed to refund any of his client's fees.

72. Respondent charged and collected an excessive fee because he

took his client's money and failed to perform any legal services on behalf of his client.

73. Respondent failed to protect his client's interests by returning any unearned fees when Ms. Schlachter terminated his services.

74. Respondent's actions are prejudicial to the administration of justice because he appropriated the $4,500 fee and failed to provide the agreed legal services or to return his client's fee.

75. Respondent failed to respond to a letter dated April 6, 2005, from the grievance committee investigating member that specifically requested documents to show his billable hours and the work performed on Ms. Schlachter's legal case.

As to TFB File No. 2005-00,481(1B)-Dana E. Keeney

76. On or about May 1, 2004, Respondent was paid a flat, nonrefundable fee of $5,000 to represent Dana Keeney and two other related plaintiffs in an action for defamation and for damages.

77. After the initial consultation, where Respondent promised to take immediate legal action against the defendants, Mr. Keeney never met or spoke with Respondent again from May 2004 through October 2004 when Mr. Keeney terminated Respondent's legal representation.

78. When he could not communicate and no action had been taken

on his legal case, Mr. Keeney mailed Respondent a letter on October 5, 2004, via certified return receipt mail, discharging Respondent as his attorney, and requesting a copy of his case file, an itemized bill, and a refund of any unearned fees.

79. To date, Respondent has failed to provide a copy of the case file, an itemized bill or any refund of unearned fees to Mr. Keeney.

80. Subsequent to being discharged by Mr. Keeney, Respondent filed a three-page complaint for defamation on October 6, 2004, in Okaloosa County, Shalimar, Florida.

81. On November 17, 2004, the defendants in the defamation action filed an answer and affirmative defenses.

82. Respondent failed to take any further action in Mr. Keeney's case, and failed to withdraw as attorney of record.

83. On December 15, 2005, the court granted the defendants' motion to dismiss for lack of prosecution because there was no record activity in Mr. Keeney's case for over a year.

84. Respondent did not file a motion to withdraw as Mr. Keeney's attorney until March 27, 2006.

85. On April 10, 2006, the court awarded fees and costs to the defendants in Mr. Keeney's case.

86. Respondent failed to diligently represent his clients because he

did not file the defamation complaint until the day *after* Mr. Keeney mailed a letter terminating his legal services, failed to timely withdraw as Mr. Keeney's counsel of record, and did not file any other pleadings with the court until the motion to withdraw in March 2006.

87. Despite numerous telephone calls by Mr. Keeney from July 2004 through October 2004, to his office, Respondent failed to communicate with his client or to keep him informed on the status of his case.

88. Respondent charged and collected an excessive fee because he took his client's money and, other than filing a three-page complaint after being discharged by his client, failed to perform the legal services for which he was retained.

89. Respondent failed to protect his client's interests by returning any unearned fees when Mr. Keeney terminated his services.

90. When Respondent refused to return the unearned fees, Mr. Keeney had no additional funds to pay another attorney to represent him in the defamation action.

91. Respondent's actions are prejudicial to the administration of justice because he failed to provide the agreed legal services, refused to return the unearned fees, failed to take any record activity in over a year to protect his client's suit from dismissal, and failed to promptly file a motion to withdraw.

92. Respondent failed to reply to The Florida Bar's inquiry letter, dated December 17, 2004, that was sent to his record Bar address of 4460 Legendary Drive, Suite 190, Destin, Florida 32541.

As to TFB File No. 2005-01,037(1B)-Ronnie and Joyce Terry

93. Respondent was hired by Ronnie and Joyce Terry on or about March 2002 to represent them in filing two separate personal injury claims against Okaloosa County for two different accidents.

94. On or about May 16, 2003, Respondent filed two separate personal injury complaints on behalf of the Terrys in Okaloosa County Circuit Court

95. Respondent failed to provide a copy of the signed contingency fee agreement and Statement of Clients' Rights in either lawsuit to the Terrys.

96. After discovery, both lawsuits proceeded to a settlement with Okaloosa County in February 2004.

97. As part of the settlement agreement, on February 16, 2004, Okaloosa County issued two checks for $4,750.00 each payable to the Terrys and Respondent.

98. Respondent contacted the Terrys to come to his office on the weekend and sign the checks indicating that he would provide them with copies of the checks and the written closing statements the next business day.

99. The settlement funds were paid out on February 24, 2004, after the checks were endorsed by the Terrys and Respondent.

100. The back of the checks indicate that the checks were cashed by Respondent, but were not deposited into Respondent's trust account.

101. There were approximately four outstanding medical bills associated with the accidents totaling about $2500.

102. Respondent paid one check to the Terrys on March 5, 2004, for $1,005.98, and a second check on March 16, 2004, for $864.98, alleging that these amounts were the balance of the settlement funds after his fees and the medical bills were paid.

103. Later in 2004, however, when the Terrys applied for a loan, they discovered a problem with their credit report because none of the medical bills had been paid by Respondent.

104. From November 2004 through March 2005, the Terrys attempted to communicate on numerous occasions with Respondent who represented that he would provide them with a copies of the closing statements, and also copies of the checks that he had mailed to the medical providers to verify payment of the bills.

105. Despite numerous requests from his clients, however, to date, Respondent has never provided to his clients a written closing statement for either

personal injury case, or copies of the checks for the alleged medical payments that he claimed he made on behalf of the Terrys.

106. Due to Respondent's failure to pay a $1,924.00 hospital bill, Ronnie Terry was sued and a judgment entered against him for $2,481.15 on February 15, 2005.

107. Respondent failed to diligently pursue the Terrys' legal cases by promptly paying the medical providers thereby exposing his clients to future liability in collection actions against them, and damaging their credit status.

108. Respondent failed to communicate with his clients regarding copies of the closing statements, county checks, and medical payment checks they had requested.

109. Respondent failed to abide by the The Florida Bar's ethical rules governing contingency fee agreements in personal injury cases because he did not execute a written closing statement that was reviewed and signed by the clients before making any disbursement of settlement proceeds.

110. Respondent misrepresented to his clients that he had paid the medical providers out of the settlement proceeds from their personal injury suits.

111. Respondent failed to hold in trust the settlement proceeds for the specific purpose of paying the medical providers on behalf of the Terrys.

112. Respondent's refusal to account for and deliver over the

settlement proceeds to the medical providers is a conversion.

113. Respondent failed to promptly notify the medical providers that he had received the settlement proceeds from Okaloosa County.

114. Respondent failed to promptly deliver over the settlement proceeds to the medical providers and to render a full accounting of the settlement proceeds to his clients despite numerous requests by the Terrys.

As to TFB File No. 2006-00,301(1B)-The Florida Bar

115. On September 2, 2003, Respondent filed a Voluntary Petition for Bankruptcy in the United States Bankruptcy Court, Northern District of Florida.

116. Respondent signed the bankruptcy petition verifying under penalty of perjury that the information provided in the petition was true and correct.

117. One of the unsecured claims listed on Respondent's Creditor's List was for Francis James, P.O. Box 1061, Andalusia, Alabama, in the amount of $487,714.81.

118. After the bankruptcy petition was filed, Francis M. James III and the James & James Law Firm, as Plaintiffs, brought an adversary proceeding against Respondent objecting to the bankruptcy discharge of their creditor's claim based on 11 U.S.C. §§ 727(a)(2), (3), and (4), and 11 U.S.C. §§523(a)(2), (4), and (6).

119. The Bankruptcy Court sustained the Plaintiffs' objections to

discharge based on 11 U.S.C. §§727(a)(2), (a)(3), and (a)(4), and therefore did not address any objections based on 11 U.S.C. §523.

120. Sections 727(a)(2), (a)(3), and (a)(4) provide in pertinent part:

> (a) the court shall grant the debtor a discharge unless……
>
> (2) the debtor, with intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of the property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—
>
> (A) property of the debtor, within one year before the date of the filing of the petition; or
>
> (B) property of the estate, after the date of the filing of the petition;
>
> (3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all the circumstances of the case;
>
> (4) the debtor knowingly and fraudulently, in or in connection with the case-
>
> (A) made a false oath or account;

121. After a full evidentiary hearing, on September 13, 2005, the U. S. Bankruptcy Judge issued a detailed 37-page Order Denying Discharge of the Debtor, sustaining the Plaintiffs' objection to Respondent's discharge pursuant to 11 U.S.C. §§727(a)(2), (a)(3), and (a)(4), thereby denying Respondent's discharge of debts in its entirety.

122. The Bankruptcy Court specifically found that Respondent's actions indicated that he intended to hinder, delay, or defraud his creditors, and that Respondent's failure to file income tax returns for four years, as well as to maintain and preserve adequate records, made it impossible for the creditors to ascertain Respondent's financial condition.

123. In particular, the Bankruptcy Court found that Respondent "made numerous false and conflicting statements under oath" and Respondent "knowingly and fraudulently made a false oath or account in connection with his bankruptcy case" in violation of 11 U.S.C. §727(a)(4).

124. Respondent failed to reply to The Florida Bar's inquiry letter, dated September 26, 2005, that was sent to his record Bar address of 4460 Legendary Drive, Suite 190, Destin, Florida 32541.

As to TFB File No. 2006-00,429(1B)-Bob Delaney

125. Respondent was hired on June 20, 2005, for $2,500 by Bob Delaney to represent him in a lawsuit against his former employer, John Franklin and Franklin Pools.

126. At the time Respondent accepted the retainer, Respondent knew, or should have known, that he was representing Franklin Pools.

127. After speaking to another attorney, Mr. Delaney believed that it would be a conflict of interest for Respondent to represent him in a law suit against

Franklin Pools and its owner, John Franklin.

128. On the afternoon of that same date, due to the conflict of interest, Mr. Delaney requested Respondent not to take any action in his legal matter, and to return his $2,500 retainer fee.

129. Respondent promised to return the $2,500 retainer fee, but, despite numerous requests by Delaney in person and by telephone to return the money, Respondent has failed to do so.

130. After the matter was referred to a grievance committee member for investigation, Respondent sent a letter dated January 18, 2006, to the investigating member in which he stated that the $2,500 was half the retainer to represent Mrs. Delaney in a real estate matter, and that he had never represented Mr. Delaney in any matter against John Franklin of Franklin Pools.

131. Subsequently, Mr. Delaney provided additional information to The Florida Bar to refute Respondent's allegations to the grievance committee showing that Respondent had assisted him in filling out three small claims forms against John Franklin, and that Respondent did not represent Mrs. Delaney in any legal matter.

132. Respondent's misrepresentations to the grievance committee investigating member are contrary to honesty and justice, and were committed in the course of his dealings with the grievance committee investigation.

133. Respondent charged an excessive fee because he did no work for the $2,500 paid to him by Mr. Delaney and refused to return the fee.

134. Respondent failed to protect his client's interest because when his services were terminated, he failed to return any unearned fee to Mr. Delaney.

135. Respondent knew, or should have known, that he represented John Franklin and Franklin Pools, and that taking a fee from Mr. Delaney to sue Mr. Franklin or Franklin Pools was a conflict of interest as well as a violation of the ethical rules.

136. Respondent failed to respond to The Florida Bar's inquiry letter dated November 7, 2005, that was mailed to his record Bar address of P.O. Box 10, Mary Esther, Florida 32569.

As to TFB File No. 2006-00,591(1B)-Sharon Santisteven

137. Respondent was hired on June 7, 2005 for $5,000 by Sharon Santisteven for assistance in resolving a real estate dispute.

138. Respondent wrote two letters to opposing counsel on June 4, 2005, and June 24, 2005, then took no further action on his client's behalf.

139. On October 19, 2005, Ms. Santisteven called and emailed Respondent to notify him that she was being sued by the opposing party in the real estate dispute, but Respondent failed to respond to her messages.

140. When Respondent failed to reply to numerous telephone and

email messages left for him by his client on October 21, (3 messages), October 24 and October 26, 2005, Ms. Santisteven retained another attorney who resolved the dispute in nine days for a total fee of $910.00.

141. Respondent refused to follow his client's instructions to resolve the real estate dispute as quickly as possible so that the lien on her home could be lifted and she could timely complete the real estate closing on her home.

142. Respondent failed to diligently pursue his client's legal matter.

143. Respondent failed to communicate with his client, and, after the initial consultation, Ms. Santisteven was never able to speak personally to Respondent again.

144. Respondent charged an excessive fee of $5,000 because he wrote two letters on behalf of his client, then he took no further action on his client's case, and he did not resolve the real estate dispute for which he was retained.

145. Upon termination of his representation, Respondent failed to protect his client's interest by failing to return any unearned fees, and provide a copy of the case file to the client's new attorney.

146. Respondent defrauded his client by taking her money and converting it to his own use and benefit without performing the legal services for which he was retained.

147. By converting Ms. Santisteven's unearned fees to his own benefit and use, Respondent knew, or should have known, that he engaged in criminal activity, namely theft, in violation of § 814.014(1), Fla. Stat.

148. Respondent's actions are prejudicial to the administration of justice.

149. Respondent failed to hold any disputed fees in his trust account.

150. Despite numerous requests from Ms. Santisteven, Respondent refused to account for the $5,000 fee to the client, or to return any portion of the fee.

151. Respondent failed to respond to The Florida Bar's inquiry letter dated December 9, 2005, that was mailed to his record Bar address of P.O. Box 10, Mary Esther, Florida 32569.

III. RECOMMENDATIONS AS TO GUILT.

In all of the above cases, I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar, to wit:

As to TFB File No. 2004-01,318(1B)-Carol K. Stout: 4-1.3 (Diligence), 4-1.4 (Communication), 4-1.5 (Legal Fees for Services), 4-1.16(d) (Protect Client's Interests), 4-8.4(b) (Engage in Criminal Activity), 4-8.4(g)(1)(Failure to respond to The Florida Bar), 5-1.1(b)(Application of Trust Funds for a Specific Purpose), 5-1.1(e) (Delivery and Accounting for Trust Funds).

As to TFB File No. 2005-00,311(1B)-Scott E. Schutzman, Esq.: 4-1.2(a)(Scope of Representation), 4-1.3 (Diligence), 4-1.15 (Safekeeping of Property), 4-1.16(d) (Protect Client's Interests), 4-8.4(b)(Engage in Criminal Activity), 4-8.4(c) (Misrepresentation, Fraud, Deceit), 4-8.4(g)(1)(Failure to respond to The Florida Bar), 4-8.4(g)(2) (Failure to respond to Grievance Committee), 5-1.1(b)(Application of Trust Funds for a Specific Purpose), 5-1.1(e)(Notice of Receipt of Trust Funds, Delivery, Accounting), 5-1.1(f)(Disputed Funds).

As to TFB File No. 2005-00,457(1B)-Marion Schlachter: 4-1.3 (Diligence), 4-1.4 (Communication), 4-1.5 (Fees for Legal Services), 4-1.16(d) (Protect Client Interests), 4-8.4(d) (Conduct Prejudicial to the Administration of Justice), and 4-8.4(g)(2) (Failure to respond to the grievance committee).

As to TFB File No. 2005-00,481(1B)-Dana E. Keeney: 4-1.3 (Diligence), 4-1.4 (Communication), 4-1.5 (Fees for Legal Services), 4-1.16(d) (Protect Client Interests), 4-8.4(d) (Conduct Prejudicial to the Administration of Justice), and 4-8.4(g)(Failure to respond to The Florida Bar).

As to TFB File No. 2005-01,037(1B)-Ronnie and Joyce Terry: 4-1.3 (Diligence), 4-1.4 (Communication), 4-1.5(a)(f)(1), (f)(2), (f)(4)(A), (f)(5) (Fees and Costs for Legal Services), 4-1.15 (Safekeeping of Property), 4-8.4(a)(Violate Bar Rules), 4-8.4(c) (Fraud, Deceit, Misrepresentation), 5-1.1(a)(Commingling of Funds), 5-1.1(b) (Application of Trust Funds for a Specific Purpose), and 5-1.1(e) (Notice of

Receipt of Trust Funds; Delivery; Accounting).

As to TFB File No. 2006-00,301(1B)-The Florida Bar: 3-4.3 (Misconduct and Minor Misconduct), 4-8.4(c) (Fraud, Deceit, Misrepresentation), 4-8.4(d) (Conduct Prejudicial to the Administration of Justice), and 4-8.4(g) (Failure to Respond to the Florida Bar).

As to TFB File No. 2006-00,429(1B)-Bob Delaney: 3-4.3 (Misconduct and Minor Misconduct), 4-1.5(Fees for Legal Services), 4-1.16(d) (Protect Client's Interests), 4-1.7(Conflict of Interest-General Rule), and 4-8.4(g)(1) (Failure to respond to The Florida Bar).

As to TFB File No. 2006-00,591(1B)-Sharon Santisteven: 4-1.2(a)(Scope of Representation, 4-1.3 (Diligence), 4-1.4(Communication), 4-1.5(Fees for Legal Services), 4-1.16(d) (Protect Client's Interests), 4-8.4(b)(Engage in Criminal Activity), 4-8.4(d) (Conduct Prejudicial to the Administration of Justice), 4-8.4(g)(1)(Failure to respond to The Florida Bar), 5-1.1(a)(1)(Trust Account Required), 5-1.1(b) (Application of Trust Funds for a Specific Purpose), and 5-1.1(f)(Disputed Ownership of Funds).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

Based on the foregoing Findings of Fact, I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined as

follows:

A. Disbarment for five years pursuant to R. Regulating Fla. Bar 3-5.1(f). In recommending this discipline of disbarment, I took into consideration the Florida Standards for Imposing Lawyer Sanctions, namely, 4.11(Failure to Preserve Client's Property), 4.41(Lack of Diligence), 4.61 (Lack of Candor), 5.11(f)(Failure to Maintain Personal Integrity), 6.11(False Statements, Fraud, and Misrepresentation), 7.1(Violation of Other Duties Owed as a Professional), and 8.1(Prior disciplinary Orders). Respondent's repetitive misconduct by misappropriation of his clients' trust funds, by taking substantial legal fees and not performing the legal services for which he was retained, and by misrepresentation to the federal bankruptcy court, warrants disbarment. I also considered the aggravating factors below and the fact that Respondent did not present any competent substantial evidence of mitigation.

The case law also supports disbarment for attorneys who demonstrate a pattern of misconduct and a history of discipline involving multiple rule violations. See The Florida Bar v. Cox, 718 So. 2d 788(Fla. 1998)(attorney's misconduct with prior discipline for 27 rule violations in four cases including dishonesty and misrepresentation warranted disbarment. Id. at 794). In The Florida Bar v. Springer, 873 So. 2d 317(Fla. 2004),where the attorney had committed multiple offenses involving lack of competence, diligence and communication with clients, as well as demonstrated a pattern of misconduct, the Court, in a special concurrence by Justice

Lewis, held that "[a]s the uncontested facts demonstrate, Springer violated a multitude of rules governing the legal profession numerous times over many years, and the ill effects of his misconduct seriously injured not one, but multiple clients." Id. at 324.

In a similar case, The Florida Bar v. Porter, 684 So. 2d 810 (Fla. 1996), the Court upheld a default entered against the attorney, and imposed disbarment for misuse of trust funds, the attorney's prior disciplinary record, and the absence of any mitigation. Id. at 813. The rule violations in this case are also similar to prior disciplinary offenses for which Respondent previously received an admonishment, a public reprimand and a 91-day suspension. See The Florida Bar v. Knowles, 572 So. 2d 1373(Fla. 1991)("repeated instances of similar misconduct should be treated cumulatively so that a lawyer's disciplinary history can be considered as grounds for more serious punishment." Id. at 1375).

B. Based on the lay witnesses and expert witness testimony presented at the final penalty hearing, Respondent shall pay restitution pursuant to R. Regulating Fla. Bar 3-5.1(i) as follows:

(1) In TFB File No. 2004-01,318(1B), I find that while the work performed on Ms. Stout's legal case may have been worth the $5,000 legal fee, Respondent cannot keep the $20,000 in costs that were to be held in his trust account on behalf of his client, and converted them to his own benefit and use. Ms Stout testified that as of the date of the hearing, over four years after she terminated

Respondent's legal services, she has not received any costs returned to her. No cash bond was permitted by the court in Ms. Stout's DUI case. Therefore the $10,000 in costs paid to Respondent for the cash bond shall be returned in full. The Florida Bar provided invoices obtained from Respondent showing that $1,000 out of the $10,000 that Ms. Stout paid to Respondent was utilized for expert fees. Respondent provided no competent substantial evidence to show that any additional expert fees were paid on behalf of his client. Therefore, since Respondent converted the trust funds to his own benefit and use, $9,000 of the $10,000 in costs paid to Respondent for expert fees shall be returned in full to Ms. Stout. Within one year after the Supreme Court issues its final order in this case, Respondent shall pay a total of $19,000 to: Carol Stout, 333 Wilkinson Place, Memphis, Tennessee, 38111.

(2) In TFB File No. 2005-00,311(1B), I find that Respondent failed to return the settlement proceeds of $20,000 which he was to hold in trust until a final settlement was reached in the case of Kid Songs for You, LLC, and converted the trust funds to his own benefit and use. Mr. Schutzman and Mr. Mudd both testified that Respondent had the $20,000 but failed to return it to the Subletts when the settlement negotiations were unsuccessful. In a lawsuit in federal court, Kid Songs for You, LLC later settled for $29,000, of which $20,000 was deducted for the trust funds misappropriated by

Respondent. Respondent shall pay $20,000 to Kid Songs for You, LLC, and send the money to Robert Lee Mudd, P.O. Box 3465, Running Springs, CA 92382.

(3) In TFB File No. 2005-00,457(1B), I find that Respondent collected an excessive fee because he did not provide legal services worth $4,500 to Marion Schlachter. Therefore, within one year after the Supreme Court issues its final order in this case, Respondent shall pay $4,000 to: Ms. Marion Schlachter, 218 Wekiva Cove, Destin, Florida 32541.

(4) In TFB File No. 2005-00,481, I find that Respondent collected an excessive fee because he did not provide legal services worth $5,000 to Dana Keeney. Therefore, within one year after the Supreme Court issues its final order in this case, Respondent shall pay $4,250 to: Mr. Dana Keeney, 1579 Venice Avenue, Fort Walton Beach, Florida 32547.

(5) In TFB File No. 2005-01,037(1B), I find that Respondent failed to pay Ronnie Terry's medical bills out of the settlement proceeds in the lawsuit, and converted the trust funds to his own benefit and use. Therefore, within one year after the Supreme Court issues its final order in this case, Respondent shall pay on behalf of Ronnie Terry, $2,933.44 plus interest at 7% on the outstanding judgment against Mr. Terry to: Stokes & Clinton, PA, P.O. Box 991801, Mobile , Alabama 36691-08801, $470 to: Okaloosa County EMS, P.O. Box 116783, Atlanta, GA, 30368, $482 to: Dr. Marcene F. Kreifels, 1198 Ferdon Blvd., Crestview, FL 32536,

and $45 to: Johnson Chiropractic Clinic, P.O. Box 486, Paxton, Florida 32538-0486.

(6) In TFB File No. 2006-00,429(1B), I find that Respondent collected an excessive fee because he did not provide legal services worth $2,500 to Bob Delaney. Therefore, within one year after the Supreme Court issues its final order in this case, Respondent shall pay $2,250 to: Mr. Bob Delaney, 4466 Kings Lynn Road, Niceville, Florida 32578.

(7) In TFB File No. 2006-00,591(1B), I find that Respondent collected an excessive fee because he did not provide legal services worth $5,000 to Sharon Santisteven. Therefore, within one year after the Supreme Court issues its final order in this case, Respondent will pay $4,250 to: Ms. Sharon Santisteven, 1330 Solitaire, Round Rock, Texas 78664.

(8) Respondent will notify and provide proof of payment of restitution as set forth in part B(1) through B(7) above to Headquarters Division of Lawyer Regulation of The Florida Bar upon payment of the above restitution. Respondent will provide a copy of the check, back and front, or other similar proof of payment that is satisfactory to The Florida Bar.

C. The payment of taxable costs to The Florida Bar in the amount of $8,576.97 in these proceedings pursuant to R. Regulating Fla. Bar 3-7.6(q)(1).

V. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1), I considered the following:

A. Personal History of Respondent:
Age: 56
Date admitted to the Bar: May 31, 1985

Prior Discipline:

The record reflects Respondent's prior disciplinary history in Florida:

*TFB File No. 1991-00,998(1B)---Public Reprimand before the Board of Governors of The Florida Bar with one year probation by court order dated December 24, 1992, relating to an arrest for possession of cocaine.

*TFB File No. 2000-00,038(1B)---Public Reprimand before the referee with one year of probation by court order dated December 31, 2001, for charging an excessive fee.

*TFB file No. 2000-01,104(1B)---Admonishment for Minor Misconduct by the grievance committee which was final on August 6, 2001, for trust account issues.

*TFB file No. 2002-00,311(1B)---91-day suspension in a reciprocal discipline case, effective March 27, 2006, by court order dated February 23, 2006, for failure to protect settlement proceeds that were the subject of a referral fee dispute in Alabama.

I also considered Respondent's prior disciplinary record in Alabama:

*Public Reprimand entered on July 17, 1994---reciprocal discipline for disciplinary action in Florida in TFB File No. 1991-00,998(1B).

*Public Reprimand entered on October 26, 2001---for a conflict of interest relating to a former client.

*Suspension for 91 days entered on June 18, 2003---for failure to protect settlement proceeds that were the subject of a referral fee dispute.

*Suspension for 120 days entered on February 22, 2005---determination that a plea to misdemeanor interference with judicial proceedings was a "serious crime" under Rule 22(a)(2) of the Alabama Rules of Disciplinary Procedure.

*Suspension for 15 months entered on February 22, 2005--- for engaging in prohibited sexual conduct with a client in exchange for fees.

B. <u>I considered the following Florida Standards for Imposing Lawyer Sanctions</u>:

<u>4.11</u> Disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury.

<u>4.41</u> Disbarment is appropriate when:

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

<u>4.61</u> Disbarment is appropriate when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another regardless of injury or potential injury to the client.

<u>5.11</u> Disbarment is appropriate when:

(f) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

<u>6.11</u> Disbarment is appropriate when a lawyer:

(a) with the intent to deceive the court, knowingly makes a false statement or submits a false document; or

7.1 Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

8.1 Disbarment is appropriate when a lawyer:

(b) has been suspended for the same or similar misconduct, and intentionally engages in further similar acts of misconduct.

C. Aggravating Factors: I considered the following aggravating factors:

(a) prior disciplinary offenses

(b) dishonest and selfish motive—Respondent kept costs, settlement proceeds and unearned fees that he used for his own personal financial benefit and use.

(c) pattern of misconduct- This factor is supported by the number of rule violations as well as the long period of time over which Respondent engaged in ethical misconduct.

(d) multiple offenses—There are 60 rule violations in these cases.

(h) vulnerability of victims—The clients relied on Respondent and trusted him to protect their best interests. In the Stout case, his client, who lived out of state, relied on him to advise her as to procedures used here in Florida on a first DUI offense. Respondent instead took $5,000 in fees and then advised her that additional costs of $20,000 were necessary to fully defend her lawsuit. Respondent kept the costs and did not return them to the client. He also failed to deposit them in his trust account spending only $1,000 on expert fees.

In the Schutzman case, Respondent's clients were accused of fraud in a counterclaim in their federal case, because Respondent kept the settlement proceeds he was to hold in trust,

and never returned them even after his client requested him to do so. His former clients had to accept less in damages to settle lawsuit because the $20,000 was deducted from their final settlement agreement.

In the Schlachter case, the client was a German immigrant who did not understand the domestic violence injunction process. Respondent jeopardized her person and her legal rights by not promptly proceeding in her case, and by not returning his unearned fees.

In the Terry case, both clients thought that Respondent had paid their medical bills with the remaining proceeds that were kept by Respondent. It was two years later when they were denied a loan that they discovered the bills were not paid by Respondent, thereby damaging their credit rating. The hospital obtained a final judgment against Mr. Terry, and the other medical bills were sent to collection.

In the Keeney case, Respondent did nothing on the legal case for defamation for nine months. Respondent failed to return the unearned fees, and failed to withdraw from the case for two years after his client terminated his services. His client's case was dismissed for lack of prosecution.

In the Delaney case, although the client advised Respondent on the same day that he hired him that there was a conflict of interest, Respondent refused to return his fees.

In the Santiseven case, Respondent failed to return the unearned fees, refused to communicate with his client and to advise her what to do when she was sued. His client had to hire another attorney to resolve the legal matter.

(i) substantial experience in practice of law—Respondent was admitted to The Florida Bar in May 1985

(j) indifference to making restitution –No costs, no settlement proceeds, and no fees have been refunded to

Respondent's clients, or to any third parties.

D. Mitigating Factors: None

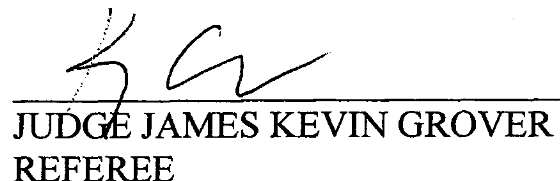
VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

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

Administrative Costs, pursuant to R. Regulating Fla. Bar 3-7.6(q)(1)(I)	$ 1,250.00
Court Reporter Fees	2,213.50
Bar Counsel Expenses	705.60
Investigative Costs and Expenses	892.46
Witness Expenses	1,164.11
Expert Witness Fees and Expenses	2,186.00
Copy Costs	165.30
TOTAL	**$ 8,576.97**

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

Dated this 9th day of Jan, 2008.

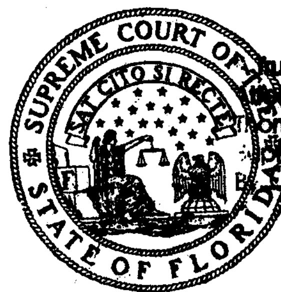


JUDGE JAMES KEVIN GROVER
REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; OLIVIA PAIVA KLEIN, Bar Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and JAMES HARVEY TIPLER, Respondent, at his record Bar address of P.O. Box 10, Mary Esther, FL 32569-0010, on this 9th day of January, 2008.

JUDGE JAMES KEVIN GROVER
REFEREE



A True Copy
Test:
Thomas D. Hall, Clerk
Supreme Court of Florida

Deputy Clerk

RULES REGULATING THE FLORIDA BAR

3 RULES OF DISCIPLINE
3-4 STANDARDS OF CONDUCT

RULE 3-4.3 MISCONDUCT AND MINOR MISCONDUCT

The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.

4 RULES OF PROFESSIONAL CONDUCT
4-1 CLIENT-LAWYER RELATIONSHIP

RULE 4-1.2 OBJECTIVES AND SCOPE OF REPRESENTATION

(a) Lawyer to Abide by Client's Decisions. Subject to subdivisions (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, shall reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) No Endorsement of Client's Views or Activities. A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) Limitation of Objectives and Scope of Representation. If not prohibited by law or rule, a lawyer and client may agree to limit the objectives or scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing. If the attorney and client agree to limit the scope of the representation, the lawyer shall advise the client regarding applicability of the rule prohibiting communication with a represented person.

(d) Criminal or Fraudulent Conduct. A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent. However, a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

RULE 4-1.3 DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 4-1.4 COMMUNICATION

(a) Informing Client of Status of Representation. A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) Duty to Explain Matters to Client. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 4-1.5 FEES AND COSTS FOR LEGAL SERVICES

(a) Illegal, Prohibited, or Clearly Excessive Fees and Costs. An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly excessive when:

(1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney; or

(2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a nonclient party, or any court, as to either entitlement to, or amount of, the fee.

(b) Factors to Be Considered in Determining Reasonable Fees and Costs.

(1) Factors to be considered as guides in determining a reasonable fee include:

(A) the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(B) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

(C) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;

(D) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;

(E) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;

(F) the nature and length of the professional relationship with the client;

(G) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and

(H) whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

(2) Factors to be considered as guides in determining reasonable costs include:

(A) the nature and extent of the disclosure made to the client about the costs;

(B) whether a specific agreement exists between the lawyer and client as to the costs a client is expected to pay and how a cost is calculated that is charged to a client;

(C) the actual amount charged by third party providers of services to the attorney;

(D) whether specific costs can be identified and allocated to an individual client or a reasonable basis exists to estimate the costs charged;

(E) the reasonable charges for providing in-house service to a client if the cost is an in-house charge for services; and

(F) the relationship and past course of conduct between the lawyer and the client.

All costs are subject to the test of reasonableness set forth in subdivision (a) above. When the parties have a written contract in which the method is established for charging costs, the costs charged thereunder shall be presumed reasonable.

(c) Consideration of All Factors. In determining a reasonable fee, the time devoted to the representation and customary rate of fee need not be the sole or controlling factors. All factors set forth in this rule should be considered, and may be applied, in justification of a fee higher or lower than that which would result from application of only the time and rate factors.

RULE 4-1.7 CONFLICT OF INTEREST; CURRENT CLIENTS

(a) Representing Adverse Interests. Except as provided in subdivision (b), a lawyer shall not represent a client if:

(1) the representation of 1 client will be directly adverse to another client; or

(2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

(c) Explanation to Clients. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

(d) Lawyers Related by Blood or Marriage. A lawyer related to another lawyer as parent, child, sibling, or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

(e) Representation of Insureds. Upon undertaking the representation of an insured client at the expense of the insurer, a lawyer has a duty to ascertain whether the lawyer will be representing both the insurer and the insured as clients, or only the insured, and to inform both the insured and the insurer regarding the scope of the representation. All other Rules Regulating The Florida Bar related to conflicts of interest apply to the representation as they would in any other situation.

RULE 4-1.15 SAFEKEEPING PROPERTY

Compliance With Trust Accounting Rules. A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts.

RULE 4-1.16 DECLINING OR TERMINATING REPRESENTATION

(a) When Lawyer Must Decline or Terminate Representation. Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

(3) the lawyer is discharged;

(4) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent, unless the client agrees to disclose and rectify the crime or fraud; or

(5) the client has used the lawyer's services to perpetrate a crime or fraud, unless the client agrees to disclose and rectify the crime or fraud.

(b) When Withdrawal Is Allowed. Except as stated in subdivision (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client insists upon taking action that the lawyer considers repugnant, imprudent, or with which the lawyer has a fundamental disagreement;

(3) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(4) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(5) other good cause for withdrawal exists.

(c) Compliance With Order of Tribunal. A lawyer must comply with applicable law requiring notice or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Protection of Client's Interest. Upon termination of representation, a lawyer shall take

steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.

4 RULES OF PROFESSIONAL CONDUCT
4-8 MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 4-8.4 MISCONDUCT

A lawyer shall not:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;

(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made:

> (1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors;

(2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors;

(3) within the time stated in any subpoena issued under these Rules Regulating The Florida Bar (without additional time allowed for mailing);

(4) as provided in the Florida Rules of Civil Procedure or order of the referee in matters assigned to a referee; and

(5) as provided in the Florida Rules of Appellate Procedure or order of the Supreme Court of Florida for matters pending action by that court.

5 RULES REGULATING TRUST ACCOUNTS
5-1 GENERALLY

RULE 5-1.1 TRUST ACCOUNTS

(a) Nature of Money or Property Entrusted to Attorney.

(1) Trust Account Required; Commingling Prohibited. A lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for fees, costs, and expenses, shall be kept in a separate bank or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account. A lawyer may maintain funds belonging to the lawyer in the trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account.

(2) Compliance With Client Directives. Trust funds may be separately held and maintained other than in a bank or savings and loan association account if the lawyer receives written permission from the client to do so and provided that written permission is received before maintaining the funds other than in a separate account.

(3) Safe Deposit Boxes. If a member of the bar uses a safe deposit box to store trust funds or property, the member shall advise the institution in which the deposit box is located that it may include property of clients or third persons.

(b) Application of Trust Funds or Property to Specific Purpose. Money or other property entrusted to an attorney for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of an attorney are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be deemed a conversion.

(c) Liens Permitted. This subchapter does not preclude the retention of money or other property upon which the lawyer has a valid lien for services nor does it preclude the payment of agreed fees from the proceeds of transactions or collection.

(d) Controversies as to Amount of Fees. Controversies as to the amount of fees are not grounds for disciplinary proceedings unless the amount demanded is clearly excessive, extortionate, or fraudulent. In a controversy alleging a clearly excessive, extortionate, or fraudulent fee, announced willingness of an attorney to submit a dispute as to the amount of a fee to a competent tribunal for determination may be considered in any determination as to intent or in mitigation of discipline; provided, such willingness shall not preclude admission of any other relevant admissible evidence relating to such controversy, including evidence as to the withholding of funds or property of the client, or to other injury to the client occasioned by such controversy.

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

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

(g) Interest on Trust Accounts (IOTA) Program.

(1) *Definitions.* As used herein, the term:

(A) "nominal or short term" describes funds of a client or third person that, pursuant to subdivision (3), below, the lawyer has determined cannot earn income for the client or third person in excess of the costs to secure the income;

(B) "Foundation" means The Florida Bar Foundation, Inc.;

(C) "IOTA account" means an interest or dividend-bearing trust account benefiting The Florida Bar Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons;

(D) "Eligible Institution" means any bank or savings and loan association authorized by federal or state laws to do business in Florida and insured by the Federal Deposit

Insurance Corporation, or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida, all of which must meet the requirements set out in subdivision (5), below.

(E) "Interest or dividend-bearing trust account" means a federally insured checking account or investment product, including a daily financial institution repurchase agreement or a money market fund. A daily financial institution repurchase agreement must be fully collateralized by, and an open-end money market fund must consist solely of, United States Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations. An open-end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940, and have total assets of at least $250 million. The funds covered by this rule shall be subject to withdrawal upon request and without delay.

(2) *Required Participation.* All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of The Florida Bar practicing law from an office or other business location within the state of Florida shall be deposited into one or more IOTA accounts, unless the funds may earn income for the client or third person in excess of the costs incurred to secure the income, except as provided elsewhere in this chapter. Only trust funds that are nominal or short term shall be deposited into an IOTA account. The member shall certify annually, in writing, that the member is in compliance with, or is exempt from, the provisions of this rule.

(3) *Determination of Nominal or Short-Term Funds.* The lawyer shall exercise good faith judgment in determining upon receipt whether the funds of a client or third person are nominal or short term. In the exercise of this good faith judgment, the lawyer shall consider such factors as:

(A) the amount of a client's or third person's funds to be held by the lawyer or law firm;

(B) the period of time such funds are expected to be held;

(C) the likelihood of delay in the relevant transaction(s) or proceeding(s);

(D) the cost to the lawyer or law firm of establishing and maintaining an interest-bearing account or other appropriate investment for the benefit of the client or third person; and

(E) minimum balance requirements and/or service charges or fees imposed by the eligible institution.

The determination of whether a client's or third person's funds are nominal or short term shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with ethical impropriety or other breach of professional conduct based on the exercise of such good faith judgment.

(4) *Notice to Foundation.* Lawyers or law firms shall advise the Foundation, at Post Office Box 1553, Orlando, Florida 32802-1553, of the establishment of an IOTA account for funds covered by this rule. Such notice shall include: the IOTA account number as assigned by the eligible institution; the name of the lawyer or law firm on the IOTA account; the eligible institution name; the eligible institution address; and the name and Florida Bar attorney number of the lawyer, or of each member of The Florida Bar in a law firm, practicing from an office or other business location within the state of Florida that has established the IOTA account.

(5) *Eligible Institution Participation in IOTA.* Participation in the IOTA program is voluntary for banks, savings and loan associations, and investment companies. Institutions that choose to offer and maintain IOTA accounts must meet the following requirements:

(A) Interest Rates and Dividends. Eligible institutions shall maintain IOTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.

(B) Determination of Interest Rates and Dividends. In determining the highest interest rate or dividend generally available from the institution to its non-IOTA accounts in compliance with subdivision (5)(A), above, eligible institutions may consider factors, in addition to the IOTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOTA accounts and accounts of non-IOTA customers, and that these factors do not include that the account is an IOTA account.

(C) Remittance and Reporting Instructions. Eligible institutions shall:

(i) calculate and remit interest or dividends on the balance of the deposited funds, in accordance with the institution's standard practice for non-IOTA account customers, less reasonable service charges or fees, if any, in connection with the deposited funds, at least quarterly, to the Foundation;

(ii) transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm from whose IOTA account the remittance is sent, the lawyer's or law firm's IOTA account number as assigned by the institution, the rate of interest applied, the period for which the remittance is made, the total interest or dividend earned during the remittance period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period; and

(iii) transmit to the depositing lawyer or law firm, for each remittance, a statement showing the amount of interest or dividend paid to the Foundation, the rate of interest applied, and the period for which the statement is made.

(6) *Small Fund Amounts.* The Foundation may establish procedures for a lawyer or law firm to maintain an interest-free trust account for client and third-person funds that are nominal or short term when their nominal or short-term trust funds cannot reasonably be expected to

produce or have not produced interest income net of reasonable eligible institution service charges or fees.

(7) *Confidentiality and Disclosure.* The Foundation shall protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule. However, the Foundation shall, upon an official written inquiry of The Florida Bar made in the course of an investigation conducted under these Rules Regulating The Florida Bar, disclose requested relevant information about the location and account numbers of lawyer or law firm trust accounts.

(h) Interest on Funds That Are Not Nominal or Short-Term. A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined elsewhere in this subchapter shall not receive benefit from interest on funds held in trust.

(i) Unidentifiable Trust Fund Accumulations and Trust Funds Held for Missing Owners. When an attorney's trust account contains an unidentifiable accumulation of trust funds or property, or trust funds or property held for missing owners, such funds or property shall be so designated. Diligent search and inquiry shall then be made by the attorney to determine the beneficial owner of any unidentifiable accumulation or the address of any missing owner. If the beneficial owner of an unidentified accumulation is determined, the funds shall be properly identified as the lawyer's trust property. If a missing beneficial owner is located, the trust funds or property shall be paid over or delivered to the beneficial owner if the owner is then entitled to receive the same. Trust funds and property that remain unidentifiable and funds or property that are held for missing owners after being designated as such shall, after diligent search and inquiry fail to identify the beneficial owner or owner's address, be disposed of as provided in applicable Florida law.

(j) Disbursement Against Uncollected Funds. A lawyer generally may not use, endanger, or encumber money held in trust for a client for purposes of carrying out the business of another client without the permission of the owner given after full disclosure of the circumstances. However, certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients owning trust account funds subject to possibly being affected. Except for disbursements based upon any of the 6 categories of limited-risk uncollected deposits enumerated below, a lawyer may not disburse funds held for a client or on behalf of that client unless the funds held for that client are collected funds. For purposes of this provision, "collected funds" means funds deposited, finally settled, and credited to the lawyer's trust account. Notwithstanding that a deposit made to the lawyer's trust account has not been finally settled and credited to the account, the lawyer may disburse funds from the trust account in reliance on such deposit:

(1) when the deposit is made by certified check or cashier's check;

(2) when the deposit is made by a check or draft representing loan proceeds issued by a federally or state-chartered bank, savings bank, savings and loan association, credit union,

or other duly licensed or chartered institutional lender;

(3) when the deposit is made by a bank check, official check, treasurer's check, money order, or other such instrument issued by a bank, savings and loan association, or credit union when the lawyer has reasonable and prudent grounds to believe the instrument will clear and constitute collected funds in the lawyer's trust account within a reasonable period of time;

(4) when the deposit is made by a check drawn on the trust account of a lawyer licensed to practice in the state of Florida or on the escrow or trust account of a real estate broker licensed under applicable Florida law when the lawyer has a reasonable and prudent belief that the deposit will clear and constitute collected funds in the lawyer's trust account within a reasonable period of time;

(5) when the deposit is made by a check issued by the United States, the State of Florida, or any agency or political subdivision of the State of Florida;

(6) when the deposit is made by a check or draft issued by an insurance company, title insurance company, or a licensed title insurance agency authorized to do business in the state of Florida and the lawyer has a reasonable and prudent belief that the instrument will clear and constitute collected funds in the trust account within a reasonable period of time.

A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those set forth above, when it results in funds of other clients being used, endangered, or encumbered without authorization, may be grounds for a finding of professional misconduct. In any event, such a disbursement is at the risk of the lawyer making the disbursement. If any of the deposits fail, the lawyer, upon obtaining knowledge of the failure, must immediately act to protect the property of the lawyer's other clients. However, if the lawyer accepting any such check personally pays the amount of any failed deposit or secures or arranges payment from sources available to the lawyer other than trust account funds of other clients, the lawyer shall not be considered guilty of professional misconduct.

(k) Overdraft Protection Prohibited. An attorney shall not authorize overdraft protection for any account that contains trust funds.

DECLARATION OF SERVICE
by
U.S. MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): **09-J-12252**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare:

☐ **By U.S. Mail:** ☒ **By U.S. Certified Mail:**

- that I am not a party to the within action;
- that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service;
- that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day;
- that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and
- that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles...

☐ **By Overnight Delivery:**

- that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS');
- that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California for overnight delivery is deposited, with delivery fees paid or provided for, with UPS that same day; and
- that in accordance with the practice of the State Bar of California for collection and processing of mail for overnight delivery by UPS, I deposited or placed for collection and overnight delivery by UPS...

☐ **By Fax Transmission:**
Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

☐ **By Electronic Service:**
Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

on the date shown below, a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

☐ *(for U.S. Mail)* in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*

☒ *(for Certified Mail)* in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
Article No.: 7160 3901 9845 4872 9818 at Los Angeles, addressed to: *(see below)*

☐ *(for Overnight Delivery)* together with a copy of this declaration, in an envelope, or package designated by UPS,
Tracking No.: addressed to: *(see below)*

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
JAMES H. TIPLER	Post Office Box 10 Mary Esther, Florida 32569	Electronic Notification Address	James H. Tipler 495 Grand Blvd., #206 Miramar Beach, Florida 32550-1897 James H. Tipler 4 Windy Lane Mary Esther, Florida 32569

☐ in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: April 11, 2011 SIGNED: [signature]
BERNARD PIMENTEL
Declarant