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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. 83,515

[TFB Case No. 93-70,356 (11H)]

v.

MICHAEL A. CATALANO,

Respondent.

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

COMPLAINANT'S INITIAL BRIEF

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POINT

WHETHER IT IS PROPER FOR A GRIEVANCE COMMITTEE TO
FIND PROBABLE CAUSE OR MINOR MISCONDUCT WHERE THE
VOTING MEMBERS OF THE COMMITTEE, CONSTITUTING A
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SYMBOLS AND REFERENCES

In this brief, the complainant, The Florida Bar, will be referred to as "The Florida Bar" or "the bar."

The transcript of the final hearing held on January 10, 1994, will be referred to as "T(FH)," followed by the cited page number.

The Report of Referee, dated June 9, 1994, will be referred to as "ROR," followed by the referenced page number(s) of the Appendix, attached (ROR-A-_____).

STATEMENT OF THE CASE

The Eleventh Judicial Circuit Grievance Committee "H" voted to find minor misconduct on October 22, 1993, and issued its report of minor misconduct on December 2, 1993, in which it recommended an admonishment be administered by a personal appearance before the Board of Governors of The Florida Bar. The respondent, through counsel, rejected this finding and the bar filed its complaint of minor misconduct on April 13, 1994. The Honorable John I. Gordon was assigned as referee on April 25, 1994, and on May 3, 1994, the respondent answered the bar's complaint, asserted affirmative defenses and moved for a dismissal. The undersigned entered his appearance as counsel of record for The Florida Bar on May 20, 1994. The respondent's motion was heard on June 6, 1994, and the referee entered his report recommending dismissal on June 9, 1994. Initially, this court adopted the report on June 23, 1994, but thereafter on June 29, 1994, vacated its opinion as being erroneous.

The Board of Governors considered the referee's report at its July, 1994, meeting and voted to seek an appeal. The bar petitioned for review on August 3, 1994.

STATEMENT OF THE FACTS

Because the referee recommended dismissal, he made no findings of fact as to the respondent's alleged misconduct. At issue here is not the alleged acts of misconduct, but rather the circumstances surrounding the vote of the Eleventh Judicial Circuit Grievance Committee "H" to find probable cause.

The committee held a hearing on this matter on October 22, 1993. At that time the committee took testimony and evidence. In attendance were five (5) members of the committee, two (2) of whom were lawyers "T(FH)pp.3-4." One was the investigating member for the committee and did not vote during the executive session "T(FH)p.4." The four (4) voting members found the evidence supported a finding of minor misconduct and recommended an admonishment be administered to the respondent by a personal appearance before The Board of Governors of The Florida Bar "T(FH)p.3."

SUMMARY OF THE ARGUMENT

Rule 3-7.4(g) of the Rules Regulating The Florida Bar clearly authorizes grievance committees consisting of no more than two lawyers and one layperson to vote on bar disciplinary cases. There is no requirement that two lawyers vote or that one lawyer and the layperson vote. The only language in the rule that addresses voting is the restriction against the investigating member casting a vote.

Interpretation of bar rules is governed by this court's approach to statutory construction. The intent of a rule or statute governs interpretation and controls even where apparent intent may contradict the actual language of a poorly drafted statute or rule. When rule 3-7.4(g) is read in its entirety, and read in the context of the remaining rules, it is clear its intent is to make the grievance process more efficient for both accused attorneys and the public by allowing committees to address a larger number of cases at each meeting. If the intention was to require two lawyer members to vote, the layperson would always be required to act as the investigator and would always be precluded from voting in any three member panel decision. Nowhere in the rules or case law is this scenario contemplated because it would relegate the laymember to a lesser role.

In the respondent's case, a quorum was present and properly voted on the allegations. The referee erred in his legal conclusion that the rule's voting requirements were not met. This

matter should be remanded for a trial on the merits.

ARGUMENT

POINT

IT IS PROPER FOR THE GRIEVANCE COMMITTEE TO
FIND PROBABLE CAUSE OR MINOR MISCONDUCT WHERE
THE VOTING MEMBERS OF THE COMMITTEE, CONSTITUTING
A QUORUM, INCLUDE ONLY ONE LAWYER.

The bar seeks to challenge the referee's legal conclusions in this matter which led to his recommendation of a dismissal. The bar submits his conclusion that R. Regulating Fla. Bar 3-7.4(g) requires two attorney members of a grievance committee to vote on a finding is erroneous and his recommendation of dismissal based upon that conclusion is unjustified. This court's scope of review of a referee's legal conclusions is broader than that of the findings of fact, The Florida Bar in re Inglis, 471 So. 2d 38 (Fla. 1985).

Rule 3-7.4(g) states:

Three members of the committee, 2 of whom must be lawyers, shall constitute a quorum. The grievance committee may consider cases in panels of not fewer than 3 members, 2 of whom must be lawyers...The 3-member panel shall elect 1 of its lawyer members to preside over the panel's actions. If the chair or vice-chair is a member of a 3-member panel, the chair or vice-chair shall be the presiding officer. All findings of probable cause and recommendations of guilt of minor misconduct shall be made by affirmative vote of a majority of the committee members present, which majority must number at least 2 members...A lawyer grievance committee member may not vote on the disposition of any matter in which that member served as the investigating member of the committee.

The referee's conclusion that the voting members must include two lawyers is erroneous and contrary to both the specific reading

of the rule as well as the general intent of the rule. The only requirement in regard to actual voting is that the majority must number at least two members. In the respondent's case, the majority voting did in fact have four members. One was a lawyer and three were nonlawyers. Thus, the bar submits the committee's vote fully complied with R. Regulating Fla. Bar 3-7.4(g). Both of the committee's lawyer members considered the case. One of the lawyers was the investigating member and therefore could not vote. Reading the rule to require two lawyers to vote would discriminate against the laymember in a manner that clearly is not intended by the rule. The rules make no distinction between the functions of lay and attorney members other than to require that an attorney chair a grievance committee. See R. Regulating Fla. Bar 3-3.4(e).

The process of construing the bar's rules can be compared to that for construing statutes. In statutory construction, the court is required to look for a reason to uphold the statute and to adopt any reasonable view that will do so. State v. Dixon, 594 So.2d 295 (Fla. 1992). The rules for construing statutes are aimed at discovering legislative intent, Dixon, supra. The court must also consider, among other things, the history of a law's enactment. State v. Webb, 398 So. 2d 820 (Fla. 1981). Legislative intent must be construed primarily from the language of the statute. Shelby Mutual Insurance Co. of Shelby, Ohio v. Smith, 556 So. 2d 393 (Fla. 1990). The statute must be read and construed in its entirety rather than a portion of it being reviewed out of context. Shuman v. State, 358 So. 2d 1333 (Fla. 1978). Intent must be given effect

even if it may contradict the strict letter of the statute. Vildibill v. Johnson, 492 So. 2d 1047 (Fla. 1986). Where the statutory language is clear and unambiguous, there is no reason for the court to resort to the statutory construction process. Shelby, supra. The bar submits R. Regulating Fla. Bar 3-7.4(g), when read within the context of the entire rule, is clear and unambiguous and therefor no interpretation of it is necessary. In the alternative, if the rule were found to be ambiguous, the intent behind the rule's language is to allow a grievance committee to handle the increasing case loads more efficiently by allowing it to break down into smaller panels to hear and dispose of more cases. Because the committee investigating member may have formed certain biases during the investigation of a case, that member is excluded from voting.

The intent of the Disciplinary Review Commission with respect to the amendment to Rule 3-7.4 was to make better use of the bar's volunteer resources at the committee level. The commission believed that rather than requiring the entire committee to make determinations on matters before it, it would be more efficient to allow the committee to break into subpanels and divide the labor rather than risk overburdening the entire committee. Each subpanel would require the input of a nonlawyer member. The decision to break into subpanels would be discretionary with the chair based on the committee's case load. The commission also was concerned about an investigating member being allowed to participate in the deliberations of the committee and to vote on the disposition of

the case. The commission believed this situation combined the prosecutorial and adjudicatory functions and therefore the investigating member should be precluded from voting. The commission's main concern in making its recommendations to this court and the bar's Board of Governors was that any subpanels used by committees have the input of a nonlawyer member and that investigating members be precluded from voting. The pertinent portions of the Disciplinary Review Commission's report is appended hereto. Further, in its petition to amend the rules, the bar discussed the amendment to Rule 3-7.4 as necessary to allow grievance committees to hear matters in panels of three or more members in those cases where the designated reviewer and the chair agree and provided that a lawyer member who investigates the particular case is precluded from voting on its disposition. The purpose was not to require the panel to consist of at least two voting lawyer members. A copy of the bar's petition is appended hereto.

The bar's position is further strengthened by the fact that the Board of Governor's authorization, appended hereto, allows these smaller panels to consider a disciplinary case. The Eleventh Judicial Circuit Grievance Committee "H" was authorized to consider grievance matters in panels of not fewer than three members, two of whom were to be lawyers. Such an arrangement allows only two members of the panel to vote because one must be assigned as an investigating member. Therefore, unless the nonlawyer member is an investigating member, it would be impossible for two lawyers to

vote on a matter.

Rule 3-7.4 was amended by this court in 1990. See The Florida Bar re Amendments to the Rules, 558 So. 2d 1008, 1017 (Fla. 1990). The rule prior to this time was 3-7.3(f). The former rule read as follows:

Not fewer than three (3) members, one of whom must be the chairperson or vice-chairperson and another of whom must be a lawyer, shall constitute a quorum. All findings of probable cause and recommendations of guilt of minor misconduct shall be made by an affirmative vote of a majority of the committee members present, which majority must number at least two (2) members.

Nowhere did the old rule state that the one lawyer member had to cast a vote, nor does any case law exist construing the rule to require such.

The amendment to the rule in 1990 altered it merely to require that a quorum must consist of two lawyers and one nonlawyer. The amendment also prevented a lawyer investigating member of the committee from voting.

In his report, the referee found the committee did not have a proper quorum when it voted to find minor misconduct in this matter "ROR-A-3." It appears the referee based his recommendation upon his interpretation of the word "consider" in the provision of the rule that states "[t]he grievance committee may consider cases in panels of not fewer than 3 members, 2 of whom must be lawyers. Consideration of matters by a panel of 3 members shall be conducted upon concurrence of the designated reviewer and the chair of the grievance committee" (emphasis added). The bar submits that within

the context of the rule, when read as a whole, the term "consider" refers to the committee's taking of evidence and, if appropriate, testimony and its executive committee deliberations. The actual vote is separate and apart from these actions. It is not uncommon for a grievance committee hearing on a particular matter to be conducted during the span of several different meetings or for the hearing to be held at one meeting and the executive committee deliberation to be held at a different time. As a result, some members may be present for the hearing, executive committee session and the vote while others may be absent from the hearing and, therefore, not qualified to vote. Further, a committee member may be present for both the hearing and the executive session but be ineligible to vote because the member must be recused due to some conflict of interest. Black's Law Dictionary, Fourth Edition, defines the term "consider" to mean "to fix the mind on, with a view to careful examination; to examine; to inspect" (citations omitted). It further defines the term to mean "to deliberate about and ponder over" or "to entertain or give heed to" (citations omitted). It appears that the referee based his interpretation of the term upon an alternate meaning defining consideration as passing judgment on a matter "T(FH)p.10." The bar submits the referee misinterpreted the purpose of the grievance committee.

The committee does not pass judgment. It acts in a manner similar to a grand jury and determines whether or not probable cause exists to warrant further proceedings or whether minor misconduct may exist to warrant a recommendation of an

admonishment. The committee's recommendations are subject to review by The Board of Governors of The Florida Bar pursuant to R. Regulating Fla. Bar 3-7.5. The committee's recommendations cannot be appealed directly to this court. A referee is not appointed as trier of fact until after probable cause has been found or minor misconduct rejected and a complaint of minor misconduct filed by the bar.

The bar submits in this case a proper quorum was met and the committee's vote to recommend a finding of minor misconduct was not defective. Therefore, the referee's dismissal of the bar's complaint of minor misconduct was erroneous and unjustified.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will consider the report of referee in this matter and enter an appropriate order remanding the case back to the referee for final hearing to take evidence concerning the allegations contained in the bar's complaint of minor misconduct.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing initial brief and appendix have been furnished by regular U.S. Mail to The Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927; a copy of the foregoing has been furnished by regular U.S. mail to respondent's counsel, Mr. Scott Sakin, 1411 N.W. North River Drive, Miami, Florida, 33125; and a copy of the foregoing has been furnished by regular U.S. mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 31ST day of August, 1994.



JAMES W. KEETER
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. 83,515

[TFB Case No. 93-70,356 (11H)]

v.

MICHAEL A. CATALANO,

Respondent.

APPENDIX TO COMPLAINANT'S INITIAL BRIEF

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IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

RECEIVED

JUN 13 1994

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. 83,515

THE FLORIDA BAR
ORLANDO

vs.

MICHAEL A. CATALANO,
Respondent.

Florida Bar File
No. 93-70,356(11H)

REPORT AND RECOMMENDATION OF REFEREE
ON RESPONDENT'S MOTION TO DISMISS THE COMPLAINT

I. Summary of Proceedings:

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, hearings were held on the following dates: Monday June 6, 1994.

The following attorneys appeared as counsel for the parties:

For the Florida Bar: James W. Keeter, Esq.

For the Respondent: Scott W. Sakin, Esq.

II. Report and Recommendation:

The Bar has filed a complaint for minor misconduct on the grounds that the Respondent violated Rule Regulating the Florida Bar 4-8.2(a).

The rule states:

"A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of

a judge..."

The Respondent, through counsel filed an answer denying the material allegations in the complaint and a motion to dismiss the complaint along with affirmative defenses.

After having read the motion to dismiss and the Bar's response thereto and having heard argument from counsel for both the Bar and the Respondent, this referee recommends that the instant complaint be dismissed for the following reasons.

The Respondent moved this Court to dismiss the complaint of minor misconduct because the Grievance Committee which heard this matter did not have a proper quorum, pursuant to Florida Bar Rule 3-7.4(g). The rule requires that the Grievance Committee have a quorum of three members of the committee, two of whom must be lawyers, before the committee may consider cases. The rule further states that a lawyer grievance committee member may not vote on the disposition of any matter in which that member served as the investigating member of the committee. In this case, the investigating member, an attorney, was David White. At the probable cause hearing, David White appeared and acted as a prosecutor/investigating member. At the time of the probable cause vote, the committee members consisted of Gui Govaert, a non-lawyer; Julian Newbauer, a non-lawyer; Gilda Geer, a non-lawyer; Julie Feigeles, a lawyer; and investigating member David White. At the conclusion of the hearing, the three non-lawyers along with the only lawyer eligible to vote, Julie Feigeles, determined that there had been minor misconduct. That vote consisted of one lawyer

and three non-lawyer members. Thus, Mr. Catalano was found to have committed minor misconduct based on the votes of one lawyer and three non-lawyers. This is contrary to Rule 3-7.4(c) which governs grievance committee procedures.

This referee hereby recommends that Respondent's motion to dismiss be granted, that the instant matter be dismissed as the grievance committee procedures were not followed as there was no legal quorum at the grievance committee hearing.

III. Statement of Costs and Manner in Which Cost should be Taxed:

It is recommended that no costs be taxed against either the Bar or the Respondent. JUN 09 1994

Dated this _____ day of June, 1994.

JON I. GORDON

Referee Jon. I. Gordon
Circuit Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above report of referee has been served upon James W. Keeter, Esq. at 880 North Orange Ave., Suite 200, Orlando, FL 32801 and Scott W. Sakin, Esq., at 1411 N.W. North River Drive, Miami, FL 33125 on this _____ day of June, 1994.

THE FLORIDA BAR
DISCIPLINARY REVIEW COMMISSION

DISCIPLINARY REVIEW COMMISSION REPORT

TO

SUPREME COURT OF FLORIDA

AND

THE FLORIDA BAR BOARD OF GOVERNORS

January, 1989

letter advising that a complaint has been filed and encloses the complaint itself and any documentation upon which it is based. The respondent is given full opportunity to respond at this stage and it is this response, together with all of the other documentation provided by the complainant and gathered by Bar counsel, which will be provided to and considered by the committee.

The Commission regards this as one of its most important recommendations as testimony indicates that this is the stage of the process which is most time consuming. Its adoption would avoid the "two trial" aspect of the present system while allowing sufficient input from all concerned in order to determine probable cause. This recommendation does not preclude a committee from holding a hearing in those cases where it is deemed essential by the committee to hear live testimony in order to arrive at a decision.

RECOMMENDATION #2:

PROBABLE CAUSE DETERMINATIONS MAY BE MADE BY A SUBPANEL OF THREE (TWO LAWYERS AND ONE NON-LAWYER) OF THE FULL GRIEVANCE COMMITTEE.

Comment

Currently it is necessary to have a quorum of the grievance committee members in order to make determinations on matters brought before it. While this in itself is not usually a problem, using the time of six to ten or more people to make a probable cause determination on one case is not an efficient use of the Bar's volunteer resources.

This recommendation has been made so that committees which

may be especially overburdened with matters to consider might break into subpanels and divide the labor. Each subpanel would require the input of a non-lawyer member as well.

The Commission feels it important to stress that subpanels would not always be used and that many cases will still be decided by a full committee or a quorum thereof. The decision to break into subpanels will be discretionary with the chair based on the caseload of the committee.

RECOMMENDATION #3:

A GRIEVANCE COMMITTEE MEMBER MAY NOT VOTE ON THE DISPOSITION OF ANY MATTER IN WHICH THAT MEMBER SERVED AS THE INVESTIGATING MEMBER.

Comment

Currently, the grievance committee member who investigates and, in some cases, presents the matter to the grievance committee is also allowed to participate in the deliberations of the committee and to vote on the disposition of the case. This situation combines the prosecutorial and adjudicatory functions and, accordingly, has brought well founded criticism from respondents and their counsel.

The investigating member in these cases often finds himself more in the role of a prosecutor or advocate. Because of that, there exists at least a perception of unfairness in allowing that individual to participate in the disposition of the matter as well.

REFEREES

Comment

The Commission was not presented with any recommendations

IN THE SUPREME COURT OF FLORIDA

RECEIVED

JUN 20 1994

THE FLORIDA BAR
ORLANDO

JWC

THE FLORIDA BAR

IN RE: PETITION TO

AMEND THE RULES

REGULATING THE FLORIDA

CASE NO.

BAR - GRIEVANCE PROCEDURES

AND CONFIDENTIALITY

PETITION TO AMEND THE RULES REGULATING THE FLORIDA BAR

The Board of Governors of The Florida Bar, pursuant to rule 1-12.1, Rules Regulating The Florida Bar, hereby petitions the court to amend the Rules Regulating The Florida Bar in the manner set out below and says:

1. This petition and the amendments sought herein were authorized by the Board of Governors of The Florida Bar at its meeting which ended May 26, 1989.

2. Notice of intent to file this petition was published in the July 15, 1989, edition of The Florida Bar News as required in rule 1-12,.1, Rules Regulating The Florida Bar. Exhibit A.

3. This petition seeks amendment of rules:

The amendments presented in this new rule differentiate between inquiries into professional conduct and complaints regarding the same. Inquiries are matters concerning someone over whom disciplinary jurisdiction exists and the facts presented, if true, constitute a violation of the Rules Regulating The Florida Bar (proposed 3-7.3(a)). Bar counsel, subject to internal guidelines and procedures, may determine not to pursue an inquiry if the matter does not relate to someone within the jurisdiction of the system or if the facts, if proven, do not constitute a violation of the rules. Complaints are those matters which are about someone over whom jurisdiction exists and the facts, if proven, constitute a violation of the rules (proposed 3-7.3(b)). Complaints must be sworn (proposed 3-7.3(c)). Bar counsel may dismiss complaints if the facts "show that the attorney did not violate the" rules (proposed 3-7.3(d) or may refer a complaint to a grievance committee for its action (proposed 3-7.3(e)).

These amendments are necessary to streamline the grievance process because of the increasing number of matters being referred to the bar and are necessary to insure that complaints are genuine and are not brought with base motives.

3-7.4 Grievance committee procedures. (Currently 3-7.3)

The amendments to this rule change reference to no probable cause with "admonishments" to "letters of advice" consistent with amendments to 3-5.1.

The amendments allow grievance committees to hear matters in panels of three (3) or more if the designated reviewer and chairman agree and provide that a lawyer member who investigates a particular case may not vote on its disposition (proposed 3-7.4(f)).

Most significantly, the amendments provide that no longer is the grievance committee required to hold a hearing before it may find probable cause. However, due process or other rights of the respondent are preserved by the requirement of providing all evidence and testimony to the respondent and allowing an opportunity for a response (proposed 3-7.4(g)).

The remaining amendments change reference to "admonishments" to "letter of advice" and clarify who issues reports and letters of such action and change reference to "private reprimand" to "admonishment" consistent with amendments to 3-5.1.

3-7.5 Procedures before the board of governors.
(Currently 3-7.4)

The amendments to this rule change reference to "private reprimand" to "admonishment" (proposed 3-7.5(a)(1)a).

The amendments place a time limit on the ability of the designated reviewer to review actions of the grievance committee thereby providing for finality of this review process (proposed 3-7.5(b) and see also, proposed 3-7.1(a)(3)).

3-7.6 Procedures before a referee. (Currently 3-7.5)

The amendments to this rule are in subsection (k) Referee's

3-7.34 Grievance committee procedures.

* * *

(e) Counsel and investigators. Upon request of a grievance committee, staff counsel may appoint a bar counsel or an investigator to assist the committee in an investigation. Staff counsel shall assist each grievance committee in carrying out its investigative and administrative duties and shall prepare status reports for the committee, notify complainants and respondents of committee actions as appropriate, and prepare all reports reflecting committee findings of probable cause, no probable cause, recommended discipline for minor misconduct, and ~~admonishments~~ letters of advice after no probable cause findings.

(f) Quorum, vote. The grievance committee may consider cases in panels of not fewer than three (3) members, one of whom must be the chairperson or vice-chairperson and another two (2) of whom must be a lawyers 7. Three (3) members of the committee, two (2) of whom must be lawyers, shall constitute a quorum. Consideration of matters by a panel of three (3) members shall only be conducted upon concurrence of the designated reviewer and the chairperson of the grievance committee. All findings of probable cause and recommendations

of guilt of minor misconduct shall be made by affirmative vote of a majority of the committee members present, which majority must number at least two (2) members. The number of committee members voting for or against the committee report shall be reflected in the transcript. Minority records may be filed. A lawyer grievance committee member may not vote on the disposition of any matter in which that member served as the investigating member of the committee.

(g) Rights and responsibilities of the respondent. The respondent may be required to testify and to produce evidence as any other witness unless the respondent claims a privilege or right properly available to the respondent under applicable federal or state law. The respondent may be accompanied by counsel. At a reasonable time before any hearing at which any finding of probable cause or minor misconduct is made the respondent shall be advised of the conduct which is being investigated and the rules which may have been violated, provided the bar may amend its statement as to which rules have been violated. The respondent shall be provided with all materials considered by the committee and shall be given an opportunity to make a written statement personally or by counsel, verbally or in writing, sworn or unsworn, explaining, refuting, or admitting the alleged misconduct. The respondent shall be granted the right to be present at any grievance committee hearing when evidence is to be presented to the

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR
RE: AMENDMENTS TO THE RULES
REGULATING THE FLORIDA BAR CASE NO. 74,570
(GRIEVANCE PROCEDURES AND
CONFIDENTIALITY)

MOTION FOR CLARIFICATION

The Florida Bar hereby moves the court for clarification of its order of February 15, 1990, entered in this case and says:

1. By order dated February 15, 1990, this court adopted progressive amendments to the procedures for investigation and prosecution of disciplinary complaints brought against Florida lawyers. Also contained in that order are amendments, the effect of which is the abolition of confidentiality in almost all instances of lawyer regulatory activity.

2. The court entered its order upon petition by the bar with the substantial input from the Disciplinary Review Commission, various individual members of the bar and members of the public. The final product of the court, by its own admission, is an integration of the recommendation of the bar and the commission, with some independent amendments by the court. Because of this

evaluating the character and fitness of an applicant for admission to practice law in that jurisdiction; or

(2) Florida judicial nominating commissions or the comparable body in other jurisdictions for the purpose of evaluating the character and fitness of a candidate for judicial office.

10. Rule 3-7.3(f) Review of inquiries, complaint processing and initial investigatory procedures.

The bar perceives the court's intent to be that once matters are concluded, regardless of the manner thereof, that such become public information. In this regard see proposed 3-7.1(h) through (j). If such is the intention, then inquiries and complaints dismissed by staff must also become public information so that the ". . . public [may] determine for itself that the grievance system works efficiently, fairly, and accurately." Page 4 of opinion.

To further this intent, new (f) is proposed in which closed inquiries and complaints dismissed by staff are equated with no probable cause findings, for the purpose of becoming public information.

3-7.3 Review of inquiries, complaint processing and initial investigatory procedures.

(f) Information concerning closed inquiries and complaints dismissed by staff. When bar counsel does not pursue an inquiry or dismisses a disciplinary case, such action shall be deemed a finding of no probable cause for further disciplinary proceedings and the matter shall become public information.

11. Rule 3-7.4(f) Grievance committee procedure.
Quorum, vote.

Under the amended rules grievance committees may consider cases in panels of not fewer than three (3) members. Neither the chairperson nor the vice-chairperson of the committee is required to be on the panel. However, the panel will need a presiding officer and the amendment allows election of same. The amendment requires the chairperson or vice-chairperson to be the presiding officer if one of them is a member of the panel. Otherwise, the presiding officer must be one of the lawyer members of the panel.

In addition to this amendment, the organization of this rule is altered, hopefully for clarity.

3-7.4 Grievance committee procedures.

(f) Quorum, vote. Three (3) members of the committee, two (2) of whom must be lawyers, shall constitute a quorum. The grievance committee may consider cases in panels of not fewer than three (3) members of the committee, two (2) of whom must be lawyers. Three (3) members of the committee, two (2) of whom must be lawyers, shall constitute a quorum. Consideration of matters by a panel of three (3) members shall only be conducted upon concurrence of the designated reviewer and the chairperson of the grievance committee. The three (3) member panel shall elect one of its lawyer members to preside over the panel's actions. If the chairperson or vice-chairperson is a member of a three (3) member panel, the chairperson or vice-chairperson shall be the presiding officer. All findings of probable cause and recommendations of guilt of minor misconduct shall be made by affirmative vote of a majority of the committee members present, which majority must number at least two (2) members. The number of committee members voting for or against the committee report shall be reflected in the transcript. A lawyer grievance committee member may not vote on the disposition of any matter in which that member served as the investigating member of the committee.

12. Rule 3-7.4(h) Rights of the complaining witness.

The court, at the bar's urging, has amended 3-7.4(g) as such rule establishes the rights of the respondent. However, the bar