

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

CASE NO. SC08-1786

Complainant,

TFB NO. 2008-10,621 (20D)

v.

MICHELLE ERIN BERTHIAUME,

Respondent.

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REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings according to Rule 3-7.6, Rules Regulating The Florida Bar, the following proceedings occurred: the final hearing was held on April 14, April 15, May 22 and July 9, 2009. A hearing on Sanctions was held on March 19, 2010. The final hearing and sanctions hearing were held in Sarasota County, Florida. The parties presented testimony, evidence, argument and memoranda to the referee. All of the transcripts, pleadings, responses, and exhibits received in evidence, and this Report of Referee, will constitute the record in this case to be forwarded to the Supreme Court of Florida.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Henry Lee Paul  
For Respondent: G. Michael Keenan

## 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 and disciplinary rules of the Supreme Court of Florida.

B. Narrative Summary of the Case. Respondent was charged with violating Rules 4-8.4(d) (a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice), Rule 4-4.1 (in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person), Rule 4-4.4 (in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person) and Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation). During the proceedings, The Florida Bar stipulated that it was not pursuing a charge of fraud against Respondent.

On September 25, 2004, Respondent signed and served by U. S. Mail a document entitled "Subpoena Duces Tecum" on Pelican Bank. The purported

subpoena directed that records of Respondent's client be produced regarding certain checks that had been written by the client, from his account at Pelican Bank, to Respondent. The checks were not honored by the bank. The purported subpoena stated: "If you fail to produce these records and the above requested information as described, you may be held in contempt of court, punishable by a fine or incarceration or both." There was no pending case and the purported subpoena was not authorized by law. The Bank refused to honor the purported subpoena and a lawyer for the Bank filed a Bar Complaint complaining of Respondent's conduct. Respondent was also charged with violating the same Rules by making misleading statements to the Bank by insisting, during a phone conversation with a senior Bank officer, that the Bank was required to produce documents pursuant to the purported subpoena.

I find by clear and convincing evidence that Respondent is responsible for including language threatening incarceration and contempt in the purported subpoena which was clearly designed to cause the Bank to produce the records without legal authority. The language in the purported subpoena was clearly misleading. Respondent knowingly and deliberately sent the purported subpoena with the offending language.

III. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY

I recommend that the Respondent be found guilty of violating Rule 4-8.4(d) (a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice). Rule 4-8.4(d) is about all of us joining together as a team in preserving the integrity of our system, and we are all only as strong as any one of our members, and it is without a doubt unacceptable that a third party be threatened with jail unless documents are produced without the vehicle of proper subpoena issued by the Court, a subpoena authorized and absolutely consistent with the requirements of the Rules of Civil Procedure.

I recommend that Respondent be found not guilty of violating Rule 4-4.1 (in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person), Rule 4-4.4 (in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person), and Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures and that she be disciplined by:

A. A ten (10) day suspension, effective thirty (30) days from the date the Supreme Court of Florida approves the Report of Referee.

B. Payment of The Florida Bar's costs in these proceedings.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

After the finding of guilt and prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Personal History of Respondent:

Age: 55

Date admitted to the Bar:

April 13, 2000

Prior Disciplinary Convictions and Disciplinary Measures Imposed Therein:  
none

The Referee notes that the Respondent is not certified in any area of practice.

VI. CASE LAW

In making these recommendations, I considered the following case law:

A. As to determination of guilt and sanctions: I read all cases

submitted by the parties. I found the following to be particularly instructive: *The Florida Bar v. Varner*, 780 So. 2d 1 (Fla. 2001) The *Varner* case supports the finding of a violation of Rule 4-8.4(d) (a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice). In *Varner*, the Respondent mistakenly informed an insurance company attorney that a lawsuit had been filed. In order to obtain a minimal settlement he agreed to dismiss the case and send the opposing counsel a notice of dismissal. When Varner found out that he had incorrectly stated a case had been filed, instead of coming forward with the mistake, he created a fictitious notice of dismissal and sent it to opposing counsel. The Court quoted *The Florida Bar v. Machin*, 645 So. 2d 938 (Fla. 1994), “While conduct that actually affects a given proceeding may be prejudicial to the administration of justice, conduct that prejudices our system of justice as a whole is also encompassed in Rule 4-8.4(d). The Court further wrote that “Varner attempted to conceal his initial mistake in representing to State Farm that a lawsuit had been filed by creating a fictitious court document that was cloaked with the aura of authenticity. Such misuse of official documents is conduct prejudicial to the administration of justice.” I note the similarity of the conduct in *Varner* to that in the present case. In *Varner*, there was no dispute that Varner executed a fictitious notice. Here, there is no dispute that there is a signature of

Respondent on the purported subpoena, and that it was mailed from her office.

Varner was found guilty of additional rule violations. The referee found no aggravating factors and three mitigating factors. Varner was suspended for a period of 90 days.

I find *The Florida Bar v. Head*, 27 So. 3d 1, 7 (Fla. 2010), is instructive in this case. The Court stated that, “the Court does not view violations of ... Rule 4-8.4(d) (a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice) as minor. The Court has clearly stated that ‘basic fundamental dishonesty is a serious flaw, which cannot be tolerated’ because dishonesty and a lack of candor ‘cannot be tolerated by a profession that relies on the truthfulness of its members’ *Fla. Bar v. Rotstein*, 835 So. 2d 242, 246 (Fla. 2002). Dishonest conduct demonstrates the utmost disrespect for the court and is destructive to the legal system as a whole.”

Additional instructive cases as to sanctions are cited in Section VII of this Report of Referee.

B. As to imposition of costs: I read all cases submitted by the parties. I found the following to be particularly instructive: *The Florida Bar v. Head*, 27 So. 3d 1, 7 (Fla. 2010).

VII. FLORIDA STANDARDS FOR IMPOSING LAWYER SANCTIONS, INCLUDING AGGRAVATING AND MITIGATING FACTORS

In making these recommendations, I considered and found the following

Standards applicable:

**6.2 Abuse of the Legal Process.**

6.22 Suspension is appropriate when a lawyer knowingly violates a court order or rule and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

**7.0 Violations of Other Duties Owed as a Professional**

7.2 Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

**9.2 Aggravation**

I find no aggravating factors applicable. The Florida Bar had requested a finding of the following aggravating factors:

9.22(b) dishonest or selfish motive;  
9.22(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process.

I make the following findings regarding the lack of aggravating factors:

Respondent was trying to collect a just debt and had been frustrated in her attempts to use the criminal process because the Bank had inexplicably described the reason for the failure to honor the checks as “refer to maker” as opposed to “non sufficient

funds.” This distinction caused the state attorney to decline to prosecute the Respondent’s client. I decline to make a determination concerning whether Respondent gave false testimony and made false statements during the disciplinary process. Although Respondent’s explanation of how and why she sent the subpoena changed over the course of the disciplinary process, I have taken into account the long history of this case in reaching my recommendation as to discipline. None of the explanations provided by Respondent were sufficient to absolve her of misconduct. I find Respondent’s explanation of her conduct to be contradictory, confusing and inconsistent.

### **9.3 Mitigation**

I find the following mitigating factors applicable:

- 9.32(a) absence of a prior disciplinary record;
- 9.32(f) inexperience in the practice of law;
- 9.32(g) character or reputation;
- 9.32(j) interim rehabilitation.

I make the following findings regarding the mitigating factors: Respondent had been practicing law for approximately four years when the misconduct occurred. Most of Respondent’s practice had been in criminal law matters and she was not experienced in civil matters. Respondent presented evidence at the sanctions hearing of her extraordinary efforts to provide pro bono representation to the neediest of residents through the Florida Rural Legal Services which

commenced long before the conduct complained of in this proceeding. Respondent is to be commended for her efforts in this regard and is given substantial credit for her voluntary efforts to help those unable to help themselves. The recommended suspension would have been substantially greater without the mitigating factor of extraordinary pro bono service. Subsequent to the misconduct, Respondent had also twice submitted to a voluntary LOMAS review and had taken the following courses: Professionalism Workshop (11/20/08) and Ethics School (11/21/08). I find this sufficient to establish interim rehabilitation.

I find the following mitigating factors requested by Respondent are not applicable:

- 9.32(b) absence of a dishonest or selfish motive;
- 9.32(d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- 9.32(i) unreasonable delay in disciplinary proceeding provided that the respondent did not substantially contribute to the delay and provided further that the respondent has demonstrated specific prejudice resulting from that delay;
- 9.32(k) imposition of other penalties or sanctions;
- 9.32(l) remorse.

I make the following findings regarding the lack of mitigating factors:

Although Respondent sought to collect a just debt, she had a self interest in collection. In attempting to collect the debt, Respondent resorted to a type of self help that subjected the Bar to disrepute. When Pelican Bank refused to honor the

purported subpoena, Respondent offered no apology and took no remedial action.

There is disputed testimony about the participants in a disturbing and confrontational phone call between a bank officer and someone who identified themselves as Respondent; the evidence indicating Respondent was the participant in the phone call does not meet the level of clear and convincing evidence.

However, it is clear that someone participated in the phone call purportedly as Respondent, and that this person had knowledge of the purported subpoena.

Respondent was, at a minimum, made aware of the confrontational phone call, after the fact, and took no remedial action. This lack of remedial action subjected the Bar to further disrepute. Respondent attacked the complainant in her written response to the initial Bar Complaint and showed no genuine remorse until she testified at the final hearing. Any remorse shown by Respondent was untimely. Respondent did not provide the extraordinary cooperation as described in *The Florida Bar v.*

*Herman*, 8 So. 3d 1100 (Fla. 2009), and the mitigating factor 9.32(e) (Full and Free Disclosure to Disciplinary Board or Cooperative Attitude Towards Proceedings) is not appropriate. Any embarrassment, economic loss, or cost incurred, in defending the prosecution of this matter does not meet the requirements to find the mitigating factor 9.32(k) (Imposition of Other Penalties). See, *The Florida Bar v. Ticktin*, 14 So. 3d 928 (Fla. 2009). Although this has been a lengthy prosecution, I find the

mitigating factor 9.32(i) (Unreasonable Delay in Disciplinary Proceeding) is not applicable in this proceeding. A large amount of time was spent in this proceeding dealing with multiple challenges by Respondent to the authority of The Florida Bar to prosecute Respondent. The challenges centered on the fact that the complaint was initially investigated by a grievance committee that recommended a finding of no probable cause with a letter of advice. The Designated Reviewer of the grievance committee rejected this recommendation and sent the case to The Board of Governors of The Florida Bar with a recommendation that the Board make a finding of probable cause. The Board of Governors did make a finding of probable cause and a complaint was filed with Supreme Court. After the complaint was filed and I was assigned as Referee, Respondent first complained that the Designated Reviewer had a conflict of interest because he was litigating against Respondent as opposing counsel and had threatened her with adverse consequences in the disciplinary proceeding. Instead of litigating the issue of possible conflict of interest by the Designated Reviewer, the parties agreed to a dismissal without prejudice, with each party to bear their own costs, so that a new grievance committee could be assigned the case for a new, taint free investigation. The subsequent grievance committee found probable cause and the case was then prosecuted by The Florida Bar. Respondent moved to dismiss this proceeding

based upon the conduct of The Florida Bar described above and her motion was denied.

Respondent also moved to dismiss the Complaint filed against her in this proceeding based upon the second grievance committee's failure to disqualify itself and a particular member because of bias and prejudice exhibited during the grievance committee proceedings. Again, Respondent's motion was denied. I made findings that The Florida Bar was authorized to prosecute the case. Although this was a lengthy proceeding, I do not find any specific prejudice to Respondent resulted. Furthermore, Respondent did not state her objections to the first case filed with the Supreme Court until after I was assigned as Referee.

#### VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

As a preliminary matter, Respondent challenged the imposition of costs citing *The Florida Bar v. Davis*, 419 So. 2d 325 (Fla. 1982). Respondent argued that because I recommended a finding of guilt on one of four Rules charged by The Florida Bar that she should be responsible for only 25% of the taxable costs. I find that *Davis* is not persuasive in these circumstances. Telephonic hearings on costs were held on May 19, 2010, and June 8, 2010. I find that The Florida Bar would have introduced the same evidence in the event The Bar had proceeded only on a violation of Rule 4-8.4(d) instead of the multiple rule violations it charged in the

Complaint.

I grant The Florida Bar's Motion to Assess Costs and find the following costs were reasonably incurred by The Florida Bar:

<b>1. Administrative Costs</b>	
Pursuant to Rule 3-7.6(q)(1)(I) .....	\$1,250.00
<b>2. The Florida Bar Investigator Time</b>	
James O. Trotter (29.00 hours) .....	\$ 637.00
<b>3. The Florida Bar Investigator Expenses (Mileage, tolls, copying)</b>	
James O. Trotter (6/20/08)	
Obtain Subpoena Duces Tecum from office of 20D GC Chair Bernardo and serve it at First American Bank	
Mileage: 24 miles @ .505 cents per mile .....	\$ 12.12
James O. Trotter (1/14/09)	
Obtain copy of Court file, Lee County Clerk of Court	
Mileage: 20 miles @ .55 cents per mile .....	\$ 11.00
Parking .....	\$ 2.00
Copy Fee .....	\$ 58.00
<b>SUBTOTAL</b>	<b>\$ 71.00</b>
James O. Trotter (2/11/09)	
Attempt to locate and serve Witness Subpoena upon George Furlan	
Mileage: 22 miles @ .55 cents per mile .....	\$ 14.40
James O. Trotter (2/12/09)	
Serve Witness Subpoena upon George Furlan	
Mileage: 10 miles @ .55 cents per mile .....	\$ 5.50
James O. Trotter (3/11/09)	
Obtain copies of court records, Lee County Clerk of Court	

Mileage: 20 miles @ .55 cents per mile .....	\$ 11.00
Parking .....	\$ 2.00
Copy Fee .....	<u>\$ 21.00</u>
<b>SUBTOTAL</b>	\$ 34.00

James O. Trotter (3/13/09)

Serve Subpoena for Deposition upon Daniel R. Gerleman,  
Esq., Fort Myers, FL; attempt to serve same upon Gail  
Burkham, Cape Coral, FL

Mileage: 22 miles @ .55 cents per mile .....	\$ 12.10
Tolls .....	<u>\$ 2.00</u>
<b>SUBTOTAL</b>	\$ 14.10

Personally Serve Subpoena for Deposition upon Gail  
Burkham

Mileage: 20 miles @ .55 cents per mile .....	\$ 11.00
Tolls .....	<u>\$ 2.00</u>
<b>SUBTOTAL</b>	\$ 13.00

James O. Trotter (3/23/09)

Contact with Manager, First American Bank, Fort Myers,  
FL; locate and interview Lori Faulkner, Cape Coral, FL

Mileage: 18 miles @ .55 cents per mile .....	\$ 9.90
Tolls .....	<u>\$ 2.00</u>
<b>SUBTOTAL</b>	\$ 11.90

James O. Trotter (4/11/09)

Personally serve Gail Burkham with Witness Subpoena

Mileage: 20 miles @ .55 cents per mile .....	\$ 11.00
Tolls .....	<u>\$ 2.00</u>
<b>SUBTOTAL</b>	\$ 13.00

Obtain notarization of Affidavit of Service upon  
Gail Burkham

Mileage: 7 miles @ .55 cents per mile .....	\$ 3.85
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James O. Trotter (3/5/10)

Personally serve Michael R. Whitt, Esq., with

Witness Subpoena	
Mileage: 12 miles @ .50 cents per mile .....	\$ 6.00
Raymond B. Raleigh (4/14/09)	
Court House with Witness, June F. Kossow	
Mileage: 48 miles @ .55 cents per mile .....	\$ 26.40
Lunch with Witness .....	\$ 20.92
Parking .....	\$ 2.00
<b>SUBTOTAL</b>	<b>\$ 49.32</b>

**4. Court Reporter Expenses**

Demby & Associates, Inc.	
Appearance at GC 20D Hearing 4/24/08 .....	\$ 180.00
Transcript of GC 20D Hearing 4/24/08 .....	\$ 444.75
<b>SUBTOTAL</b>	<b>\$ 624.75</b>

Demby & Associates, Inc.	
Appearance at GC 20D Hearing 5/29/08 .....	\$ 210.00
Transcript of GC 20D Hearing 5/29/08 .....	\$ 573.75
<b>SUBTOTAL</b>	<b>\$ 783.75</b>

Demby & Associates, Inc.	
Appearance at GC 20D Hearing 6/26/08 .....	\$ 90.00
Transcript of GC 20D Hearing 6/26/08 .....	\$ 109.00
<b>SUBTOTAL</b>	<b>\$ 199.00</b>

Demby & Associates, Inc.	
Appearance at Referee Hearing 12/08/08 .....	\$ 70.00

Demby & Associates, Inc.	
Appearance at Referee Hearing 2/02/09 .....	\$ 140.00

Demby & Associates, Inc.	
Appearance at Referee Hearing 3/23/09 .....	\$ 140.00

Demby & Associates, Inc.	
Appearance at Referee Hearing 4/14/09-4/15/09 ...	\$ 1,225.00

Transcript of Referee Hearing 4/14/09-4/15/09 .....	\$ 2,699.00
<b>SUBTOTAL</b>	<u>\$ 3,924.00</u>

Demby & Associates, Inc.	
Appearance at Referee Hearing 5/22/09 .....	\$ 315.00
Transcript of Referee Hearing 5/22/09 .....	<u>\$ 688.00</u>
<b>SUBTOTAL</b>	\$ 1,003.00

Demby & Associates, Inc.	
Appearance at Referee Hearing 7/09/09 .....	\$ 280.00
Transcript (Excerpt only) of Referee Hearing 7/09/09 .....	\$ 38.25
Transcript of Referee Hearing 7/09/09 .....	<u>\$ 626.25</u>
<b>SUBTOTAL</b>	\$ 944.50

Demby & Associates, Inc.	
Appearance at Referee Hearing 9/10/09 .....	\$ 70.00

Demby & Associates, Inc.	
Appearance at Sanctions Hearing 3/19/10 .....	\$ 420.00

Fort Myers Court Reporting (4/07/09)	
Transcript of Depositions of Steven Kushner and Michael Whitt, Witnesses .....	\$ 355.85

Fort Myers Court Reporting (4/07/09)	
Transcript of Deposition of Gail Burkham, Witness .....	\$ 498.20

**5. Henry Lee Paul, Bar Counsel, Expenses**

Attend Case Management Conference on 12/8/08	
Mileage: 106 miles @ .585 cents per mile .....	\$ 62.01
Tolls .....	<u>\$ 2.00</u>
<b>SUBTOTAL</b>	\$ 64.01

Attend Referee Hearing on 2/2/09	
Mileage: 106 miles @ .55 cents per mile .....	\$ 58.30
Tolls .....	<u>\$ 2.00</u>
<b>SUBTOTAL</b>	\$ 60.30

Attend Referee Hearing on 3/23/09	
Mileage: 106 miles @ .55 cents per mile .....	\$ 58.30
Tolls .....	<u>\$ 2.00</u>
<b>SUBTOTAL</b>	\$ 60.30

Attend Depositions on 4/8/09	
Mileage: 252 miles @ .55 cents per mile .....	\$ 138.60
Meals: Lunch (1) .....	\$ 13.00
Tolls/Parking .....	<u>\$ 9.00</u>
<b>SUBTOTAL</b>	\$ 160.60

Attend Final Hearing 4/13/09 through 4/15/09	
Mileage: 106 miles @ .55 cents per mile .....	\$ 58.30
Meals .....	\$ 90.81
Lodging .....	\$ 278.00
Other (tolls, tip for bellman) .....	<u>\$ 7.00</u>
<b>SUBTOTAL</b>	\$ 434.11

Attend Continued Final Hearing on 5/22/09	
Mileage: 124 miles @ .55 cents per mile .....	\$ 68.20
Meals .....	\$ 39.74
Lodging .....	\$ 101.00
Other (tolls) .....	<u>\$ 1.00</u>
<b>SUBTOTAL</b>	\$ 209.94

Attend Continued Final Hearing on 7/09/09	
Mileage: 108 miles @ .55 cents per mile .....	\$ 59.40
Tolls .....	<u>\$ 2.00</u>
<b>SUBTOTAL</b>	\$ 61.40

Attend Sanctions Hearing on 3/19/10	
Meals .....	\$ 32.87

Lodging .....	\$ 79.00
<b>SUBTOTAL</b>	<b>\$ 111.87</b>

**6. Karen B. Lopez, Bar Counsel, Expenses**

Attend Sanctions Hearing on 3/19/10	
Mileage: 127.8 miles @ .50 cents per mile .....	\$ 63.90

**7. Troy Matthew Lovell, Bar Counsel, Expenses**

Attend Referee Hearing on 3/23/09	
Mileage: 110 miles @ .55 cents per mile .....	\$ 60.50
Tolls .....	\$ 1.00
<b>SUBTOTAL</b>	<b>\$ 61.50</b>

**8. Witness Expense**

June Kossow to attend Final Hearing on 4/14/09	
Airline travel from Atlanta to Sarasota and return	\$ 287.20

**9. The Florida Bar Copying Costs**

438 pages @ .15 cents per page on 12/1/08 .....	\$ 65.00
952 pages @ .15 cents per page 3/20–3/23/09.....	\$ 142.80
207 pages @ .15 cents per page on 3/31/09 .....	\$ 31.00
369 pages @ .15 cents per page on 4/1/09 .....	\$ 55.00
79 pages @ .15 cents per page on 4/03/08 .....	\$ 11.00
35 pages @ .15 cents per page on 4/06/09 .....	\$ 5.00
156 pages @ .15 cents per page on 5/19/09 .....	\$ 23.00
120 pages @ .15 cents per page on 3/12/10 .....	\$ 18.00
165 pages @ .15 cents per page on 3/15/10 .....	\$ 24.75
<b>SUBTOTAL</b>	<b>\$ 375.55</b>

<b>TOTAL</b>	<b><u>\$13,528.92</u></b>
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It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the

judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar. Although I recognize it is in the discretion of the Board of Governors of The Florida Bar to agree to a payment plan, I recommend that Respondent be permitted to remit payment of these costs through a payment plan based upon Respondent's financial ability to pay.

Dated this \_\_\_\_\_ day of June, 2010.

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The Honorable Judy Goldman, Referee  
R. L. Anderson Building  
4000 South Tamiami Trail  
Venice, Florida 34293

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 32301, and that copies were mailed by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; HENRY LEE PAUL, Bar Counsel, The Florida Bar, 4200 George J. Bean Parkway, Suite 2580, Tampa, Florida 33607-1496; and MICHELLE ERIN BERTHIAUME, Respondent c/o G. MICHAEL KEENAN, Respondent's Counsel, at G. Michael Keenan, PA, 1532 Old Okeechobee Road, Suite 103, West Palm Beach, Florida 33409-5270 on this \_\_\_\_\_ day of June, 2010.

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The Honorable Judy Goldman, Referee