

**IN THE SUPREME COURT OF FLORIDA
(Before a Referee)**

THE FLORIDA BAR,

Complainant,

v.

JANE MARIE LETWIN,

Respondent.

**Supreme Court Case
No. SC09-2360**

**The Florida Bar File
Nos. 2009-50,256(17B)
2009-50,513(17B)**

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REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar filed its formal Complaint in this cause on December 22, 2009. Thereafter, the Chief Judge of the Fifteenth Judicial Circuit appointed the undersigned, to serve as referee. A final hearing in this matter was held on May 17, 2010. The pleadings and all other papers filed in this cause, which are forwarded to the Supreme Court of Florida with this report, constitute the entire record.

Throughout the course of these proceedings, respondent was represented by Alvin Ernest Entin; The Florida Bar was represented by Alan Anthony Pascal.

II. FINDINGS OF FACT:

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

B. Narrative Summary:

COUNT I

The Florida Bar File No. 200-50,256(17B)

The Florida Bar announced a voluntary dismissal of this count in open court since the complainant is deceased, and The Florida Bar could not proceed on this count without the complainant's testimony.

COUNT II

The Florida Bar File No. 2009-50,513(17B)

1. In or about August 2008, respondent sent a letter to numerous current and former part time adult education teachers in Broward County, Florida. The number of letters sent, according to the respondent's own testimony, was over 900 letters to these individuals.

2. Each letter improperly solicited these part time teachers to join a purported class action suit against the Broward County School Board. A copy of respondent's August 28, 2008, correspondence to the over 900 prospective clients with attachment was attached to the complaint as Composite Exhibit B.

3. The letter contained inaccuracies and statements of fact that induced approximately 50 clients to retain respondent's legal services.

4. First, the case referenced by respondent in the letter had not been certified as a class action by the trial court.

5. Respondent's letter further did not identify it as an advertisement, as required by The Rules Regulating The Florida Bar.

6. Further, the contract that respondent enclosed with the letter was not marked as a sample, as required by The Rules Regulating The Florida Bar.

7. The letter also stated that "I need to have your express acceptance of my legal representation or the COURT will not recognize your claim."

8. Such statement was improper and not an accurate statement of law or fact.

9. Respondent failed to explain that the recipients of the letter were free to choose and hire any attorney to represent them in a lawsuit.

10. Statements contained within her solicitation letter were both inaccurate and erroneous, and meant to induce prospective clients to hire her.

11. Finally, respondent's actions were clearly prejudicial to the proper administration of justice.

III. RECOMMENDATION AS TO GUILT:

As to Count II: By the conduct set forth above, respondent violated R. Regulating Fla. Bar **3-4.2** [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline]; **4-7.4(a)** [Except as provided in subdivision (b) of this rule, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no

family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. A lawyer shall not permit employees or agents of the lawyer to solicit in the lawyer's behalf. A lawyer shall not enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this rule. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes (i) any written form of communication directed to a specific recipient and not meeting the requirements of subdivision (b) of this rule, and (ii) any electronic mail communication directed to a specific recipient and not meeting the requirements of subdivision (c) of rule 4-7.6. Subsection (b) provides as follows: (b) Written Communication Sent on an Unsolicited Basis. (1) A lawyer shall not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, an unsolicited written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if: (A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication; (B) the written communication

concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter; (C) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer; (D) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence; (E) the communication contains a false, fraudulent, misleading, or deceptive statement or claim or is improper under subdivision (c)(1) of rule 4-7.2; or (F) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer. (2) Written communications to prospective clients for the purpose of obtaining professional employment are subject to the following requirements: (A) Written communications to a prospective client are subject to the requirements of rule 4-7.2. (B) The first page of such written communications shall be plainly marked "advertisement" in red ink, and the lower left corner of the face of the envelope containing a written communication likewise shall carry a prominent, red "advertisement" mark. If the written communication is in the form of a self-mailing brochure or pamphlet, the "advertisement" mark in red ink shall appear on the address panel of the brochure or pamphlet and on the inside of the brochure or pamphlet. Brochures solicited by clients or prospective clients need not contain the "advertisement" mark. (C)

Written communications mailed to prospective clients shall be sent only by regular U.S. mail, not by registered mail or other forms of restricted delivery. (D) Every written communication shall be accompanied by a written statement detailing the background, training and experience of the lawyer or law firm. This statement must include information about the specific experience of the advertising lawyer or law firm in the area or areas of law for which professional employment is sought. Every written communication disseminated by a lawyer referral service shall be accompanied by a written statement detailing the background, training, and experience of each lawyer to whom the recipient may be referred. (E) If a contract for representation is mailed with the written communication, the top of each page of the contract shall be marked "SAMPLE" in red ink in a type size 1 size larger than the largest type used in the contract and the words "DO NOT SIGN" shall appear on the client signature line. (F) The first sentence of any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member shall be: "If you have already retained a lawyer for this matter, please disregard this letter." (G) Written communications shall not be made to resemble legal pleadings or other legal documents. This provision does not preclude the mailing of brochures and pamphlets. (H) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, any written

communication concerning a specific matter shall include a statement so advising the client. (I) Any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member shall disclose how the lawyer obtained the information prompting the communication. The disclosure required by this rule shall be specific enough to help the recipient understand the extent of the lawyer's knowledge regarding the recipient's particular situation. (J) A written communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client's legal problem.]; **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...]. I find respondent not guilty of violations 4-4.1, 4-8.4(a) and 4-8.4(c) Rules Regulating The Florida Bar.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I find respondent guilty of misconduct justifying bar discipline, and recommend she receive a 90 day suspension without any further probation since she is currently on probation and these events occurred before the imposition of the sanctions imposed by Judge Thomas. However, this Court Orders the Respondent to an education course or workshop dealing with Solicitations/Advertisements, if available or obtain written materials on the topic.

Respondent also shall pay The Florida Bar's reasonable costs in this matter, as set forth in The Florida Bar's affidavit of costs. Statutory interest shall be applied to this cost judgment, should respondent fail to satisfy it immediately. Pursuant to R. Regulating Fla. Bar 1-3.6 and unless otherwise deferred by the Board of Governors of The Florida Bar, respondent will be deemed delinquent and declared ineligible to practice law if she fails to pay this cost judgment within 30 days of it being final.

The Florida Standards for Imposing Lawyer Sanctions support the imposition of a suspension in the instant case. I find the following standards apply to respondent's case:

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; and

8.0 PRIOR DISCIPLINE ORDERS

8.2 Suspension is appropriate when a lawyer has been publicly reprimanded for the same or similar conduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

Respondent has engaged in similar prior misconduct involving conduct

prejudicial to the proper administration of justice requiring the imposition of this suspension for the protection of the legal system and the public.

Florida Case law and The Supreme Court of Florida has deemed that a suspension is an appropriate sanction for an attorney who engages in improper solicitation of clients and for conduct clearly prejudicial to the proper administration of justice.

The Florida Supreme Court has firmly held that “The solicitation of business by members of The Bar, all of whom are officers of the Court, has been and is universally condemned. The Canons of Professional Ethics in empathetic terms denounce such conduct and the language used cannot be misunderstood by either the young and inexperienced or the old and experienced members of the Bar. By whatever means employed, solicitation of professional business in unethical and warrants the imposition of appropriate discipline.” The Florida Bar v. Scott, 197 So.2d 518 (Fla. 1967).

In The Florida Bar v. Barrett, 897 So.2d 1269 (Fla. 2005), The Supreme Court held that although cases involving unethical solicitation of clients have imposed a wide variety of discipline depending on the facts of the case, suspension is appropriate when respondent’s actions are knowing, intentional and potentially injurious to a client, the public or the legal system as a whole. Respondent’s misconduct in sending over 900 letters involving improper solicitation justifies the

recommended discipline in this case.

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

Prior to recommending discipline, and pursuant to R. Regulating Fla. Bar 3-7.6(k)(1), I considered the following:

A. Personal History of Respondent:

Age: 72

Date admitted to The Florida Bar: October 28, 1993

B. Aggravating Factors:

- 9.22(a) prior disciplinary offenses;
- 9.22(c) pattern of misconduct;
- 9.22(d) multiple offenses

Ordinarily, I would find these to be aggravating factors, however, based upon the fact that but for the timing of the committee process, the instant matter would have been included in the case before Judge Thomas and that the instant complaint occurred during the very same personal difficulties that resulted in Judge Thomas' decision, I feel it would be inequitable to weigh all of these factors as they ordinarily would be.

C. Mitigating Factors:

(a) Personal or emotional problems during the relevant time period-illness and subsequent death of the Respondent's husband of twenty five years.

(b) Absence of selfish or dishonest motive – The Bar did not successfully rebut the lack of ability to obtain fees for the actions that were the subject of the letter. The limited monies obtained were solely to defray costs of litigation. Moreover, on the fact of the letter, the Respondent stated that she will work for anyone without resources for free.

(c) Interim rehabilitation – the Respondent has had no further complaints since the end of her suspension for events that took place during the same period of severe emotional distress.

D. Prior Discipline: Respondent received a public reprimand for misrepresentation by Supreme Court Order dated February 23, 1995; and Respondent received a 90 day suspension and 3 years probation with a requirement of monitoring by a supervising attorney for contempt, neglect and misrepresentation by Supreme Court Order dated August 9, 2009.

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

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

A. Grievance Committee Level Costs:		
1. Court Reporting Costs	\$	451.25
2. Bar Counsel Travel Costs	\$	-0-

B.	Referee Level Costs:	
1.	Court Reporting Costs	\$ 200.00
2.	Bar Counsel Travel Costs	\$ 58.00
C.	Administrative:	\$ 1,250.00
D.	Miscellaneous Costs:	
1.	Investigators Expenses	\$ 67.50
2.	Witness Fees	\$ -0-
3.	Copy Costs	\$ -0-
4.	Auditor Costs	\$ -0-
	TOTAL ITEMIZED COSTS:	<u>\$ 2,026.75</u>

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 30 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 _____ day of _____, 2010.

NANCY PEREZ, 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, FL 32399-1927, and that copies were mailed by regular U.S. mail to the following: STAFF COUNSEL, The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300; ALAN ANTHONY PASCAL, Bar Counsel, The Florida Bar, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, FL 33321; and to ALVIN ERNEST ENTIN, Respondent's Counsel, Entin & Della Fera, P.A., 110 SE 6th Street, Suite 1970, Fort Lauderdale, Florida 33301 on this _____ day of _____, 2010.

NANCY PEREZ, REFEREE