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

THE FLORIDA BAR,

Complainant,

v.

WILLIAM HENRY WINTERS
and MARC EDWARD YONKER,

Respondents.
_____/

**CONSOLIDATED:**

CASE NO. SC10-1332
TFB FILE NO. 2009-10,287(13B)
CASE NO. SC10-1333
TFB FILE NO. 2009-10,288(13B)

## REPORT OF REFEREE

**I. Summary of Proceedings:** Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar, all pleadings, notices, motions, orders, transcripts, and exhibits are forwarded to the Supreme Court of Florida with this Report, and constitute the record in this case.

These matters were consolidated at the Referee level. The Respondents' counsel moved for an Order granting separate Final Hearings for each of the Respondents which Motion was made in open Court on the first day of the evidentiary hearing. The Court denied the request.

The Court ruled on several Motions preliminary to the Final Hearing. Those Motions included Motions for Partial Summary Judgment made on behalf of each Respondent. The Court denied the Motion for Partial Summary Judgment as to Respondent Winters. With regard to Respondent Yonker the Motion for Summary Judgment was granted in part and denied in part.

The Final Hearing was conducted on March 21 – 24 when evidence was presented, and March 28, 2011 when closing arguments were heard. The parties requested and stipulated to the entry of Findings of Fact to allow further mediation

before the sanction portion of the case was presented. The Court granted the request. A Sanctions Hearing was held on June 8, 2011. The following attorneys appeared as counsel for the parties:

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| For The Florida Bar: | Henry Lee Paul, Esquire<br>Chardean Mavis Hill, Esquire |
| For The Respondents: | Donald A. Smith, Jr., Esquire<br>Todd W. Messner, Esquire |

Both sides of the case were exceptionally well represented. The presentation of documentary evidence and testimony was presented in a timely and professional manner. The memoranda presented during the course of these proceedings was of a very high caliber and helpful to the undersigned.

**II. Findings of Fact as to each item of misconduct with which the Respondents are charged:** After considering all the pleadings and evidence presented, written Findings of Fact on April 5, 2011 were entered and provided to counsel.

In arriving at the Findings of Fact the Court considered the conflicting evidence that was presented. The credibility of the various witnesses was an important factor to be weighed when considering the overall fabric of the evidence presented. The Court made comment/reference to the credibility with regard to some of the evidence/witnesses. The portions of the evidence not mentioned specifically in the Findings of Fact were not considered relevant for mention. In some instances, the decision was based upon the lack of credibility of the witness given both the testimony of the witness and the totality of the presentation when considered in total by the undersigned. The credibility of the witnesses and the inter-relation of the credibility of the various witnesses was critical in the undersigned arriving at the Findings of Fact in this cause.

The Findings of Fact entered April 5, 2011 are republished:

**IN THE SUPREME COURT OF FLORIDA**

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And MARC EDWARD YONKER

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## FINDINGS OF FACT

This Judge was assigned the task as Referee with regard to the Florida Bar v. Winters & Yonkers. The appointment was by the Supreme Court and the Chief Judge of the Sixth Judicial Circuit. These proceedings are neither civil nor criminal; the proceedings are quasi-judicial administrative.

The evidence required to sustain a disciplinary decision against either of the Respondents must be CLEAR AND CONVINCING. It is something less than beyond a reasonable doubt, as required in criminal cases, and something more than a preponderance of the evidence, as required in civil cases. See The Florida Bar v. McCain, 361 So.2d 700, 706 (Fla. 1978); The Florida Bar v. Raymond, 238 So.2d 594, 598 (Fla. 1970). In McCain the Florida Supreme Court noted that "…we have a continuing duty to require charges such as these to be supported by clear and convincing evidence where the charges had been denied by reputable members of the Bar…"

Respondent Yonker's Motion for Partial Summary Judgment was granted as to allegations of false and misleading statements made under oath and theft of attorney's fees. The Order was signed March 28, 2011.

Testimony was presented commencing Monday, March 21 through mid afternoon Thursday on the remaining allegations, March 24 with closing arguments on March 28, 2011. The charges in this matter resulted from facts that occurred in the spring and summer of 2001. Counsel for The Florida Bar had presented a summary of the Rules in effect at that time. Counsel for the Respondents has agreed to the accuracy of the compilation. The compilation is included in the record as "Bench's Exhibit A".

## Other Prior Proceedings

It is important to note that there was a civil trial in Hillsborough County, Florida wherein Richard Mulholland sued Mr. Winters and Mr. Yonkers. That trial took place in June 2008 and was the subject of an appeal. See Winters v. Mulholland, 33 So.2nd 54 (Fla.2nd DCA 2010). It is necessary to issue a cautionary note that the proceeding conducted before the Bench in this disciplinary proceeding is a much different proceeding than the jury trial that occurred in the civil section of the Circuit Court for Hillsborough County. This trier of fact has no specific knowledge of what occurred in the Courtroom in Hillsborough County. The proceeding before this Bench has been entirely separate and apart from the civil trial. Persons looking at the proceeding before this Bench should understand that this is not a reconsideration of what occurred in Hillsborough County. This Judge has not reviewed the transcript and does not have any knowledge of what witnesses were called, what they said, or what exhibits were introduced into evidence at that trial. The findings herein will be based solely on the evidence presented in this proceeding.

The matter in The Florida Bar v. Winters & Yonker is not a retrial or reconsideration of the legal issues tried before the jury in Hillsborough County in 2008.

## The Witnesses

It is important to note that in this proceeding there was no testimony or suggestion that any clients were harmed or not properly represented. The issues presented were regarding differences between the Richard Mulholland firm and the attorneys who left, Mr. Winters and Mr. Yonker.

The factual situation leading to The Florida Bar filing charges took place in the spring and summer of 2001. The Florida Bar followed their policy of deferral in not proceeding with the disciplinary action until the civil matter referred to above had come to a close. The practical effect regarding the delay that resulted was evident in the recall of many of the witnesses who were called upon, almost ten years later, to recall conversations that occurred in the late spring or early summer of 2001.

Great consideration has been given to observing the witnesses during the course of the four days of presentation of evidence and considering their basis of knowing the subject and facts about which they testified, their demeanor in testifying, their interest or lack of interest, their interest in the outcome of the matter, and evaluation of their testimony in light of the

entirety of the testimony that has been presented. In addition to the live testimony, the Court has considered the deposition testimony of several witnesses.

As trier of fact, it is important to evaluate the testimony of witnesses. It is not necessary, however, to detail all of the Court's conclusions regarding credibility or weight given to certain evidence. Evaluation of the testimony results in the following findings with regard to three of the many witnesses who testified both live and by deposition.

## Elizabeth Chapa

One witness that was central to the case presented to the Bench was Elizabeth Chapa who was a legal assistant at the Mulholland law firm from December 1995 until April 26, 2001 when she was terminated. Ms. Chapa appeared to be in a very awkward and uncomfortable position. She had given testimony in several depositions and sworn statements in cases prior to this Bar matter as well as a deposition in this matter. Her testimony covered a period of over ten years starting with the date she was fired to the proceedings before this Bench. The scenario regarding Ms. Chapa was affected when a private investigator was hired by Mr. Mulholland in 2005 with regard to investigating certain aspects of the computer security in 2001 at the Mulholland law firm.

Ms. Chapa had been in a very high pressure situation which resulted in her signature being included along with others on Exhibit 44. The Court listened very carefully to the evidence in an attempt to determine who authored Exhibit 44. No such testimony came forward as no one acknowledged having authored the document. The main purpose of the document was to procure Ms. Chapa's testimony. Attorney Michael Addison, who represented Ms. Chapa, did indicate that he had made some modification to the document but that the document had been presented to him. The main change was to take the word conspiracy out of the document at the request of Ms. Chapa.

Ms. Chapa first testified in her deposition in the civil matter in late spring 2005. Her testimony before the Bench was that she did not tell the truth at that deposition. After the first deposition, Ms. Chapa had an encounter in the front yard of her home with the private investigator, Mr. Sankey, who was hired by Richard Mulholland. That began the chain of events that led to the signing of the "agreement" which is Exhibit 44. The signing of the agreement was followed by a sworn statement taken by Mr.

Mulholland's attorney on June 9, 2005 which statement was continued on December 5, 2005. Thereafter, three additional depositions occurred of Ms. Chapa on January 23, 2006, February 7, 2008 and February 27, 2008. The witness was also deposed in this Bar proceeding.

Having considered the overall circumstances regarding Elizabeth Chapa and her testimony in light of the testimony of others, the Court finds that her testimony is not supportive of the Bar's burden to present clear and convincing evidence on the matters she testified about. Ms. Chapa's testimony was far less than clear and convincing. Even Ms. Chapa on cross examination indicated that some of her testimony was based on muddled recall from her experiences with all the transcripts to date and the passage of time. When asked by Mr. Smith during cross examination whether her testimony was muddled Ms. Chapa indicated "That would be fair to say."

## **Richard Mulholland**

The testimony of Richard Mulholland has been considered. This matter is not directly about the Mulholland firm or Richard Mulholland, however, the manner in which the firm was run is deeply intertwined with the matters regarding Mr. Winters and Mr. Yonker. Mr. Mulholland's testimony was contradictory in several respects to every other witness that testified in this matter.

Mr. Mulholland testified that he an "open door" policy in the office where attorneys and staff were free to come in and discuss matters with him at any time. No one agreed with Mr. Mulholland on that point. Every witness that addressed the subject was to the contrary and in fact one former lawyer/employee indicated that he was fired as a result of having gone to Mr. Mulholland to discuss a request for an increase in responsibility. The associate attorney was fired within the hour after having talked to Mr. Mulholland rather than going through Mr. Winters at the time.

Mr. Mulholland also indicated to the Court that he suggested the firing of Ms. Chapa. His testimony is refuted on that point specifically as well as the general manner in which witnesses perceived how the Mulholland law office was run. Mr. Mulholland was the decision maker regarding the firing of people, some of whom testified. He did more than suggest courses of action.

These are examples of Mr. Mulholland's testimony on critical points that were totally refuted by other witnesses. The Court finds that Mr.

Mulholland's testimony is not reliable in any instances where witnesses refuted Mr. Mulholland's version of the facts. Mr. Mulholland ran his office in a very autocratic manner and as part of that practice had developed a pattern of immediately dismissing employees who he perceived were thinking of leaving or who told him they were going to leave. Mr. Winters, the last attorney employee to leave, apparently was an exception to some extent.

Mr. Mulholland's testimony did not contribute to the clear and convincing test on areas critical to the allegations against the Respondents.

## John McCue

Attorney John McCue testified regarding his nineteen years with the Mulholland law firm beginning in 1980 until 1999 when he was summarily dismissed. Mr. McCue was very respectful of Mr. Mulholland and other than disappointment at having been dismissed did not seem on a vendetta of any sort regarding Mr. Mulholland.

Mr. McCue was very factual in describing his meetings with Mr. Mulholland over the years where Mr. Mulholland addressed prior problems that Mr. Mulholland had had when attorneys had left the law firm and clients had gone with them. Mr. McCue described a conscious effort by Mr. Mulholland to set his office up so as to make the main contact person with clients be a non-lawyer case manager with lawyers being dispatched only as necessary. Mr. McCue described this process as a way of operating established by Mr. Mulholland to prevent personal/professional relationships being established between clients and lawyers to the extent possible.

The testimony regarding a wrongful death claim wherein Ms. Edwards was the Personal Representative for her deceased sister evidenced the style of operation that Mr. McCue had testified about. Ms. Edwards testified that she suffered the unfortunate loss of her sister in May 2000 when a prescription was miss filled at a local drug store. The testimony is confusing as to when Ms. Edwards was signed to an engagement contract or by whom.

The importance of the Edwards' file to this proceeding arose when Mr. Winters contacted Ms. Edwards to advise her that he was leaving the law firm and inquiring as to whether she would desire his services rather than the Mulholland law firm. The wrongful death suit became pertinent to these proceedings because Mr. Winters contacted Ms. Edwards and signed her to a contract for his representation.

Mr. Mulholland dispatched his legal assistant to Ms. Edwards to seek to recoup Ms. Edwards as a client. Testimony indicated that Ms. Edwards had never met Mr. Mulholland until June or July of 2001. Ms. Edwards believes she first contacted the Mulholland law firm in May of 2000. There was no testimony that established when she first became a client, however, the lawsuit for the wrongful death was filed in January 2001. The testimony clearly established that Mr. Mulholland had not met Ms. Edwards prior to filing the lawsuit. Ms. Edwards had met Mr. Winters in relation to his working on her case. Ms. Edwards ultimately elected to stay with the Mulholland firm.

There was further testimony regarding the way in which the Mulholland law firm was set up. Clients calling in response to advertisements would talk to non-lawyers and would in fact be signed to fee agreements without ever having talked to or meeting with a lawyer. The testimony indicated that was common practice in the law firm.

These findings regarding the practices of the law firm corroborated Mr. McCue's testimony about Mr. Mulholland's desire to control the files and therefore the client population both during the time of representation and in the event an attorney were to leave the firm. There was further testimony concerning a situation where an attorney left and took files. The witness indicated that Mr. Mulholland called then State Attorney Harry Lee Coe who was the State Attorney for the Thirteenth Judicial Circuit at the time. The testimony indicated that the files were returned to the law firm in short order after Mulholland's call to the State Attorney.

Again, the Mulholland law firm is not the Respondent in this case. The Findings of Fact set forth above are important in recognizing the climate under which the factual situation complained of regarding Mr. Winters and Mr. Yonker occurred back in the spring and summer of 2001.

The testimony further establishes that Mr. Winters and Mr. Yonker both attempted to address quantum merit claims with the Mulholland law firm. Richard Mulholland would not respond to their attempts. He chose instead to pursue the civil litigation which occurred in the Circuit Court for Hillsborough County with a jury trial occurring in the summer of 2008.

The specific allegations are considered in the context of the Findings of Fact regarding the type of situation that was presented at the Mulholland law firm at the time when Mr. Winters and Mr. Yonker exited.

## The Letterhead Issue

Mr. Winters and Mr. Yonker were considering/planning their exit from the Richard Mulholland law firm in spring and early summer of 2001. During that time period the testimony indicates Mr. Winters had discussions with Bert Alvarez. Mr. Alvarez appeared before the Bench and explained that he in fact did have serious discussions with Mr. Winters, who he knew very well and respects, about forming a law firm but in the end decided that he did not want to be included in a new law firm. Based on the ongoing discussions the letterhead that was generated in June 2001 included Mr. Alvarez to-wit: Winters, Yonker & Alvarez. When Mr. Alvarez realized his name had been included, he promptly sent word to Mr. Winters that he was in fact not interested in becoming a part of the law firm and that the letterhead should no longer be used. The testimony establishes that the letterhead was used for a short period of time thereafter. The Florida Bar asserts that use of the letterhead violated six different provisions of the Code of Professional Responsibility. Counsel for the Respondents acknowledged that there was a violation of 4- 7.10(f). The Court finds that there was a technical violation of that provision. The Court does not find that clear and convincing evidence shows a violation of the other provisions relied upon by The Florida Bar.

## Misrepresentations To The Mulholland Law Firm And To Clients

When Mr. Winters and Mr. Yonker decided to leave the Mulholland law firm they began contacting clients who they had represented during the course of their employment with the Mulholland law firm. There is no contention that the contact was not authorized. The charges brought by The Florida Bar center around statements that were allegedly made by Mr. Winters and Mr. Yonker and information allegedly not shared with the clients. The Court has considered the testimony on the issue of misrepresentations regarding the law firm and to the clients. The testimony does not establish by clear and convincing evidence that the representations were made by either Mr. Winters or Mr. Yonker. Further, the charge that the attorneys failed to advise the clients of a possible claim for quantum merit/fees by Mulholland against the clients could be forthcoming or that there might be a delay in the disbursement of funds to the client upon completion of the case did not violate the Rules in effect in 2001. The evidence does not support the claimed non-disclosure nor does review of the Code of Professional Conduct in effect as of the summer of 2001 indicate that such disclosure was required.

The clear and convincing testimony established that both Mr. Winters and Mr. Yonker advised clients, both verbally and in writing, that any claim for fees from the Mulholland firm would be covered by the contractual fee the clients had with the attorneys. The Florida Bar charges that the attorneys should have been more complete in their disclosure of what might happen with regard to the differences between the Mulholland law firm and the new Winters & Yonker firm as it might impact the clients. The Rules in effect in 2001 did not require such disclosure. (Based on the testimony presented the harm that might have occurred as alleged by The Florida Bar did not occur with regard to any client.)

## Misconduct Towards The Richard Mulholland Firm

The Florida Bar charges two general areas of misconduct in this section of the Complaint. The Bar charges that both Mr. Winters and Mr. Yonker converted the files of the law firm to their own personal use in violation of the property rights of the Mulholland law firm to the files. There is no contention that the clients belonged to either the departing lawyers or law firm. This claim is in regard to the files only.

The other claim presented by The Florida Bar is that Mr. Yonker was involved in changing information on computer screens with regard to client contact information. This conduct allegedly occurred before Mr. Yonker left the law firm's employment. The allegation is that Elizabeth Chapa, who by then had been fired by the Mulholland firm, was the conduit to accomplish the changing of the computer screens.

The testimony establishes by clear and convincing evidence that Mr. Yonker took files from the Mulholland law firm over a lunch period and had information from those law firm files copied for his own personal use. The taking of the law files out of the office was not within the scope of Mr. Yonker's employment and the copies were not made for the purpose of advancing the good of the law firm. The testimony also establishes by clear and convincing evidence that Mr. Winters maintained control over less than ten files upon leaving the law firm. Those files were recovered within a few days by the law firm.

No evidence was produced before the Court as to the nature of the information in the client files of the Mulholland law firm. Law office files generally have information of different types contained therein. The files include information that has been collected at the ultimate expense of the client which information would arguably be the property of the client. Files

would also include attorney work product information in the form of the attorney's notes and thought processes. Further, if the thought processes were from Mr. Winters or Mr. Yonker, it would be unlikely that they would not be entitled to that information. There was no testimony to suggest that Mr. Mulholland's thought process was contained in any file. The Court was not able to make any evaluation concerning the nature of the information in the client files.

The Court finds that under Chapter 812.014 that there was no testimony concerning valuation of the files and therefore a presumed value under Chapter 812 would result in the conduct being a possible violation of that Statute to-wit: a second degree misdemeanor.

The allegations regarding the unauthorized modification as to the computer screens have been considered. There is no doubt that the computer screens were modified and that some modifications were accomplished by Elizabeth Chapa. The testimony with regard to this allegation centers solely on Mr. Yonker with no suggestion or charge levied against Mr. Winters regarding the computer screens. The Court has considered the testimony on this matter and finds that the evidence does not rise to the level of clear and convincing with regard to this charge against Mr. Yonker. While the evidence is clear and convincing that the fired employee, Ms. Chapa, made changes to the computer screen information, the evidence is not clear and convincing that she acted at the direction of Mr. Yonker or that he personally engaged in the alleged conduct.

## **Secret Plans**

During the presentation of evidence there has been a theme presented by The Florida Bar that the Respondents secretly planned their departure from the law firm. The fact that the Respondents did not share their plans with Richard Mulholland or others in the firm does not fit as a violation of any provision of the Rules of The Florida Bar. Given the operating procedure/history of the Mulholland law firm in dealing with individuals who announce their plans to leave, the not sharing of plans appears to have been a reasonable, if not necessary, step.

Mr. Mulholland had a right to operate his firm in the manner he deemed appropriate. The testimony of attorney Wally Pope provided an example of how an open and supportive law firm deals with departing attorneys. Mr. Pope left a law firm in Tampa after four years to form a law firm in Pinellas County. The history of that law firm regarding departing

attorneys was much different than the situation at the Mulholland law firm. The secrecy with regard to logistical planning by Mr. Winters and Mr. Yonker did not violate any of the Rules of Conduct. In retrospect the exit would have been better for all involved had the procedure described by Mr. Pope been followed.

## Conclusion

Based on the above discussion and findings the Referee finds that there have been technical violations in two areas charged by The Florida Bar to-wit: the inclusion of Mr. Alvarez on the letterhead for a short period of time and the personal use of the files of the Mulholland firm.

The matter involving the inclusion of Mr. Alvarez on the letterhead did not result in any advertising advantage by the Respondents or any apparent harm to the public.

The use of the information from the files was not shown to have any negative monetary effect on the Mulholland firm. With regard to the clients who elected to have the Respondents represent them, having the information from the files served the best interests of the clients.

Counsel have advised that upon receipt of these Findings of Fact the parties will return to mediation which is scheduled for Friday, April 8, 2011.

Counsel are instructed to set a Case Management Conference before the undersigned Referee within a reasonable time after mediation.

Dated this 5th day of April, 2011 in St. Petersburg, Pinellas County, Florida.

(Signed by Referee Walt Logan)_____
WALT LOGAN, Circuit Judge, Referee

cc: Henry Lee Paul, Esquire (via e-mail)
Donald A. Smith, Jr., Esquire (via e-mail)

**III. Recommendations as to whether or not the Respondents should be found guilty:** Based upon my findings, I find that there have been technical violations in two areas charged by The Florida Bar, to wit: the inclusion of Mr. Alvarez on the letterhead for a short period of time and the personal use of the files of the Mulholland firm.

A. I recommend that Respondents be found guilty of a violation of Rule 4-7.10(f) (lawyers may state or imply that they practice in a partnership or authorized business entity only when that is the fact).

B. I recommend that Respondents be found guilty of a violation of Rule 3-4.3 (misconduct and minor misconduct – conduct otherwise not enumerated).

C. I expressly find that no other violations were proven by clear and convincing evidence; therefore, I recommend that Respondents be found not guilty as to all remaining Rules charged by The Florida Bar.

**IV. Recommendation as to Disciplinary Measures to be Applied:** The Supreme Court of Florida has held that the purposes served by lawyer discipline are as follows:

> First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations.

The Florida Bar v. Lord, 433 So. 2d 983, 986 (Fla. 1983). The purposes of discipline are also addressed in the Florida Standards for Imposing Lawyer Sanctions. In addition to the criteria set forth in Lord, the Court directs consideration of the lawyer's mental state and the duties violated. Stds. Imposing Law. Sancs. (Preface).

A. After considering Lord and the Standards for Imposing Lawyer Sanctions, I find and recommend as follows regarding the inclusion of Mr. Alvarez's name on Respondents' letterhead:

First, the Court holds that discipline should protect the public from unethical conduct, but not deny the public the services of a qualified lawyer. There was no

testimony that the public was caused any disservice by Mr. Alvarez's name remaining on letterhead for a period of months in 2001. Moreover, Mr. Alvarez testified that he has a high opinion of Mr. Winters, but did not know Mr. Yonker as well. Mr. Alvarez explained that he was not offended or aggrieved by the erroneous inclusion of his name on the letterhead.

Second, the Court directs that discipline must be sufficient to punish, while also encouraging rehabilitation. Respondents' actions constituted a technical violation of Rule 4-7.10(f). The conduct occurred approximately ten years ago. Neither punishment nor rehabilitation is necessary with regard to the letterhead issue.

Third, the Court recognizes that discipline must serve to deter others from similar violations. Deterrence of others is not a substantial factor given the diminimus nature of the violation.

B. After considering Lord and the Standards for Imposing Lawyer Sanctions, I find and recommend as follows regarding the personal use of Mulholland firm files by Respondents:

First, with regard to protecting the public from unethical conduct, while not denying the public the services of a qualified lawyer, there was no suggestion/ proof that the public was harmed either ten years ago or today. The adoption of Rule 4-5.8 in 2006, approximately four and a half years after the conduct in this case occurred, seeks to protect the public by setting forth the appropriate procedures directing an attorney's conduct when departing from a law firm. I have considered that at the time of Respondents' conduct, the Court had issued no directives pertaining to law firm attorney departures. While an ethics opinion existed, Rule 1 of Florida Bar Procedures for Ruling on Question of Ethics prohibits referees and the Bar from utilizing ethics opinions as the basis for disciplinary action. In the years following Respondents' conduct, the Bar petitioned the Court for a rule with the explanation that the Bar membership required guidance governing attorney departures.

I have noted that prior to the adoption of Rule 4-5.8 and contemporaneous with Respondents' conduct, the Bar evaluated disputes regarding the use of firm files as misconduct warranting admonishments. Even in matters in which the departing attorneys' use of the files was over a protracted period of time and

materials were never returned to the firm, the Bar disposed of the disputes with an admonishment. See Florida Bar v. Eugene Paul Brinn, TFB No. 2003-11,634(13D); Florida Bar v. Thomas Allen Shaffer, TFB No. 2001-11,850(6B). I find that the promulgation of Rule 4-5.8 provides the necessary protection of the public without imposing enhanced discipline, which would be inconsistent with discipline imposed in analogous, contemporary matters.

Second, the Court directs that discipline must be sufficient to punish while also encouraging rehabilitation. I have considered the positive testimony of Judges Gregory P. Holder and James D. Arnold, before whom Respondents have practiced, as well as that of Thomas R. Bopp, Esquire, who has been opposing counsel in numerous matters against Respondents, compelling in determining that rehabilitation is not warranted with regard to Respondents and these facts.

Third, the Court recognizes that discipline must serve to deter others from similar violations. I find that the promulgation of Rule 4-5.8 in 2006 and the Court's development of directives and language with regard to law firm break-ups since 2001, when Respondents left the Mulholland firm, have sought to accomplish the goal of deterrence that might otherwise be served absent the change in the Rules. Further discipline of Respondents will not serve the Court's goal of deterring future behavior.

After considering the entire presentation to this Referee; the totality of the situation; the purposes to be served by discipline; Respondents' mental states; and the duties violated, an admonishment of Respondents is the recommendation I make to the Supreme Court with regard to these two matters.

**V. Personal History and Past Disciplinary Record:** After the finding of guilt and prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(C), I considered the following personal history and prior disciplinary record of Respondent Winters, to wit:

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| Year of Birth: | 1959 |
| Date Admitted to Bar: | October 19, 1984 |
| Prior discipline: | Admonishment for Minor Misconduct, 2005 |
| Aggravating Factors: | Prior Disciplinary Admonishment, 2005 (facts not similar to this case) |
| Mitigating Factors: | Character and reputation in the legal community |

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

| | |
|---|---|
| Year of Birth: | 1966 |
| Date Admitted to Bar: | April 25, 1994 |
| Prior discipline: | None |
| Aggravating Factors: | None |
| Mitigating Factors: | Absence of prior disciplinary record<br>Character and reputation in the legal community |

**VI. Statement of Costs and Manner in Which Costs Should be Taxed:** I find the costs as itemized in the parties' Stipulation for Award of Costs Assessed Against Respondents were stipulated to by the parties as reasonably incurred by The Florida Bar and should be paid by Respondents. Costs are assessed joint and severally against the Respondents in the amount of $24,750.00, to be paid within thirty (30) days after the ruling of the Florida Supreme Court becomes final.

DATED this _____ day of _____ 2011.

_____
HONORABLE WALT LOGAN
Referee

Copies to:

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Henry Lee Paul, Esquire, Bar Counsel, The Florida Bar, 4200 George J. Bean Parkway, Suite 2580, Tampa, Florida 33607-1496

Kenneth L. Marvin, Esquire, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300