



December 20, 2019

Via email swalker@floridabar.org

Sherry Walker
Florida Bar

Re: Jeffrey E. Appel
Florida Bar # 0994030

Ms. Walker:

I understand you have contacted my attorney, Bruno DeZayas and requested that I contact you while I was traveling for my son's graduation from FSU. As opposed to having a lengthy phone conversation, I thought it best if I send you this email, outlining what has transpired with the FLA and the results of the research those circumstances prompted.

As you know, I received an admonishment from a grievance committee for a DUI which occurred nearly three years ago. Thereafter, I entered into a contract with the FLA under the assumption my participation was mandatory, a conclusion which my research appears to show was incorrect. I will explain my analysis in detail below; however, I want you to know that I desire to continue participation in the FLA, but have been trying to clarify those terms of participation since the fall but have not been able to do so. I have attached a series of emails documenting my efforts as Attachment 1.

What transpired in the fall of this year was that my monitor, Jim Joiner, became concerned for me when I was going through a short period of depression. He apparently contacted the FLA and I was subsequently contacted by a Dr. Scott Weinstein, who I spoke with about my continued participation in the FLA. He proposed I switch my support group away from the one I had established in Lakeland to a group in Tampa. I expressed my concern as the meeting time conflicted with the Lakeland group, with which I had developed a close bond over the past two years and because traveling to Tampa on Wednesday evenings would take 4-4 ½ hours from my evening time and I still have two middle school age children living at home. He told me he did not expect perfect attendance but that I showed an effort to attend and that would be my only requirement. I told him I would try it out. He then arranged for the transfer of my mentor to Andrea Holmes who accepted me into the group and I began attendance in Tampa. At the initial session, I was told by Ms. Holmes that consistent attendance was mandatory and, shortly thereafter she was extending the meeting from an hour to 90 minutes.

Since Dr. Weinstein had eliminated my prior contractual obligations in exchange for attending group in Tampa, I followed up with him to determine the terms of the new contract he intended and to explain how the group was different than he anticipated and explained to me. Also, after reaching out several times and some time had passed, I finally received new contract and it did not comport with the terms we had discussed. Nevertheless, I continued to attend in Tampa in good faith while trying to clarify with him in the emails as you can see. I did not get a response but was operating under the terms he and I discussed. Later, I was contacted by the FLA for not complying with the terms of my prior contract, which was very confusing to me since I thought my conditions were changed when attending the new group. As recently as last week I reached out to Dr. Weinstein again, asking for written clarification, but

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Exhibit D

as of this writing have still received no response. I found my situation of being in limbo very frustrating and causing anxiety. As you probably also know, I have been in substantial compliance with meeting attendance, annual conference attendance and testing for two years since I started my participation, but this change of terms, lack of clarification and feeling of being in limbo has been quite stressful.

Based on the above stated situation, I took two actions. First, I did research about my obligations after an admonishment and what the Florida Bar defines as probation and who has authority to implement probation. Second, I have been regularly seeing my own mental health care provider, with whom I have a long-standing relationship and have had largely good results.

The following is a synopsis of how I interpret the results of the report instituting the admonishment as opposed to implementing a period of probation.

Below are the bar rules touching on probation which might be considered relevant to my circumstances, from which it appears only the Supreme Court of Florida may implement a condition of probation, which was not done in my case. I received a written admonishment with only recommendations, not requirements as might be associated with a probation.

RULE 1-3.2 MEMBERSHIP CLASSIFICATIONS

(a) Members in Good Standing.

(1) Members of The Florida Bar in good standing means only those persons licensed to practice law in Florida who have paid annual membership fees for the current year and who are not retired, resigned, delinquent, on the inactive list for incapacity, or suspended.

(2) Members of The Florida Bar who have elected inactive status, who have paid annual membership fees for the current year, and who are not retired, resigned, delinquent, suspended, or on the inactive list for incapacity, are considered to be in good standing only for purposes of obtaining a certificate of good standing and for no other purpose. A certificate of good standing issued to an inactive member will reflect the member's inactive status.

(b) Conditionally Admitted Members.

The Supreme Court of Florida may admit a person with a prior history of drug, alcohol, or psychological problems to membership in The Florida Bar and impose conditions of probation as the court deems appropriate on that member. The RRTFB September 19, 2019 period of probation will be no longer than 5 years, or for an indefinite period of time as the court deems appropriate by conditions in its order. The conditions may include, but not be limited to, participation in a rehabilitation program, periodic blood and urine analysis, periodic psychological examinations, or supervision by another member of The Florida Bar. The probation will be monitored by The Florida Bar and the costs paid by the member on probation. A failure to observe the conditions of probation or a finding of probable cause as to conduct of the member committed during the period of probation may terminate the probation and subject the member to all available disciplinary sanctions. Proceedings to determine compliance with conditions of admission will be processed in the same manner as matters of contempt provided elsewhere in these Rules Regulating The Florida Bar. If necessary, the court may assign a judicial referee to take testimony, receive evidence, and make findings of fact in the manner

prescribed in the rule concerning procedures before a referee. The findings of the referee may be appealed as provided in the rule for procedures before the supreme court.

I am not a conditionally admitted member, but rather a member in good standing; thus, no probation under this rule can apply to me.

RULE 3-3.2 BOARD OF GOVERNORS OF THE FLORIDA BAR

(a) Responsibility of Board.

The board is assigned the responsibility of maintaining high ethical standards among the members of The Florida Bar. The board will supervise and conduct disciplinary proceedings in accordance with the provisions of these rules.

(b) Authority to File a Formal Complaint. No formal complaint may be filed by The Florida Bar in disciplinary proceedings against a member of the bar unless 1 of the following conditions has been met:

(1) Finding of Probable Cause. A formal complaint may be filed if there has been a finding under these rules that probable cause exists to believe that the respondent is guilty of misconduct justifying disciplinary action; (2) Emergency Suspension or Probation. A formal complaint may be filed if the member is the subject of an order of emergency suspension or emergency probation that is based on the same misconduct that is the subject matter of the formal complaint; (3) Felony Determination or Adjudication. A formal complaint may be filed if the respondent has been determined or adjudged to be guilty of the commission of a felony; (4) Discipline In Another Jurisdiction. A formal complaint may be filed if the respondent has been disciplined by another entity having jurisdiction over the practice of law; (5) Felony Charges. A formal complaint may be filed if a member has been charged with commission of a felony under applicable law that warrants the imposition of discipline and if the chair of the grievance committee agrees. A decision of the grievance committee chair to not file a formal complaint must be reviewed by the full grievance committee. The grievance committee may affirm or reverse the decision. RRTFB September 19, 2019 (6) Discipline on Action of the Florida Judicial Qualifications Commission. A formal complaint may be filed if the Supreme Court of Florida has adjudged the respondent guilty of judicial misconduct in an action brought by the Florida Judicial Qualifications Commission, the respondent is no longer a judicial officer, and the facts warrant imposing disciplinary sanctions.

(c) Executive Committee. All acts and discretion required by the board under these Rules of Discipline may be exercised by its executive committee between meetings of the board as may from time to time be authorized by standing board of governors' policies.

I have never been under an Emergency Suspension or Probation implemented by the Florida Supreme Court.

3-5. TYPES OF DISCIPLINE RULE 3-5.1 GENERALLY

A judgment entered, finding a member of The Florida Bar guilty of misconduct, will include 1 or more of the following disciplinary measures:

(a) Admonishments. A Supreme Court of Florida order finding minor misconduct and adjudging an admonishment may direct the respondent to appear before the Supreme Court of Florida, the board of governors, grievance committee, or the referee for administration of the admonishment. A grievance committee report and finding of minor misconduct or the board of governors, on review of the report, may direct the respondent to appear before the board of governors or the grievance committee for administration of the admonishment. A memorandum of administration of an admonishment will be made a part of the record of the proceeding after the admonishment is administered

(b) Minor Misconduct. Minor misconduct is the only type of misconduct for which an admonishment is an appropriate disciplinary sanction. (1) Criteria. In the absence of unusual circumstances misconduct will not be regarded as minor if any of the following conditions exist: (A) the misconduct involves misappropriation of a client's funds or property; (B) the misconduct resulted in or is likely to result in actual prejudice (loss of money, legal rights, or valuable property rights) to a client or other person; (C) the respondent has been publicly disciplined in the past 3 years; (D) the misconduct involved is of the same nature as misconduct for which the respondent has been disciplined in the past 5 years; (E) the misconduct includes dishonesty, misrepresentation, deceit, or fraud on the part of the respondent; or (F) the misconduct constitutes the commission of a felony under applicable law. (2) Discretion of Grievance Committee. A grievance committee may recommend an admonishment for minor misconduct or diversion to a practice and professionalism enhancement program when unusual circumstances are present, despite the presence of 1 or more of the criteria described in subpart (1) of this rule. When the grievance committee recommends an admonishment for minor misconduct or diversion to a practice and professionalism enhancement program under these circumstances, its report will contain a detailed explanation of the circumstances giving rise to the committee's recommendation. (3) Recommendation of Minor Misconduct. If a grievance committee finds the respondent guilty of minor misconduct or if the respondent admits guilt of minor misconduct and the committee concurs, the grievance committee will file its report recommending an admonishment, the manner of administration, the taxing of costs, and an assessment or RRTFB September 19, 2019 administrative fee in the amount of \$1,250 against the respondent. The report recommending an admonishment will be forwarded to staff counsel and the designated reviewer for review. If staff counsel does not return the report to the grievance committee to remedy a defect in the report, or if the report is not referred to the disciplinary review committee by the designated reviewer [as provided in rule 3-7.5(b)], the report will then be served on the respondent by bar counsel. The report and finding of minor misconduct becomes final unless rejected by the respondent within 15 days after service of the report. If rejected by the respondent, the report will be referred to bar counsel and referee for trial on complaint of minor misconduct to be prepared by bar counsel as in the case of a finding of probable cause. If the report of minor misconduct is not rejected by the respondent, notice of the finding of minor misconduct will be given, in writing, to the complainant. (4) Rejection of Minor Misconduct Reports. The rejection by the board of governors of a grievance committee report of minor

misconduct, without dismissal of the case, or remand to the grievance committee, is deemed a finding of probable cause. The rejection of a report by a respondent is deemed a finding of probable cause for minor misconduct. At trial before a referee following rejection by a respondent of a report of minor misconduct, the referee may recommend any discipline authorized under these rules. (5) Admission of Minor Misconduct. A respondent may tender a written admission of minor misconduct to bar counsel or to the grievance committee within 15 days after a finding of probable cause by a grievance committee. An admission of minor misconduct may be conditioned on acceptance by the grievance committee, but the respondent may not condition the admission of minor misconduct on the method of administration of the admonishment or on nonpayment of costs incurred in the proceedings. An admission may be tendered after a finding of probable cause (but before the filing of a complaint) only if an admission has not been previously tendered. If the admission is tendered after a finding of probable cause, the grievance committee may consider the admission without further evidentiary hearing and may either reject the admission, affirming its prior action, or accept the admission and issue its report of minor misconduct. If a respondent's admission is accepted by the grievance committee, the respondent may not later reject a report of the committee recommending an admonishment for minor misconduct. If the admission of minor misconduct is rejected, the admission may not be considered or used against the respondent in subsequent proceedings.

(c) Probation. The respondent may be placed on probation for a stated period of time of not less than 6 months nor more than 5 years or for an indefinite period determined by conditions stated in the order. The judgment will state the conditions of the probation, which may include but are not limited to the following: (1) completion of a practice and professionalism enhancement program as provided elsewhere in these rules; (2) supervision of all or part of the respondent's work by a member of The Florida Bar; (3) required reporting to a designated agency; RRTFB September 19, 2019 (4) satisfactory completion of a course of study or a paper on legal ethics approved by the Supreme Court of Florida; (5) supervision over fees and trust accounts as the court directs; or (6) restrictions on the ability to advertise legal services, either in type of advertisement or a general prohibition for a stated period of time, in cases in which rules regulating advertising have been violated or the legal representation in which the misconduct occurred was obtained by advertising.

I was not placed on any probation and received only a written admonishment – no "order" was entered in my case.

A review of my report (Attachment 2) in contrast to an order of probation (Attachment 3) shows the apparent difference. I have called attention to the report in my case which are relevant, showing a) participation in FLA was not a factor in reaching the decision for an admonishment; b) FLA was a recommendation as opposed to a requirement and c) there was no order of probation as part of my discipline, which was an admonishment, which I have taken seriously and have not repeated the behavior, nor has any client ever complained to the bar about my behavior since the DUI which precipitated this admonishment. In contrast, Attachment 3 demonstrates a case where the attorney was placed on probation, in clear terms, by an order of the Supreme Court of Florida, a completely different from my resulting admonishment and recommendations from a grievance committee.

To reiterate, I desire to maintain a positive relationship with the FLA and to participate. However, I believe I should also follow the guidance of my long-term healthcare provider. I had a visit last week and my concerns with the FLA were among the items we discussed. I memorialized the visit in a letter, which my provider confirmed is accurate (Attachment 4).

At this point, I am requesting some additional time to clarify with the FLA, after the FLA has had time to consider my provider's opinions on how I could most benefit from continued participation. As you can see from the emails provided, this does not often happen overnight and I assume there are procedures and protocol the FLA goes through which, understandably, requires more than an instantaneous reply. I certainly do not want to litigate the issue of the ambiguities in the report which was drafted or the authority to implement a probation. Moreover, even if I am "required" to participate in the FLA, the terms of such participation seem to be deferred to the relationship the FLA and I agree upon, when considering all factors.

I'm hoping this email will demonstrate to you that I am attempting to navigate this situation in good faith. Again, I am requesting a short time to determine what my relationship with the FLA will be and I am hoping to receive a response from Dr. Weinstein. I realize it is the holidays and he is a busy man, but I will do my best to reach out to him again and request he put his recommendations in writing to avoid further confusion. I also intend to share with him my own health care provider's recommendations to see if we can reach a conclusion expeditiously.

I appreciate your professional courtesy and consideration of my matter.

Sincerely,



Jeffrey E. Appel

JEA/mlg