

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC06-251

v.

TFB File No. 2005-00,800(8A)

DAVID JON RUSS,

Respondent.

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**SECOND AMENDED REPORT OF THE REFEREE**  
**ACCEPTING CONSENT JUDGMENT**

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On February 9, 2006, The Florida Bar filed its Complaint in this case with the Supreme Court of Florida. This referee was appointed on March 2, 2006. On April 19, 2006, a case management conference was held and the date of the final hearing was set for July 26, 2006. After the initial Conditional Guilty Plea for Consent Judgment was remanded back to the referee for further consideration, a case management conference was held on October 3, 2006.

On November 1, 2006, this referee filed with the Supreme Court of Florida a Motion to Extend Time to File Report of Referee.

On November 9, 2006, Respondent executed an Amended Conditional Guilty Plea for Consent Judgment and both parties have executed an Amended Stipulation for Entry of Consent Judgment. An Affidavit of Costs was filed on May 9, 2006.

All of the aforementioned pleadings, responses thereto, and this Amended Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

## 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 Case. Respondent admits that he has violated Rules 3-7.2(c) (Duty to Report Criminal Determination) and 4-8.4(b) (Commit a Criminal Act) of the Rules Regulating The Florida Bar by the following acts:

a. According to the Information filed by Assistant State Attorney M. Suzanne Chistolini of the Second Judicial Circuit, Respondent did, on December 20, 1997, damage by fire or explosion the (Count I) Main Building of the Guaranty National Bank on W. Tennessee Street and (Count II) the Drive through building of the same Guaranty National Bank.

b. On July 10, 1998, Respondent entered a plea of nolo contendere to both counts of arson of a structure (both second degree felonies) in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, in the matter styled State of Florida v. David Jon Russ,

Case No. 97-4831, and Circuit Judge J. Lewis Hall, Jr. issued an Order of Probation/Community Control/Drug Offender Probation.

c. Respondent received a sentence which includes 180 days in the Leon County Jail, 10 years probation, and an inpatient residential treatment program.

d. By operation of Rule 3-7.2(i)(3) Rules Regulating the Florida Bar, the final determination by the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, is considered conclusive proof of the criminal offenses charged.

e. By reason of the foregoing, Respondent violated Rule 4-8.4(b) of the Rules Regulating The Florida Bar.

f. Respondent failed to notify the Florida Bar of his determinations within the 30 days required by Rule 3-7.2(c) and did not do so until June 2, 2005.

g. By reason of the foregoing, Respondent has violated Rule 3-7.2(c) of the Rules Regulating The Florida Bar.

### III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating Rules 3-7.2 (c) (Duty to Report Felony Determination) and 4-8.4(b) (Commit a Criminal Act) of the Rules Regulating The Florida Bar.

### IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

1. Suspension for three years nunc pro tunc September 21, 2006;
2. Pay The Florida Bar's Taxable costs of \$1,622.80.

In making this recommendation, I considered the case law holding that disbarment is the presumed appropriate discipline for a felony determination, but that it is not automatic. The Florida Bar v. Grief, 701 So.2d 555 (Fla. 1997). Other cases have approved suspension. The Florida Bar v. Arnold, 767 So.2d 438 (Fla. 2000) (60 day suspension).

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following personal history of Respondent, to wit:

Age: 49  
Date admitted to the Bar: March 16, 1983  
Prior Discipline: None

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

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

**Grievance Committee Level**

Bar Counsel Travel Expenses	81.35
Photocopying Costs	48.30
Subtotal	\$ 129.65

**Referee Level**

Administrative Costs, pursuant to to Rule 3-7.6(q)(1)(I), Rules of Discipline	\$ 1,250.00
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Bar Counsel Travel Expenses	170.12
Investigative Costs and Expenses	73.03
Subtotal	\$ 1,493.15
<b>TOTAL</b>	<b>\$ 1,622.80</b>

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 thirty 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 \_\_\_\_\_, 2006.

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The Honorable Frances A. King  
County Judge/Referee  
Marion County Courthouse  
110 N.W. 1st Avenue, Room 2059  
Ocala, FL 34475-6601

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Amended Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927, and that copies were furnished by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, JAMES A.G. DAVEY, JR., Bar Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and DAVID JON RUSS, Respondent, whose record Bar address is 602 South Main Street, #H1, Gainesville, FL 32601-6718, on this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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Barbara E. Stein  
Judicial Assistant