

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

Case No. SC07-818

[TFB Case Nos. 2005-31,238(02S);
2006-90,001(02S)]

ALAN BENNETT GARFINKEL,

Respondent.

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**REPORT OF REFEREE RECOMMENDING
DIVERSION TO A PRACTICE AND PROFESSIONALISM
ENHANCEMENT PROGRAM**

I. **RECOMMENDATION:** Pursuant to Rules Regulating The Florida Bar 3-5.3(h)(1), the referee adopts the parties' conditional agreement for diversion to a practice and professionalism enhancement program, a copy of which is attached hereto and incorporated herein.

II. **PURPOSE AND PROGRAMS WHICH ARE RECOMMENDED:** The purpose of diversion is to assist the respondent in the future avoidance of the situations summarized below. Pursuant to the parties' Conditional Agreement for Diversion to a Practice and Professionalism Enhancement Program, I recommend as an appropriate discipline for the stated misconduct:

A. Diversion to a practice and professionalism program, specifically the Bar's Advertising Workshop.

B. Pre-filing and pre-approval of all respondent's advertisements with the Standing Committee on Advertising of The Florida Bar before publication of those advertisements for a period of one year from the date of this plea. Such probation shall be unsupervised and non-reporting.

III. **NARRATIVE SUMMARY:** The bar's two count Complaint concerns respondent's failure to ensure that radio and direct mail advertisements using the name of his law firm complied with the Rules Regulating The Florida Bar and that they were timely filed with the Standing Committee on Advertising.

IV. **COSTS:** The respondent shall pay the costs of this matter as follows:

Administrative Fee:	\$ 1,250.00
Administrative Cost:	
1. Court Reporter Costs	\$ 480.20
2. Bar Counsel Travel Costs	<u>\$ 419.30</u>
TOTAL	\$ 2,149.50

Additional costs:

Advertising Workshop Fee	\$ 750.00
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V. **ATTENDANCE AT ADVERTISING WORKSHOP:** Respondent shall attend the next scheduled advertising workshop or other professional enhancement program recommended by The Florida Bar.

VI. **EFFECT OF DIVERSION:** Diversion to a practice and professionalism enhancement program shall close this disciplinary file without the imposition of a disciplinary sanction and diversion shall not constitute a record of professional misconduct. If respondent successfully completes the diversion recommended hereunder, this disciplinary file shall remain closed.

VII. **EFFECT OF FAILURE TO COMPLETE DIVERSION PROGRAM:** If respondent fails to fully comply with all requirements of this diversion, the bar may reopen its disciplinary file and conduct further proceedings under rule 3-5.3(k), Rules Regulating The Florida Bar. Failure to complete the practice and professionalism enhancement program shall be considered a matter of aggravation when imposing a disciplinary sanction. Pursuant to rules 1-3.6(c) and (e), Rules Regulating The Florida Bar: Any person now or hereafter licensed to practice law in Florida shall be deemed a delinquent member if the member: (c) fails to pay the costs assessed in diversion or disciplinary cases within 30 days after the disciplinary decision or diversion recommendation becomes final, unless such time

is extended by the board of governors for good cause shown; (e) fails to pay fees imposed as part of diversion for more than 90 days after the diversion recommendation became final, unless such time is extended by the board of governors for good cause shown. Delinquent members shall not engage in the practice of law in Florida nor be entitled to any privileges and benefits accorded to members of The Florida Bar in good standing.

DATED this ____ day of _____, 2008.

Robert Doyel, Referee

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

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