

**IN THE SUPREME COURT OF FLORIDA**

(Before a Referee)

THE FLORIDA BAR,  
Complainant,

CASE NO. SC09-1120  
TFB NO. 2008-11,181 (6E)

v.

DAVID ARTHUR EATON,  
Respondent.

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**AMENDED REPORT OF REFEREE**

This Report amends and supersedes that Report of Referee entered on the 20<sup>th</sup> Day of October, 2009 which was provided to the undersigned in error, and which said Report does not conform to the Stipulation for Entry of Consent Judgment entered into by and between The Florida Bar, and the Respondent.

- I. Summary of the Proceedings: The undersigned was duly appointed Referee in these proceedings. The Parties hereto have agreed to a stipulated resolution, which I recommend that the Court accept:

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Maria L. Torres

For Respondent: Martin Errol Rice

Respondent participated fully in this proceeding.

- I. Findings of Fact: The parties stipulated to the following facts:

Respondent represented Ruth E. Sparrow regarding estate planning matters for many years. In November, 2006, Respondent met with Sparrow at her home to discuss changes she wanted to make to her estate plan. Sparrow was 85 years old, and suffered from macular degeneration.

Sparrow discussed with Respondent that she desired to revise her will to make her great nephew her sole heir. She also wanted to make her great nephew her Power of Attorney. During the meeting, Respondent expressed admiration for Sparrow's condominium, and that he would be interested in purchasing the

condominium in the event of her passing.

Following the meeting, Respondent prepared several documents for Sparrow's signature, including a Last Will and Testament, a Durable Power of Attorney, and an Option to Purchase. The next day, Sparrow executed the documents. Sparrow's signature on these documents was witnessed by two individuals and notarized by a notary public.

The Option to Purchase provided that, for a consideration of \$10,000, Respondent was granted an option to purchase Sparrow's condominium for a period of 10 years at a purchase price of \$80,000. Respondent failed to advise Sparrow in writing of the desirability of seeking the advice of independent legal counsel, (although Respondent asserts that he did advise her so orally), and did not to obtain her informed consent in writing to the essential terms of the transaction and his role in the transaction. Respondent did not pay Sparrow \$10,000 as consideration for the Option to Purchase. When the Option was discovered by a relative of Sparrow, Respondent canceled the same of record.

III. Recommendations as to Guilt: I recommend that Respondent's Conditional Guilty Plea be accepted and that he be found guilty of 4-1.8(a) (knowingly acquire pecuniary interest adverse to client.)

IV. Recommendation as to Disciplinary Measures to Be Applied: A 60-Day Suspension.

V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to The Rules Regulating the Florida Bar 3-7.6(m)(1), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 51

Date Admitted to Bar: 9/15/1983

Prior disciplinary convictions and disciplinary measures imposed therein: 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:

Administrative costs pursuant to Rule 3-7.6(q)(1)(I)	\$1,250.00
The Florida Bar Expenses:	
Investigator Costs	741.18
Court Reporting Costs	862.00
Bar Counsel Expenses	<u>23.35</u>
TOTAL ITEMIZED COSTS:	<u>\$2,876.53</u>

It is recommended that the foregoing itemized costs, be charged to the respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 29th day of October, 2009.

Ed Bergmann

Charles Ed Bergmann, Referee

Original to Supreme Court, Referee's original file previously sent:

**Copies of this Amended Report of Referee only to:**

**Maria L. Torres**, Bar Counsel, The Florida Bar, 4200 George J. Bean Parkway, Suite 2580, Tampa, Florida 33607-1496;

**Martin E. Rice**, Attorney for Respondent, P.O. Box 205, St. Petersburg, FL 33731-0205;

**Kenneth Lawrence Marvin**, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300.