

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

DAVID JAY BERNSTEIN,

Respondent.

Supreme Court Case  
No. SC14-966

The Florida Bar File Nos.  
2012-50,489(17G)  
2013-50,351(17G)  
2014-90,015(02S)

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**CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT**

COMES NOW, the undersigned respondent, David Jay Bernstein, and files this Conditional Guilty Plea pursuant to Rule 3-7.9 of the Rules Regulating The Florida Bar.

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent is acting freely and voluntarily in this matter, and tenders this Plea without fear or threat of coercion. Respondent is satisfied with counsel, whose signature is affixed to this plea.
3. Respondent is currently the subject of Florida Bar disciplinary matters, which have been assigned to The Florida Bar File Nos. 2012-50,489(17G); 2014-90,015(02S); and 2013-50,351(17G). Respondent consents to The Florida Bar Case No. 2013-50,351(17G) being included to the within action

for purpose of settling this matter pursuant to the instant Conditional Guilty Plea for Consent Judgment.

4. The disciplinary measures to be imposed upon respondent are as follows:

A. Respondent shall receive a public reprimand to be served by publication in the Southern Reporter.

B. Within thirty (30) days of signing this Conditional Guilty Plea for Consent Judgment, respondent shall cease offering legal services or identifying his law practice in any manner by the names “Federal Criminal Defense Center”; “Federal Legal Center”; or any other name that violates the Rules Regulating The Florida Bar. Respondent may offer legal services and identify his law practice by the name “David Jay Bernstein, P.A. – National Attorney/Inmate Legal Services”, or such other name that fully complies with Rule 4-7.21, Rules Regulating The Florida Bar and all other applicable rules and laws.

C. Respondent shall pay The Florida Bar’s costs in this matter.

5. The following allegations and rules provide the basis for respondent’s guilty plea and for the discipline to be imposed in this matter:

The Florida Bar File No. 2012-50,489(17G)

Ivan Hall, through his mother, retained the Respondent's law firm regarding post-conviction relief. While there was no written fee agreement, Mr. Hall's mother paid \$1,000.00 upon retention and understood that an additional \$500.00 was due at a later date. This additional \$500.00 was never paid and the Respondent fully refunded the \$1,000.00 fee to Ms. Hall. Although the representation was for the limited legal service of one post-conviction remedy without an appearance in the proceeding, Respondent did not secure written informed consent for this limited representation.

During the course of the representation all communication with the law firm was between James Murphy, a law firm paralegal, and Ivan Hall or his mother. Unfortunately, Mr. Murphy ignored office protocol relative to Mr. Hall's case and worked independently on this matter without reporting to Mr. Bernstein in any manner until such time as the client became upset with the law firm and filed a Bar grievance. Mr. Murphy was prosecuted for the Unlicensed Practice of Law and in that proceeding he provided the Bar with a sworn affidavit attesting that, from the time he accepted the \$1,000.00 deposit from Mr. Hall's mother to the time Mr. Hall filed his grievance, Murphy acted covertly and surreptitiously to hide the very existence of Mr. Hall and his case from the Respondent. Respondent was out of the office for an extended period of time due to health issues during this period of

time. The Respondent has proffered that he has undertaken remedial measures to effect stricter supervision over his employees.

At all relevant times, respondent used the trade names Federal Criminal Defense Center and Federal Legal Center in violation of Rule Regulating Fla. Bar 4-7.9(c). Respondent has agreed to cease using the trade names Federal Criminal Defense Center and Federal Legal Center.

The Florida Bar File No. 2014-90,015(02S)

On or about June 11, 2013, Respondent's office disseminated or caused to be disseminated a direct mail letter to an individual represented by the complainant, Peter Levin. The direct mail advertisement was not filed for review with The Florida Bar at least 20 days before mailing as required by Rule 4-7.19(a). The direct mail advertisement did not contain the information required by Rule 4-7.18(b)(2)(H), how the respondent obtained the addressee's name and address and information about the addressee's appeal discussed in the direct mail letter. The direct mail advertisement did not contain written information detailing the background, training and experience of the lawyer or law firm sending the communication. Rule 4-7.18(b)(2)(C). The trade name used by the respondent on the direct mail letter, "Federal Legal Center" can be considered misleading and deceptive because it can be construed as implying a connection with a government agency in violation of Rule 4-7.21(b). It is the Respondent's position that he did

not mean to mislead anyone and as previously stated herein, respondent has agreed to cease using the trade names Federal Criminal Defense Center and Federal Legal Center.

The Florida Bar File No. 2013-50,351(17G)

Jesus Acosta hired Federal Criminal Research, Inc., in 2008 to file certain post convictions motions on his behalf. Federal Criminal Research was initially owned by Paul Luskin, a disbarred attorney, and was at a different location and was not related to Respondent's firm in any manner. Any and all monies paid by Mr. Acosta in relation to the above-referenced motions were paid to Paul Luskin and not the Respondent. Sometime thereafter, Luskin and his company ceased working on Acosta's matter. Beginning in or around 2011, Respondent's employee, James Murphy (who, coincidentally, had previously worked for Luskin) began corresponding with Acosta under Respondent's letterhead, "Federal Criminal Defense Center" without the Respondent's knowledge. Murphy sent several written communications directly to Acosta throughout the representation which did not disclose his nonlawyer status. Respondent asserts that, similar to the Hall matter, he was not made aware by Murphy of the Acosta matter, which occurred around the same time frame. Again, respondent represents he has undertaken remedial measures to effect stricter supervision over his employees, inclusive of Mr. Murphy's termination as an employee of the law firm.

6. Despite the presence of mitigating and ameliorating factors set forth elsewhere in this document, the Respondent admits that by the conduct set forth above, he violated the following Rules Regulating The Florida Bar: **4-1.2(c)** [ If not prohibited by law or rule, a lawyer and client may agree to limit the objectives or scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing. If the attorney and client agree to limit the scope of the representation, the lawyer shall advise the client regarding applicability of the rule prohibiting communication with a represented person.]; **4-1.3** [A lawyer shall act with reasonable diligence and promptness in representing a client.]; **4-1.4(a)** [A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.]; **4-1.4(b)** [A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.]; **4-5.3(a)** [A person who uses the title of paralegal,

legal assistant, or other similar term when offering or providing services to the public must work for or under the direction or supervision of a lawyer or law firm.]; **4-5.3(b)** [With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar: (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; **4-5.3(c)** [Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the

lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.]; **4-8.4(a)** [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;]; **4-8.4(d)** [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.]; **4-1.16(a)(2)** [Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client]; **4-7.9(c)** [A lawyer shall not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name shall be in violation of this rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.]; **4-7.21(b)**



[Misleading firm name]; **4-7.18(b)(2)(H)** [Ad does not contain any information telling addressee how respondent obtained information about addressee]; Rule **4-7.18(b)(2)(C)** [Ad does not contain background information about respondent]; and **4-7.19(a)** [Advertisement was not filed in a timely manner with the Bar for review before it was disseminated].

7. Respondent asserts the following in mitigation of his actions:

A. Respondent has been a member of The Florida Bar since November 30, 1994 and has no previous discipline.

B. Respondent had no dishonest or selfish motive.

C. Respondent has been cooperative with The Florida Bar throughout these proceedings.

D. Respondent made a timely good faith effort to rectify the consequences of James Murphy's actions.

E. Respondent has otherwise good character and a good reputation in the community.

F. Respondent was suffering from serious medical issues during the period of time that this misconduct took place.

G. Respondent is remorseful for his conduct in this matter.

8. The Florida Bar has approved this proposed plea in the manner required by Rule 3-7.9.

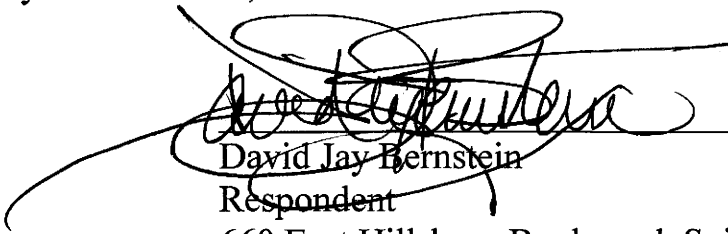
9. If this plea is not finally approved by the Referee and the Supreme Court of Florida, then it shall be of no effect and may not be used by the parties in any way.

10. If this plea is approved, then respondent agrees to pay all reasonable costs associated with this case pursuant to Rule 3-7.6(q) in the amount of \$2,326.74. These costs are due within 30 days of the court order. Respondent agrees that if the costs are not paid within 30 days of this court's order becoming final, respondent shall pay interest on any unpaid costs at the statutory rate. Respondent further agrees not to attempt to discharge the obligation for payment of the Bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy. Respondent shall be deemed delinquent and ineligible to practice law pursuant to Rule 1-3.6 if the cost judgment is not satisfied within 30 days of the final court order, unless deferred by the Board of Governors of The Florida Bar.

11. Respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement, and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding may reflect adversely on any reinstatement proceedings or any other Bar disciplinary matter in which respondent is involved.

12. This Conditional Guilty Plea for Consent Judgment fully complies with all requirements of the Rules Regulating The Florida Bar.

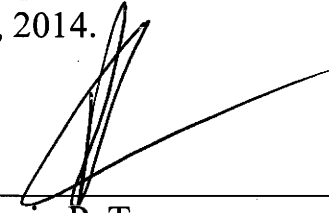
Dated this 25th day of November, 2014.



David Jay Bernstein  
Respondent

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Dated this 1st day of December 2014.



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Dated this 5 day of <sup>December</sup>~~November~~, 2014.



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