

## Neil Gillespie

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**From:** "Neil Gillespie" <neilgillespie@mfi.net>  
**To:** "Jim Watson" <jwatson@flabar.org>  
**Cc:** "James A G Davey, Jr." <jdavey@flabar.org>; "Brian Stuart Kramer" <kramerb@sao8.org>; "Melissa Jay Murphy" <melissam@salterlaw.net>; "Carl B Schwait" <cschwait@dellgraham.com>  
**Sent:** Monday, April 11, 2011 4:46 PM  
**Attach:** NOTICE OF GRIEVANCE PROCEDURES.pdf; 2009, 04-22-09, Salter, Feiber reply.pdf  
**Subject:** Re: Complaint, Gillespie v Robert W. Bauer, The Florida Bar File No. 2011-00,073(8B)  
 Dear Mr. Watson:

Thank you for your response. I trust that your trial is complete and you are back in the office.

Attached is a "Notice of Grievance Procedures" provided to me by the Florida Bar July 30, 2010. The relevant portion to our discussion is paragraph 4:

4. The grievance committee is the Bar's "grand jury." Its function and procedure are set forth in Rule 3-7.4. Proceedings before the grievance committee, for the most part, are nonadversarial in nature. However, you should carefully review Chapter 3 of the Rules Regulating The Florida Bar.

The claim that that the grievance committee is the Bar's "grand jury" is misleading. The grievance committee bears little in common with an actual grand jury.

As previously noted, an actual grand jury issues a finding of fact or presentment that is signed by all the members. The presentment is filed with the clerk of the court and is a public record.

While the grievance committee has nonlawyer members, only a quorum is needed for a vote, and the quorum is not required to have any nonlawyer members. A grievance committee could be composed entirely of lawyers. An actual grand jury would not be composed entirely of lawyers.

The selection and composition of an actual grand jury is different than the Bar's "grand jury". Actual grand juries are larger, usually 15 to 21 members.

In an actual grand jury, jurors are selected at random and their names are taken from lists prepared by the clerk of the circuit court. Most government officials are disqualified to serve on an actual grand jury. An elected public official is not eligible to be a grand juror.

In contrast, the Bar's "grand jury" draws from a small pool of self-selected members. The Eighth Circuit Grievance Committee "B" consists of ten members; seven lawyers and three nonlawyers. The Bar's "grand jury" requires a quorum (in my case 5 members), non of whom are required to be nonlawyers. I know of no prohibition on government or elected officials serving on a grievance committee. For example, I believe that Mr. Kramer, as an Assistant State Attorney, is a government official. This is not permitted on an actual grand jury.

In an actual grand jury witnesses will be called one by one and placed under oath to tell the truth, and subject to penalties for perjury. Under Rule 3-7.4(d) grievance committees may be informal in nature and the committees shall not be bound by the rules of evidence. Under Rule 3-7.4(h) the respondent may be required to testify and to produce evidence...and given an opportunity to make a written statement, sworn or unsworn, explaining, refuting, or admitting the alleged misconduct. No one is placed under oath nor subject to the penalties for perjury in the Bar's

"grand jury".

Given the result of the grievance committee in my case, I believe Messrs. Bauer and Rodems (and perhaps others) made false statements and misrepresentations prejudicial to the administration of justice. In an actual grand jury, witnesses must be truthful of face penalty of perjury. In the Bar's "grand jury" providing false information appears commonplace, and it appears that lying goes unchecked and unpunished. From what I see, it is a routine part of the process to allow the respondent to avoid justice. Even former adversaries such as Mr. Rodems can, in essence, join with the respondent against the complainant.

I found nothing in the rules that would prevent the respondent, the respondent's counsel or designee, a witness, or a third party, from independently contacting members of the grievance committee to influence their vote.

The following are events in my bar complaint against Mr. Bauer: (please correct if needed)

Pursuant to Rule 3-7.3(a) bar counsel Annemarie Craft (ACAP) reviewed my complaint/inquiry against Mr. Bauer and determined that the alleged conduct, if proven, would constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline. Ms. Craft notified me (October 13, 2010) that she forwarded the complaint to The Florida Bar's Tallahassee Branch Office for consideration. Ms. Craft was the second bar counsel assigned; the initial bar counsel, William Kitchen, was removed from the inquiry.

Pursuant to Rule 3-7.3(c) my complaint (July 29, 2010) was in writing and under oath, although the response from Mr. Bauer, and a 13 page diatribe from attorney Ryan C. Rodems were not made under oath. (Note: The Bauer and Rodems correspondence contained a number of false statements and misrepresentations prejudicial to the administration of justice.)

Pursuant to Rule 3-7.3(b) bar counsel James A G Davey, Jr. in the Tallahassee Branch Office decided to pursue an inquiry, opened a disciplinary file as a complaint, and investigated the allegations contained in the complaint.

Pursuant to Rule 3-7.3(f) Mr. Davey referred the complaint (November 5, 2010) to Melissa Murphy, Chair Eighth Judicial Circuit Grievance Committee "B" for its further investigation. Mr. Davey instructed Ms. Murphy assign the complaint to a grievance committee member for investigation and enclosed a Notice of Assignment of Investigating Member and/or Panel form. Mr. Kramer was assigned as investigating member (November 15, 2010).

Pursuant to Rule 3-7.4(j) Finding of No Probable Cause (1) the grievance committee terminated the investigation by finding that no probable cause exists to believe that the respondent has violated these rules.

In a letter dated March 18, 2011, you wrote me stating that: "Pursuant to Rule 3-7.4(k), this document serves as a Letter Report of No Probable Cause Finding. On the basis of a diligent and impartial analysis of all the information available, on March 18, 2011, the grievance committee found no probable cause for further disciplinary proceedings in this matter. The membership of the committee is made up of both attorneys and non-attorneys. This case is now closed." (relevant portion)

Rule 3-7.4(k) states: "(k) Letter Reports in No Probable Cause Cases. Upon a finding of no probable cause, bar counsel will submit a letter report of the no probable cause finding to the complainant,

presiding member, investigating member, and the respondent, including any documentation deemed appropriate by bar counsel and explaining why the complaint did not warrant further proceedings." (relevant portion)

It appears that your letter of March 18, 2011 fails to comply with Rule 3-7.4(k) because it failed to explain why the complaint did not warrant further proceedings given the overwhelming evidence of misconduct. You also failed to include any documentation explaining why the complaint did not warrant further proceedings.

The second paragraph of your March 18, 2011 letter states: "Because the Bar only has the authority to address questions of ethics, the committee could not address any legal issues about which you may feel concerned. If you have further concerns about what your legal remedies may be, you must consult with legal counsel of your choice. The Florida Bar is unable to provide legal advice in this respect."

Consult with legal counsel of your choice? That statement belies the fact that Mr. Bauer, a referral from the bar, was my counsel to represent me against prior counsel Barker, Rodems & Cook, PA. Subsequent to Mr. Bauer, I retained attorney Sheldon J. Childers to review the representations of Mr. Bauer and Barker, Rodems & Cook, PA. Mr. Childers prepared but refused to sign the following documents (September 17, 2009) regarding the prior representation, and dropped the matter when I would not agree to a "walk-away" settlement with the prior attorneys.

Analysis of Case and Recommendation  
Economic Analysis Spreadsheet  
Case Spreadsheet

So it appears your suggestion to "consult with legal counsel of your choice" is not tenable.

Subsequent to the closure of the complaint, I learned that Melissa Murphy, Chair Eighth Judicial Circuit Grievance Committee "B", is with the firm Salter, Feiber, Murphy, Hutson & Menet, P.A.. Attached you will find correspondence dated April 22, 2009 from Kristine Van Vorst of Salter Feiber, addressed to me, declining representation in a mortgage matter. When I called Ms. Van Vorst for a referral April 27, 2009, she was not available and I spoke with Kimberly, an assistant. Kimberly suggested Robert Bauer, then Barbara Cusumando. So it appears that Salter Feiber is biased in favor of Mr. Bauer, a fact that may have prevented a fair consideration of the complaint by Ms. Murphy, the presiding member of the grievance committee.

While a complainant has no right of appeal (Rule 3-7.4(i)) I ask that the designated reviewer request a review by the disciplinary review committee (Rule 3-7.5(a)(2)) and make a recommendation of probable cause that further disciplinary proceedings are warranted. (Rule 3-7.5(a)(5)(G)). Rule 3-7.5 refers to a "disciplinary review committee" but this term is not defined in Rule 3-2.1 so please explain. I do not believe a review by the grievance committee would be useful since it ruled 5-0 against action and appears Salter Feiber is biased in favor of Mr. Bauer, but do not reject such review out of hand.

In my view the grievance process is a parody of justice. Thank you.

Sincerely,

Neil Gillespie  
8092 SW 115th Loop  
Ocala, FL 34481

cc: Mr. James A G Davey, Jr.  
Mr. Brian Kramer  
Ms. Melissa Murphy  
Mr. Carl B Schwait

----- Original Message -----

**From:** [Jim Watson](#)

**To:** [Neil Gillespie](#)

**Sent:** Wednesday, March 23, 2011 1:36 PM

**Subject:** Re: Complaint, Gillespie v Robert W. Bauer, The Florida Bar File No. 2011-00,073(8B)

Mr. Gillespie:

I did not state that the grievance committee operated like a grand jury....what I said was that their deliberations were confidential like those of a grand jury.

It is not necessary that there be non-lawyer members present to constitute a quorum....as my original email said a quorum requires three or more members and two of those three members must be lawyers.

Mr. Schwait is one of the Board of Governors members for the 8th Judicial Circuit. He represents the interests of the attorneys who practice in the 8th circuit as well as takes part in the review of Grievance Committee actions and any disciplinary matters that are referred to the Board of Governors for actions required under our rules.

Any further matters which you might raise will have to wait until next week as I am preparing for a trial that begins on Friday. Thanking you for your consideration..Jim Watson

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Jim Watson, Chief Branch Discipline Counsel  
The Florida Bar  
Tallahassee Branch Office of Lawyer Regulation  
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## NOTICE OF GRIEVANCE PROCEDURES

1. The enclosed letter is an informal inquiry. Your response is required under the provisions of The Rules Regulating The Florida Bar 4 8.4(g), Rules of Professional Conduct. Failure to provide a written response to this complaint is in itself a violation of Rule 4 8.4(g). If you do not respond, the matter will be forwarded to the grievance committee for disposition in accordance with Rule 3-7.3 of the Rules of Discipline.
2. Many complaints considered first by staff counsel are not forwarded to a grievance committee, as they do not involve violations of the Rules of Professional Conduct justifying disciplinary action.
3. “Pursuant to Rule 3-7.1(a), Rules of Discipline, any response by you in these proceedings shall become part of the public record of this matter and thereby become accessible to the public upon the closure of the case by Bar counsel or upon a finding of no probable cause, probable cause, minor misconduct, or recommendation of diversion. Disclosure during the pendency of an investigation may be made only as to status if a specific inquiry concerning this case is made and if this matter is generally known to be in the public domain.”
4. The grievance committee is the Bar’s “grand jury.” Its function and procedure are set forth in Rule 3-7.4. Proceedings before the grievance committee, for the most part, are non-adversarial in nature. However, you should carefully review Chapter 3 of the Rules Regulating The Florida Bar.
5. If the grievance committee finds probable cause, formal adversarial proceedings, which ordinarily lead to disposition by the Supreme Court of Florida, will be commenced under 3-7.6, unless a plea is submitted under Rule 3-7.

# SALTER, FEIBER, MURPHY, HUTSON & MENET, P.A.

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## ATTORNEYS AT LAW

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April 22, 2009  
VIA CERTIFIED MAIL

Neil J. Gillespie  
8092 SW 115<sup>th</sup> Loop  
Ocala, FL 34481

RE: Representation

Dear Mr. Gillespie:

Thank you for your correspondence dated April 20, 2009 including attachments thereto.

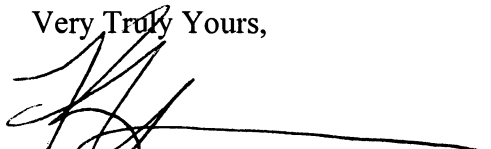
On the basis of our preliminary review of the facts of your claim, we have concluded that we are not interested in pursuing the possibility of handling of your claim. Of course, we are not passing judgment on the merits of any claims that might be made on your behalf.

This letter confirms that we have not been retained as attorneys for you on any basis. However, we do urge you to retain an attorney as soon as possible if you want to pursue any claims that might exist to recover damages on your mother's behalf.

We have not undertaken to advise you concerning any statutes of limitation that might be applicable to your claim. Again, if you want to pursue any claims, you should retain an attorney as soon as possible and obtain advice from that attorney concerning the applicable statutes of limitation. We suggest that you contact The Florida Bar Referral Service at 1-800- 342-8011 in getting a referral for an attorney in your area.

We appreciate the opportunity to discuss your case with you.

Very Truly Yours,



Kristine Van Vorst

KVV/kmc