Licensing and Discipline of Fiscal Professionals in the State of Florida: Attorneys, Certified Public Accountants, and Real Estate Professionals

Debra Moss Curtis

Available at: https://works.bepress.com/debra_curtis/16/
CARIBBEAN LEGAL AFFAIRS

Introduction for the Goodwin Seminar Articles: Trade Winds in Caribbean Law—Evolution of Legal Norms and Quest for Independent Justice

Jane E. Crow

Waiting to Exhale: Commonwealth Caribbean Law and Legal Systems

Dr. Ros-Marie B. Antoine

The Caribbean Court of Justice: A Unique Institution of Caribbean Creativity

Honorable Sir David Simmons

INTERNATIONAL LEGAL AFFAIRS

Notes on Lawyers and Commerce

Anthony Chase

Critique, Culture and Commitment: The Dangerous and Counterproductive Paths of International Legal Discourse

Geoffrey A. Hoffman

Traveling to Cuba? Sorry, It's Closed

Ignacio M. Santuino

A Not So Special Rate: A Look at the Unequal Medicare Reimbursement Rates Between the United States and the Commonwealth of Puerto Rico

Michael L. Torres

FLORIDA LEGAL AFFAIRS

Licensing and Discipline of Fiscal Professionals in the State of Florida: Attorneys, Certified Public Accountants, and Real Estate Professionals

Debra Moss Curtis

2004 Survey of Florida Juvenile Law

Michael J. Dale

VOLUME 29
NUMBER 2
WINTER 2005
LICENSED AND DISCIPLINE OF FISCAL PROFESSIONALS IN THE STATE OF FLORIDA: ATTORNEYS, CERTIFIED PUBLIC ACCOUNTANTS, AND REAL ESTATE PROFESSIONALS

DEBRA MOSS CURTIS

I. INTRODUCTION AND PURPOSE .............................................. 340
II. FISCAL PROFESSIONALS: THE RELATIONSHIP BETWEEN ATTORNEYS, CERTIFIED PUBLIC ACCOUNTANTS, AND REAL ESTATE PROFESSIONALS IN FLORIDA .................................................. 340
III. LICENSING OF PROFESSIONALS ........................................... 343
   A. Attorney Licensing .................................................... 343
   B. Real Estate Professionals ............................................. 348
   C. Certified Public Accountants ......................................... 353
   D. Comparing and Contrasting Fiscal Professional Licensing ......... 357
IV. THE DISCIPLINE SYSTEMS .................................................. 359
   A. Attorneys .............................................................. 359
   B. Real Estate Professionals ............................................. 366
   C. Certified Public Accountants ......................................... 370
   D. Comparing and Contrasting Fiscal Professional Discipline ...... 375
V. STATISTICS REGARDING LICENSING, COMPLAINTS, AND DISCIPLINE IN THE ACCOUNTANCY, ATTORNEY, AND REAL ESTATE PROFESSIONS .................................................. 377
   A. Licensees in Florida .................................................. 378
   B. Complaints Against Licensees Received/Probable Cause Found .................................................. 381
   C. Dispositions of Disciplinary Files .................................. 383
   D. Gender and Disciplines Ordered .................................... 383
   E. Categories of Discipline Ordered .................................... 386
   F. Discipline by Geographic Location ................................ 390
   G. Overall Licensees Disciplined ...................................... 391
VI. CONCLUSION .............................................................. 394

* Debra Moss Curtis is an Assistant Professor of Law at Nova Southeastern University, teaching Lawyering Skills and Values, Secured Transactions, Criminal Procedure, and Law Office Management. Thanks to Abigail Marion and Jen Kopf, NSU '06, for assistance gathering information and data for this article.
I. INTRODUCTION AND PURPOSE

The purpose of this article is to compare the regulation of several professions within the state of Florida. In Florida, attorneys are self-regulated through The Florida Bar. As a branch of the Supreme Court of Florida, The Florida Bar serves as the licensing agency of attorneys within the state. Two other professions—real estate professionals and certified public accountants—in which the public also places fiscal trust and responsibility, are regulated through a different agency, the Department of Business and Professional Regulation (DBPR). This article seeks to examine and explain the different methods of licensing and regulation between these professional groups and looks at empirical data regarding the discipline of such members.

The idea for this statistical review arose in 2004 following an analysis, done by this author in conjunction with another legal professional, on the public’s view of Florida attorney discipline. That article dealt with the discipline of Florida attorneys and featured statistics gathered from public sources. After publication of that article original information was received from The Florida Bar regarding the specifics of attorney discipline during a certain time period. At that time we came across data comparing attorneys with other professions, prompting a more detailed comparison of the differences in these state professional systems.

II. FISCAL PROFESSIONALS: THE RELATIONSHIP BETWEEN ATTORNEYS, CERTIFIED PUBLIC ACCOUNTANTS, AND REAL ESTATE PROFESSIONALS IN FLORIDA

The mission of the Department of Business and Professional Regulation (DBPR) is to ensure that professionals provide quality services to the public. In addition, The Florida Bar lists as its ultimate goal “to provide more effective delivery of legal services.” Both of these professional membership and regulation organizations deal with various occupations. However, the three occupations that overlap frequently either in licensing or in their fiscal responsibilities to the public are attorneys, certified public accountants, and real estate professionals.

In reality, many of these three professional groups are cross-trained; in other words, an attorney also may be a certified public accountant or a real estate broker. A New York State Bar Ethics opinion was issued to assist New York attorneys in sorting out the conflicts of interest in acting as part of a law firm engaged in real estate matters. In that opinion, the State Bar Ethics Committee reiterated that it was not improper for lawyers to engage in other businesses such as dually working as either real estate brokers or certified public accountants. Lawyers, however, must overcome the presumption in many rules of professional conduct that their work in any non-legal field is subject to the rules of professional conduct of lawyer. They also must make it clear to clients that simply being qualified in more than one field is not directly related to the work to be done. Attorneys also must be aware of conflicts of interest in their rules in any dual transaction.

Attorneys have also become acutely aware of the interaction between professions, as well as the cross-purpose in the examination of whether legal...
services should be permitted in the structure of organizations other than traditional law firms. The American Bar Association has been considering the thorny issue of whether lawyers should be allowed to join with other professionals to offer services under one single practice, and how that new structure may affect attorneys’ abilities to serve the public and financial outcome. The Florida Bar Ethics hotline reported in 2002 that it had received inquiries about attorneys regarding combining their businesses with others, among them accountants. And clients are increasingly more interested in engaging attorney professionals that may provide the benefits of expertise in accounting matters as well. The three groups of professions occasionally have overlapping responsibilities. Real estate brokers often are authorized by state law to draft or complete specific legal documents or to conduct closing and settlement proceedings in certain real estate transactions. Some states also allow certified public accountants to perform some activities otherwise considered "legal services," such as appearances before certain tax adjudicatory bodies.

Ultimately, citizens of Florida rely upon members of these three professions to responsibly handle their money and property. While other service professions regulated by the DBPR deal in property and money, those professions are not based on fiscal responsibility. You may pay a contractor, and trust that person with important property, but you are seeking a tangible, physical service from the contractor. The same goes for architects, electrical contractors, barbers, and funeral directors—all occupations regulated by the DBPR. However, accountants and real estate professionals provide basic services that involve holding, accounting for, and transferring money.

Other professions in Florida also have high levels of trust and are not regulated by the DBPR. A key example is physicians, who are regulated by the Florida Board of Medicine. However, while doctors certainly are paid

13. See Amendments to Rules Regulating the Fla. Bar, 820 So. 2d 210, 213 (Fla. 2002).
14. Id.
15. See Brooks, supra note 6, at 1071. Brooks asserts that "dual capacity practitioners" benefit consumers by providing a "higher quality product at a lower cost." Id. at 1076.
17. Id. at 338.
18. See DBPR Home Page, supra note 2.
19. See id.
20. See Florida Board of Medicine, Board Overview, at http://www dob state fl m d medical/me_home.html (last visited Feb. 7, 2005). There are several divisions by medical specialty. For their services, their basic purpose is not related to any fiduciary duty, but rather to the patient’s health. Attorneys assist clients through the legal system. All attorneys are required under self-regulation rules to be fiscally responsible to their clients when dealing with their money. However, many fields of law have built into them the primary task of fiscal responsibility, such as estate planning and guardianships. Because this fiscal responsibility, like that of accountants and real estate professionals, often takes center stage in the service to clients, these three professions were chosen for comparison.

III. LICENSING OF PROFESSIONALS

A. Attorney Licensing

Most consumers in the public are familiar with the concept that an attorney must "pass the bar" in order to become licensed in a particular state. What many consumers do not understand is that the "Bar Exam," and in fact, the entire regulation of attorneys in the state of Florida, is handled solely through the judicial system of the state; the same system in which attorneys ultimately conduct most of their business. The Supreme Court of Florida, which is the highest court in the state, handles bar admissions through its administrative arm, the Florida Board of Bar Examiners. A task of the Florida Board of Bar Examiners is to be gatekeeper for admission to the professional organization known as The Florida Bar, and it is known to be a powerful force. For many years, there has been a growing movement to deregulate the legal profession and allow lay practitioners to practice law. However, the requirements for admission to the bar remain

21. See Robert B. Hale, Comment, Auditor Liability Under the DTPA: Can It Get Any Worse for Accountants?, 74 BAYLOR L. REV. 313, 320 (1992) (noting that services of a professional are similar in that they require application of professional judgment and rendering of an opinion, and specifically lists real estate agents, attorneys, and accountants as examples in this category).
23. FLA. BAR ADMINS. R. 1-12. "The Florida Board of Bar Examiners consists of twelve members of The Florida Bar and three members of the general public who are not lawyers." FLA. BAR ADMINS. R. 1-21.
stringent. Admission to the bar exam begins with an application. The application itself has a three-page checklist that is so detailed that the first step of the "Checklist to File a Bar Application" is instructions to the reader to "[p]rint this checklist and [c]heck each item when completed" in order to ensure all parts of the application are completed. The second step, which requires gathering informational materials, contains fifteen individual items that may be needed depending on responses to some inquiries, including employment information for the past ten years (or since the applicant's sixteenth birthday, whichever is shorter), as well as financial information, information regarding arrests, charges or accusations, and specifics on traffic violations. The third part lists thirteen steps to properly complete the application. Part four contains information on "packaging" the application complete with fingerprint card, photograph, and other supporting documents.

Applicants who wish to sit for the bar exam must have graduated from a law school accredited by the American Bar Association. The costs for a typical six-semester curriculum to complete law school can exceed $100,000 including living expenses. Only after satisfactory completion of law school requirements can students be "certified" by their deans to proceed with The Florida Bar Examination. Actual admission to the Florida Bar is divided into two general categories. The first requirement is the taking and passing of The Florida Bar Exam, which is administered on the last Tuesday and Wednesday of February and July each year in one central location in the state. In addition, the admissions process also requires the passing of the Multistate Professional Responsibility Exam (MPRE), given three times yearly, and administered by the National Conference of Bar Examiners, rather than the state itself. Although applicants must be present in the state of Florida (although not a resident) to sit for the two-day Florida Bar Exam in February or July, applicants to Bar admission in Florida may physically be present in any state administering the MPRE and then have those scores forwarded to the Florida Board of Bar Examiners.

The two-day Florida Bar examination contains two portions. Part A is the "Florida-prepared" portion, generally containing three hours of essays followed by three hours of multiple-choice questions, and including subjects chosen from: Florida Constitutional Law, Florida Rules of Civil and Criminal Procedure, Florida Rules of Judicial Administration, Federal Constitutional Law, Chapters 4 and 5 of the Rules Regulating The Florida Bar, Corporations, Partnerships, Wills, Administration of Estates, Contracts, Criminal Law, Criminal Procedure, Evidence, Family Law, Real Property, Torts, and Trusts. Part B of the two-day exam is titled "Multistate Bar Examination," and it is created by the National Conference of Bar Examiners. This portion of the exam is six hours, two hundred questions, and deals exclusively with the non-state specific subjects of Contracts, Torts, Constitutional Law, Criminal Law, Real Property, and Evidence. The exam is given primarily in paper format, although examinees are permitted to take the essay portion of the exam using laptop computers under certain conditions.

The separate MPRE is a fifty question, two-hour, multiple-choice examination, exclusively testing a lawyer's professional conduct as governed by the American Bar Association's Model Rules of Professional Conduct, Model Code of Judicial Conduct, and other evidentiary and substantive laws.

26. FBBE FAQs, supra note 24.
28. Id.
29. Id.
30. Id.
32. Id. at 550.
34. FBBE FAQs, supra note 24. The past several years, this sole location has been in Tampa, Florida, at that city's convention center. Florida Board of Bar Examiners, Florida Bar Examination and Filing Deadlines, at http://www.floridabarexam.org/public/main/index/FLABarExamDates.PDF?file=FLABarExamDates.PDF (last visited Feb. 7, 2005) [hereinafter Bar Schedule].
37. Id. at 1. Most, if not all, of these subjects are available in a typical law school curriculum. See STUDENT HANDBOOK, supra note 33, at 3-4.
39. Id. These courses, with the exception of evidence, which at some schools is a required upper-level course, are generally mandatory courses given in the first year of law school. STUDENT HANDBOOK, supra note 33, at 3-4.
40. Florida Board of Bar Examiners, Laptop Program, at http://www.floridabarexam.org/public/main/index/laptop.html (last visited Feb. 7, 2005). Examiners must load a particular software program onto the laptop and be prepared to continue with the exam in paper-based format in the event of malfunction. Id.
to emerge from those bodies.\textsuperscript{41} However, despite its universal-sounding name, the "American Bar Association" (ABA) is a voluntary organization for attorneys, not a licensing agency.\textsuperscript{42} Each state individually creates and approves its own ethical codes and rules for attorneys to follow, to which they are individually bound.\textsuperscript{43} Although many states base their own rules on the ABA rules, attorneys required to sit for this exam, and be tested on these rules, ultimately are not bound by those exact rules, particularly if their state has made substantive changes.\textsuperscript{44}

The MPRE is graded with both a raw score, calculated from the number of test questions answered correctly, and a scaled score, calculated with a statistical process adjusting for variations in the difficulty of the test from year to year.\textsuperscript{45} Raw scores run from zero to fifty, while scaled scores run from fifty to one hundred fifty.\textsuperscript{46} The Supreme Court of Florida fixed the passing rate for bar admittance at a scaled score of eighty or better, which must be attained within twenty-five months of passing other parts of The Florida Bar Exam.\textsuperscript{47}

The second requirement for admittance to The Florida Bar, apart from passing these two examinations, is the passing of a character and fitness screening.\textsuperscript{48} The Supreme Court of Florida holds a "good moral character" requirement emphasizing an inquiry into the applicant's "honesty, fairness, and respect for the rights of others."\textsuperscript{49} In considering the character and conduct of an applicant, the court recognized that the character and conduct "must have a rational connection to the applicant's fitness to practice law."\textsuperscript{50}

\textsuperscript{41} Tests, supra note 38. Most Florida law schools require such a course entitled Professional Responsibility covering the material tested on this exam. \textit{STUDENT HANDBOOK, supra note 33, at 3-4.}

\textsuperscript{42} American Bar Association, \textit{About the ABA}, at http://www.abanet.org/about/home.html (last visited Feb. 7, 2005).


\textsuperscript{44} Id. Several of Florida's professional responsibility rules are different from ABA rules, and in fact, portions of them are among the subjects included in Part A of the two-day Florida Bar Exam. Id.


\textsuperscript{46} Id.

\textsuperscript{47} FLA. BAR ADMIS. R. 4-18, 4-33.2 (2004).

\textsuperscript{48} FLA. BAR ADMIS. R. 2-12. The Bar requires applicants to possess "good moral character." Id. Rule 2-12 of the Rules of the Florida Supreme Court Relating to Admission of the Bar requires that all applicants seeking admission to the Bar shall "produce satisfactory evidence of good moral character." Id.

\textsuperscript{49} Florida Bd. of Bar Examiners v. G.W.L., 364 So. 2d 454, 458 (Fla. 1978).

\textsuperscript{50} Id.
The Florida Bar has no reciprocity with licensed attorneys from other jurisdictions. Any candidate wishing to obtain a Florida Bar license must submit to The Florida Bar Examination.  

B. Real Estate Professionals

In every state, as well as in the District of Columbia, real estate brokers and sales agents must be licensed to conduct real property business dealings. Real estate professionals may be divided into two categories: real estate agents (also called sales associates) and real estate brokers. The real estate profession in Florida is governed by the DBPR, specifically, the Florida Real Estate Commission. The DBPR is a Florida state agency that issues licenses and ensures the quality of services provided by its licensees. It regulates some two hundred classes of licensed professions and occupations and is required under the Florida Statutes to submit an annual report on the professions that it regulates. The Division of Real Estate regulates real estate licenses through education, regulation, and compliance. It provides administrative support to the Florida Real Estate Commission, which consists of seven members appointed by the Governor and confirmed by the Senate.

59. FBBE FAQs, supra note 24.
60. Id.
62. Career Webschool, Florida Real Estate School-State Requirements, at http://www.careerwebschool.com/Florida-Real-Estate/florida-real-estate-state-requirements.html (last visited Feb. 7, 2005) [hereinafter Real Estate Requirements]. Real Estate Appraisers are also considered professionals under the DBPR and Florida Statutes, however, their roles in relation to the public are dissimilar to attorneys and CPAs and thus have been excluded for purposes of this article. Fla. Stat. § 475.610 (2003); Division of Real Estate, Florida Real Estate Appraiser Board, at http://www.state.fl.us/dbpr/real-estate/appraiser_board.html (last visited Feb. 7, 2005) [hereinafter Real Estate Appraiser].
63. § 475.02(1).
64. DBPR Home Page, supra note 2.
65. Id.
67. § 475.02(1). Four members must be brokers holding active licenses for a five-year period. Id. One member is a licensed broker or sales associate for two years, and two members are members of the public who have never been licensed real estate professionals. Id. Members hold their positions for four year terms, may be removed for cause, and one member of the commission must be at least sixty years of age. § 475.02(1)-(2).
68. Career, supra note 61.
69. Id. A broker is defined under Florida Statutes as a person who "appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property." § 475.01(1)(a).
70. Real Estate Requirements, supra note 62.
71. § 475.17(3)(a). Florida Licensing Requirements for Real Estate are readily accessible on the "myFlorida.com" webpage, listed under the DBPR, Division of Real Estate, Florida Licensing Requirements for Real Estate, at http://www.myflorida.com/dbpr/real/license-requirements.shtml (last visited Feb. 7, 2005) [hereinafter Licensing Requirements for Real Estate]. In addition, further detailed information clarifying these statutes appears in the Florida Administrative Code. See generally Fla. ADMIN. CODE R. 63J2 (2004).
72. § 475.17(3)(d).
73. Id.
74. Real Estate Requirements, supra note 62.
76. Id.
Associate Exam. Finally, applicants must complete the administrative step of activating their licenses and completing forty-five classroom hours of post-licensing course work prior to biennial license expiration. Currently, neither licensed Florida attorneys nor applicants with a four-year degree are required to submit to these real estate requirements.

By contrast, those seeking to become real estate brokers must already hold an active real estate sales associate license and then complete twelve months of real estate experience during a period of five years before seeking to become a broker. A broker must take an additional pre-licensing course, approved by the Florida Real Estate Commission, consisting of seventy-two classroom hours, which also is valid for two years after the course completion date. This course focuses more specifically on advanced skills for this higher level of licensing, such as opening, owning, managing, and supervising a real estate office, including escrow management, valuing real property, listing and selling real property, and several specialty areas including environmental issues that affect real estate transactions. Such information includes understanding policies and law relating to leasing real property and employing sales associates.

All other requirements for brokers are similar to sales associates, such as the application, fingerprinting, paying a fee, and the successful passing of the real estate broker examination. Real estate brokers also must complete administrative requirements in order to activate their licenses and complete at least sixty hours of post-licensing course work prior to license expiration.

77. Licensing Requirements for Real Estate, supra note 71. A passing grade on this exam is a seventy-five. Id. In addition, applicants may sit for the Florida Real Estate Law Examination, of which a passing score of at least thirty is required. Id. In addition, Florida has "mutual recognition" of licensing with ten states. SALESPELSON COURSE SYLLABUS, supra note 75.

78. Real Estate Requirements, supra note 62. Real estate applications may be submitted partially online. Id.


80. Real Estate Requirements, supra note 62.

81. Id.


83. Id.

84. Real Estate Requirements, supra note 62.

85. Id. Fees for Real Estate Brokers are initially $162 with a renewal fee of $72.50 per license; licenses must complete fourteen hours of continuing education every two years. Id.; Division of Real Estate, Fees, at http://www.myflorida.com/dbpr/re/fees.shtml (last visited Feb. 7, 2005) [hereinafter Fees].

86. IFREC FAQs, supra note 79. Applicants who fail must wait at least thirty days to take the exam again. Id.


88. Id.

89. Id.

90. Id.

91. Id.


95. Id. The list appears to contain a few repetitions of schools and addresses. See id.

The initial and continuing education courses necessary for real estate professionals are regulated by the DBPR. All of the details of the specific classroom requirements within each school, including the requirements for successful course completion, as well as regulations on advertising, are specified.

All active licensees must also complete a minimum of fourteen hours of continuing education during each biannual license renewal period, except for the first license period. During the first licensing period, all brokers and sales associates must complete a specified post-licensing course prior to the first renewal. For sales associates, this course requirement is not more than forty-five hours (including exam) in subjects including “property management, appraisal, real estate finance, the economics of real estate management, marketing, technology, sales and listing of properties, business office management . . . practical real estate application skills, development of business plans, marketing of property, and time management.” By contrast, the post-licensing course for brokers includes instruction in the same subjects for up to sixty hours prior to the first license period. Sales associates must pay a $65 renewal fee, while brokers pay a renewal fee of $72.50.

The Florida Division of Real Estate has “mutual recognition” with ten states, in which both brokers and sales associates can qualify for an equivalent-type license in Florida if they are eighteen years of age, hold a high school diploma or equivalent, and are not a resident of Florida at the time of application.

97. Law schools may be accredited by states for graduates to sit for only that state’s bar exam; however, the American Bar Association also nationally accredits law schools, permitting ABA-accredited school graduates to apply for the bar examination in any state. American Bar Association, The ABA Role in General, at http://www.abanet.org/legalaid/accreditation/abaroles.html (last visited Feb. 7, 2005).


101. § 475.17(3)(a). These courses must be given by an accredited college, registered real estate school, or other approved center. Id.


103. Fees, supra note 85.

104. SALESPERSON COURSE SYLLABUS, supra note 75. The ten states are Alabama, Arkansas, Colorado, Georgia, Indiana, Kentucky, Mississippi, Nebraska, Oklahoma, and Tennessee. Id. There are other requirements for certain states, and if applicants have received their licenses in these ten states by reciprocity, they may not claim mutual recognition in Florida. Id.

105. § 473.302(4).

106. § 473.302(7)(a)-(c). A detailed list of public accounting duties is included in this statute. Id.


108. § 473.306(2)(b); Fla. Admin. Code R. § 61J1-27.002 (2003). The other hours must equal at least thirty semester hours or forty-five quarter hours in excess of those required for the baccalaureate degree, including a program concentrating on accounting as defined in the administrative code. § 473.306(2)(b).


110. § 473.306(4)(a).

111. § 473.306(4)(b). In addition, an applicant who is rejected for a license based on character must be furnished with a complete record of such evidence upon which the determination was based. Fla. Stat. § 473.306(4)(c) (2004).


113. See id.

114. Board of Accountancy, supra note 107.
each subject of the exam for Florida applicants, but does not administer a Florida-specific examination. The exam is actually prepared by the Board of Examiners of the American Institute of Certified Public Accountants (AICPA). The Board of Examiners of the AICPA is responsible for both preparing and grading the Uniform CPA exam. All fifty states—as well as the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands—use this exam. The National Association of State Boards of Accountancy (NASBA) assists the boards of accountancy in processing the exam grades and providing statistical information arising from the exam. In 2003, the DBPR approved the final administration of a paper-based CPA examination for Florida test-takers. Beginning on April 5, 2004, all of the testing for the CPA examination in Florida is only computer-based.

The Board offers four testing “windows” for examinees to take the exam. An exam “window” is a three-month period during which the exam is offered. Each month the exam is not offered for “routine maintenance” of the system.

The new computer-based examination consists of the same number of parts as the previous paper-based examination, although they have been re-named. The four sections of the exam are: 1) Auditing and Attestation; 2) Business Environment and Concepts; 3) Accounting and Reporting; and 4) Financial Accounting and Reporting.

Financial Accounting & Reporting; 3) Regulation; and 4) Business Environment and Concepts. The cost for taking each of these sections, which does not include the $50 application fee and is paid directly to the Board of CPA, ranges from $100.50 to $134.50 for each section. The estimated total cost for first-time exam candidates may be up to $800.

Candidates for licensing may take different sections of the exam individually and in any order. Once taken, the examinee earns credit for each section of the exam passed for a period of eighteen months. Candidates must pass all four sections within that eighteen-month period and may not retake a failed section within the same examination window.

Information about the CPA exam, including access to sample exams, is available on a national website. In Florida, applicants contact the national examination services directly to set up exam testing. There is generally no application deadline; rather, the new computer-based examination is intended to allow candidates to apply on a rolling basis for an examination window. Once a test appointment is scheduled, candidates may reschedule an appointment if there is a conflict. Applicants do not have to be physically located within their respective jurisdictions to take the exam, but may take it at any site approved by the company administering the exam.

115. § 473.306(7)(a); see also American Institute of Certified Public Accountants, The Uniform CPA Examination Candidate Bulletin (2004), http://www.cpa-examorg/cpa/bulletin.html (last visited Feb. 7, 2005) [hereinafter CPA Candidate Bulletin]. The Board of Examiners makes recommendations to each individual board of accountancy regarding standards. Id.

116. CPA Candidate Bulletin, supra note 115, at 1. The AICPA is the largest national professional organization for CPAs, and its mission is to serve its members in a way to enable them to provide valuable services. Id.

117. Id.

118. See id. at 1, 4.

119. Id. at 1.


121. CPA Licensee, supra note 112.

122. Id.

123. Id.

124. CPA Ready, Computerized CPA Exam Information, at http://www.cpaexam.com/content/examinfo.asp (last visited Feb. 7, 2005) [hereinafter CPA Exam Info]. These sections correspond in order to the old paper-based examination sections of 1) Auditing; 2) Financial Accounting and Reporting; 3) Accounting and Reporting; and 4) Business Law and Professional Responsibilities. Id. Applicants who are currently in their eighteen-month period of accumulating credits may use old paper-based section credits combined with newer, computer-based passed sections during the transition period of the computer-based testing. Id. The specific descriptions of each section are available in the Uniform CPA Examination Candidate Bulletin, June 1, 2004. CPA Candidate Bulletin, supra note 115.

125. Id.


127. American Institute of Certified Public Accountants, CPA Computer-Based Examination FAQs at http://www.cpa-exam.org/cpa/computer_faq.html (last visited Feb. 7, 2005) [hereinafter CPA FAQs]. Each section of the exam carries a different cost. CPA Licensee, supra note 112. The total cost may include other fees associated with the testing. Id.


129. CPA Exam Info, supra note 124.

130. Id.

131. CPA FAQs, supra note 127.

132. CPA Candidate Bulletin, supra note 115. The telephone number is 1-800-CPA-EXAM (1-800-272-3920). American Institute of Certified Public Accountants, Steps to Become a CPA, http://www.cpa-exam.org/get_started/steps.html (last visited Feb. 7, 2005). In other states, applicants may have to contact their Board of Accountancy directly or another service. Id.

133. See id. at 8.

134. Applicants may reschedule at no charge if they are rescheduling more than thirty days in advance. Id. at 12. Rescheduling between five and twenty-nine days results in a charge of approximately $35; however, rescheduling within five days requires full forfeiture of the fee for the section that was scheduled. CPA Candidate Bulletin, supra note 115. CPA FAQs, supra note 127.

135. CPA Candidate Bulletin, supra note 115; CPA FAQs, supra note 127.
able subject to additional hours taken.145 License renewal may be administratively accomplished through the "myflorida.com" secure website and must be renewed every two years.146 In addition to the continuing education courses, current licensees must also pass an exam on Florida Accountability Law and Rules.147 This open-book exam is administered either via the Internet or via hard copy upon request.148 The total biennial cost to renew the CPA license is $95.149

The accountability system provides that applicants who have passed the CPA examination in another state may become licensed in Florida. First, if the applicant has passed all parts of the nationally administered exam, in conformance with Florida's rules for sitting for the exam, but not yet applied to be licensed in another state, the examinee may apply to transfer credit of the uniform exam to Florida.150 In contrast, if the candidate has already been licensed or applied for licensing in another jurisdiction, a process known as endorsement must be undergone, requiring a ten-page application with a fee, five years of governmental accounting after licensure, and compliance with specific rules regarding educational experiences and accreditation.151

D. Comparing and Contrasting Fiscal Professional Licensing

The first difference between the fiscal professionals examined in the state of Florida is their educational requirements. Real estate professionals are not required to hold any particular traditional degree,152 while CPAs are required to complete a baccalaureate degree,153 and attorneys are required to complete a post-graduate degree.154 However, real estate professionals must take a certain number of credit hours of training specifically in that field.155

---

136. Id. Applicants must bring a document entitled "Notice to Schedule" to the center, and without it, will not be allowed to sit for the exam. CPA CANDIDATE'S BULLETIN, supra note 115, at 14. Applicants must also bring photo identification, on which the name must exactly match the notice. Id. at 7.

137. Thompson Proctor & Lamm, P.C., Test Centers, at http://www.2070.com/registrationgate way/coder-USA&state=FL&cid=CPA (last visited Feb. 7, 2005) [hereinafter TCL Center]. In the past, when paper-based exams were administered, more than 55,000 applicants took the exam as given twice a year. American Institute of Certified Public Accountants, The New CPA Exam Meeting Today's Challenges, at http://www.aicpa.org/pubs/cpbl/may2002/supp/ edul.htm (last visited Feb. 7, 2005). These exams were administered in large rooms to accommodate hundreds or more applicants simultaneously. Id. The new computer-based format allows more examination windows, more flexibility to applicants on which section to take at what time, and more options in scheduling and location, as well as private exam carrels. Id.; CPA CANDIDATE'S BULLETIN, supra note 115, at 8-11, 15-16.

138. CPA CANDIDATE'S BULLETIN, supra note 115, at 22.

139. CPA Exam Info, supra note 124.

140. CPA CANDIDATE'S BULLETIN, supra note 115.

141. CPA FAQs, supra note 127.


143. Id.

similarly, CPAs must have majored specifically in accounting and then taken additional specific accounting courses.\textsuperscript{156} In contrast, the attorney, who has completed a minimum of seven years of post-high school education, is not required to take course training specific to the vocation.\textsuperscript{157} Law school courses often are said to teach students to think like lawyers and to teach the law, but they do not necessarily cover the specific every day business requirements of being an attorney.\textsuperscript{158} One of the results of these requirements is a discrepancy in ages of the fiscal professionals. A real estate professional could be as young as eighteen (as per licensing requirements),\textsuperscript{159} while the requirement of a bachelor’s degree makes an accounting licensee unlikely to be that young (although no age requirement is specified in the licensing),\textsuperscript{160} and certainly attorneys are expected to be even older, with the necessity of three additional years of education over accountant licensees.\textsuperscript{161}

A second level of comparison is the examination process. Real estate professionals are required to take an exam that is crafted and administered by the State of Florida.\textsuperscript{162} The real estate exam is given by private testing centers and is in computer format with immediate feedback.\textsuperscript{163} The accountancy exam, by contrast, is administered by a national organization and has recently switched to an internet format at an approved testing site. Additionally, feedback is not immediate, as the written portion of the exams requires careful evaluation. Attorney examinations differ from both real estate and accounting exams. Attorney examinations are a combination of Florida law and national law, and the Florida Board of Bar Examiners works to administer this combination test with the National Conference of Bar Examiners.\textsuperscript{164} While the Bar has recently begun allowing examinees to use laptop computers in the writing of the exam, it is a paper-based exam given only on two specific dates a year in one central location.\textsuperscript{165} Feedback as to a passing score generally comes after a delay of several months. Such a difference in examination methods certainly sets a different tone and level of accessibility to the future professionals. This difference regulates the rate at which the stream of professionals is increased in each profession, requiring careful planning by employers and future licensees alike.

\textsuperscript{156} § 473.396(2)(v)(1), (2).
\textsuperscript{157} FLA. BAR ADMIN. R. 14-13.1(a).
\textsuperscript{158} See generally, \textit{STUDENT HANDBOOK}, supra note 33.
\textsuperscript{159} § 475.17(1)(x).
\textsuperscript{160} A. FLA. ADMIN. CODE R. 61H1-27.002.
\textsuperscript{161} FLA. BAR ADMIN. R. 4-13.1(a).
\textsuperscript{163} See id., IFREC FAQ, supra note 79.
\textsuperscript{164} FLA. BAR ADMIN. R. 4-11.
\textsuperscript{165} FLA. BAR ADMIN. R. 4-14, 4-15.

The third level of difference between the licensure systems is the manner in which they treat potential licensees who are licensed in other jurisdictions. On one end of the spectrum is the attorney system in Florida, forbidding any reciprocity of other licensed attorneys. On the other end, for our purposes, is the real estate system, which has set up a mutual recognition system with twenty percent of the licensing states, once additional minimum standards are met.\textsuperscript{166} A far more complicated system is the accountant enforcement system, which designates minimum requirements, work experience, and the potential of additional continuing education.\textsuperscript{167}

The final level of comparison between the professions is in the administrative requirements. All three fiscal professional categories require some type of post-licensing continuing credit. Real estate professionals are required to carry a heavy load during the first renewal period, followed by a comparatively lighter educational requirement—half of an attorney’s requirements in two-thirds the time period.\textsuperscript{168} By contrast, accountants are required to complete more than twice the number of hours in a period one-third shorter in length than attorneys. All three fiscal professional categories are also required to renew their licenses and pay a fee. Both real estate professionals and accountants have two-year renewal periods,\textsuperscript{169} brought into time concurrence according to the DBPR annual report year, with a fee of less than $100; meanwhile, attorneys have a three-year renewal period,\textsuperscript{170} staggered as to actual admittance date to the Florida Bar, with a maximum fee of $265 annually.\textsuperscript{171}

IV. THE DISCIPLINE SYSTEMS

A. Attorneys

The Supreme Court of Florida establishes the responsibilities of its member attorneys through the \textit{Rules Regulating the Florida Bar}.

\textsuperscript{167} FLA. ADMIN. CODE R. 61H1-29.003.
\textsuperscript{168} FLA. ADMIN. CODE R. 61J2-3.020.
\textsuperscript{169} FLA. ADMIN. CODE R. 6141-031.00(1)(c); see CPA Exam Reminder, supra note 146.
\textsuperscript{170} R. REGULATING FLA. BAR 10.10(b) (2004).
\textsuperscript{171} R. REGULATING FLA. BAR 1-7.3. Although The Florida Bar Exam is administered only twice per year, the actual admittance date of the applicant may depend on the completion of the full processing of any individual application. FLA. BAR ADMIN. R. 2.
reme Court of Florida sets the standards of actions for attorneys and determines what constitutes discipline.175 The Supreme Court of Florida also is ultimately responsible for disciplining Florida attorneys.176 The professional regulation of lawyers in Florida is not the same as a civil lawsuit for malpractice.177

The grievance process against an attorney begins with a complaint from a client.178 Clients are encouraged, before filing a complaint, to first contact the Attorney Consumer Assistance Program (ACAP), launched by The Florida Bar in March 2001.179 A client who contacts ACAP before filing a grievance will first discuss the behavior of the subject attorney with non-lawyer personnel and then with ACAP attorney personnel, who will by then have reviewed the information.180 The ACAP attorney's role is to help determine if a potentially actionable grievance exists against an attorney and to guide the client through the filing of such a complaint.181


173. R. REGULATING FLA. BAR 3-1.2.

174. Id.

175. R. REGULATING FLA. BAR 3-1.1. A civil lawsuit for malpractice occurs when attorneys are sued in the civil court system of the judicial circuit having jurisdiction over that attorney's actions, proceeding according to the court and substantive rules and laws of the jurisdiction. FLA. STAT. § 95.11 (2003). Such malpractice lawsuits are subject to a statute of limitations, as set by section 95.11, Florida Statutes. Id. In a lawsuit for malpractice, the court usually is asked to award monetary compensation to the plaintiff. Id. In professional regulation grievance matters, only the status of the attorney's license is at stake. R. REGULATING FLA. BAR 3-5.1. There is no monetary compensation ordered. Id.


177. The Attorney Consumer Assistance Program (ACAP) was created by The Florida Bar to investigate charges of unethical conduct against lawyers practicing in Florida and assist clients in resolving problems prior to filing a complaint. Pam Pudlow, Disciplinary Details, FLA. B. NEWS, Mar. 15, 2001, available at http://www.flabar.org/DIVCOM/INJN/NEWS_01/Pam5576c55337d08a4d9852526b900786b0ca31a95473e351a5525260f2070206070OpenDe- cument (last visited Feb. 7, 2005).

178. Complaint Against a Florida Lawyer, supra note 176. One reason that this program was created was to reduce the number of complaints filed on matters not under the jurisdiction of The Florida Bar for which to give discipline. Pudlow, supra note 177. Generally, The Florida Bar has the authority to investigate lawyers' behavior regarding fiscal responsibilities, conflicts of interests, lying, and failure to follow through with matters. See generally R. REGULATING FLA. BAR 5-1.1, 4-1, 4-1.1, 4-1.7, 4-8.4.

179. New Bar Program to Assist Clients and Their Clients, 28 FLA. BAR NEWS 1, Apr. 15, 2001, available at http://www.flabar.org/DIVCOM/INJN/NEWs01/nf5e5b3590c8f8f80d49 d82526b900786bcfa2b8e8c2e2b08b52526aad06277f7170OpenDocument (last visited Feb. 7, 2005) [hereinafter New Bar Program]. The ACAP program is apparently successful in reducing the number of grievances filed against attorneys and satisfying clients as well. Id. Complaints to the grievance system of The Florida Bar have dropped eight percent since 2001, when ACAP was instituted. Id.

180. R. REGULATING FLA. BAR 3-7.3(e).


182. R. REGULATING FLA. BAR 3-7.3(e).

183. Complaint Against a Florida Lawyer, supra note 176. Id.

184. Id.

185. Id. At this point, the complaint is initially labeled as an "inquiry." Id. One reason, for example, that the Bar may not be able to handle a complaint is if the attorney is not li- censed in the state of Florida by The Florida Bar. See R. REGULATING FLA. BAR 1-3.1.

186. Complaint Against a Florida Lawyer, supra note 176. Attorneys may not know if their behavior was discussed with ACAP when no complaint was filed. Id.

187. R. REGULATING FLA. BAR 3-7.6(c)(2). Extensions are generally liberally granted for attorneys engaged in the active practice of law. Curtis & Kaufman, supra note 3, at 679.

188. R. REGULATING FLA. BAR 3-7.6(c)(2).

189. R. REGULATING FLA. BAR 3-7.3(a).

190. R. REGULATING FLA. BAR 3-7.3(f).
that the conduct of the attorney was not proper, but it does not limit that attorney's right to practice law within the state of Florida.\footnote{200}

Attorneys also may have their minor misconduct declared improper in a more public fashion, but still without limiting their right to practice law.\footnote{201}

This may be appropriate where injury or potential injury is caused by the attorney's actions, but where the behavior is generally categorized as negligent rather than knowing or intentional.\footnote{202}

Such a judgment of a "public reprimand" is published in the law reporters for Florida cases.\footnote{203}

If an attorney's misbehavior is not considered "minor" under the Rules Regulating the Florida Bar, there are three levels of discipline potentially available to the court.\footnote{204}

The discipline is public, and in some way, restricts or alters the attorney's right to practice law.\footnote{205}

The least intrusive discipline which alters an attorney's right to practice is being placed on probation.\footnote{206}

Attorneys may be placed on probation for a time period generally between six months and three years. They also may be required to complete continuing education programs or to be supervised by licensed attorneys.\footnote{207}

Alternatively, attorneys may be suspended from practice either after a hearing or on an emergency basis.\footnote{208}

Suspensions are generally imposed for either ninety days or less, which do not require proof of rehabilitation or passage of the bar examination, or between ninety days and three years, which do require rehabilitation and may also require passage of all or part of the bar exam.\footnote{209}

An attorney's license may be suspended for violations regarding which includes dishonesty, misrepresentation, deceit, or fraud by the subject attorney; and behavior constituting a felony.\footnote{210}

\begin{enumerate}
\item\footnote{200} FLA. STDS. IMPOSING LAW. SANCS. 2.6. An admonishment generally consists of a memorandum documenting the behavior and directing the attorney to appear before either the grievance committee or The Florida Bar Board of Governors for a discussion of the behavior.
\item\footnote{201} R. REGULATING FLA. BAR. 3-5.1(a).
\item\footnote{202} FLA. STDS. IMPOSING LAW. SANCS. 2.5.
\item\footnote{203} FLA. STDS. IMPOSING LAW. SANCS. 4.13, 4.23, 4.43, 4.63, 5.13, 5.23, 6.13, 6.23, 6.33, 7.3, 8.3; see also Fla. Bar v. Kelner, 670 So. 2d 62, 63 (Fla. 1996); Fla. Bar v. Lumbly, 517 So. 2d 13, 14 (Fla. 1987).
\item\footnote{204} R. REGULATING FLA. BAR. 3-5.1(d) (2004). Florida cases are published solely in the Southern Reporter, Second Series.
\item\footnote{205} R. REGULATING FLA. BAR. 3-5.1(c).
\item\footnote{206} R. REGULATING FLA. BAR. 3-5.1(d)(3).
\item\footnote{207} Id.
\item\footnote{208} R. REGULATING FLA. BAR. 3-5.1(d); see also FLA. STDS. IMPOSING LAW. SANCS. 2.5, 2.4 (2004).
\item\footnote{209} R. REGULATING FLA. BAR. 3-5.1(e).
\end{enumerate}
improper dealing with client property causing injury, revealing confidential information of a client, knowing of conflicts of interest without disclosing them to clients, knowingly failing to perform services for a client, knowingly lacking competence causing injury, or knowingly deceiving a client, causing injury or potential injury.210

The court also may order an emergency suspension of the license of an attorney without the full grievance proceeding when an attorney has been convicted of a serious crime, or if an attorney's conduct will, or is likely to, cause immediate or serious injury to a client or the public.211

The most severe of the disciplines against attorneys is disbarment.212 Attorneys who are disbarred lose both the privilege of practicing law and their status as members of the Bar.213 Attorneys may be permanently disbarred or disbarred with leave to apply for readmission.214

There is no explicit list of violations published for attorneys that will result in disbarment. However, disbarment may be recognized as an appropriate punishment in a variety of grave injuries or potential injuries to a client, or being convicted of a felony, engaging in the sale of drugs, fraud, or for deceitful behavior.215

210. FLA. STDS. IMPOSING LAW. SANS. 4.12, 4.22, 4.32, 4.42, 4.52, 4.62. In addition, a license suspension may be appropriate for any attorney who engages in certain kinds of criminal conduct or other activities, including causing intentional injury or potential injury to a client, the public, or the legal system. FLA. STDS. IMPOSING LAW, SANS. 8.2. The Supreme Court of Florida may also find it appropriate to suspend an attorney's license to practice law if the attorney already has been publicly reprimanded for the same or similar conduct, and subsequently has another violation of a similar type. Id.

211. FLA. STDS. IMPOSING LAW. SANS. 2.4. The Florida Bar is required to file a formal complaint of discipline within sixty days of an order of emergency suspension. R. REGULATING FLA. BAR 3.5-2(d)(4) (2004). Such a case then proceeds directly to trial, skipping the need for a probable cause hearing before a grievance committee. Id. Attorneys may move to have the emergency order dissolved. R. REGULATING FLA. BAR 3.5-2(d)(1).

212. R. REGULATING FLA. BAR 3.5-1(f).

213. Id.

214. Id., see In re Upshur, 586 So. 2d 311 (Fla. 1991), see also Fla. Bar v. Ryder, 540 So. 2d 121 (Fla. 1988). The disbarred attorney must show, in a petition supported by clear and convincing evidence, that he or she both has completed the bar examination and is rehired, once again fit to practice law. FLA. STDS. IMPOSING LAW, SANS. 2.2 (2004). The disbarred attorney must also wait a minimum of five years before reappealing. Id.

215. FLA. STDS. IMPOSING LAW. SANS. 4.11, 4.21, 4.31, 4.41, 4.41, 4.51, 5.21, 6.31, 7.1. This rule also applies when an attorney intentionally reveals information regarding a client's matter, with the intent to benefit a third person, and the disclosure, which would not otherwise be permitted, causes potential or real injury to the client. FLA. STDS. IMPOSING LAW, SANS. 4.61. If an attorney knowingly or intentionally deceives a client, disbarment may be appropriate regardless of injury. Id. When an attorney is found guilty of theft from monies held by that lawyer in a fiduciary relationship, The Florida Bar rules provide for a rebuttable presumption of disbarment. FLA. STDS. IMPOSING LAW. SANS. 4.11; see also Fl. Bar v. Mart, 550 So. 2d

2005] LICENSING AND DISCIPLINE OF FISCAL PROFESSIONALS 365

The Florida Standard for Imposing Lawyer Sanctions states that a court should consider the following factors in imposing a discipline order on an attorney: the duty violated by the attorney, the mental state of the attorney, the potential or actual injury caused by the misconduct, and whether any mitigating or aggravating factors existed in the matter.216 Aggravating factors may justify an increase in the discipline level imposed on an attorney, and by contrast, mitigating factors may justify a reduction in the discipline imposed.217

The public has some access to this discipline information, although not in a single format with both an organized report and detailed information. The Florida Bar publishes a summary chart for its past fiscal year overviewing the years 1996-97 to the present, regarding bar population and final orders in a number of ways. The first is through a listing of orders by the Supreme Court of Florida detailing the attorney's name, city, specific conduct, and discipline received dating back approximately a year.218 In addition, these paragraphs are published in the Florida attorney trade newspaper, The Florida Bar News, on a biweekly basis. It is available at law libraries open to the public, although many non-lawyers may not be aware of this publication or its availability. Last, an individual concerned about a specific attorney may contact The Florida Bar directly to inquire about his/her discipline history.219

464 (Fla. 1989). Standard 5.1 called it failure to maintain personal integrity. FLA. STDS. IMPOSING LAW, SANS. 5.1. Other reasons for the disbarment sanction include intentionally deceiving the court, abusing the legal process, or intentionally violating the terms of a prior disciplinary order. E.g., FLA. STDS. IMPOSING LAW, SANS. 6.11, 6.21, 8.1.

216. FLA. STDS. IMPOSING LAW. SANS. 9.32.

217. FLA. STDS. IMPOSING LAW. SANS. 9.21, 9.31. Facts which may be considered aggravating include prior disciplinary offenses, experience level, patterns of misconduct or vulnerability of the victim of the offense. FLA. STDS. IMPOSING LAW, SANS. 9.22. Mitigating factors may include absence of prior record or dishonest motive, personal problems or situations, good faith efforts to rectify consequences, impairments, and overall character. FLA. STDS. IMPOSING LAW, SANS. 9.32.


220. Id.
B. Real Estate Professionals

The Department of Business and Professional Regulation provides a centralized electronic format for both licensees and the public to gather information about the regulation of many professions.221 The site may be searched according to occupation.222

Complaints against real estate associates, brokers, or unlicensed persons practicing in the field must be in writing and signed.223 A complaint form is available on the DBPR website for consumers, or the complainant may write a letter including details of the complaint along with copies of all pertinent documents.224

The Division of Real Estate’s “Complaint Section” will forward a complaint to a complaint analyst when received for a determination of legal sufficiency.225 If sufficient information does not exist to support a violation, a letter will be sent to the complainant explaining that a case will not be opened.226

A probable cause panel, consisting of two members of the Florida Real Estate Commission, determines if probable cause exists that a licensee or subject of an investigation violated the Florida Statutes pertaining to real estate.227 The main office of the Real Estate Commission is in Orlando, Florida.228 Members, including those serving on probable cause panels, may be compensated $50 per day for attendance at meetings or the conducting of “official” business of the Commission, as defined in the code.229

222. Id.
223. Division of Real Estate, Frequently Asked Questions, at http://www.myflorida.com/dbpr/re_blq_emf_new.shtml (last visited Feb. 7, 2005) [hereinafter Real Estate FAQs]. The complaint form itself asks the complainant to properly categorize the problem as either unlicensed activity, escrow deposit, property management, appraisal, or other. Department of Business and Professional Regulation, Uniform Complaint Form, at http://www.myflorida.com/dbpr/dbpr/le_portal/dbpr-d070-p.pdf (last visited Feb. 7, 2005) [hereinafter Uniform Complaint Form]. It also asks to list private attorney information if available. Id.
224. Real Estate FAQs, supra note 223.
225. Id.
226. Id.
227. FLSA ADMIN. CODE R. 61J2-20.009 (2006). The members of the panel are appointed by the chairperson of the Commission, and one panel member may be a former member, rather than a current member, of the Commission. Id. If a former member, that person must hold an active real estate license. Id.
228. FLSA ADMIN. CODE R. 61J2-20.048.

2005] LICENSING AND DISCIPLINE OF FISCAL PROFESSIONALS 367

When an investigation of a complaint is undertaken, the DBPR is required to furnish to the subject a copy of that complaint, and the subject has twenty days in which to submit a written response to that complaint.230 The panel must consider the response by the subject, but regardless of it, may still have the power to issue an emergency order if warranted in order to protect the public.231 The complaint will be further investigated by the DBPR and its report submitted to the probable cause panel, including findings and recommendations as to the existence of probable cause. The department may also dismiss a case at any point in the proceedings for insufficient evidence.232

As an alternative to the complaint investigated by the probable cause panel, the DBPR may give a licensee, who is the subject of a complaint, a “notice of noncompliance for an initial offense of a minor violation.”233 A minor violation is defined as one that “does not demonstrate a serious inability to practice the profession, result in economic or physical harm to a person, or adversely affect the public health, safety, or welfare or create a significant threat of such harm.”234 There are twenty such behaviors listed which carry no other penalty, including improper use of a guest lecturer in a course or failure to maintain an office entrance sign.235 The notice identifies the statute and rule violated, and provides information on how to comply.236 The subject is given fifteen days from the time of receipt of notice in order to be in compliance; failure to comply may result in a citation.237 The law requires the DBPR to keep the complainant updated as to probable cause and any other proceedings or appeals.238 If there are violations which the Division will hear, and the documentation supports these violations, a case is opened and forwarded to a local Investigative Field Office.239 Complaints are confidential until the subject of

230. FLSA STAT. § 455.225(1)(b) (2003). These guidelines are not specific to the real estate profession only, rather they applies to the entire Department of Business and Professional Regulation. See id. Compare with section 454.021 of the Florida Statutes, which delegates the regulation of attorneys to the Supreme Court of Florida. § 454.021.
231. § 455.225(1)(b).
232. § 455.225(2).
233. Id. A dismissal may come even after a finding of legal sufficiency. Id.
234. §§ 455.225(3)(a).
235. Id.
237. FLSA ADMIN. CODE R. 61J2-24.003(2).
238. Id.
239. § 455.225(9).
240. Real Estate FAQs, supra note 223.
the investigation waives the privilege of confidentiality or ten days after a disciplinary action finding of probable cause.241

In cases going to the probable cause panel, a determination as to the existence of probable cause is made by a majority vote.242 Generally, a panel that requests additional investigative information must make that request within fifteen days of the receipt of the initial report and make its determination within thirty days of that date.243

In a situation of a disputed issue of material fact, a formal hearing on the complaint may be heard by an administrative law judge, who issues a recommended order.244 In addition, the DBPR may have such a judge review any final order by the Board.245 Mediation may be used to assist the processing of a complaint.246 Such judicial reviews have recently included appeals from decisions of the Florida Real Estate Commission by brokers having licenses revoked or having been found guilty.247

A person operating as a broker or sales associate without a valid active license commits a third degree felony under Florida law, and the Division of Real Estate may refer such situations to the State Attorney.248 The Florida Real Estate Commission, as a licensing body, may impose various disciplines against its licensees for wrongdoing.249 It may choose to fine, suspend, revoke licenses, place on probation, or simply reprimand its licensees.250 The Florida Statutes and the Florida Administrative Code detail a range of disciplinary guidelines for violations under chapter 475 of the Flor-

241. Id. The outcome of any action taken against a licensee may be discovered by contacting the DBPR with the correct spelling of the licensee’s name. Id.
242. § 455.225(4). The Florida Administrative Code specifically stated there were two members (not at least two) of a probable cause panel for real estate hearings, which then appears to require a unanimous vote. FLA. ADMIN. CODE R. 612-20.009.
243. § 455.225(4). However, extensions may be granted. Id.
244. § 455.225(5).
245. § 455.225(7).
246. FLA. ADMIN. CODE R. 612-24.004.
247. Jones v. Dep’t of Bus. & Prof’l Regulation, 873 So. 2d 1266 (Fla. 5th Dist. Ct. App. 2004) (holding that there was no “dishonest dealing by trick, scheme or device” and reversing in part); Djoike v. Dep’t of Bus. & Prof’l Regulation, Div. of Real Estate, 875 So. 2d 693, 695 (Fla. 4th Dist. Ct. App. 2004) (holding that the Florida Real Estate Commission could not reverse an administrative law judge’s finding of not guilty and no violation of statute, reversing the previous finding).
248. § 475.421(1)(a).
249. See Real Estate F(4)(b), supra note 223.
250. Id. Restitution to the complainant is not within the power of the board. Id. Licensees operating outside of their licensing or employing those who do so may also be punishable. Id.
The harshest penalty imposed on a licensee is revocation.262 Revocation of a licensee is generally permanent, except in certain unusual circumstances.263

The disciplines themselves are reported on the DBPR public access websites.264 By following a link entitled “Disciplinary Action,” members of the public may access fully compiled reports by year—dating back to the DBPR year 2000—of discipline information sorted by city, including “name of disciplined professional and a full description of the behavior involved.”265 In addition, the DBPR produces an annual report summarizing the licensee numbers, complaints received, and dispositions of various professions, including real estate.266 Last, the public may search individual licensees online by name and learn the status of their licenses—including whether they have had their license revoked, or had other discipline imposed on them.267

C. Certified Public Accountants

The discipline process of certified public accountants (CPA) generally begins with a complaint against a Florida CPA. A uniform complaint form is available online at www.myfloridalicense.com, and contains a contact number at the DBPR Customer Contact Center for assistance in completing the form.268 The form itself, found through the general licensing pages, rather than at the specific Division of Accountancy page, asks complainants for personal information such as name, company, address, contact information, and a specific question regarding whether this is a complaint regarding unlicensed activity.269 Last, the form allows for the inclusion of a 5000 character complaint description.270 It may be mailed or submitted online.271

The Florida Board of Accountancy is responsible for appointing a probable cause panel to determine whether probable cause exists for a violation of the Florida Statutes regarding rules of accountancy.272 The Florida Accountancy Board consists of nine members, seven of whom are CPAs and two of whom are consumer members.273

The Board-appointed probable cause panel is composed of at least three members.274 One member must be a current Board member and another must be a present or former Board member who must hold an active and valid CPA license.275 The panel must also contain a former or present consumer member, if available.276 Any determination of probable cause must be made by a majority vote of the probable cause panel.277 The Chairman of the Board selects the probable cause panel, and one panelist is selected as presiding officer, who determines the meeting times of the panel.278 The process of finding probable cause is similar to that of the process for real estate professionals, described above, as they are both under the jurisdiction of the DBPR.279

The Board of Accountancy has set forth specific penalty ranges that correspond with specific behavior violating the Florida Statutes.280 Rule 61H1-36.004(2) of the Florida Administrative Code lists multiple categories

262. See id.
263. FLA. ADMIN. CODE R. 61H1-24.005(1).
264. DBPR Home Page, supra note 2. Certain aspects of the DBPR website are password protected. See id. They are generally specific sites related to license maintenance, renewal and personal information. Id.
266. Real Estate Appraisal, supra note 62.
269. Uniform Complaint Form, supra note 223.
270. Uniform Complaint Form, supra note 223.
271. Id.
272. FLA. ADMIN. CODE R. 61H1-19.007 (2003). To be a member of the Florida Board of Accountancy, board members must attend all regularly scheduled meetings (approximately ten per year) and may not be absent without excuse from three consecutive meetings. FLA. ADMIN. CODE R. 61H1-19.006. Excess absences are specifically defined as "illness of the Board member or member of the Board member's family, death of a member of the Board member's immediate family, or natural disaster." FLA. ADMIN. CODE R. 61H1-19.006(1). The terms "family" and "immediate family" are also defined. FLA. ADMIN. CODE R. 61H1-19.006(3)-4.
274. FLA. ADMIN. CODE R. 61H1-19.007(2).
275. Id.
276. Id.
277. FLA. ADMIN. CODE R. 61H1-19.007(1).
278. FLA. ADMIN. CODE R. 61H1-19.007(3).
279. § 455.225(4).
280. §§ 473.322, 323.
of violations. The following table summarizes the Code's information regarding violations:

### Table 1: Disciplining Accountants

<table>
<thead>
<tr>
<th>Violation</th>
<th>Source (FLA. STAT. or FLA. ADMIN. CODE)</th>
<th>Minimum Penalty</th>
<th>Maximum Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attempting to procure license by bribery or fraudulent misrepresentation</td>
<td>§ 473.323(1)(b); Fla. Admin. Code R. 61H1-36.004(2)(a)</td>
<td>Revocation and $5000 fine if license is denied; denial of license and refer to State Attorney if not licensed</td>
<td>Not applicable</td>
</tr>
<tr>
<td>CPA License disciplined by another jurisdiction</td>
<td>§ 473.323(1)(c); Fla. Admin. Code R. 61H1-36.004(2)(b)</td>
<td>Same penalty as imposed in other jurisdiction or same range of penalties for same violation</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Misdeemeanor criminal conviction relating to accountancy</td>
<td>§ 473.323(1)(d); Fla. Admin. Code R. 61H1-36.004(2)(c)</td>
<td>Reprimand; $5000 fine; (one (1) year suspension and two (2) years probation)</td>
<td>Reprimand; $5000 fine; (one (1) year probation and $5000 fine)</td>
</tr>
<tr>
<td>Felony criminal conviction relating to accountancy</td>
<td>§ 473.323(1)(d); Fla. Admin. Code R. 61H1-36.004(2)(c).</td>
<td>One (1) year suspension; two (2) years probation; $5000 fine</td>
<td>Revocation and $5000 fine</td>
</tr>
</tbody>
</table>

281. Fl. Admin. Code R. 61H1-36.004(2) (1999). Two recent cases in which the Board of Accountancy was a party were either affirmed without decision or declined to be heard by the Florida appellate courts, and no further information is available on these matters. Jarzow v. State, 847 So. 2d 483 (Fla. 4th Dist. Ct. App. 2003) (unpublished table decision); Buchman v. Dept. 'of Bus. & Prof'l Regulation, 819 So. 2d 754 (Fla. 1st Dist. Ct. App. 2002) (unpublished table decision). In previous years, particularly in 1993 and 1994, most published cases regarding the Board of Accountancy dealt with accountant's ability to advertise. See Baner v. State, 62 So. 2d 435 (Fla. 1st Dist. Ct. App. 1993), rev'd by Baner v. Florida Dept. of Prof'l Regulation, 512 U.S. 156 (1994); see also Dept.' of Bus. & Prof'l Regulation v. Rampell, 621 So. 2d 426 (Fla. 1993).

<table>
<thead>
<tr>
<th>Violation</th>
<th>Source (FLA. STAT. or FLA. ADMIN. CODE)</th>
<th>Minimum Penalty</th>
<th>Maximum Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negligence or misconduct: client records disposition</td>
<td>FLA. ADMIN. CODE R. 61H1-23.002; FLA. ADMIN. CODE R. 61H1-36.004(2)(b)(4).</td>
<td>Letter of guidance</td>
<td>Suspension until records are returned</td>
</tr>
<tr>
<td>Solicitation</td>
<td>§ 473.323(1)(d); FLA. ADMIN. CODE R. 61H1-36.004(2)(l).</td>
<td>Letter of guidance</td>
<td>Reprimand; one (1) year probation; $5000 fine; and one (1) year suspension</td>
</tr>
<tr>
<td>Practicing on suspended or revoked license</td>
<td>§ 473.323(1)(d); FLA. ADMIN. CODE R. 61H1-36.004(2)(l).</td>
<td>Revoke if previously suspended, refer to State Attorney if previously revoked</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Practicing on inactive license</td>
<td>§ 473.323(1)(l); FLA. ADMIN. CODE R. 61H1-36.004(2)(l).</td>
<td>Reprimand and fine based on length of time in practice while inactive; $100 per month or $5000 maximum (will require licensure or cease practice)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Licensees practicing in an unlicensed firm</td>
<td>§ 473.309; § 473.310; § 473.323(1)(g); FLA. ADMIN. CODE R. 61H1-36.004(2)(l).</td>
<td>Reprimand and $100 per month fine to maximum of $5000 and suspension of right to practice until corrected</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Suspension of right to practice in front of any state or federal agency</td>
<td>§ 473.323(1)(q); FLA. ADMIN. CODE R. 61H1-36.004(2)(m).</td>
<td>Same penalty as imposed by agency or imposition of same range as those set forth in those rules for type of violation</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Lack of good moral character</td>
<td>§ 473.323(1)(d); FLA. ADMIN. CODE R. 61H1-36.004(2)(e).</td>
<td>Reprimand and one (1) year probation</td>
<td>Revocation</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Violation</th>
<th>Source (FLA. STAT. or FLA. ADMIN. CODE)</th>
<th>Minimum Penalty</th>
<th>Maximum Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to pay fines or administrative costs imposed by final order or citizations</td>
<td>§ 473.323(1)(l); FLA. ADMIN. CODE R. 61H1-36.004(2)(o).</td>
<td>$100 per month fine for every month licensee is late to max of $5000</td>
<td>Revocation</td>
</tr>
</tbody>
</table>

Once these penalties have been assessed by the Board, the public is able to access information about them. One way is through the exact same annual report, which summarizes the real estate profession, created by the DBPR annually in accordance with its fiscal year ending June 30. A second way is to search individually for a particular licensee by name to determine that person’s discipline status and history.

D. Comparing and Contrasting Fiscal Professional Discipline

The first major difference in the discipline of these fiscal professionals in Florida is in the certainty of discipline for a particular action. The rules governing attorney behavior include broad categories of actions, with room for interpretation for particular circumstances. In contrast, both real estate professionals and certified public accountants are pre-noticed with a specific list of behaviors and specific penalties imposed for those behaviors. The difference is two-fold—first in the notice to a potential violator and second in the amount of discretion given to a particular body imposing discipline.

All three systems involve initial boards, made up of diverse members and non-members of the profession initially reviewing a behavior for discipline, and do allow for mitigating circumstances that may ultimately affect the final disposition.

284. Search by Name, supra note 267.
A second difference in evaluating these three systems of discipline is the ultimate manner in which the discipline is finalized. In professions regulated by the DBPR, disciplines are generally decided by a board, with an administrative law judge either recommending an order or reviewing a final order. By contrast, judges in attorney cases serve as initial "referees" recommending discipline, with ultimate discipline being ordered by the highest court of the state, and thus becoming part of the legal system in which the attorney operates.289

A third difference is a program that attorneys have put into place to "pre-handle" potential attorney grievances.290 In an effort to reduce the number of improper grievances brought before the Bar, a consumer assistance program was put into place three years ago to assist consumers with complaints.290 While the real estate and certified public accountant professions are under the umbrella of the already consumer-friendly DBPR, with help lines available, no such specific program has been deemed necessary to assist the consumer in properly resolving problems with these professions. Statistics discussed in Part IV of this article may illuminate the Bar’s need for such a program.

A fourth difference is the manner in which unauthorized practice claims are handled. The same disciplinary body which deals with license violations also handles complaints of unlicensed activity for DBPR, treating unlicensed activity as a consumer fraud issue.291 The real estate complaint form even specifically provides for a place to indicate that complaint subject.292 The public on-line information for DBPR even allows for searches of complaints against persons or organizations that were not DBPR-licensed.293 By contrast, the information about the "unlicensed practice of law" appears in the "regulation" section of The Florida Bar website, rather than the consumer services information, and has a separate complaint sent to a department created to monitor this problem specifically.294

287. R. REGULATING FLA. BAR 3-7.6.
288. See R. REGULATING FLA. BAR 3-7.7.
289. New Bar Program supra note 179.
290. Id.
291. Department of Business and Professional Regulation, Don't Be A Victim of Unlicensed Activity, at http://www.state.fl.us/dbpr/os/communications_office/unlicensed_activity/ don't_be_a_victim.doc (last visited Feb. 7, 2005) [hereinafter Don’t Be A Victim].
292. Uniform Complaint Form, supra note 223.
293. Don't Be a Victim, supra note 29.

A fifth comparison may be made in the diversion from the probable cause panel provided for in the real estate complaint system. Certain violations by real estate professionals are considered so technical that an administrative notice and order to comply may be directly issued rather than the violation being heard for substance. In contrast, the attorney system provides for a minor misconduct result but not process,295 while the accountant system focuses on more major penalties.296

One sharp difference between the professions regulated by the DBPR and the self-regulated attorney system is the ability to fine the licensed professional for violations. Both the real estate and accountant professions provide specifically for fines, in some cases up to $5000 for some accounting violations to be paid by the disciplined professional as part of the discipline imposed.297 By contrast, fines are not regularly part of the attorney discipline process.298

A final distinction among the professions is the public’s access to information. The real estate profession, through the DBPR, has been most forthcoming with information, including both an annual detailed report as well as a searchable index for licensed professionals. To learn about discipline regarding a certified public accountant, only general information regarding totals may be gleaned from the annual report, but an individual may be searched, showing the DBPR does not require the same information among different regulated professions. Those interested in attorney discipline also may search individual names or look at a numerical report, but also may peruse individual information about attorneys and their disciplines, although sorted by date and not by name or location.

V. STATISTICS REGARDING LICENSING, COMPLAINTS, AND DISCIPLINE IN THE ACCOUNTANCY, ATTORNEY, AND REAL ESTATE PROFESSIONS

The following information is gathered from two different kinds of sources.299 The first source is the official reports released by the governing

295. R. REGULATING FLA. BAR 3-5.1(b).
298. Complaint Against a Florida Lawyer, supra note 176. There are some instances where attorneys may be required to pay restitution for specific misdeeds, and a client recovery fund is available under The Florida Bar to assist in certain client compensation situations. Id. See also Fla. Stat. IMPOSING LAW. SANS 2.1–8 (2004).
299. The author is not a trained statistician; all information was hand-tabulated and percentages rounded on a traditional +/- 5 basis.
body, either the DBPR or The Florida Bar. Each regulatory body has produced certain kinds of office information available to the public for the past several years; however, the information type has not been consistent through the years, even from the same organization. This information is presented in accord with the agency’s fiscal year, which is a July 1 to June 30 year for both the DBPR and The Florida Bar. The second type of information used is compiled from general public records published regarding the discipline of each professional where available. The information gathered from these sources does not come from an official report of the agency, but rather was tabulated from various reports listing, and/or describing, disciplines throughout a year. Information about the nature of those disciplines was extrapolated from the published reports. Each table or set of tables will indicate from which source the information was procured.

A. Licensees in Florida

The published annual reports of both the Department of Business and Professional Regulation and The Florida Bar list the total number of licensees being regulated in Florida.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountancy (includes firms)</td>
<td>25,392</td>
<td>25,872</td>
<td>32,119</td>
<td>33,024</td>
<td>31,471</td>
<td>32,336</td>
<td>35,016</td>
</tr>
</tbody>
</table>

307. See Long Range Program Plan, supra note 283. The DBPR annual report included all accountant licensees through 1996-97; starting in 1997-98 active licensees were designated.
316. The Florida Bar information indicates that the membership figure now includes total members (members in good standing) and inactive status.
First, the numbers of those being regulated under the Real Estate Commission are far greater than those of accountancy or attorneys, as all corporations, organizations, and schools involved in the real estate profession are reported together under one figure in the DBPR annual report.\textsuperscript{317} It is not possible to extrapolate only the number of sales associates and/or broker licensees, and thus it is difficult to examine the comparative effect that these licensing agencies have on individuals.

Second, the manner in which licensees are reported has shifted through the years.\textsuperscript{28} A consumer of these professional services, keeping a watch on

\textsuperscript{317} See Long Range Program Plan, supra note 283. The DBPR included all real estate licensees regardless of status but distinguished between brokers (B) and sales associates (S) in its annual report through the 1997-98 year. After that, only active real estate licensees were designated without distinction of the category.

\textsuperscript{318} 1996-1997 Report, supra note 308, at 62. This number shown represents the number of active licensees.

\textsuperscript{319} 1997-1998 Report, supra note 309, at 62. This number shown represents total real estate commission.

\textsuperscript{320} 1998-1999 Report, supra note 310, at 22. This number shown represents total real estate commission.

\textsuperscript{321} 1999-2000 Report, supra note 311, at 22. This number shown represents total real estate commission.

\textsuperscript{322} 2000-2001 Report, supra note 312, at 7. This number shown represents total real estate commission.

\textsuperscript{323} 2001-2002 Report, supra note 313, at 8. This number shown represents total real estate commission.

\textsuperscript{324} 2002-2003 Report, supra note 314, at 6. This number shown represents total real estate commission.

\textsuperscript{325} 1996-1997 Report, supra note 308, at 62. This number shown represents total real estate commission.

\textsuperscript{326} 1997-1998 Report, supra note 309, at 62. This number shown represents total real estate commission.

\textsuperscript{327} Bar Disciplinary Statistics, supra note 218. See Long Range Program Plan, supra note 283.

\textsuperscript{328} Bar Disciplinary Statistics, supra note 218. See Long Range Program Plan, supra note 283.
The first notable figure is the number of accountancy complaints versus the number of complaints against attorneys. Approximately twice the number of attorney licenses have been issued, yet more than thirty times the number of complaints have been filed. Although the overall number of complaints against attorneys is decreasing, the number is still far greater than in either of the other fields.

A second figure to look at is the number of files in which probable cause was found compared to the total number filed. In accountancy, the number of files with probable cause have been steadily decreasing from approximately a little more than one-third of the grievances filed down to one-fourth. In some years, only one complaint was not found to have probable cause, while by comparison, the real estate complaints with probable cause are a small fraction of the total number of complaints filed. The reasons for

348. See Long Range Program Plan, supra note 283. The DBPR distinguished between brokers and sales associates in their annual report through the 1997-98 report. Id.
350. Id.
352. Id.
354. Id. at 14.
356. Id.
357. 2000-2001 REPORT, supra note 312, at 8.
358. Id. at 9.
360. Id. at 10.
362. Id. at 8.
365. See Long Range Program Plan, supra note 283.
367. See id.
368. See id.
372. 2000-2001 REPORT, supra note 312, at 8; Bar Disciplinary Statistics, supra note 218.
373. 2001-2002 REPORT, supra note 313, at 9; Bar Disciplinary Statistics, supra note 218.
spective disciplinary bodies. The Florida Bar publishes a paragraph-long narrative about each final order of discipline from the Supreme Court of Florida. The Division of Real Estate has a direct link to a calendar year-long compilation of descriptive narratives regarding discipline, sorted by city of the licensee, licensee name, and a full description of the discipline ordered. Through reading these individual narratives, Table 5 was compiled for the three years available in full to the public.

Table 5: Total Disciplines Designated by Gender/Percentage of Disciplined Licensees by Gender for Years 2000-2002.

<table>
<thead>
<tr>
<th>Year: 2000</th>
<th>Professions</th>
<th>Disciplines in Report</th>
<th>Male/Female</th>
<th>Percentage Male/Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorneys</td>
<td>250</td>
<td>221/29</td>
<td>88%12%</td>
<td></td>
</tr>
<tr>
<td>Real Estate</td>
<td>271</td>
<td>170/85</td>
<td>63%31%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year: 2001</th>
<th>Professions</th>
<th>Disciplines in Report</th>
<th>Male/Female</th>
<th>Percentage Male/Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorneys</td>
<td>281</td>
<td>242/39</td>
<td>86%14%</td>
<td></td>
</tr>
<tr>
<td>Real Estate</td>
<td>221</td>
<td>145/60</td>
<td>66%27%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year: 2002</th>
<th>Professions</th>
<th>Disciplines in Report</th>
<th>Male/Female</th>
<th>Percentage Male/Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorneys</td>
<td>217</td>
<td>188/24</td>
<td>87%13%</td>
<td></td>
</tr>
</tbody>
</table>

375. FREC Disc., supra note 265; Fla. Bar News Releases, supra note 219.
377. FREC Disc., supra note 265.
379. For Table 5, years 2000 through 2002, any discrepancy in gender split against total results from the inability to determine a certain person’s gender.

<table>
<thead>
<tr>
<th>Professions</th>
<th>Disciplines in Report</th>
<th>Male/Female</th>
<th>Percentage Male/Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real Estate</td>
<td>235</td>
<td>157/56</td>
<td>67%24%</td>
</tr>
</tbody>
</table>

There is a clear difference in the numbers of men and women being disciplined in these two professions. It is clear that in the legal field in Florida, men are being disciplined at a far greater rate than women. It was posited previously in regard to this data that the source of this discrepancy can be linked to data indicating that more disciplines also are ordered on attorneys with more than ten or even twenty years of experience. In addition, with women having entered the legal profession in small numbers over many years, a critical mass of women has not yet reached the level of responsibility in which most attorneys are at risk for discipline.

By contrast, due to different levels of education required for licensing, combined with the lifestyle flexibility available to those in the real estate profession, it is likely that large numbers of women have been a part of the real estate business for many years, thus increasing the overall likelihood that women will be involved in business. Second, the real estate business is not structured in terms of levels of responsibility in the same manner as law firms. While a new attorney in certain legal structures may work under the guidance and supervision of more senior attorneys for many years without dealing directly with clients (and thus unlikely to be the subject of a complaint), real estate sales associates, due to the nature of their work, deal directly with individual clients right away. Although they work under the structure of real estate brokers, different responsibilities fall to each licensed group, and each licensed group is subject to complaints related to the work associated with that licensee’s responsibility. Therefore, due to the nature of this work, no person working in the real estate profession is immune from complaints.

380. Curtis & Kaufman, supra note 3, at 691-95.
381. Id.
382. Id. In this article, it was clear from a longer range view of the data that the percentage of women being disciplined is rising in Florida. Id.
383. See Significant Points, supra note 366.
384. Id.
385. Curtis & Kaufman, supra note 3, at 693 n.151.
386. Id.
387. Id.
E. Categories of Discipline Ordered

In examining which types of discipline were ordered within each professional regulatory organization, the quirk of information being presented for some period of time and then no longer being presented in the annual report was particularly noticeable.\(^{388}\) Table 6 looks in detail at some of the different kinds of discipline ordered by each regulatory body from official annual reports, from 1997 through 2000.\(^{389}\) Once that format changed and the information was no longer presented in summary form, the information in Table 7 became available: a composition of extrapolated data from the individual descriptions of the disciplines ordered on the same subject.\(^{390}\) It also is important to note that from reviewing individual reports of real estate licensee discipline, those under the real estate system may be given more than one category of discipline at a time, so that one behavior can generate numbers in multiple categories.\(^{391}\) By contrast, the categories of discipline are generally exclusive in the attorney system, which results in a total count in each category of discipline equaling, but not exceeding, the total number of disciplines in real estate.\(^{392}\)

<table>
<thead>
<tr>
<th>Year: 1997-1998</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Profession</strong></td>
</tr>
<tr>
<td>Accountant</td>
</tr>
<tr>
<td>Attorney</td>
</tr>
<tr>
<td>Real Estate</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year: 1998-1999</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Profession</strong></td>
</tr>
<tr>
<td>Accountant</td>
</tr>
<tr>
<td>Attorney</td>
</tr>
<tr>
<td>Real Estate</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year: 1999-2000</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Profession</strong></td>
</tr>
<tr>
<td>Accountant</td>
</tr>
<tr>
<td>Attorney</td>
</tr>
<tr>
<td>Real Estate</td>
</tr>
</tbody>
</table>

388. See Long Range Program Plan, supra note 283.
391. See Long Range Program Plan, supra note 283.
393. Even when the format of the report remained constant, certain information was not presented in certain years. Some figures were not explicit within the annual report, but calculated from other information within it.
394. The DBPR titles this category as “Voluntary Relinquishment” while The Florida Bar titles them “Disciplinary Resignations.”
395. The Florida Bar presents this information through the present in official report form. However, for comparison purposes with the other professions, extrapolated data is used post-2000.
Table 7: Data Assembled from Individual Reports Regarding Selected Disciplines Ordered 2000-2002

<table>
<thead>
<tr>
<th>Year: 2000</th>
<th>Profession</th>
<th>Total Disciplines Given</th>
<th>Disbar/Revoke</th>
<th>Suspend</th>
<th>Probation</th>
<th>Voluntary Surrender/Resign</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney</td>
<td>250</td>
<td>38</td>
<td>129</td>
<td>11</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>Real Estate</td>
<td>271</td>
<td>41</td>
<td>54</td>
<td>95</td>
<td>37</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year: 2001</th>
<th>Profession</th>
<th>Total Disciplines Given</th>
<th>Disbar/Revoke</th>
<th>Suspend</th>
<th>Probation</th>
<th>Voluntary Surrender/Resign</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney</td>
<td>281</td>
<td>29</td>
<td>148</td>
<td>10</td>
<td>21</td>
<td></td>
</tr>
<tr>
<td>Real Estate</td>
<td>221</td>
<td>21</td>
<td>68</td>
<td>56</td>
<td>38</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year: 2002</th>
<th>Profession</th>
<th>Total Disciplines Given</th>
<th>Disbar/Revoke</th>
<th>Suspend</th>
<th>Probation</th>
<th>Voluntary Surrender/Resign</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney</td>
<td>217</td>
<td>31</td>
<td>101</td>
<td>4</td>
<td>29</td>
<td></td>
</tr>
<tr>
<td>Real Estate</td>
<td>264</td>
<td>38</td>
<td>57</td>
<td>119</td>
<td>25</td>
<td></td>
</tr>
</tbody>
</table>

396. There are two sources of information on attorney discipline available from The Florida Bar. The first source is a statistical chart based on fiscal year totals of the numbers of disciplines, totaled by year and category and cost of discipline, available at www.floridabar.org. However, The Florida Bar also publishes individual reports, in paragraph form, on each discipline, which are available either on the same website, or in print through The Florida Bar News. Information about the discipline of real estate professionals is also available through an organized statistical chart published by the Department of Business and Professional Regulation, as well as through a report compiling the individual reports, in paragraph form, on each discipline in this profession. As the statistical charts created by each licensing agency do not provide clear correlating information, Table 7 was created by re-searching the individual paragraphs on attorney discipline for these calendar years (not published in compilation by The Florida Bar), and comparing those figures with the individual paragraphs as published in compilation form by the Department of Business and Professional Regulation. The individual attorney reports, however, do not explicitly match the statistical chart published on The Florida Bar website (due to time period differences and gaps between the total disciplines from that statistical chart) with those actually published in detailed form. Therefore, the figures for attorney discipline represent what a member of the public would extrapolate from reading only individual reports of attorneys, as well as reading individual reports about Real Estate professionals, but not necessarily the exact figures as published by The Florida Bar.

397. See Tables 6 & 7.
398. Id.
399. Id.
400. Id.
401. FLA. STAT. § 475.25 (2003).
402. See FLA. STDS. IMPOSING LAW. SANCS. 3.0 (2004).
403. Id. § 475.25(1).
404. See FLA. STDS. IMPOSING LAW. SANCS. preface.
405. See id.; Table 7.

While the low total number of accountancy disciplines yields no unusual breakdown as among disciplines, an interesting contrast is seen between the attorney system and real estate system. Despite the higher number of total disciplines given in the real estate system, the number of those with certain categories of disciplines is not always higher, or in proportion to the greater number of total disciplines. In the years examined, attorneys who were disciplined were far more likely to be suspended than real estate licensees. In all years, the total numbers of licensees in each group who were disbarred or had their license(s) revoked were in closer proportion to the total disciplines given. The number of licensees who received probation is very close between professions, despite the discrepancies in total disciplines for the first three years, with the numbers of attorneys on probation decreasing and the number of real estate professionals on probation increasing. Although disciplines are given similar names and effect among these professions, the discipline systems order them in different quantities.

The difference between the end results of discipline may be related to the structure of how disciplines may be ordered. The real estate system, working from the DBPR, provides a specific list of violations with penalties —so within a factual interpretation of the situation, the discipline category has been predetermined. By contrast, the attorney rules are written more open-ended, allowing discipline categories to be determined in each specific factual situation. Second, the real estate system allows more than one discipline to be imposed, the most common example being probation and suspension being ordered together, along with a fine. By contrast, the judge acting as referee in examining a lawyer’s factual circumstances must choose to recommend only one discipline category. The number of professionals on probation presented the most striking changes through the years examined. One explanation for the rising number of real estate professionals on probation simultaneous to the sinking number of attorneys on probation is the real world consequence of the discipline ordered. When a real estate professional is put on probation, a probation may be ordered to follow a suspension, and is usually accompanied by a
fine as well as an additional educational requirement.\textsuperscript{406} By contrast, attorneys put on probation are subject to no other levels of discipline, other than potentially being ordered to complete additional educational requirements.\textsuperscript{407} In short, because of the "one discipline" nature of the system, an attorney on probation suffers little professional consequence, and thus the "punishment" may be falling out of favor within the disciplinary body.

F. Discipline by Geographic Location

Table 8 examines certain selected counties within Florida for the total number of disciplines ordered. This geographic information was extrapolated from the individual listing, which the DBPR emphasizes, as it sorts the individual discipline listings first by year and then by city.\textsuperscript{408} The counties examined were selected as some of the major population centers, though certainly not all of them, within Florida.

- Table 8: Disciplines Ordered by Florida County (Selected)

<table>
<thead>
<tr>
<th>Year: 2000</th>
<th>Profession</th>
<th>Broward</th>
<th>Hillsboro</th>
<th>Leon</th>
<th>Miami-Dade</th>
<th>Orange</th>
<th>Palm Beach</th>
<th>Pinellas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney</td>
<td>27</td>
<td>13</td>
<td>6</td>
<td>64</td>
<td>13</td>
<td>19</td>
<td>22</td>
<td></td>
</tr>
<tr>
<td>Real Estate</td>
<td>21</td>
<td>10</td>
<td>1</td>
<td>53</td>
<td>28</td>
<td>21</td>
<td>8</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year: 2001</th>
<th>Profession</th>
<th>Broward</th>
<th>Hillsboro</th>
<th>Leon</th>
<th>Miami-Dade</th>
<th>Orange</th>
<th>Palm Beach</th>
<th>Pinellas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney</td>
<td>40</td>
<td>21</td>
<td>5</td>
<td>72</td>
<td>10</td>
<td>1</td>
<td>21</td>
<td></td>
</tr>
<tr>
<td>Real Estate</td>
<td>32</td>
<td>11</td>
<td>1</td>
<td>31</td>
<td>14</td>
<td>26</td>
<td>13</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year: 2002</th>
<th>Profession</th>
<th>Broward</th>
<th>Hillsboro</th>
<th>Leon</th>
<th>Miami-Dade</th>
<th>Orange</th>
<th>Palm Beach</th>
<th>Pinellas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney</td>
<td>24</td>
<td>8</td>
<td>7</td>
<td>52</td>
<td>11</td>
<td>23</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>Real Estate</td>
<td>39</td>
<td>9</td>
<td>3</td>
<td>45</td>
<td>15</td>
<td>26</td>
<td>12</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{406} See § 475.25(1).
\textsuperscript{407} F.A. \textit{STDS. IMPOSING LAW. SANCS.} 2.7.
\textsuperscript{408} See FREC Disc., supra note 265.

In counties with a high population, there are higher numbers of disciplines in both the attorney and real estate professions.\textsuperscript{409} The South Florida tri-county area of Broward County, Miami-Dade County and Palm Beach County contain high levels of the general population and is likely to employ high numbers of service professionals as well.\textsuperscript{410} However, the other counties examined show no pattern of connecting disciplined professionals with geographic location. For example, Hillsborough County, in which Tampa is located, in one year examined has slightly more attorneys disciplined than real estate professionals.\textsuperscript{411} In a second year examined, the number of attorneys disciplined was approximately two times that of real estate professionals.\textsuperscript{412} In the third year, the numbers were nearly equal.\textsuperscript{413}

G. Overall Licensees Disciplined

One last look at the accountant, attorney, and real estate professionals is an evaluation of the overall profession and how many disciplines are being ordered in each. Table 9 examines the total licensees and total disciplines in each year as reported in the agency’s annual reports, and calculated the percentage of disciplines as to licensees. There are two important notes to these figures. The first is that while throughout this entire table, the total licensees of the two DBPR professions is calculated on the total licensees, active and inactive.\textsuperscript{414} However, The Florida Bar, as noted in Table 2, only reported active licensees up until the 2002-2003 year.\textsuperscript{415} As a result, comparison percentages are affected. The second point of data is that in the real estate profession, more than one discipline may be ordered to one licensee—thus, the column reflecting the total disciplines is actually the number of disciplines, not exactly the number of licensees.

\textsuperscript{409} Curtis & Kaufman, supra note 3, at 694.
\textsuperscript{410} See id. at 699-701.
\textsuperscript{411} Curtis & Kaufman, supra note 3, at 697; see FREC Disc., supra note 265.
\textsuperscript{412} Id.; see FREC Disc., supra note 265.
\textsuperscript{413} Id.; see FREC Disc., supra note 265.
\textsuperscript{414} See Long Range Program Plan, supra note 283.
\textsuperscript{415} Bar Disciplinary Statistics, supra note 218.
### Table 9: Total Licensees, Disciplines and Percentages of Discipline

#### Year: 1997-1998

<table>
<thead>
<tr>
<th>Professions</th>
<th>Total Licensees</th>
<th>Total Disciplines</th>
<th>Percentage of Disciplines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountancy</td>
<td>25,392</td>
<td>40</td>
<td>1.65%</td>
</tr>
<tr>
<td>Attorneys</td>
<td>58,108</td>
<td>417</td>
<td>72%</td>
</tr>
<tr>
<td>Real Estate</td>
<td>197,045</td>
<td>977</td>
<td>50%</td>
</tr>
</tbody>
</table>

#### Year: 1998-1999

<table>
<thead>
<tr>
<th>Professions</th>
<th>Total Licensees</th>
<th>Total Disciplines</th>
<th>Percentage of Disciplines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountancy</td>
<td>28,687</td>
<td>29</td>
<td>1.0%</td>
</tr>
<tr>
<td>Attorneys</td>
<td>59,741</td>
<td>403</td>
<td>67%</td>
</tr>
<tr>
<td>Real Estate</td>
<td>165,585</td>
<td>1024</td>
<td>62%</td>
</tr>
</tbody>
</table>

#### Year: 1999-2000

<table>
<thead>
<tr>
<th>Professions</th>
<th>Total Licensees</th>
<th>Total Disciplines</th>
<th>Percentage of Disciplines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountancy</td>
<td>28,607</td>
<td>16</td>
<td>0.66%</td>
</tr>
<tr>
<td>Attorneys</td>
<td>61,014</td>
<td>391</td>
<td>64%</td>
</tr>
<tr>
<td>Real Estate</td>
<td>168,244</td>
<td>521</td>
<td>31%</td>
</tr>
</tbody>
</table>

#### Year: 2000-2001

<table>
<thead>
<tr>
<th>Professions</th>
<th>Total Licensees</th>
<th>Total Disciplines</th>
<th>Percentage of Disciplines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountancy</td>
<td>31,471</td>
<td>40</td>
<td>1.33%</td>
</tr>
<tr>
<td>Attorneys</td>
<td>62,722</td>
<td>472</td>
<td>75%</td>
</tr>
<tr>
<td>Real Estate</td>
<td>215,287</td>
<td>297</td>
<td>14%</td>
</tr>
</tbody>
</table>

---

416. The 1997-1998 annual report by the DBPR does not explicitly state the total disciplines, however this number was extrapolated from other information given.

417. The annual report format of the DBPR changed beginning in 2000. Rather than reporting the "total disciplines," the report states "Disposition of Disciplinary Actions" and compares with "Disposition of Non-Disciplinary Actions." See Long Range Program Plan, supra note 283. This number appears to reflect the total disciplines ordered in that year. This category appears in all annual reports forward from this date.

418. Id.
419. Id.
420. This year marks the first that attorney license numbers included both active and inactive licensees.
421. See Long Range Program Plan, supra note 283.
sionals, but as a weakness in the system that potentially does not catch enough licensees.

The accounting profession has the second lowest ratio of the three professions examined, and as discussed above in conjunction with Table 3, may be attributed to the profession’s clients, and the overall low number of complaints. 422

The attorney profession has clearly been working to reduce the number of licensees disciplined. As discussed earlier, the ACAP program by the Florida Bar has clearly produced results. 423 In the years since the ACAP program was introduced, the ratio of disciplines to licensees has decreased by a full one-third. 424

The real estate profession demonstrates the greatest reduction in total disciplines compared with total licensees; from a high of 62% in 1998-99, 425 down to the most recent figure of 17% in 2002-03. 426 The total number of licensees is growing tremendously in recent years, while the total number of disciplines is shrinking. 427 The reasons for these dramatic changes may be many. First, the real estate profession may simply be experiencing fewer disciplinary problems within its system, due to education, licensing requirements or ethical qualities of professionals, or any combination of factors. Alternatively, fewer disciplines may have been ordered due to changes in the way the system is being administered—individual probable cause panels may be viewing behaviors differently, or more citations warning real estate professionals of potential violations may be doing the job of diverting potentially problematic behavior before it reaches the complaint stage. Finally, the changes in the annual report (not clearly labeling the total disciplines in a year) may be altering the appearance of the statistics, resulting in altered data.

VI. CONCLUSION

Although the public may place the same fiscal trust in attorneys, real estate professionals, and certified public accountants within Florida, these professions are not treated the same by their licensing bodies. With different educational requirements, testing, and renewal requirements, each of these fiscal professionals are presented to the consumer with different back-

422. Id
423. Id
424. Id
426. See Long Range Program Plan, supra note 283.
427. Id