

## **MONITORING, MENTORING AND TWELVE-STEP WORK**

The F.L.A. Monitor plays a critical role in the lives of recovering attorneys or bar applicants who need to prove their rehabilitation and sobriety to The Florida Bar or Florida Board of Bar Examiners. Without the ability to document and provide evidence of recovery, many of these individuals might not be licensed to practice law. Fortunately, over the years good rapport has been developed between F.L.A. and these authorities and, in most instances, F.L.A.'s recommendation that an individual be admitted or reinstated is followed. The respect and credibility accorded FLA has been earned over time with the recognition that most of the people we have advocated for have conducted themselves as responsible attorneys. Just as importantly, FLA has always been honest and above board about making negative reports as well.

Some recovering attorneys have expressed their discomfort in acting as monitors, saying that they feel like probation officers and don't feel that it is within the spirit of their 12 Step program. **That position is understood and respected.** There are others who value their anonymity and are concerned that it may be compromised through the monitoring process. These attorneys can still provide valuable help to other lawyers, law students, bar applicants and judges by doing more traditional twelve-step work or by acting, in a very real but unofficial capacity, as a mentor.

While FLA. has never advocated that recovering attorneys separate themselves from the recovering community, it does recognize that many of their issues need to be shared and processed with other lawyers who can relate and share their own experience, strength and hope. Our local support group meetings (there are now more than twenty) have provided this. An attorney who has a personal experience with addiction, recovery and the practice of law can help another just by attending meetings. Twelve-step calls, sponsorship, step study and just giving a phone number to a newcomer are a few of the more traditional ways one can help the FLA. client.

Mentoring is a little more difficult to define and specify. Basically, it amounts to being a role model who practices the principles in all his or her affairs, including the practice of law. New attorneys need to learn how to practice law from one who does it using the principles of the program; others may need to learn to do it differently from the way they have in the past. Many older attorneys, recovering and otherwise, feel that many of the problems that exist today in the practice are due to the lack of mentoring available to new attorneys. To some extent, every recovering

attorney is a role-model for the newcomer, something that we should all take to heart.

## **The Monitor**

Before volunteering one's services as a Monitor, the attorney should have an understanding of the general qualifications and responsibilities involved.

**Qualifications.** The monitor should fit the following basic profile:

1. In recovery for a minimum of two years.
2. Active in AA/NA attending at least two meetings per week.
3. Have a Sponsor, have worked the steps, and be familiar with the AA/NA program and literature.
4. Be a member of The Florida Bar (or the bar of the state in which the attorney resides).

Additionally, the attorney should make a realistic assessment of his or her job and family responsibilities to determine whether there is enough time to devote to the monitoring task. Some attorneys with the best of intentions and the desire to be a monitor simply find that monitoring does not fit into their busy schedules. This is not fair to the client and places unnecessary stress on both parties, not to mention the FLA office staff who must account for all monitor reports (for those attorneys conditionally admitted or on probation) to Lawyer Regulation Department at The Florida Bar. Also it is preferable, but not essential, that the monitor and the monitored share some common ground, whether it be their history, their area of specialty, or something else. The FLA staff also attempts to take age and gender into account when selecting a monitor. However, these considerations are not cast in stone, and there have been many successful deviations from this general preference.

Occasionally, a Monitor might be needed to testify at a reinstatement, disciplinary, or admission hearing and, as a qualifying question, may be asked if he or she is in recovery. While one would hope that the members of the panel and the individuals present would honor the confidentiality of such a statement, there is obviously no guarantee of that. A monitor needs to recognize this possibility and be willing to risk the loss of anonymity if the need arises.

### **Monitor's Responsibilities.**

1. Meet face to face with the monitored at least once per month and discuss the client's progress, including, but not limited to the areas included on the "Checklist" provided below.
2. Prepare a Monitor Report each month including, at a minimum, whether the monitored is in compliance with the terms of the contract.
3. Forward the Monitor Report to the FLA office no later than the 5th of the month following the meeting.
4. Report to the FLA office any relapses, non-compliance or other concerns as part of the Monitor Report or more frequently when appropriate.
5. Make suggestions for improvement or impose additional requirements on monitored when seen as needed, e.g., therapy, psychiatric evaluation, other program, etc.

The following Checklist is suggested as a guideline for the monitor in assessing the client's progress and recovery.

### **Checklist**

- a. Meeting attendance.
- b. Sponsor/Progress in the Steps
- c. Monitoring
- d. Emotional traps (anger, guilt, depression, anxiety, insomnia, etc.)
- e. Additions/subtractions to addiction history (secrets)
- f. Compulsive behavior (sex, work, food, nicotine, gambling, theft, spending, etc.)
- g. Current therapy/Treatment/Medications (prescribed/OTC)
- h. Relationships - Dysfunctional/Positive aspects
- I. Physical health/Exercise program
- j. Leisure Time/Fun
- k. Work (professional status, job duties, workplace attitudes)
- l. Financial status
- m. Legal/Licensure
- n. Additional Training and/or Continuing Legal Education
- o. Spiritual Program
- p. "Soft" Areas of Recovery Program, i.e., what needs improvement.

The monthly meeting should allow enough time to explore these areas generally and discuss any concerns of either the monitor or monitored. Sometimes circumstances dictate a shorter, more perfunctory meeting, but on a regular basis enough time should be scheduled for the monitor to really get to know the person being monitored. It isn't required that this meeting take place at the end of the month or during the first week of the month; the middle of the month is fine, as is any other time. We suggest that these meetings be scheduled and calendared just like any other commitment.

## **The Client**

The FLA office has a system that codes each client according to how they are referred to FLA and their status with the Florida Bar. These codes are used primarily for statistical and administrative purposes. There is generally no need for the Monitor or the Client to be familiar with these codes, but it is important that both monitor and client understand that there are different categories of clients being monitored. To be an effective monitor, one must know the client's history and the reason for the contract (the monitor will be provided with a copy of the client's file at the outset of the relationship), and the client should be able to understand why his or her requirements differ from someone else's.

Generally, the different categories of clients can be characterized as follows:

**Voluntary** . Lawyers and bar applicants sometimes voluntarily enter into a contract with FLA, usually for the purpose of creating a documented record of sobriety. This is often in anticipation of disciplinary or admission problems. A contract with evidence of compliance and positive indicators of rehabilitation is usually considered as mitigation in disciplinary proceedings. Similarly, a bar applicant with a substance abuse history is more likely to be admitted, either conditionally or unconditionally, with a record of compliance under contract. Other voluntary clients are those who want evidence of their sobriety for reasons of employment, divorce/custody matters, criminal cases, for future reinstatement proceedings, or simply because they believe an ongoing, structured rehabilitation program will assist in their recovery.

The drug test results and monitor reports for these people are maintained on file until FLA is requested, and released, by the Client to provide the information to The Florida Bar, Florida Board of Bar Examiners, or other third party. Sometimes the release of information is included in the contract; sometimes the release is provided later and, of course, until that time all information remains

confidential. If, at some point, the Client wants direct testimony or an affidavit from his or her monitor, or FLA's Executive or Program Director, that assistance can be provided as well.

**Conditional Admissions.** The Board of Bar Examiners is responsible for investigation and screening of any applicant with a reported history of substance abuse or mental illness. Without clear evidence of recovery in an on-going program, they may be unwilling to admit an applicant to The Florida Bar. Many times the Board has elected to admit an applicant to practice with the condition that he or she enter a contract (or continue under an existing contract) with FLA and comply with the terms it specifies.

A conditional admission allows the lawyer the full and complete privilege of practicing law, subject only to maintaining residence within the State and complying with his or her contract. In these cases, the Monitor Report is critical to the continuing good standing of the conditional admittee. The Monitor Report must be received by the FLA office by the fifth of each month to ensure that it can be forwarded to the Lawyer Regulation Department in a timely manner. A failure to comply with this requirement may result in the issuance of a Rule to Show Cause why the admittee's conditional status should not be revoked.

During a period of conditional admission, drug tests are administered randomly and a positive result must be reported to Lawyer Regulation. In such instances, each case is considered individually with input from the lawyer, the monitor, the medical review officer, and the FLA staff. The same procedure is followed for probationary cases.

For the new lawyer conditionally admitted, the monitor may also serve as a role-model and should be aware that the client's attitudes and practices may be affected by his observations of and his relationship with his monitor. FLA encourages *mentoring* along with monitoring in these cases, as well as in all monitoring relationships.

**Probation/Suspension.** The lawyer who has been through the disciplinary system and been suspended from practice or placed on probationary status may be required by The Florida Bar to maintain a contract with FLA. These contracts, as with those of conditional admittees, require random drug testing, monthly monitoring and twelve-step participation and study as well as other additional requirements imposed on an individual basis. The procedure for reporting is the same as for conditional admittees, the monthly Monitor Reports being forwarded to Lawyer Regulation on

the 10th of each month. The term of the contract is usually from one to three years. Failure to comply may result in revocation of probation and loss of the license to practice. Relapses should be immediately reported to the FLA office and included in the Monitor Report along with any other concerns.

**Employer Probation:** In certain situations, an attorney's impairment may come to the attention of his or her employer, partners, or colleagues, although not rising to the level of an ethical violation which prompts a Bar grievance. In such situations, FLA will enter into a contract at the request of the attorney or employer. The contract will incorporate all the monitoring and testing provisions of a probation or conditional admission contract, but reports will be provided to the employer only and, in cases of non-compliance, the employer will decide what sanctions are appropriate, generally after consultation with the FLA staff.

In general, it must be clearly understood by both the client and the monitor that the Monitor Reports are critical and both parties need to cooperate mutually to ensure that the Report is received by the FLA office in a timely fashion. Some monitors ask the client to provide them with the Monitor Report form, then take responsibility for mailing or faxing it after the monitor has completed the form. In other cases, the monitor may prepare the report at the monthly meeting and give it to the client, in which case the client takes the responsibility to transmit the report to the FLA office. The contact between the two, the monthly meeting, the providing of a meeting list by the client, and transmittal of the monitor report can all be accomplished in various ways as agreed between the monitor and client.

### **Drug Testing**

The frequency of the random drug testing is generally specified by the Board of Bar Examiners or The Florida Bar in their requirements to each applicant or lawyer. If the frequency is not specified, or if the contract is voluntary, it will be determined by the FLA staff based on the client's history and the time and circumstances of each case.

Once a contract has been signed, the information is provided to FLA's testing service, FirstLab, which will generate a computer roster for random calls. FirstLab will provide the FLA participant with a PIN number which is used by calling an 800 number on a daily basis to determine if a test is to be taken that day. FirstLab will assist the client in locating the closest drop site and

instruct him or her in the procedure. The client should be aware of the importance of making the daily call and the need to respond immediately. FLA is aware that this is sometimes difficult for busy attorneys, but the importance of compliance in this regard cannot be over-emphasized.

Every substance abuse contract calls for total abstinence from alcohol or other controlled substances. Additionally, the client must advise all medical providers of his or her history and, if medication is prescribed, the physician should advise FLA in writing. In the event that a drug test is positive, the FLA office will notify the client and the monitor, and FLA's Medical Review Officer (MRO), an M.D. specializing in addictionology whose services are provided by FirstLab, will speak to the client by phone and file a written report with FLA. The client is also asked to explain the positive test in writing to FLA, and this is communicated to Lawyer Regulation.

### **The Contract**

The Contract is the primary instrument through which FLA operates to provide monitoring of the Client. It is an agreement between FLA and the Client that each will perform certain actions and provide certain services. The terms of each contract will be determined by agreement between the parties or by direction of The Florida Bar or Florida Board of Bar Examiners. Most of the standard provisions have been addressed previously.

A contract may also contain special provisions requiring a third party evaluation or a course of treatment determined by FLA, usually in conjunction with a treatment professional. Many contracts require the Client to attend 90 AA/NA meetings in 90 days, and acquiring a sponsor and working the steps is always a requirement. The number of weekly 12 Step meetings required may vary but is never less than one, as well as one of the attorney support groups (if such a meeting is located within a reasonable distance). The 12-step program and the traditional suggestions are the foundation of the maintenance of recovery under the FLA contract.

## **The FLA Staff**

The FLA staff consists of the Executive Director, Myer (Michael) Cohen, Assistant Director, Judith Rushlow, Office Manager and Bookkeeper, Robert Dalton, and Administrative Assistant, Eleni Uher. Each has specific responsibilities, but everyone is client-oriented and advised of progress and developments in each case.

The office is open 9 to 5 Monday through Friday. Michael and Judy are available for emergencies 24 hours a day through their digital pagers (305-306-6744 Judy and 305-239-0150 Michael). Any member of the staff is always glad to answer questions, discuss a problem, or provide specific assistance when needed.

## **The FLA Member**

As with the 12 Step programs, to become a member of FLA, one only has to desire to be part of the organization and to remain clean and sober. Our membership includes lawyers, law students and judges. Some of our members are clients under contract; some are their monitors. Some of our members are disbarred or suspended from practice; others have yet to be admitted. Others have never experienced discipline or admission problems, but have suffered from alcoholism and drug addiction and include FLA as part of their recovery program.

More recently, FLA has begun to include in its membership lawyers or prospective lawyers who have suffered the effects of stress and depression as well as other forms of addictive illness. Their progress can be monitored through FLA by a contract and monitoring system more appropriately designed to meet their needs. These individuals are also included in FLA membership and benefit from the organization as well.

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