IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant/Petitioner,

v.

EDWARD B. ROOD,

Respondent/Cross-Petitioner,

_____/

CASE NO. 78,795
TFB NO. 90-10,733(13E)
90-11,550(13E)

CASE NO. 78,741
TFB NO. 91-10,534(13E)

REPLY AND ANSWER BRIEF

OF

THE FLORIDA BAR

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SYMBOLS AND REFERENCES

In this brief, The Florida Bar, appellant will be referred to as "The Florida Bar" or "The Bar". The appellee, Edward B. Rood, will be referred to as "Respondent".

"RI" will refer to the record in Supreme Court Case No. 78,741. "RII" will refer to the record on Count I of Supreme Court Case No. 78,795. "RIII" will refer to the record on Count III of Supreme Court Case No. 78,795.

"TRI" will refer to Volume I and II of the transcript of the final hearing on Supreme Court Case No. 78,741 held on January 21, 1992. "TRII" will refer to Volume I, II, and III of the transcript of the final hearing on Count I of Supreme Court Case No. 78,795 held on February 26 and 27, 1992. "TRIII" will refer to Volume I and II of the transcript of the final hearing on Count III of Supreme Court Case No. 78,795 held on April 20, 1992. "TRIV" will refer to the transcript of the discipline hearing on Supreme Court Case Nos. 78,741 and 78,795 held on June 19, 1992. "DTR" will refer to the transcript of Respondent's discipline hearing held on June 17, 1992.

"RRI" will refer to the Report of Referee dated July 15, 1992, on Counts I and III of Supreme Court Case No. 78,795. "RRII" will refer to the Report of Referee dated July 15, 1992 on Supreme Court Case No. 78,741.

"The fraudulent conveyance case" will refer to Supreme Court Case No. 78,741. "The Stephenson case" will refer to Count III of Supreme Court Case No. 78,795. "The Ng case" will refer to Count I of Supreme Court Case No. 78,795.

REPLY AND ANSWER TO RESPONDENT'S STATEMENT OF THE FACTS AND OF THE CASE

The Answer and Initial Brief of Respondent fails to properly cite to the record in this case, contains inaccurate facts, and facts outside of the record in this cause. The Bar will rely on the facts set forth in its Initial Brief and will comment on the following facts set forth by Respondent.

CASE NO. 78,795 (THE STEPHENSON CASE)

Respondent sets forth as a fact that Mr. Webster took the Stephenson guardianship file with him when he left Respondent's firm in 1986. The Respondent testified during the Final Hearing that the Stephenson guardianship file remained with his firm after Mr. Webster left the firm in 1986. (TRIII, pp.21 and 26; RII, TFB Exhibit 8-A).

The Respondent also claims that on January 13, 1987, his secretary, Jan Taylor, sent Barbara Stephenson forms for an inventory and an annual return of guardian, without his knowledge. Contrary to the foregoing, the Respondent himself, testified at the Final Hearing that in January of 1987 he had his secretary send the documents to Mrs. Stephenson. (TRII, p.372).

The Respondent claims as fact that after the March 20, 1987 hearing before Judge Alvarez the only other time he ever met with Barbara Stephenson was in September, 1989 in another hearing before Judge Alvarez. The foregoing is not supported by the record. The record establishes that in April, 1988, Barbara Stephenson received

an Order to Show Cause (RII, TFB Exhibit #12) on the Heidi Stephenson guardianship case. The Order to Show Cause prompted Barbara Stephenson to contact the Respondent. (TRII, p.176). The Respondent advised Mrs. Stephenson that she needed to come into his office to see him. Mrs. Stephenson went to the Respondent's office in June of 1988. During the meeting, the Respondent had prepared a Return Of Guardian of Property (RII, TFB Exhibit #14) which indicated that the guardianship assets had been turned over to Heidi on her 18th birthday, August 27, 1987. Mrs. Stephenson advised the Respondent that the document was false and that none of the money had been paid to Heidi. The Respondent advised Barbara Stephenson that she needed to sign the document in order to stay out of trouble. Mrs. Stephenson signed the document even though the same contained false information based on the Respondent's advice. (TRII, pp.178, 179).

As set forth by the Respondent in his brief, on June 10, 1988, Respondent received a phone call from Lakeland lawyer Mark Clements, who informed him that Heidi had not been paid her guardianship funds. Contrary to the Respondent's facts, the record establishes that on June 10, 1988, Heidi and her sister, Kalebra, went to consult with Mark Clements in regard to Heidi's rights to recover her guardianship funds. (TRII, pp.228-230; RII, TFB Exhibit #12-B). The Respondent claims that shortly after the call from Mr. Clements, he received a call from Barbara Stephenson telling him that Heidi had been paid. As set forth above, the record establishes that Mrs. Stephenson never advised the

Respondent that Heidi had been paid and, in fact, she advised the Respondent that the Return of Guardian of Property which she executed in June, 1988 was false at the time she signed it in the presence of Respondent.

The Respondent states as fact that on June 20, 1988, Heidi and her sister, Kalebra, came to his office and advised the Respondent that Heidi had been paid. The Respondent claims that at that time, he brought Patricia Barnes, a notary, into his office, went through the formalities of a sworn statement with Heidi, had Heidi execute, in the presence of the notary, an Acknowledgment of Receipt of Property and thereafter had Ms. Barnes notarize the document. The record establishes that after Barbara Stephenson executed the Return of Guardian of Property in June, 1988, the Respondent began calling Heidi requesting that she come to his office to sign some papers. (TRII, pp.230, 231). After receiving several calls from the Respondent, Heidi asked her sister, Kalebra, to call the Respondent. Kalebra called the Respondent and was advised by the Respondent that if Heidi did not come down to his office to sign some papers which he had prepared, that Barbara Stephenson was going to go to jail. (TRII, p.253). As a result of the phone conversation, Kalebra took Heidi to the Respondent's office on June 20, 1988, to sign the documents requested by Respondent. When Heidi and Kalebra went to the Respondent's office, they were again advised by the Respondent that the papers needed to be signed so that their mother would not go to jail. Thereafter, the Respondent provided Heidi with a document entitled Acknowledgment of Receipt

of Property (RII, TFB Exhibit #13). Heidi reviewed the document and advised the Respondent that the same was false in that she had not received her guardianship funds. The Respondent insisted that the document be executed. Heidi signed the document in the presence of her sister and the Respondent only. Thereafter, the Respondent called Patricia Barnes into his office and had Ms. Barnes notarize the same. (TRII, pp.231-234, 252-256, p.276).

The Florida Bar's Initial Brief adequately rebuts any of the remaining inaccurate facts set forth by the Respondent in regard to the Stephenson case, thus, The Bar will not restate those facts. In addition, the Court should note that most of the facts set forth in Respondent's brief are based on the Respondent's testimony which the Referee found to be unworthy of belief. (RRI, Section II).

CASE NO. 78,795 (THE NG CASE)

The Respondent claims in his Statement of Facts that it is undisputed that in 1988, when NG said he couldn't pay the loans, Respondent told his CPA of the losses and listed the same on his 1988 tax return. First, the Bar disputed throughout the proceedings that loans were made to NG. The evidence established that the checks in question were for gambling debts. (RIII, TFB Exhibit #2). Further, the Respondent did not claim the checks in question as a loss on his 1988 tax return until after Mr. Allweiss asked the Respondent if the same had been done. (RIII, TFB Exhibit #4, p.34).

The Respondent states as fact that there is no dispute in the record that NG acknowledged that loans were made by Respondent to

him and that the loans were repaid to the Respondent. The record clearly establishes that NG gave sworn testimony to the State Attorneys Office that the checks in question were gambling debts and not loans. The documentary evidence which the Respondent relies on to support his position is an unsworn statement which allegedly contains the signature of Michael NG. Respondent failed to submit any evidence that the signature was in fact Mr. NG's and he failed to produce the two witnesses contained on the document to testify under oath that Michael NG did, in fact, sign the document.

The remaining facts set forth by the Respondent in his brief are sufficiently rebutted by The Florida Bar's Initial Brief in this cause.

CASE NO. 78,741 (FRAUDULENT CONVEYANCE CASE)

The Bar's Statement of The Facts in its Initial Brief sufficiently rebut the inaccurate facts set forth by the Respondent in his Brief. The Court should again note that the facts set forth by the Respondent in his Brief are based primarily on the Respondent's testimony and his son's testimony which the Referee found to be totally unworthy of belief.

SUMMARY OF THE ARGUMENT

The Respondent's Brief presents several arguments alleging that the Referee's findings of fact and recommendations of guilt are erroneous. The Respondent argues that he is not guilty of any misconduct and as a result thereof discipline is not justified.

The Referee found, based on all of the facts and circumstances in the fraudulent conveyance case, that Respondent and his son engaged in a course of fraudulent conduct with respect to the conveyance of the Lakeland Property and that they both lied when they testified in affidavits that at the time of the transfer of the Lakeland Property Respondent was unaware of the Michigan judgment. The referee also found, based on all of the facts and circumstances in the Stephenson guardianship case, that the Respondent failed to competently and diligently pursue and conclude Heidi's guardianship case and knowingly and intentionally encouraged, advised and caused his clients to execute false documents and thereafter filed the same with the Probate Court. The Respondent denied engaging in the acts set forth above. However, the Referee found the Respondent's testimony totally unworthy of belief and rejected the same. The Referee's rejection of the Respondent's testimony was justified based on the entire record in this cause.

The Referee's findings of fact are presumed to be correct and it is the Respondent's burden to demonstrate that the Report of Referee's as to Count I of the Supreme Court Case No. 78,795 and Case No. 78,742 are erronnlawful or unjustified. The Respondent

has failed to rebut the presumption of correctness. The facts in all of the cases involved in the Bar's Amended Initial Brief and this Brief, taken as a whole, clearly support not only the Referee's findings of fact, but also his recommendations of guilt and thus the same should be upheld.

As argued in The Bar's Amended Initial Brief, the Respondent should be disbarred for his cummulative fraudulent, deceitful, and criminal misconduct.

The Florida Bar requests this Court to reject the Referee's recommendation that Respondent be found not guilty on Count III of Supreme Court Case No. 78,795; reject the Referee's recommendation of discipline on Count I of Supreme Court Case No. 78,795 and Supreme Court Case No. 78,741; and disbar Respondent from the practice of law in this State.

REPLY ARGUMENT (CASE NO. 78,795)(THE NG CASE)

The Bar will rely on its argument in the Amended Initial Brief of The Florida Bar to rebut the Respondent's argument in his Answer Brief on this case.

ANSWER TO RESPONDENT'S ARGUMENT

The Respondent challenges the Referee's findings of fact and recommendations of guilt as to Count I of Supreme Court Case No. 78,795(The Stephenson Case) and Case No. 78,741 (The Fraudulent Conveyance Case). The Respondent claims that the Referee's findings and recommendations of guilt are unsupported by clear and convincing evidence.

A Referee's Findings of Facts should be upheld unless clearly erroneous or lacking in evidentiary support since the Referee had an opportunity to personally observe the demeanor of the witnesses and to assess their credibility. The Florida Bar v. Stalnaker, 485 So. 2d. 815 (Fla. 1986). In both of the above-referenced cases, the Referee found that the Respondent was not a credible or believable witness and specifically found that the Respondent lied in the fraudulent conveyance case (Case No. 78,741), when he testified that at the time of the transfer of the Lakeland Property, Respondent was unaware of the Michigan judgment.

The Referee's Findings of Fact and Recommendations of Guilt in both of the above-referenced cases are supported by clear and convincing evidence.

CASE NO. 78,795 (COUNT I, THE STEPHENSON CASE)

The Respondent challenges the following findings by the Referee:

(1) That Respondent failed to competently and diligently pursue and conclude Heidi's guardianship case; and

(2) During the course of Respondent's representation of the

Stephensons, Respondent knowingly and intentionally encouraged, advised and caused his clients to execute false documents in June, 1988 and thereafter filed the false documents in the Probate Court.

Contrary to Respondent's argument in his Brief, both findings are supported by the record in this case which establishes the following:

In January, 1987, the Respondent assumed the responsibility for his firm's legal representation in the Heidi Stephenson guardianship case. (RII, TFB Exhibits #5, #6, #16, and #17).

On March 20, 1987, the Respondent attended a hearing before Judge Alvarez on the guardianship case. During the hearing, Respondent advised Judge Alvarez of the fact that the guardians had spent the ward's funds. Judge Alvarez advised Respondent that the funds had to be paid by the Stephenson's on or before Heidi's 18th birthday. (TRII, pp.34-37). Heidi Stephenson became 18 years of age, five months later, on August 27, 1987.

Between March 20, 1987 and April, 1988, the Respondent failed to determine whether or not the Stephenson's had replaced Heidi's guardianship funds. In addition, the Respondent neglected to file an Inventory and an Annual Return of the Guardian. As a result, an Order to Show Cause was issued on April 20, 1988. The Order to Show Cause scheduled a hearing for June 22, 1988. (RII, TFB Exhibit #12). Sometime between April 22, 1988 and June, 1988, Barbara Stephenson advised Respondent of the fact that Heidi's guardianship funds had not been repaid. (TRII, pp.177-178). On May 10, 1988, the Respondent allegedly sent a letter to Mrs.

Stephenson which stated as follows:

> Dear Mrs. Stephenson:
>
> I plan to go to this hearing and just tell the Judge what happened since your plan for working this out fell through. (RII, TFB Exhibit #12(a)).

Mrs. Stephenson testified that she never received Respondent's letter of May 10, 1988. (TRII, p.178).

Respondent testified during the final hearing in this cause and he argues in his brief that subsequent to May 10, 1988, Barbara Stephenson advised him that she and her husband paid Heidi her guardianship funds. Barbara Stephenson testified that she never advised Respondent that she and her husband had paid Heidi her guardianship funds. Barbara Stephenson also testified that in June, 1988, Respondent called her and advised her that she needed to come into his office and sign some papers in order to stay out of trouble with the Probate Court. Mrs. Stephenson further testified that she went to the Respondent's office in early June to sign documents prepared by Respondent. She testified that when she was presented with a document entitled Annual Return of Co-Guardians (RII, TFB Exhibit #14) she advised Respondent that the same was false. Mrs. Stephenson testified that Respondent told her that if she did not want to get into trouble she had to sign the Annual Return of Co-Guardians. (TRII, pp.178-179).

Respondent argues in his brief that he did not have anything to do with the preparation or execution of the Annual Return of Co-Guardians executed by Barbara Stephenson in June, 1988. Respondent

testified at the final hearing that his office received the Annual Return of Co-Guardians from Mrs. Stephenson and that the same was thereafter filed with the Court. Respondent also testified that he did not know that the Annual Return of Co-Guardians was false when filed with the Court. Respondent's argument and his testimony is not worthy of belief as found by the Referee in this case, based on the following:

1. Between June 10 and June 14, 1988, Respondent received a telephone call from attorney Mark Clements regarding the fact that Heidi had not received her guardianship funds. (TRII, pp.229-230; RII, TFB Exhibit #12(b)).

2. Barbara Stephenson testified that after Respondent knowingly had her sign a false Annual Return of Co-Guardians, in early June, 1988, Respondent told her that Heidi also needed to come to his office to sign a document. (TRII, pp.178-180).

3. Barbara Stephenson testified that shortly after she executed the false Annual Return of Co-Guardians, she went into Shands Hospital in Gainesville, Florida. She testified that she advised Heidi not to sign any documents stating that Heidi had received the $20,000 while Barbara was in the hospital. Barbara Stephenson testified that she was concerned that Heidi would never receive the $20,000 if she (Barbara) died from the illness which caused her to be hospitalized and if Heidi had signed a document falsely acknowledging receipt of her guardianship funds. (TRII, p.180).

4. Heidi testified that during the time her mother was in

the hospital, she received several phone calls from Respondent requesting her to come to his office to sign a document. Heidi testified that Respondent told her that she needed to sign the document to keep her mother out of trouble. Heidi further testified that after she received several calls from Respondent, she asked her sister, Kalebra, for assistance. (TRII, pp.230-231).

5. Kalebra testified that in June, 1988 she called Respondent, pursuant to Heidi's request, and was advised by Respondent that Heidi needed to sign a document to keep her mother from going to jail. (TRII, pp.252-253).

6. Kalebra and Heidi testified that they went to Respondent's office on June 20, 1988 and met with Respondent. They testified that Respondent was advised that the document entitled Acknowledgement of Receipt of Property, which Respondent wanted Heidi to sign, was false in that Heidi had not been paid the $20,000 from the guardianship. They testified that Respondent told Heidi that if she did not sign the document her mother could go to jail. They further testified that the only persons present in the room when the document was signed was Heidi, Kalebra, and Respondent. They also testified that the document was not sworn to and notarized at the time Heidi executed it. (TRII, pp.231-234, 252-256, 276).

7. Kalebra testified that Respondent asked her and Heidi whether or not they wanted a copy of the document. Kalebra also testified that, in response, she asked Respondent if they should get a copy of the document. Kalebra further testified that

Respondent indicated that the fewer copies floating around, the better. (TRII, pp.256-257).

The Respondent's testimony during the final hearing in this cause was contrary to the testimony of Barbara Stephenson, Heidi and Kalebra. Respondent testified that on June 20, 1988, Heidi and Kalebra came to his office so that Heidi could execute the document entitled Acknowledgement of Receipt of Property. Respondent testified and argues that neither Heidi nor Kalebra advised him of the fact that the document was false. Respondent also testified and argues that Patricia Barnes, a secretary in his office and a notary, swore Heidi in, watched Heidi execute the document and thereafter notarized the same.

Respondent's testimony was contrary to the testimony of his own witness, Patricia Barnes. Patricia Barnes testified that during her short tenure with Respondent's firm, she recalled notarizing only one document for Respondent. She testified that she recalled two women being in Respondent's office at the time she notarized the document for Respondent. Ms. Barnes could not identify Heidi and Kalebra as the women who were in Respondent's office when she notarized a document for Respondent. Ms. Barnes testified that she did not swear in the woman who signed the document. She also testified that she could not recall whether or not the document was already executed when she notarized the same. (TRII, pp.275-276, 280).

The Annual Return of Co-Guardians and the Acknowledgement of Receipt of Property were filed with the Probate Court on June 22,

1988. (RII, TFB Exhibit #'s 13 and 14). Neither an Inventory nor a Petition for Discharge was submitted to the Court in June, 1988. As a result thereof, an Order to Show Cause was issued on June 9, 1989 to Respondent and to the Stephensons. The Order set a hearing for August 17, 1989. (RII, TFB Exhibit #18). Respondent asked Dennis Lopez, an attorney in his office, to handle the matter for him. (TRII, p.84).

On July 10, 1989, Mr. Lopez sent a letter to the Stephensons on Rood & Associates stationary, which enclosed the Petition for Discharge of Co-Guardians and a document entitled Receipt, Approval of Accounting, Waiver of Notice, and Consent to Discharge of Co-Guardians. Mr. Lopez' letter asked the Stephensons to execute the documents and to return the same to him prior to August 17, 1989. (RII, TFB Exhibit #19). The Stephensons signed the documents prepared by Mr. Lopez in July, 1989 even though the same were false and returned the documents to Mr. Lopez. Barbara Stephenson and Heidi testified that they assumed Mr. Lopez knew the documents were false since he was associated with the Respondent's office. (TRII, pp.184-187, 233-135).

The false documents of July, 1989, were filed with the Probate Court on August 7, 1989. (RII, TFB Exhibit #'s 20, 21). On August 14, 1989, Mary Cummings, a clerk of the Probate Court, contacted Mr. Lopez and advised Mr. Lopez that the guardianship case would not be closed until an inventory was filed. In addition, Ms. Cummings asked Mr. Lopez to make an inquiry of the status of the guardianship funds since the funds were not to be disbursed without

a court order. (RII, TFB Exhibit #23).

On August 14, 1989, Mr. Lopez contacted Barbara Stephenson and Heidi and was advised that the guardianship funds had not been disbursed to Heidi. (TRII, pp.107-108). Upon receiving this information, Mr. Lopez asked Barbara Stephenson and Heidi to meet with him the following day to discuss the case. On August 15, 1989, Barbara Stephenson and Heidi met with Mr. Lopez. During the meeting with Mr. Lopez, either Barbara, Heidi, or both advised Mr. Lopez that in June, 1989, Respondent knew that Heidi had not received the guardianship funds on her 18th birthday. They also advised Mr. Lopez that Respondent knowingly encouraged and advised them to sign false documents in June, 1988, in order to keep Barbara Stephenson from getting into trouble for converting the guardianship funds to her own use. (TRII, pp.110-113). At the conclusion of the meeting, Mr. Lopez asked Barbara Stephenson and Heidi to return to the office the following day to discuss how the guardianship case should be resolved.

On August 16, 1989, Barbara Stephenson and Heidi again met with Mr. Lopez. During the meeting, Mr. Lopez obtained a sworn statement from Heidi. (RII, TFB Exhibit #26).

At the final hearing, Mr. Lopez testified that in the late afternoon of August 16, 1989, he met with Respondent and advised Respondent of the allegations made by Barbara and Heidi regarding Respondent's knowledge and participation in the execution of the false documents of June, 1988. Mr. Lopez also testified that he probably told Respondent that Heidi was claiming that she had not

received the guardianship funds. Mr. Lopez further testified that Respondent told him that he could not recall the Stephenson guardianship case and would have to review the Court file the following morning. Mr. Lopez testified that he probably told Respondent about the hearing scheduled for the following morning (August 17, 1989) before Judge Alvarez. (TRII, pp.124-128).

The Respondent's actions subsequent to August 16, 1989 support the Referee's finding that Respondent encouraged, advised and caused the Stephensons to execute a false document in June, 1988 and that he knowingly filed false documents with the Probate Court.

On the morning of August 17, 1989, Respondent went to the Courthouse and attended the hearing before Judge Alvarez on the Stephenson guardianship case. At the conclusion of the hearing, the Judge entered an Order of Discharge closing the guardianship case. (TRII, pp.128-129; and RII, TFB Exhibit #33).

Respondent testified that when he went to the Courthouse on August 17, 1989, he did not know the true status of Heidi's guardianship funds. The testimony by Respondent was not worthy of belief based on Mr. Lopez' testimony set forth above. In addition, Barbara and Heidi would have no reason to lie about the fact that the funds had not been disbursed when the same would subject them to possible sanctions including criminal charges. Respondent also testified at the final hearing that he did not attend the hearing before Judge Alvarez on August 17, 1989. Respondent testified that he attended some other hearing that morning, but there is no evidence in the record to support his contention. Respondent

testified that after attending some other hearing, he stopped into the probate division to review the Stephenson court file at which time he found that the Order of Discharge had already been signed by Judge Alvarez. The foregoing testimony by Respondent was contrary to the following evidence presented at the final hearing on this case:

1. Mr. Lopez testified that on the morning of August 17, 1989, Respondent advised him that he (Respondent) went to the hearing before Judge Alvarez during which time the Judge signed the Order of Discharge.

2. On the morning of August 17, 1989, Mr. Lopez' secretary wrote a note to Mr. Lopez which stated as follows:

> "I called Mary Cummings and she said the Order of Discharge was in her pending drawer because we had not filed the inventory. The Order would not be submitted until we did this. Mr. Rood then comes in - told me he had been to the hearing, that Judge Alvarez signed the Order of Dis. and Judge said that when a ward says she has received the assets that is enough - Mr. Rood has advised Mrs. Stephenson's attorney, Sansone, of this and the Stephensons are out of trouble.
>
> MR. ROOD WANTS TO SEE YOU WHEN YOU GET IN". (RII, TFB Exhibit #33).

3. During a hearing held on September 8, 1989, in the guardianship case, Judge Alvarez stated that Respondent came to the Order to Show Cause hearing, that all of the documents were in the file, so he signed the Order of Discharge of Co-Guardians. (RII, TFB Exhibit #35).

Judge Alvarez testified at the final hearing that he would not have signed the Order of Discharge had he been advised that Heidi

was claiming that she had not received the guardianship funds. (TRII, p.298).

It is the Bar's position that the Respondent failed to advise Judge Alvarez of the fact that false documents were filed with the Probate Court in June, 1988 so that the guardianship case would be closed without the Court being appraised of the Stephenson's allegations that Respondent knowingly had them execute false documents. Evidence supporting The Bar's position is the fact that, on September 6, 1989, Respondent contacted the Stephenson's new attorney, Douglas Gregory, and advised Mr. Gregory that Barbara and Kleber Stephenson should execute a promissory note to Heidi prior to a hearing scheduled before Judge Alvarez on September 8, 1989 so that the judge could not ask Heidi or her parents about the "perjured" documents. Mr. Gregory's file notes (RII, TFB Exhibit #36) revealed that he advised Respondent that the judge could ask anything he wanted to during the hearing. Respondent apparently disagreed with Mr. Gregory and indicated that he had case law that stood for the proposition that the judge should not ask about criminal matters in a public hearing. Further, in closed chambers, prior to the hearing before Judge Alvarez on September 8, 1989, Respondent advised the judge that there was no reason to ask the Stephensons about the "perjured" documents. At the same time, Mr. Gregory advised the judge that he had been informed that the Stephensons were not the targets of the criminal investigation, that he had explained to the Stephensons their Fifth Amendment rights, but that they wanted to answer any questions that the judge

wanted to ask them. (RII, TFB Exhibit #36).

The testimony and documentary evidence in this case established by a clear and convincing standard that Respondent failed to competently and diligently pursue and conclude Heidi Stephenson's guardianship case and that during his representation of the Stephensons, he knowingly and intentionally encouraged, advised and caused Barbara and Heidi Stephenson to execute false documents in June, 1988 and thereafter knowingly and intentionally filed the false documents with the Probate Court. The Referee's findings and recommendations of guilt should be upheld.

CASE NO. 78,741 (THE FRAUDULENT CONVEYANCE CASE)

The Respondent challenges the Referee's finding regarding the value of Rood, Jr.'s 1/2 interest in the Lemon Street Property. The Respondent claims that his son's 1/2 interest in the Lemon Street Property had sufficient value to satisfy the Michigan judgment on September 20, 1987. The record evidence which Respondent relies on to support his claim is a 1985 appraisal of the entire parcel rather than Rood, Jr.'s 1/2 interest and gives the fair market value rather than the "quick sale" or "public sale" value.

The 1985 appraisal relied on by Respondent was prepared at the time Rood, Jr. and his brother, Clay Rood, placed the Lemon Street Property for sale. Contrary to the Respondent's argument, Rood, Jr. testified during a deposition in October, 1988 and at the final hearing in this cause, that the property could not be sold because it was located in the airport runway zoning district. After

unsuccessful efforts to sell the property in 1985, Rood, Jr. believed the entire parcel was worth less than $200,000. (TRI, pp.66-70). The record in this cause clearly established that in 1987, Rood, Jr.'s 1/2 interest in the Lemon Street Property was worth less than $100,000. In addition, on June 19, 1989, Rood, Jr. encumbered the Lemon Street Property with a mortgage in the amount of $24,230.57 which was security for a note dated April 16, 1986. Further, during a deposition on November 20, 1989, Clay Rood, the brother of Rood, Jr., who owned the other 1/2 interest in the Lemon Street Property, testified as follows in response to questions propounded by Dr. Alverson's counsel:

> Q. Have you ever considered partitioning your interest in the land?
>
> A. I think the property is too small as it is. I think that's one of the problems we have had, that the type of tenant that would go in there, the type of buyer who is looking for land in that highly industrialized area is looking for more square footage instead of less. And the people I have talked to feel it is just too small, and that's one of the problems. And I guess that's why we've always been trying to tie it into the other landowners in the area, because that's what has been creating the problem.
>
> You cut that piece of property in half, and you're going to have a worthless piece of property. Your going to destroy whatever value it has right now. With the building requirements, the Florida area ratios, and being in the MAP flag zone, you need more land area to build an office building, something like that, to make it really functional. I mean, I'm not a real estate development expert, but that's the gist of what I've been told from the people who have looked at it and the realtors I have talked to. (RI, TFB Exhibit #22, p.17).

Clay Rood eventually purchased Rood, Jr.'s 1/2 interest in the Lemon Street Property at a public sale for $62,000. The Referee's

finding that Rood, Jr.'s 1/2 interest in the Lemon Street Property had a value of $62,000 was not clearly erroneous based on Rood, Jr.'s testimony, during the final hearing in this cause and during a deposition in October, 1988; based on Clay Rood's deposition testimony; based on the amount Clay Rood paid to purchase Rood, Jr.'s 1/2 interest in the property; and based on the $24,000 mortgage which encumbered the property.

The Respondent challenges the Referee's finding that there was a lack of adequate consideration for the transfer of the Lakeland Property from Rood, Jr. to the Respondent in September, 1987. The Respondent argues that his consideration in 1987 for the Lakeland Property was approximately $700,000.

Respondent testified during the trial in the Polk County Alverson v. Rood case that his consideration, in 1987 for the Lakeland Property, consisted of the following:

A.	1974 Initial Investment	$ 157,500
B.	Return on initial investment	204,750
C.	Initial bargain obtained	122,000
	$280,000	
	157,000	
	122,000	
D.	Payment of principal on Rood Jr.'s Southeast Bank Loan	175,000
E.	Interest and attorney's fees on Southeast Loan	16,000
F.	Payment of 98 Property taxes for 1985 - 1987	24,000
G.	Taxes for two other years (approximately)	10,000
		709,250

(RI, TFB Exhibit #1, p.124-126)

The Respondent's testimony and his argument in his Brief are without merit and are contradicted and refuted by the record in

this case. It is undisputed that the June, 1974 conveyance of the Lakeland Property from the Barbers to Rood, Jr. was a gift from Respondent to Rood, Jr. who paid no consideration for the property. Respondent claims that the gift was conditional and that he could demand return of the property if his son mismanaged it. Despite the alleged condition, and despite the fact that, since at least 1982, Rood, Jr. had been unable to pay either the taxes on the property, or the principal of $175,000 due on a Southeast Bank mortgage (which encumbered the Lakeland Property), there was never any demand made by Respondent upon Rood, Jr. to return the property until after the judgment in the Michigan Alverson v. Rood case was rendered in November, 1986. Respondent had paid all of the mortgage payments on the $175,000 Southeast Bank loan which was incurred in 1981 (RI, TFB Exhibit #1, p.75) and most of the Lakeland Property taxes since 1982. (RI, TFB Exhibit #1, p.127).

In addition, Rood, Jr.'s testimony in the Polk County Alverson v. Rood case, with respect to Respondent's consideration for the Lakeland Property in September, 1987 was in conflict with Respondent's testimony. Rood, Jr. testified that Respondent's consideration for the Lakeland Property consisted of Respondent's payment of the balance (as of January, 1987) owed on Rood, Jr.'s Southeast Bank loan including interest and attorneys fees in the approximate amount of $140,000; $24,000 due for the 1985 through 1987 taxes on the Lakeland Property; and $75,000 in attorney fees which Respondent paid to attorney Hugh Smith for representation in a criminal matter involving Respondent in 1986. (RI, TFB Exhibit

#1, pp.37-45). According to Rood, Jr.'s testimony, the total consideration paid by Respondent for the Lakeland Property in September, 1987 was $239,000. However, Respondent testified during the final hearing in this cause that he did not consider the $75,000 in attorney fees which he paid to Hugh Smith as consideration for the Lakeland Property; thus, if any consideration was paid, the maximum indirect consideration paid by Respondent to Rood, Jr. for the Lakeland Property in September, 1987 was $164,000. This sum was not adequate consideration for the property in light of the property's fair market value or "public sale" value in September, 1987. (See RI, TFB Exhibit 2.9 and TFB Exhibit #2.15).

In March, 1987, Rood, Jr., in a financial statement which he provided to a bank, (RI, TFB Exhibit #2.3(5)) claimed that the Lakeland Property was valued at 1.9 million dollars. On November 4, 1987, Respondent submitted a loan offering sheet to First Florida Bank (RI, TFB Exhibit #2.7) wherein he claimed that the Lakeland Property had a value of 1.9 million dollars. In addition, on March 31, 1989, Respondent entered into an Option to Purchase Real Estate with Walter J. Wright (RI, TFB Exhibit #2.8) with respect to the Lakeland Property. The purchase price for the property was 1.7 million dollars. The Florida Bar introduced into evidence an appraisal by Curtis Wheeler regarding the "quick sale" value of the Lakeland Property in September, 1987. (RI, TFB Exhibit #2.15). Mr. Wheeler's appraisal established that in 1987 the Lakeland Property had a "quick sale" value of between $989,400

and $1,154,300. In addition, Mr. Wheeler testified that the Lakeland Property had a fair market value of $1,450,000 (RI, TFB Exhibit #1, p.140 and TFB Exhibit #2.9). Even if, in 1987, the Lakeland Property had a value of $989,400, Respondent's maximum consideration of $164,000 was not adequate for the Lakeland Property.

The Referee's findings regarding Respondent's consideration for the Lakeland Property for 1987 are supported by clear and convincing evidence and should be upheld.

The Respondent also challenges the Referee's finding that the Respondent lied when he testified in an affidavit that at the time of the transfer of the Lakeland Property that he was unaware of the Michigan judgment. The evidence in this case showed that in December, 1986, Rood, Jr. was tried in Tampa on certain criminal charges. Rood, Jr. was acquitted of those charges, and the Respondent served as co-counsel at the trial. During the course of the trial, the State of Florida attempted to bring into evidence a certified copy of the judgment from the Michigan Alverson v. Rood case. Respondent vehemently argued before the court against the proffering into evidence of the judgment. (RI, TFB Exhibit #9, pp.13-16). The Respondent argues that he never saw the judgment during the criminal case. However, the record evidence establishes otherwise. (See RI, TFB Exhibit #9).

The Respondent argues that there is insufficient evidence to support a finding that he intended to assist his son in efforts to defraud his son's creditors of assets. The record evidence in this

case support such a finding.

On November 4, 1987 (less than two months after the fraudulent transfer), Respondent applied for and obtained a $500,000 to $1,000,000 line of credit from First Florida Bank. The Respondent gave the bank as security for the line of credit a first mortgage on the Lakeland Property. (RI, TFB Exhibit #2.7). In addition, on January 4, 1987, Respondent further encumbered the Lakeland Property by agreeing to assume a $100,000 debt of Rood, Jr.'s to First Florida Bank. The obligation was secured by a second mortgage on the Lakeland Property. Then, after Rood, Jr.'s judgment creditors sought and succeeded in having the conveyance of the Lakeland Property set aside as fraudulent, Respondent stopped making payment on the line of credit from First Florida Bank. As a result thereof, the bank instituted foreclosure proceedings which led to a public sale of the Lakeland Property. The bank purchased the property at the public sale for the sum owed by Respondent. (RII, Section II; TRI, pp.91-92).

During the final hearing in this cause, held on January 21, 1992, the Respondent and Rood, Jr. were asked about the ultimate disposition of the Lakeland Property. Rood, Jr. testified as follows in response to questions asked by Bar Counsel:

Q. Isn't it true, Mr. Rood, Sr., bought it back after the foreclosure sale?
A. I don't believe that's happened yet. The property is still registered in the Bank's name . . .
Q. The Bank owns the property?
A. The Bank owns the property.
Q. Your father is seeking to buy that property back from the bank?
A. That's something he's considering.
(TRI, pp.91, 93).

In addition, Respondent testified as follows in response to questions propounded by Bar Counsel:

> **Q. Is it a fact that you are negotiating now to purchase that property back for yourself?**
> A. Well, lets phrase it, the truth is, I owe First Florida $550,000 because of this line of credit. So I'm paying them off. That's my duty to pay them off and I am. I've paid within a few dollars of that already. (TRI, pp.169, 170).

After the Final Hearing, but prior to the discipline hearing in this cause, Bar Counsel discovered and introduce into evidence a quit claim deed which reflected that on November 4, 1991 (three months prior to the Final Hearing), First Florida Bank conveyed the Lakeland Property to Respondent in exchange for $564,299. (DTR, p.2; RI, Discipline Exhibit #1). It is obvious that the Respondent never recorded the deed so that neither Bar Counsel or the Referee would become aware of the fact that he again held title to the Lakeland Property. All of the foregoing facts which are supported by the record clearly establish that the Respondent intended to assist his son in defrauding creditors of his son's assets, specifically the Lakeland Property.

The Respondent argues that he did not intend to assist his son in defrauding creditors because he believed his son was going to win the appeal of the Michigan Alverson v. Rood case and because his son's insurance carrier had advised him that they would pay the judgment if the appeal of the same was not successful.

Respondent specifically testified during the Final Hearing that he did not know of the appeal of the Michigan Alverson v. Rood case until long after his son transferred the Lakeland Property to

him. (TRI, p.149, L.6-7). In addition to the foregoing, there was no evidence produced at the Final Hearing that Rood, Jr.'s insurance company advised Respondent that they would pay the Michigan judgment if they did not win the case on appeal, other than the testimony from the Respondent and Rood, Jr. The Respondent failed to call as a witness, the attorney or the insurance agent that advised him of the foregoing. In addition, the Referee found both the Respondent and Rood, Jr. to be unworthy of belief.

The actions of the Respondent and his son from the time the Michigan judgment was entered up to the time of the Final Hearing clearly establishes an intent to defraud creditors. All of the Referee's findings of facts and recommendations of guilt in this case are supported by clear and convincing evidence and should be upheld.

CONCLUSION

Based on the Bar's argument's and authority, in its Amended Initial Brief and in this Reply and Answer Brief, this Court should overturn the Referee's finding of not guilty in Count III of Supreme Court Case No. 78,795 as clearly erroneous; uphold the Referee's findings of fact and recommendations of guilt in Count I of Supreme Court Case No. 78,795 and Case No. 78,741; and disbar the Respondent for his misconduct in Supreme Court Case No. 78,741 and 78,795.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that the original of the foregoing Reply and Answer Brief of The Florida Bar has been furnished by regular U.S. Mail to Sid J. White, Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval, Tallahassee, Florida 32399-1927; a copy to Edward B. Rood, pro se, 200 Pierce Street, Tampa, Florida 33602-5084, and a copy to John T. Berry, Staff Counsel, The Florida Bar, Legal Division, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 9th day of December, 1992.

Bonnie L. Mahon

BONNIE L. MAHON