IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR, **CASE NO. SC10-332**

Complainant, **TFB NO. 2008-10,419(20A)**

v.

BRIAN GERARD DOHERTY,

Respondent.

_____/

AMENDED[1] FINAL REPORT OF REFEREE

PART ONE.

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed a referee to conduct disciplinary proceedings according to Rule 3-7.6, Rules Regulating The Florida Bar, the following proceedings occurred: the final hearing on guilt was held on July 27, 28, 29, 2010, and August 2, 2010. A Preliminary Report of Referee (PROR) as to guilt was issued on November 12, 2010. The Preliminary Report of Referee is incorporated herein and shall be considered as part of this Final Report of Referee. A hearing on sanctions was held

[1] After having been advised by the complainant of an apparent scrivener's error in my Final Report of Referee of December 17, 2010, I find that an earlier version of the report has been distributed to the Court and counsel. I now make this Amended Final Report of Referee. I deeply apologize to the Court, Mr. Paul, Mr. Corsmeier, and to Mr. Doherty.

on December 8, 2010. All hearings were held in Sarasota County, Florida. The parties presented testimony, documentary evidence, argument, and memoranda to the referee. Pleadings, responses, exhibits[2] received in evidence, transcripts,[3] the Preliminary Report of Referee, and this Final Report of Referee constitute the record[4] in this case to be forwarded to the Supreme Court of Florida.

The following attorneys appeared as counsel for the parties:

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[2] In the course of preparing this final report, an email, dated December 16, 2010, was received, by which Respondent raised objections to notations made by Complainant on its Exhibit List. The notations show the bar's exhibits 19b, 19s, 19t, 19u, and exhibit 33 were admitted into evidence [without reservation]. Respondent's counsel objected on the grounds that I had not admitted these items, but rather had reserved ruling.

My ruling at the sanctions hearing in essence overruled the objection in part and sustained it in part. So much of what Respondent testified to relative to the documents or what could be viewed as historical facts would be deemed admitted. The remainder of the content of these items [matters about which there would be no opportunity to cross-examine, for example, opinions made by absent individuals] would be deemed inadmissible. Respondent's counsel requested in the email that Complainant's counsel be directed to amend its Exhibit List. Given that such a direction could require further hearings, and given that my appointment as referee expires at end of business on December 17, 2010, I have chosen to resolve the issue by submitting this analysis. The Exhibit List will be permitted to stand in its current form. Respondent's objections are noted.

The several emails that memorialize discussions by the court and counsel for Complainant and Respondent are included in the Addendum, more particularly addressed in footnote 3, below.

[3] Because of shortness of time by which to complete all the items necessary to put together a complete package of the record, from the date of the sanctions hearing (December 8, 2010), and the deadline for my authority to complete this matter (today, December 17, 2010), a final transcript is absent in the package being sent to the Court, *i.e.*, the sanctions hearing. Counsel for the parties shall provide the transcript to the Clerk within 28 days from the date of this Report.

[4] The shortness of time has created an additional complication relative to putting together a complete package of the record. Complainant has provided a List of Exhibits. There are additional exhibits in my possession which are not listed therein. I include them at the very end of this Final report as an Addendum. All the transcripts of all the proceedings will demonstrate my rulings as to all exhibits.

There are also exhibits in the bar's list that I do not possess. They are TFB 23, TFB 49, and TFB 50. Counsel for the parties shall provide these items to the Clerk within 28 days from the date of this Report in order to supplement the record.

Finally, the bar provided to me its Proposed Final report of Referee. It has been included my Index of Record, at Tab 45.

For The Florida Bar: Henry Lee Paul
Chardean Mavis Hill

For The Respondent: Joseph A. Corsmeier

II. Findings of Fact as to Each Item of Misconduct With Which the Respondent Is Charged: See the Preliminary Report of Referee.

PART TWO.

I. SUMMARY OF SANCTIONS HEARING PRESENTATIONS

In a Preliminary Report of Referee, dated November 12, 2010, I found that Respondent had violated the requirements of Rule 4-1.8 and Rule 4-1.7, Rules Regulating The Florida Bar. A further proceeding on the matter of sanctions was conducted on December 8, 2010. Complainant filed a Memorandum of Law for Sanctions. Respondent had filed a Respondent's Memorandum on Appropriate Discipline. I heard sworn testimony from Respondent and Mrs. Debra Spencer, a daughter of Audrey Smith. Complainant and Respondent offered several documents into evidence.

In the course of Respondent's testimony, Complainant raised a number of matters, including several that pertained to documentary evidence. These, *inter alia*, included the following:

A. An order from the Supreme Court of New Hampshire, dated December 4, 1997, cited as *In re Doherty's Case*, 142 N.H. 446, 703 A.2d 261, wherein the Respondent was ordered suspended from the practice of law for two years. A reciprocal disciplinary suspension of two years was ordered by the

Supreme Court of Florida on July 2, 1998, in Case Number 92,440. Reinstatement was ordered by the Florida Supreme Court on March 13, 2001.

B. An order denying reinstatement to the Massachusetts bar, grounded upon a Hearing Panel Report, dated June 11, 2001, wherein issues were reviewed relating to the New Hampshire Supreme Court's suspension of Respondent from the practice of law, and the Respondent's licensure with several entities of a governmental nature and several securities-industry related professional organizations:

1. The National Association of Securities Dealers, Inc.
2. The Certified Financial Planners Board of Standards, Inc.
3. The International Association of Financial Planning.
4. The 'securities department' of the State of Illinois.
5. The Connecticut Department of Banking.
6. The Florida Department [of] Banking and Finance.

C. A Stipulation and Consent Agreement before the Florida Department of Banking and Finance, Division of Securities and Investor Protection, entered in September 2002.

D. A data compilation relative to Respondent's filings for licensure with the investment industry, as of November 21, 2006.

E. Evidentiary issues relating to Life Insurance Agents Professional Liability Applications, bearing Respondent's name as applicant, as follows:

1. A new policy, number RHC05-23641, underwritten by Houston Casualty Company, for a period from 08/01/2006 to 08/01/2007.
2. A new policy, number LIA-6601420, underwritten at Lloyd's, for a period from 08/01/2007 to 08/01/2008.

3. A renewal policy of number LIA-6601420, number LIA-6603707, underwritten at Lloyd's, for a period from /8/01/2008 to 08/01/2009.

4. An email, dated July 10, 2008, from Respondent, pertaining to the potential of a claim being asserted against him.

Respondent's documents were affidavits from a number of individuals, attesting to his good character and fitness to practice law.

Along with arguing the relevancy of the documentary evidence, counsel for Complainant pressed the dishonest or selfish motives of Respondent, emphasized his refusal to acknowledge his wrongful conduct, and asserted that Respondent abused his trust obligations in the face of Mrs. Smith's vulnerability and her declining health. Meantime, counsel for Respondent argued that, at worst, Respondent merely acted negligently in the representation of Mrs. Smith, held no improper or selfish motives, took steps to insure compliance with the rules regulating the bar, fully cooperated with the proceedings against him, and should not be held for discipline on account of the New Hampshire suspension due to its remoteness. Counsel urged that Respondent had good character and was fit to practice law and that he exhibited remorse for his conduct.

II. RECOMMENDED SANCTIONS

I recommend that Brian Gerard Doherty be disbarred. I do not recommend that the disbarment be permanent. I make this recommendation after considering all the evidence, arguments of counsel, and relevant legal authorities.

The Complainant had recommended disbarment. The Respsondent had recommended a reprimand.

A. The Evidence At The Sanctions Hearing.

1. *The New Hampshire bar suspension*. The facts and circumstances of Respondent's suspension are set forth in the Court's opinion. In summary, in February 1991, Respondent agreed to represent Joanna and Donald Ducey in a personal bankruptcy action in the United States Bankruptcy Court for the District of New Hampshire. He accepted a $10,000.00 retainer towards a total fee of $15,000.00. Upon receipt of the $10,000.00, Respondent deposited the money in his general office account, rather than into a separate client trust account, and began using the funds for his own purposes, despite an obligation to comply with certain requirements, in order to properly accept fees in a bankruptcy action. The procedures required that Respondent file an application to be employed as counsel for the Duceys, that he obtain approval to accept the funds, and that he disclose his acceptance of additional post-petition fees. Respondent failed to conform his actions to these requirements. In July 1991, Respondent informed the Duceys that he was relocating to Florida. The Duceys retained new counsel. In September 1991, Respondent petitioned for leave to withdraw as counsel. In October 2001, Respondent filed a Motion for Allowance of Attorney's Fees Nunc Pro Tunc, claiming fees and expenses of approximately $14,290.00. Respondent took the position that the retainer had been earned-upon-receipt, and was not refundable. The bankruptcy court granted Respondent's motion to withdraw, but denied Respondent's claim for fees and ordered that Respondent return the $10,000.00 to the Duceys. Respondent refused to disgorge the funds, filed an appeal with the United States District Court for the district of New Hampshire, but thereafter failed to pursue the appeal as it was dismissed on August 3, 1992. In April 1992, Respondent filed his own personal bankruptcy action, in which he sought to have

the $10,000.00 debt owed to the Duceys discharged. The bankruptcy court held that the debt was not dischargeable and that there was no such things as a non-refundable, earned-upon-receipt retainer for an attorney undertaking representation of a debtor in a bankruptcy proceeding. In February 1996, Respondent disgorged the funds, almost four and a half years after the order instructing Respondent to return the $10,000.00 fee to the Duceys.

a. Among the many matters that are of note, two are pertinent here:

i. The up-front payment. Respondent took the fees from his clients under the banner of an "earned-upon-receipt" retainer.

Commentary. I find that there is a similarity between the "earned-upon-receipt" bankruptcy retainer and the fees Respondent billed Mrs. Smith for future services related to the educational trust he had authored for her. Having previously concluded that this advance payment by Mrs. Smith was exceptionally generous, I had found in the preliminary report of referee no rule violation on the question whether Respondent had knowingly acquired a pecuniary interest adverse to his client.

That finding, though I do not set it aside, is now cast in doubt. The earned-upon-receipt stance taken by Respondent in the Ducey matter provided legal cover for him to claim immediate access to funds that he was straight away ordered to disgorge. The suspicion surfaces whether the fee charged to Mrs. Smith for services *in futuro* was simply a like attempt to provide legal cover for obtaining immediate access to her funds.

ii. Compliance with a court order. Respondent failed for more than 4 years to comply with a bankruptcy judge's extant, lawful, and un-overturned order of disgorgement of the self-styled 'earned-upon-receipt fees' until he finally relented

in February, 1996. This point in time (February 1996) holds substantial significance because Respondent's undertaking to disgorge came only one month after the January 17, 1996, New Hampshire Supreme Court Committee on Professional Conduct evidentiary hearing relative to Respondent's conduct as the Duceys' counsel.

Commentary. I find that this course of conduct reflects poorly on Respondent's fitness to practice law. It displayed a disregard for the judicial process.

2. *Representations to securities-related professional organizations*.

Respondent failed to disclose the existence of tax liens/judgments, despite being required to do so, on his 2/13/92 and 4/24/96 filings of Form U-4, a uniform application for securities-industry registration. He finally did so, *per* a 5/15/96 entry to his CRD, also a securities industry document. He likewise chose not to disclose to securities authorities that he was the subject of complaint, *i.e.*., the bar complaint before the New Hampshire Supreme Court, until his 2/13/98 filing.

Commentary. I find that a failure to be forthright in matters pertaining to a discrete area of professional licensure casts doubt upon his fitness to practice law while simultaneously maintaining a wealth management practice. It also raises an issue of Respondent's credibility.

I find that no other conclusions may be drawn, relative to Form U-4 or the filings with the Certified Financial Planners Board of Standards, Inc.; the International Association of Financial Planning; the 'securities department' of the State of Illinois; or the Connecticut Department of Banking. There is simply too little data upon which to draw conclusions.

3. *The ‘error and omissions’ insurance coverage*.

Three completed applications, listed above, were presented at the sanctions hearing, each containing the representation that the applicant had not undergone a suspension of professional licensure. The form of the applications did require on the final page that it be signed by the applicant. In each instance, the applications went unsigned.

Respondent testified at the December 8, 2010, sanctions hearing that he did not prepare the applications; and, while agreeing that an insurance policy was issued based upon the application, he testified that he did not know of any error and that the company had not send it to him to ask him to sign it.

Commentary. I reject Respondent’s testimony. I do so for several reasons. First, a detailed examination of the historical facts contained in three documents circumstantially shows by clear and convincing evidence that the person who originated the particularized information relative to the applicant could only have been the Respondent:

a. The 08/01/06 to 08/01/07 application itemized that there was no currently held error and omission coverage; that Respondent was the applicant as identified by name and by his DBA, his address, phone number, fax number, and email address; that no professional liability claims had been made against the applicant within the past 5 years; that $120,000.00 totaled the commissions for the preceding 12 months and $120,000.00 the expected commissions for the next 12 months; that the percentage of revenue was 50% life – individual, 25% fixed annuities, and 25% equity indexed annuities; that the top 3 companies with whom the applicant placed his business together with percentage of revenue for each were

John Hancock – 50%, National Western Life – 25%, and NACOLAH – 25%; that the applicant had no current error and omission coverage; that the applicant chose not to have prior-acts coverage; and that the applicant had chosen specific amounts for limits on liability and deductible.

b. The form of the 08/01/07 to 08/01/08 application sought the same categories of information as did the form of application for the preceding year. The entries to the completed application contained the same information relative to identity of the applicant, the negation of professional liability claims against the applicant, the total commissions, and that the applicant chose identical limits on liability and deductible.

There were entries that were different from the preceding year's application: for example, that the percentage of revenue had changed to 50% life – individual, 10% fixed annuities, and 40% equity indexed annuities from the same top 3 companies, John Hancock – 50%, National Western Life – 10%, and NACOLAH – 40%; and that the applicant did have current error and omission coverage through Houston. Interestingly, an entry indicated a request for prior-acts coverage.

c. The form of the 08/01/08 to 08/01/09 application sought the same categories of information as did the form of application for the preceding two years. The completed application contained much the same information as the preceding years' applications, except the percentage of revenue had changed to 75% life – individual, 5% fixed annuities, and 20% equity indexed annuities, and the number of companies increased to 5 with the result that the percentage ratio decidedly changed as follows: John Hancock - 35%, National Western Life - 5%, NACOLAH - 25%, AVIVA - 20%, and Midland National - 15%; and there was

an entry that showed that there was error and omission coverage, with OMEGA rather than with Houston Casualty.

As we follow the thread of information contained in these successive, completed applications, it is apparent that they have an internal, progressing, and nuanced coherence from which it is necessary to conclude that an individual with knowledge of the particulars must have supplied the minutiae in these applications over the course of three years. The conclusion is manifest that Respondent had to have been the source of the running details of his sole practitioner's business.

Respondent did not say or imply that absolutely none of the details of the information was correct. Nor did he assert or imply that absolutely none of details of the information came from him.

Second, Respondent sent an email, dated July 10, 2008, to his carrier's representative. The email supplemented the renewal application for coverage from 08/01/2008 to 08/01/09, policy number LIA-6601420. In it, Respondent disclosed the potential for a claim against him originating with his pursuit in probate of an unpaid $3,500.00 fee for his past services as personal representative of Mrs. Smith's estate. Respondent allowed, in the email, that it was his obligation under the policy to report the matter to his carrier.

Pertinent to the current issue as to the question, whether it was Respondent who was supplying the carrier with the details stated in the several applications, is the fact the Respondent specifically stated in the email that he had gone on-line to renew his policy. Several conclusions follow from this statement.

By going on-line, it is readily explainable that each of the applications should contain no signature of the Respondent's. By engaging the use of the internet whereby Respondent employed electronic communication as a means of

transacting business with an insurance agent, it is clear that he need not have signed a hardcopy of the application in order to have submitted it. Submission of the application does not necessarily rest on the signing of a document.

Next, implicit in Respondent's email was the obvious declaration that, in the act of renewing the policy, it was he who was the individual typing out on a computer key-board the answers to the questions posed in the application for renewal.

Next, the point that Respondent made, that the company had not sent him the application to ask him to sign it, warrants some attention. I find it awkward if Respondent was implying that he placed the gist of his position on the fact that the form of application contained the requirement of a signature. Does that mean that representations made by an applicant carry any different weight if the form had not contained the signature line, and the warrant and misrepresentation provisions?

I also find it awkward if Respondent was implying in this testimony that if the company had sent the application to him and he had signed it with the error in place, he would then deem it to be binding on him for purposes of these proceedings. Casting away responsibility for the contents of the application on the basis that he did not sign the document failed to give due meaning to the probative value of the misrepresentation for purposes of these disciplinary proceedings. The context was very important here.

We were in the midst of the sanctions portion of a disciplinary proceeding relating to his former client, Mrs. Smith. The guilt portion, in part, dealt substantively with issues concerning a failure to follow Florida Bar Rule requirements of written disclosure. The sanctions portion concerned all relevant issues that could be raised under the Florida Standards for Imposing Lawyer

Sanctions. Respondent's sworn disavowals of responsibility for the three applications for professional liability coverage were, in my view, dismissive of the gravamen of the circumstances.

Separately, I find it awkward if Respondent was implying that he was unaware of the error simply because he had not physically received a hard copy of the application. Surely, an acknowledgement of the responsibility that the representations in the several application did in fact emanate from the Respondent/applicant, for purposes of these proceedings, would be understood by Respondent to be laid at his doorstep irrespective whether he would have received a hard copy or whether he simply was engaging the opportunity to review it electronically when making a renewal request.

Respondent's own words then, together with the content of the applications themselves and the context of the proceedings, support a finding, which I make, that Respondent did not testify truthfully in the course of the December 8, 2010, sanctions hearing when he denied that he was the individual who three times falsely reported "No" to the question, Has the applicant ever had any professional license terminated or suspended? Respondent has presented himself as wholly absolved of responsibility. I find that such an approach missed the mark as to the nature and substance of these proceedings.

Next, Respondent's decision to misrepresent whether there had been prior suspensions has been demonstrated, in my view, to have been willful and intentional. The fact that he had made misrepresentations of a comparable character to securities-related professional organizations in the 1990s is highly probative that he did so in these three applications.

I conclude that Respondent's sworn denial severely damages his credibility. I also find that his sworn denial reflects poorly on Respondent's fitness to practice law as it displays a disregard for the judicial process, not too dissimilar to the disregard that I find having occurred when Respondent failed, for more than four years, to comply with the un-overturned order of disgorgement by the New Hampshire bankruptcy judge in the Ducey matter.

4.*The vulnerability of the client, Mrs. Audrey Smith*.

In a number of matters, I made favorable findings at the preliminary report stage, both explicit and implicit, relative to Respondent's interactions with Mrs. Smith. And, I refrained from drawing negative conclusions in this regard, thus leaving Respondent's testimony about the matter intact. My approach was based upon an acceptance of the truthfulness of his testimony during the final hearing. Consider the following:

a. Respondent's actions on behalf of Mrs. Smith were pursuant to her express wishes to return to Conseco/Washington National products, as he sought to secure for her annuities that were within her "comfort" zone during this time of travail.
b. Mrs. Smith's diagnosis of cancer, together with her declining health, prompted Respondent to be highly motivated to simplify her life through reducing the number of annuities, prompting the change-over purchase of Conseco/Washington National annuities.
c. Respondent had a good faith belief that his planned sale and concomitant purchase of an annuity was not functionally related to the practice of law and was not a business transaction within the scope of bar rule 4-1.8(a).

Commentary. These views of Respondent's testimony are cast in doubt. I conclude that Respondent's sworn disavowal at the sanctions hearing that he was the person who had been responsible for authoring the denial of past professional licensing suspension has caused, in my view, severe damage to his credibility.

5.*Respondent's conduct causing injury*.

Respondent plainly had an intimate knowledge of the family members of Howard J. Smith and Audrey B. Smith, and could foresee whatever potential there might have been for family disputes arising from the structure of the estate planning he authored, including installing himself as successor trustee and personal representative rather than family members.

During these proceedings, Respondent testified that he was simply following the express wishes of his client, Mrs. Smith. Complainant has argued that Respondent's actions have created havoc for the family members, the obvious example of which was the caveat filed against him.

Commentary. I do not place substantial weight on this issue.

B. <u>The Sanction</u>. I recommend that Respondent be disbarred. I begin by noting the Florida Standards For Imposing Lawyer Sanctions. The Court has indicated that these standards provide "a starting point" in the deliberative process. *The Florida Bar v. Cox*, 794 So.2d 1278 (Fla.2001). Standard 1.1 states the purpose of lawyer disciplinary proceedings:

> "The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to discharge their

professional duties to clients, the public, the legal system, and the legal profession properly."

Id. I find that the totality of the facts and circumstances of Respondent's conduct as presented in this record demonstrate by clear and convincing evidence that Respondent has failed to discharge his professional duties to his client, Audrey B. Smith, the public, the legal system, and the legal profession properly.

Further, under Standard 4.3, I find that the Respondent has failed to avoid a conflict of interests. *See* the recommendations I made in the Preliminary Report of Referee relative to Rule 4-1.8 and Rule 4-1.7, Rules Regulating The Florida Bar.

Under Standard 6.11, I find that Respondent, with the intent to deceive the court, knowingly made a false statement.

Under Standard 7.1, I find that Respondent intentionally engaged in conduct that was a violation of a duty owed as a professional with intent to obtain a benefit for himself, and that caused potentially serious injury to the public or the legal system.

Under Standard 9.22(a), I find the prior New Hampshire suspension to be an aggravating factor.

Under Standard 9.22(b), I find a selfish motive on the part of Respondent insofar as placing his own pecuniary interest as paramount as his client's.

Under Standard 9.22(g), I find that Respondent's sworn sanctions-hearing disavowal of the representations to professional liability carriers severely undermines his other sanctions-hearing testimony wherein he asserted that he has acknowledged, and learned from, the wrongful nature of his past conduct.

Under Standard 9.22(i) I note that Respondent was admitted to the practice of law in Massachusetts in June 1978, New Hampshire in November 1978, and

Florida in April 1987. I find that Respondent has had substantial experience in the practice of law at all times relevant to these proceedings.

Under Standard 9.32(d), I find that Respondent's proffer of an asserted timely and good faith effort to rectify consequences of misconduct to be severely undercut.

Under Standard 9.32(e), I find that any assertion from Respondent that there has been a cooperative attitude in these proceedings to be severely weakened.

III. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED. The Florida Bar filed a timely Motion to Assess Costs. The Florida Bar and Respondent agreed to the imposition of the following costs, which I find were reasonably incurred by The Florida Bar:

Bar Counsel Costs:

Henry Lee Paul, Bar Counsel

Attend Referee Hearing on 6/23/10	
Mileage: 106 miles @ .50 cents per mile	$ 53.00
Tolls	$ 2.00
Meals (lunch)	$ 33.80
SUBTOTAL	$ 88.80
Meet with Witnesses on 7/21/10 in Fort Myers	
Mileage: 240 miles @ .50 cents per mile	$ 120.00
Tolls and parking	$ 11.00
SUBTOTAL	$ 131.00
Attend Final Hearing 7/26/10 through 7/29/10	

Mileage: 106 miles @ .50 cents per mile	$ 53.00
Meals (breakfast, lunch, dinner)	$ 81.85
Lodging	$ 279.00
Tolls	$ 2.00
Copies	$ 26.58
SUBTOTAL	$ 442.43
Attend Final Hearing on 8/2/10	
Mileage: 106 miles @ .50 cents per mile	$ 53.00
Meals (lunch)	$ 7.47
Tolls	$ 2.00
SUBTOTAL	$ 62.47
Attend Final Hearing on 11/4/10	
Mileage: 106 miles @ .50 cents per mile	$ 53.00
Tolls	$ 2.00
SUBTOTAL	$ 55.00

Chardean M. Hill, Attorney

Attend Final Hearing 7/27/10 through 7/29/10	
Mileage: 420 miles @ .50 cents per mile	$ 210.00
Meals (lunch)	$ 25.93
SUBTOTAL	$ 235.93
Attend Final Hearing on 8/2/10	
Mileage: 140 miles @ .50 cents per mile	$ 70.00
Meals (lunch)	$ 7.41
SUBTOTAL	$ 77.41

Investigative Costs:

Karen Brown (5/25/10 - 6/2/10)

Personally serve subpoena duces tecum upon Registered Agent for North American Company for Life and Health Insurance and Chief Financial Officer for Washington National Insurance Company

Mileage: 12 miles @ .50 cents per mile $ 6.00

Karen Brown (6/18/10)

Personally serve subpoena duces tecum

Mileage: 8 miles @ .50 cents per mile $ 4.00

James O. Trotter (7/9/10)

Personally serve Witness Subpoena upon Andrea Louise Moore Moskowitz, Naples, Florida and Stephen and Debra Spencer, Fort Myers, Florida

Mileage: 26 miles @ .50 cents per mile $ 13.00

The Florida Bar Investigator Time:

Karen Brown (4.75 hours)	$ 118.75
Jeffery C. Satchwell (0.60 hours)	$ 16.20
James O. Trotter (20.50 hours)	$ 533.00
SUBTOTAL	$ 667.95

Court Reporter Costs:

Demby & Associates, Inc.

Appearance at Case Management Conference 4/15/10	$ 70.00
Accurate Reporting of Indiana	
Appearance at Deposition of Witness, Christy Wilson 7/14/10	$ 85.00
Transcript of Wilson Deposition	$ 225.44
SUBTOTAL	$ 310.44
Accurate Reporting of Indiana	
Appearance at Deposition of Witness, David Rikkers 7/22/10	$ 85.00
Transcript of Rikkers Deposition	$ 72.44
SUBTOTAL	$ 157.44
Clark Reporting Service	
Appearance at Deposition of Brian Doherty 7/9/10	$ 200.00
Transcript of Doherty Deposition	$ 435.50
SUBTOTAL	$ 635.50

Witness Costs:

The Florida Bar – Reimbursement for State of Florida, Department of Finance, checks for fees to Corporate Representative for Conseco Insurance Company, Corporate Representative for Washington National Insurance Company, and Christy Wilson c/o Conseco Insurance Company $ 45.00

Miscellaneous Costs:

The Florida Bar Copying Costs: $524.17

North American Company for Life & Health Insurance

Documents requested per subpoena

590 pages @ .10 per page	$ 59.00
TOTAL:	**$4,835.54**

It is recommended that all such costs and expenses be charged to the respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case become final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this _____ day of December, 2010.

_____

The Honorable Emanuel LoGalbo, Jr.,
Referee

Original to:

The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1925

Copies furnished to:

Henry Lee Paul, **Bar Counsel**, The Florida Bar, 4200 George J. Bean Parkway, Suite 2580, Tampa, Florida 33607-1496

Brian Gerard Doherty, Respondent, c/o Joseph A. Corsmeier, Respondent's Counsel, at Law Office of Joseph A. Corsmeier, P.A., 2454 N. McMullen Booth Road, Suite 431, Clearwater, Florida 33759

Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300

ADDENDUM LIST BY THE COURT

Additional documentary items.

1. TFB 19F, TRUST ACCOUNTING PURSUANT TO FS 737.3055 FOR THE SMITH REAL ESTATE TRUST u/a/d AUGUST 10, 2006, filed in the Probate Court for the Twentieth Judicial Circuit, Collier County, Florida.
2. TFB 19X, Statement for Legal Services – Educational Trust, on letterhead of Doherty Professional Association, dated August 10, 2006.
3. TFB 19Y, Statement for Legal Services – Real Estate Trust, on letterhead of Doherty Professional Association, dated August 10, 2006.
4. TFB 19Z, Statements of Doherty Professional Association relative to Audrey B. Smith, a total of 15 pages.
5. TFB 29, CRD printout as of 11/21/2006, a total of 23 pages.
6. TFB 39, AMENDMENT TO SALES REPRESENTATIVE AGREEMENT between Brian G. Doherty and Conseco Marketing, LLC, dated 16 March, 2006, one page.
7. Printouts of emails, showing the following interactions:
    a. December 15, 2010 11:32 am from bar's office to judge's office
    b. December 16, 2010 11:10 am from Mr. Corsmeier to judge's office
    c. December 16, 2010 11:53 am from judge's office to both sides
    d. December 16, 2010 2:30 pm from Mr. Corsmeier to judge's office
    e. December 17, 2010 7:22 AM from Mr. Paul to judge's office
    f. December 17, 2010 9:25 AM from Mr. Corsmeier to judge's office