IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

SC Case No. SC11-836
TFB File No. 2008-31,207(07B)

HENRY T. SWANN, III

Respondent.
_______________________________________/

INITIAL BRIEF

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SYMBOLS AND REFERENCES

In this brief, the complainant, The Florida Bar, shall be referred to as "The Florida Bar" or "the bar."

The transcripts of the final hearing held on November 14, 15, 16, 17 and 18, 2011 shall be referred to as "T" followed by the cited volume number and page number.

The Report of Referee dated February 9, 2012, will be referred to as "ROR" followed by the referenced page number(s) of the Appendix, attached. (ROR A____).

The bar's exhibits will be referred to as B-Ex.___, followed by the exhibit number. The respondent's exhibits will be referred to as R-Ex. _____, followed by the exhibit number.

STATEMENT OF THE CASE

The Seventh Judicial Circuit Grievance Committee "B" voted to find probable cause in this matter on January 22, 2010. The bar served its five count Complaint on April 28, 2011. The Referee was appointed on May 31, 2011. On July 27, 2011, the bar moved for an extension of time to file the Report of Referee to and including January 13, 2012 and, after it appeared this motion was not received and docketed by this Court, the bar served its amended motion for extension of time on October 17, 2011 seeking the same extension time period. On October 20, 2011, this Court entered its order granting the bar's amended motion for extension of time and directed that the Report of Referee be filed on or before January 13, 2012. The final hearing was held on November 14 through November 18, 2011. On December 7, 2011, the bar served its second motion for extension of time seeking until February 13, 2012 for the Referee to file his report. This Court granted the extension on December 16, 2011. The Referee served his report on February 9, 2012 wherein he recommended respondent be suspended from the practice of law for a period of 91 days with proof of rehabilitation prior to reinstatement and that he be assessed the bar's costs in this matter totaling $16,327.05. The referee recommended respondent be found guilty of violating the following Rules Regulating The Florida Bar: As to Count I, 3-4.3 for engaging in

conduct that was unlawful or contrary to honesty and justice; 4-1.7(b) for representing a client where his exercise of independent professional judgment was materially limited by his responsibilities to another client, a third person, or by his own interests; 4-3.4(a) for unlawfully obstructing another party's access to evidence or otherwise unlawfully altering, destroying or concealing a document or other material that he knew or should have known was relevant to a proceeding or for counseling or assisting another person to do any such act; 4-8.4(a) for violating or attempting to violate the Rules of Professional Conduct or for knowingly assisting another to do so or for doing so through the acts of another; 4-8.4(c) for engaging in conduct in connection with the practice of law that involved dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) for engaging in conduct in connection with the practice of law that was prejudicial to the administration of justice. As to Count II, 3-4.3 for engaging in conduct that was unlawful or contrary to honesty and justice; 4-1.7(b) for representing a client where his exercise of independent professional judgment was materially limited by his responsibilities to another client, a third person, or by his own interests; 4-5.3(b) (2005) for failing to make reasonable efforts to ensure he had in effect reasonable measures to ensure his nonlawyer employee's conduct was compatible with respondent's professional obligations, for failing to properly supervise his

nonlawyer employee, and for failing to take remedial action to avoid or mitigate the consequences of the nonlawyer employee's misconduct upon learning of it; 4-8.4(a) for violating or attempting to violate the Rules of Professional Conduct or for knowingly assisting another to do so or for doing so through the acts of another; and 4-8.4(d) for engaging in conduct in connection with the practice of law that was prejudicial to the administration of justice. As to Count III, 3-4.3 for engaging in conduct that was unlawful or contrary to honesty and justice; 4-3.4(a) for unlawfully obstructing another party's access to evidence or otherwise unlawfully altering, destroying or concealing a document or other material that he knew or should have known was relevant to a proceeding or for counseling or assisting another person to do any such act; 4-8.4(c) for engaging in conduct in connection with the practice of law that involved dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) for engaging in conduct in connection with the practice of law that was prejudicial to the administration of justice. As to Count IV, 3-4.3 for engaging in conduct that was unlawful or contrary to honesty and justice; 4-1.1 for failing to provide competent representation to a client; 4-1.7(b) for representing a client where his exercise of independent professional judgment was materially limited by his responsibilities to another client, a third person, or by his own interests; 4-1.8(a) for entering into a business transaction with a client wherein

they had differing interests; 4-8.4(a) for violating or attempting to violate the Rules of Professional Conduct or for knowingly assisting another to do so or for doing so through the acts of another; 4-8.4(c) for engaging in conduct in connection with the practice of law that involved dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) for engaging in conduct in connection with the practice of law that was prejudicial to the administration of justice. As to Count V, 3-4.3 for engaging in conduct that was unlawful or contrary to honesty and justice; 4-1.1 for failing to provide a client with competent representation; 4-1.7(b) for representing a client where his exercise of independent professional judgment was materially limited by his responsibilities to another client, a third person, or by his own interests; and 4-8.4(d) for engaging in conduct that was prejudicial to the administration of justice. In total, respondent was found to have engaged in five separate violations of rules 3-4.3 and 4-8.4(d), four violations of rule 4-1.7(b), three violations of rules 4-8.4(a) and 4-8.4(c), two violations of rules 4-1.1 and 4-3.4(a), and one violation of rules 4-1.8(a) and 4-5.3(b).

At its meeting ending March 24, 2012, the Board of Governors of The Florida Bar considered the Report of Referee and voted to seek an appeal of the referee's recommendation of a 91 day suspension and instead seek disbarment. The Florida Bar served its petition for review on April 4, 2012. Respondent requested

an extension of time of twenty days to file his cross-petition for review which The Florida Bar did not oppose.

STATEMENT OF THE FACTS

Respondent was found to have engaged in numerous acts of serious misconduct occurring between 2003 and 2007 that constituted multiple violations of the Rules Regulating The Florida Bar. All five counts of the bar's Complaint involved some aspect of respondent's personal behavior and two of these counts involved respondent's clients (ROR A4). Two separate circuit courts in different, unrelated cases found respondent's testimony to be evasive and lacking in credibility (ROR A5). Likewise, the referee found respondent's testimony at the final hearing to be contradictory either to the documents in evidence or to his previous testimony and/or statements (ROR A5).

Respondent breached his fiduciary duties as personal representative for his father's estate and/or as attorney-in-fact for his elderly mother by using $463,429.00 of estate funds/mother's funds for his personal investments, for a loan to his friend, and for his personal purposes and profit (ROR A4, A7, A10). Respondent commingled estate and non-estate assets in the checking account he opened for his father's estate and used these funds to pay non-estate related expenses related to his mother's care and to make "loans" to himself (ROR A8; T Vol. VII pp. 818-823). Specifically, respondent used the money from his father's estate and/or his mother to purchase four investment properties located in Florida.

He titled the investment properties in his own name or in the name of business entities he controlled (ROR A8). None of the investments were made in the name of his father's estate, in respondent's name as personal representative for the estate, in his mother's name, who was the sole beneficiary of his father's estate, or in respondent's name as trustee for his mother (ROR A8). Respondent twice testified under oath in his dissolution of marriage case and stated in his initial response to the bar that he invested these funds as personal representative for his father's estate for the ultimate benefit of his mother (ROR A8-A9). None of the investments were done to benefit respondent's mother or to increase his father's estate (ROR A10). Rather, respondent was intentionally structuring these transactions in such a way as to confuse ownership of the monies and/or assets, to confuse the entity responsible for capital gain taxes and to hide assets from his wife leading up to and during their dissolution of marriage (ROR A10). Respondent involved clients in his efforts to obscure the ownership of property purchased with monies from his father's estate and/or his mother (ROR A17-A20, A21).

Although respondent at one point characterized the funds he took from his father's estate and/or from his mother as loans (T Vol. VII p. 818), he did not create documentation memorializing these loans (ROR A10; T Vol. VII p. 821). There was no evidence that respondent paid either his father's estate or his mother

any of the profits from the investments that respondent estimated were worth approximately $900,000.00 as of December 9, 2005 (ROR A9-A10; B-Ex. 1 Tab 29 p. 119) or that he paid any interest on the “loan.” The only persons who profited from these investments were respondent and, later, respondent’s wife after she uncovered these assets during the discovery in the dissolution of marriage case (ROR A10).

Respondent violated his fiduciary responsibilities as closing agent for the sale of certain property known as Coquina Key by failing to timely disburse monies from the closing to satisfy an outstanding mortgage (ROR A15). Respondent bought Coquina Key using funds from his father’s estate and/or from his mother. The mortgage he obtained on the property had a due on sale clause and provided that the mortgage was assumable only after notice to and approval by the lender (ROR A14; B-Ex. 1 Tab 79 p. 11 paragraph 18). Respondent sold Coquina Key but waited 14 months after the closing to pay off the mortgage (ROR A15; B-Ex. 1 Tab 29 p. 124; B-Ex. 1 Tab 90; B-Ex. 1 Tab 96; R-Ex. 82 pp. 24, 32).

Respondent admitted at the final hearing that he could have paid off the mortgage on the day of the closing. He, however, used the money intended to pay off the mortgage for his own purposes (ROR A16). Respondent paid off the mortgage on Coquina Key with proceeds from the sale of another, unrelated

property (ROR A15; T Vol. VIII p. 896). Respondent testified, under oath, at the final hearing that, because the mortgage was not recorded by the lender, the buyers received clear title despite respondent's failure to pay off the mortgage at the closing (ROR A15-A16). The official records, however, contradicted respondent's testimony, as the lender timely recorded the mortgage as evidenced by B-Ex. 1 Tab 79.

Respondent also defrauded a lender by misrepresenting on the mortgage application the ownership of certain real property known as the San Mateo house (ROR A22). Respondent purchased the property in the name of First Coast Land and Title, LLC, an entity created in the name of his former client and girlfriend, Kadija Rhoualmi, but owned and controlled by respondent (ROR A21, A25, A26; Answer to Complaint; B-Ex. 1 Tab 76; B-Ex. 1 Tab 98; B-Ex. 1 Tab 99; R-Ex. 93; T Vol. VII p. 803; T Vol. VIII p. 918). He used funds belonging to his father's estate and/or his mother and some of his own personal and marital funds to purchase the San Mateo house (ROR A21; B-Ex. 1 Tab 27 pp. 63-64; B-Ex. 1 Tab 28; B-Ex. 1 Tab 29 pp. 105-106, 115, 130). Respondent transferred the San Mateo house to K. R. H. Investments, LLC, another entity he owned and controlled but created in Ms. Rhoualmi's name (ROR A22; B-Ex. 1 Tab 100; R-Ex. 91 p. 5). Despite having transferred the San Mateo house to K.R.H. Investments, LLC,

respondent obtained a $700,000.00 loan from a bank wherein he falsely stated on the application that the owner of the San Mateo house was First Coast Land and Title, LLC (ROR A22; B-Ex. 1 Tab 106; R-Ex. 91 p. 7).

Respondent knowingly assisted Ms. Rhoualmi in financially and emotionally exploiting William Shelton, Sr. (ROR A25, A26). Ms. Rhoualmi in April 2005 sent Mr. Shelton to respondent presumably with a zoning issue involving one of Mr. Shelton's properties. At the time of this consultation with respondent, Mr. Shelton was approximately 71 years old, in poor health with a long history of atherosclerosis affecting both his heart and his brain (ROR A-27; B-Ex. 1 Tab 1 pp. 3-5). The elderly gentleman, knowing that respondent was close friends with Ms. Rhoualmi, expressed his interest in dating Ms. Rhoualmi, who was more than 30 years his junior (ROR A26 - A27). Respondent did not advise his client that he had provided legal services to Ms. Rhoualmi nor did he reveal the true nature of his relationship with Ms. Rhoualmi (ROR A27). Mr. Shelton eventually began dating Ms. Rhoualmi.

During the course of her relationship with Mr. Shelton, Ms. Rhoualmi used a deed that indicated it was prepared by respondent to convey an interest in Mr. Shelton's valuable real estate to herself (ROR A27-A28; B-Ex. 1 Tab 14). Respondent paid the recording fee for this deed with a check drawn on his office

account (ROR A28; B-Ex. 1 Tab 24; T Vol. VIII pp. 944-945; T Vol. 1 pp. 72, 93-94). Respondent testified in the ensuing civil litigation brought by Mr. Shelton's family that his legal secretary either printed out the deed form and gave it to Ms. Rhoualmi to complete or she prepared the deed at Ms. Rhoualmi's request without respondent's assistance (ROR A28; B-Ex. 1 Tab 1 p. 5). Ms. Rhoualmi utilized a second deed, that appeared to be the same form as the one used by respondent, to transfer an interest to herself in additional valuable real property Mr. Shelton owned (ROR A29; B-Ex. 1 Tab 1 pp. 5-6; B-Ex. 1 Tab 15). This second deed appeared to have been prepared by respondent and/or his office (ROR A26; B-Ex. 1 Tab 14; B-Ex. 1 Tab 15). The civil court found Ms. Rhoualmi attempted to obtain Mr. Shelton's money and property with the "active assistance" of respondent (ROR A35; B-Ex. 1 Tab 1 pp. 3-4) and that respondent acted in concert with Ms. Rhoualmi to take advantage of Mr. Shelton (ROR A25; B-Ex. 1 Tab 1 p. 26).

Respondent's testimony of not having knowledge of his legal secretary's involvement in preparing the Shelton deeds and in preparing the check used to pay the recording fee for the first transaction was found by the referee not to be credible (ROR A29-A30; T Vol. VIII pp. 944-945). Likewise, the referee found that respondent lied to Mr. Shelton about the nature of his relationship with Ms.

Rhoualmi (ROR A27) and that respondent revealed his true relationship with Ms. Rhoualmi and his complicity in her schemes when he bragged to Mr. Shelton that he had Mr. Shelton's "girl" and land (ROR A31; B-Ex. 1 Tab 127p p. 4-5). Respondent continued to act in concert with Ms. Rhoualmi during the civil litigation, including communicating strategy with her attorney in the civil litigation (B-Ex. 1 Tab 24 document marked as Respondent's Exhibit 103-M to Lippes' August 25, 2011 deposition) and by acting as her attorney (B-Ex. 1 Tab 10 pp. 11, 18).

Despite being an officer of the court, respondent took actions prior to and during his dissolution of marriage to obscure his ownership of marital assets and to defraud a lender (ROR A37; B-Ex. 1 Tab 25; B-Ex. 1 Tab 125). As a result of respondent's actions, his wife's attorneys expended considerable efforts to discover marital assets that respondent had transferred to various entities that, on their face, appeared to be unrelated to respondent (ROR A37; B-Ex. 1 Tab 125). For example, respondent, who had purchased Ocean Hammock in his own name, transferred the property to Green Ville, LLC and thereafter to K. R. H. Investments, LLC, entities owned in the names of other people and which appeared unrelated to respondent (Answer to complaint; B-Ex. 1 Tab 91; B-Ex. 1 Tab 95). These entities, however, were controlled by respondent (Answer to complaint; B-

Ex. 1 Tab 28; B-Ex. 1 Tab 126; T Vol. VII pp. 846-847, T Vol. VIII pp. 886, -887) and he directed the actions of the named owners as they related to Ocean Hammock (Answer to complaint; T Vol. VIII p. 918; B-Ex. 1 Tab 126). Respondent transferred Ocean Hammock from one entity to another solely for the purpose of avoiding the filing of a *lis pendens* against the property by his wife (ROR A38; B-Ex. 1 Tab 29, pp. 39-41). Respondent then sold this property without advising his wife (ROR A38; B-Ex. 1 Tab 27 pp. 82-83; B-Ex. 1 Tab 29 pp. 5-6). Respondent took similar action with respect to transactions involving the San Mateo house when he purchased the property in an entity created in the name of his girlfriend but that he controlled (Answer to Complaint; B-Ex. 1 Tab 98; B-Ex. 1 Tab 99; R-Ex. 91 pp.1-4; B-Ex. 1 Tab 76; R-Ex. 93; T Vol. VII p. 803; T Vol. VIII p. 918).

Respondent's utilization of legal entities created in the names of Ms. Rhoualmi and another client, Christiane Martinot, required his wife to pursue civil action against Ms. Rhoualmi and Ms. Martinot and the entities associated with them (ROR A39). His wife also pursued respondent's sister, and all the entities respondent created due to respondent's intentional concealment of marital assets through purchases and/or transfers of real properties to these persons and entities (ROR A39). Respondent transferred several marital investment properties to his

sister and concealed his activities by sending the deeds to his mailing address rather than to his sister's address in Georgia (ROR A45; R-Ex. 80 p. 30; R-Ex. 84 p. 5).

Respondent's misconduct in his dissolution of marriage case included misrepresentations in his testimony during the Temporary Matters hearing on August 24, 2005. Respondent testified falsely regarding the transfer of the San Mateo house (ROR A43; B-Ex. 1 Tab 27 pp. 63-64; B-Ex. 1 Tab 98; B-Ex. 1 Tab 100; R-Ex. 91 pp. 3, 5). The court found respondent's testimony at the hearing to be "extremely evasive" and deemed him not to be a credible witness (ROR A40; B-Ex. 1 Tab 26). Respondent was also uncooperative with discovery requests and failed to file the required financial affidavit. He failed to produce any documentation regarding his income prior to the hearing on his wife's motion for temporary support (ROR A40). Respondent had bought and sold several parcels of property. There however was no evidence as to what exactly were respondent's holdings, in what entities they were held or if there were assets concealed outside the United States (ROR A40; B-Ex. 1 Tab 26). Based on respondent's testimony and evidence from the hearing, the court found respondent's finances murky.

Respondent forged his wife's signature to an application for a home equity line of credit in the amount of $150,000.00 (ROR A5, A41; B-Ex. 1 Tab 29 p. 86).

He obtained the funds and wrote a check to his business associate who in turn used the monies to purchase a mortgage Bank of St. Augustine had on respondent's law office (ROR A41-A42; B-Ex. 1 Tab 29 p. 94). Using the home equity line of credit in such a manner was contrary to the requirements set forth in respondent's marital separation agreement wherein it was agreed that the home equity line of credit would be used to pay the mortgage on the marital home (ROR A42; R-Ex. 52 p. 2). The business associate's mortgage was thereafter recorded and it appeared on the public record that respondent's law office condominium was encumbered by said mortgage. Respondent knew he did not owe his business associate anything (ROR A42; T Vol. VIII p. 869; T Vol. IX p. 1030) and that the mortgage was a sham.

Respondent mislead Bank of St. Augustine in another matter by obtaining a loan secured by the San Mateo house despite being aware that his wife had filed a notice of *lis pendens* against the property (ROR A42; B-Ex. 1 Tab 29 pp. 41-42). Shortly before the notice of *lis pendens* was filed, respondent transferred title of the San Mateo house to another of his legal entities and, as a result, his wife recorded the *lis pendens* against the wrong owner of the property (ROR A42; B-Ex. 1 Tab 29 pp. 41-42). Respondent did not disclose to the lender the existence of this *lis pendens* against the San Mateo house when he applied for the loan. Respondent's omission of a material fact resulted in the lender loaning money to

respondent secured by property that the lender believed was free of encumbrances (ROR A43; B-Ex. 1 Tab 29 pp. 41-42).

Respondent involved his client, Ms. Martinot, in business transactions involving assets of his father's estate and/or his mother. He never made the required conflict of interest disclosures to Ms. Martinot (ROR A47). He also involved her in his attempts to hide real property from his wife in the dissolution of marriage case (B-Ex. 1 Tab 93; B-Ex. 1 Tab 94; B-Ex. 1 Tab 95; B-Ex. 1 Tab 97; B-Ex. 1 Tab 125; B-Ex. 1 Tab 126), resulting in Ms. Martinot and her business, Green Ville, LLC, being sued by his wife (ROR A39, A52; Answer to Complaint; B-Ex. 1 Tab 125; B-Ex. 1 Tab 126). Respondent's use of Ms. Martinot's company also caused her concern regarding whether she might have any tax liability (ROR A50; B-Ex. 1 Tab 126). In addition to using Ms. Martinot and her limited liability company to hide real property from his wife, respondent used her to hide money so that his wife could not "take" it (ROR A51; B-Ex. 1 Tab 126). He provided Ms. Martinot with funds and requested she deposit the funds into her bank account for Green Ville, LLC., which she did (ROR A51; B-Ex. 1 Tab 126). Respondent also involved Ms. Rhoualmi, who was a former client and girlfriend, in transactions intended to hide assets from his wife in the dissolution of marriage case (ROR

A47-A48). As a result, Ms. Rhoualmi also was sued by respondent's wife (ROR A39).

In his capacity as personal representative of the Natalia Berwick Taylor probate estate and as trustee of the Natalia Berwick Taylor Trust, respondent took actions that personally benefitted himself and Ms. Rhoualmi without proper disclosure to the beneficiaries and without consideration as to whether it would benefit the estate or trust beneficiaries (ROR A52). One of the assets of the Taylor estate was a home located in St. Augustine, Florida. The respondent permitted Ms. Rhoualmi and Robin Monahan, another of his former clients, to live in the Taylor home either rent free or at a rental amount below fair market value without the knowledge or consent of the beneficiaries (ROR A52-A53; B-Ex. 1 Tab 46; B-Ex. 1 Tab 48; B-Ex. 1 Tab 51; Answer to Complain; B-Ex. 1 Tab 111 p. 2; B-Ex. 1 Tab 118 p. 4; B-Ex. 1 Tab 24 document labeled as Respondent's exhibit 103A to Lippes' deposition dated August 25, 2011; T Vol. I p. 120). Respondent's oral rental agreement with Ms. Monahan permitted her to live rent free for two months and thereafter to pay the monthly rent to Ms. Rhoualmi rather than to respondent (ROR A54; B-Ex. 1 Tab 24 document labeled as Respondent's exhibit 103A to Lippes' deposition dated August 25, 2011; T Vol. I p. 120). Although respondent had an obligation to protect the Taylor home from vandalism and keep it insured,

he also had a fiduciary duty to ensure the estate was receiving fair market value for the rental. Respondent failed to do so with his rental agreement with Ms. Rhoualmi and by permitting Ms. Monahan to pay her rent directly to Ms. Rhoualmi (ROR A54). Respondent's February 23, 2006 correspondence to one of the estate beneficiaries was misleading and did not fully disclose the circumstances regarding the rental of the Taylor home. (ROR A54; R-Ex. 97) He also did not disclose to the trust beneficiaries the full details of the rental arrangements (ROR A54; B-Ex. 1 Tab 62; R-Ex. 9 p. 6; R-Ex. 30 p. 1). Although the trust beneficiaries had no vested interest in the Taylor home, as Ms. Taylor's relatives, they expressed a particular interest in ensuring that her final wishes regarding her home were carried out pursuant to her will (ROR A55; B-Ex. 1 Tab 62; R-Ex. 30 p. 1; T Vol. II p. 154; T Vol. III p. 278). Respondent failed to provide the beneficiaries with a timely accounting of the trust assets and had no explanation for his delay in first contacting them after Ms. Taylor's death (ROR A55; B-Ex. 1 Tab 58; T Vol. VIII p. 970).

SUMMARY OF ARGUMENT

The referee found that respondent made repeated misrepresentations, some of which were under oath, violated his fiduciary duties, engaged in business transactions with clients wherein there were conflicting interests without making any disclosures to the clients, engaged in conduct that was prejudicial to the administration of justice by attempting to hide assets during his divorce, assisted his girlfriend in exploiting a former client he knew was elderly and particularly vulnerable, perpetrated fraud on several lenders and forged his wife's name on an application for a home equity line of credit. Based on the referee's findings of fact, the Florida Standards for Imposing Lawyer Sanctions, the available case law and the serious and cumulative nature of respondent's misconduct, disbarment is warranted.

As a general rule, this Court will not second-guess a referee's recommendation of discipline as long as the discipline is authorized under the Florida Standards for Imposing Lawyer Sanctions and has a reasonable basis in existing case law. *The Florida Bar v. Glueck*, 985 So. 2d 1052, 1058 (Fla. 2008). This Court's scope of review of a referee's recommendation as to discipline is greater than that afforded to the referee's findings of fact because this Court has the ultimate responsibility for ordering the appropriate disciplinary sanction. This

Court had dealt more harshly with cumulative acts of misconduct than with isolated instances of wrongdoing. *The Florida Bar v. Shankman*, 908 So. 2d 379, 386 (Fla. 2005). Respondent's cumulative acts of misconduct require harsher discipline than that recommended by the referee.

"A license to practice law confers no vested right to the holder thereof but is a conditional privilege that is revocable for cause." R. Regulating Fla. Bar 3-1.1. See also, *Petition of Wolf*, 257 So. 2d 547, 548 (Fla. 1972) (The license to practice law is a privilege, not a right. . .). The conditional privilege to practice law is encumbered by an attorney's obligation to uphold the high ethical standards of the legal profession. "Lawyers are officers of the Court and members of the third branch of government. That unique and enviable position carries with it commensurate responsibilities" [See *The Florida Bar v. Levine*, 498 So. 2d 941, 942 (Fla. 1986), dissenting opinion of Justice Ehrlich], conditions [See *The Florida Bar v. Massfeller*, 170 So. 2d 834, 839 (Fla. 1964)], and special burdens [See *State ex rel. Florida Bar v. Fishkind*, 107 So. 2d 131, 132 (Fla. 1958)]. Respondent has forfeited the privilege to practice law by his actions in this disciplinary case.

Cumulative misconduct may be found where an attorney engages in a course of conduct over a period of time involving multiple acts of misconduct, rule violations, and clients. *The Florida Bar v. Shankman*, 908 So. 2d at 386.

Respondent engaged in an ongoing course of misconduct over a period of four years involving acts in his personal life and conduct involving his clients. Most disturbing is respondent's pattern of untruthfulness, resulting in two different courts finding his testimony not to be credible. Respondent also needed to assert his Fifth Amendment rights in the Shelton case when questioned about his sexual relationship with Kadija Rhoualmi because he had lied during his divorce case about not having such a relationship with her (ROR A25). Respondent habitually used others for his own gain without remorse. Rather than accepting full responsibility for his misconduct in the Shelton and Taylor matters, respondent sought to cast blame on Harold Lippes, opposing counsel in those cases, and the person who initially brought the Shelton matter to the bar's attention (ROR A57). The referee found five aggravating factors and only one mitigating factor (ROR A72-A73). It is particularly troubling that two victims, William Shelton and respondent's elderly mother, were particularly vulnerable and susceptible to undue influence (ROR A73).

This Court long has held that "[i]t is essential to the well-being of the profession that every lawyer square his personal and professional conduct by the precepts of the Code of Ethics." *Dodd v. The Florida Bar*, 118 So. 2d 17, 21 (Fla. 1960). Those attorneys, like respondent, unable to do so should be disbarred.

ARGUMENT

ISSUE

WHETHER THE SERIOUS AND CUMULATIVE NATURE OF RESPONDENT'S MISCONDUCT WARRANTS DISBARMENT RATHER THAN THE REFEREE'S RECOMMENDATION OF A 91 DAY SUSPENSION

In recent years, this Court has moved toward imposing stronger sanctions for attorney misconduct. *The Florida Bar v. Herman*, 8 So. 3d 1100 (Fla. 2009). Here, respondent engaged in a course of misconduct extending over a four year period where he used others for his own financial gain and repeatedly lied about his actions. Of all respondent's acts of misconduct, his dishonesty is the most disturbing and, standing alone, warrants disbarment.

This Court has stated that it finds "it troubling when a member of the Bar is guilty of misrepresentation or dishonesty, both of which are synonymous for lying. Honesty and candor in dealing with others is part of the foundation upon which respect for the profession is based. The theme of honest dealing and truthfulness runs throughout the Rules Regulating The Florida Bar and The Florida Bar's Ideals and Goals of Professionalism." *The Florida Bar v. Poplack*, 599 So. 2d 116, 118 (Fla. 1992).

Two separate circuit courts in different cases found respondent's testimony to be evasive and lacking in credibility (ROR A5; B-Ex. 1 Tab 2 p. 2; B-Ex. 1 Tab

26 p. 1). Similarly, the referee found respondent's testimony at the final hearing to be contradictory either to the documents in evidence or to his previous testimony and/or statements and thus not credible (ROR A5).

The record is replete with respondent's lack of credibility, lack of candor and his propensity to switch positions in order to protect his own interests or to elevate his status in the eyes of others. For example, with respect to the funds from his father's estate and/or his mother, respondent was untruthful as to the source of the funds, the purpose for which he had the funds in his possession and the amount of money involved. Respondent misrepresented to his sister that he had invested the proceeds from their father's life insurance policy for their mother's benefit (T Vol. II p. 225). He varied his sworn testimony, depending upon the circumstances, regarding whether these investments were for his own benefit or for the benefit of his elderly mother (ROR A7). The facts, however, show that respondent, as personal representative of his father's estate and/or as attorney-in-fact for his mother, used the $463,429.00 (including the proceeds from the life insurance policy) for his own benefit (T-Vol.VII pp. 819-821; T Vol. XI p. 1046).

During a hearing in his dissolution of marriage case, respondent testified, under oath, that he borrowed $400,000.00 from his father's estate to purchase the Ocean Hammock investment property (B-Ex. 1 Tab 27 p. 80). This statement was

completely at odds with the representation to his sister that he was investing the money for their mother's benefit. Only a few months later, during his deposition in the same dissolution of marriage case, respondent testified, under oath, that he did not borrow any money from his father's estate to purchase the various investment properties but, instead, invested $463,000.00 on behalf of his mother as her fiduciary (B-Ex. 1 Tab 29 pp. 103, 105). He claimed that he had done this in order that his mother would have adequate monies for her current and future care. He even created a flow chart to show that the monies invested were not from marital funds, to indicate the actual properties purchased and to show that the profits from the investments were not his. Respondent contradicted his previous sworn testimony in the dissolution case. In addition, in his dissolution of marriage case, respondent testified that the money (the $463,249.00) invested had grown to a little over $900,000.00 (B- Ex. 29 p. 119) and that these gains belonged to his mother and not to himself (FB-Ex. 29 p. 129).

During the final hearing in these disciplinary proceedings, respondent claimed, for the first time, that his mother loaned him the money to use as he saw fit (T Vol. VII p. 818; T Vol. VIII pp. 931-932). He also indicated for the first time that the amount of money he took from his father's estate and/or his mother was $355,000.00 (T Vol. VII p. 820; T Vol. VIII p. 933) rather than $463,000.00 (T

Vol. VII p. 825). Respondent continued the contradictions in his testimony as it relates to the $400,000.00 he used to repay his mother. During the deposition in his divorce case, respondent testified that he deposited, or caused to be deposited, $400,000.00 to Green Ville, LLC's account in order to repay the $463,000.00 he had borrowed from his mother. Yet during the final hearing in this matter, respondent testified that he did not know why the $400,000 had been deposited to the account of Green Ville, LLC (T Vol. VIII p. 887). Respondent's propensity for lack of candor regarding his father's estate funds or his mother's funds consistently permeated the legal proceedings in which respondent was involved. Such breach of ethics is harmful to the administration of justice and detrimental to the public's perception of the legal profession. *The Florida Bar v. Rightmyer,* 616 So. 2d 953, 955 (Fla. 1993).

Respondent's lack of candor extended to the misrepresentations concerning the sale of the Ocean Hammock property that had resulted in the $400,000.00 payment to Green Ville, LLC. During the final hearing, respondent had no credible explanation why the sales proceeds from the Ocean Hammock property were deposited to the account for Green Ville, LLC, which no longer owned the property, instead of K. R. H. Investments, LLC, which was the record owner of the property. Respondent had orchestrated the transfer of the property from Green

Ville, LLC to K. R. H. Investments, LLC (T Vol. VIII pp. 887-888). Therefore, respondent clearly knew Green Ville, LLC was not entitled to receive the $400,000.00. Respondent's explanation, under oath, was that the deed transferring the property from Green Ville, LLC to K. R. H. Investments, LLC may not have been recorded (T Vol. VIII p. 887). The deed itself, B-Ex. 1 Tab 95, clearly showed it was recorded on August 5, 2005 at 8:26 AM and that respondent had prepared the deed. The deed transferring Ocean Hammock to E. C. N. Properties, LLC was recorded the same morning, only one hour later (B-Ex. 1 Tab 96), and indicated that it too, was prepared by respondent. Thus, respondent's sworn testimony was at odds with the documentary evidence.

Respondent made additional statements during the final hearing that were contradictory to the documentary evidence. He testified that Washington Mutual Bank had not recorded its mortgage on the Coquina Key property. Thus, when respondent sold the property, the buyers were able to receive clear title (T Vol. VIII p. 898). The mortgage, however, clearly showed it was recorded in the public records by the lender within days of its execution by respondent (B-Ex. 1 Tab 79). In addition, despite the mortgage having a due on sale clause and being assumable only after notice to and approval by the bank (B-Ex. 1 Tab 79 p. 11 paragraph 18), respondent sold the property without advising the bank of the sale nor of the fact

that he had taken a mortgage back from the buyers (B-Ex. 1 Tab 29 pp. 123-126; B-Ex. 1 Tab 86; T Vol. VIII pp. 894-898). Most troubling is the fact that, despite having received sufficient proceeds from the sale of the Coquina Key property, respondent did not pay off the Washington Mutual Mortgage immediately but waited fourteen months to pay off the mortgage using proceeds from the sale of an unrelated property (B-Ex. 1 Tab 29 p. 124; B-Ex. 1 Tab 90).

Respondent's testimony in his divorce case concerning marital and non marital assets were contradictory. During his deposition in the divorce case, respondent testified that his father's estate owned the San Mateo house and the promissory note from John Rainey Council (B-Ex. 29 p. 130). Yet respondent included these same assets, the San Mateo house and the Council promissory note, in the property settlement and support agreement as marital assets. This agreement was incorporated into the final judgment (B-Ex. 1 Tab 36). If these assets belonged to his father's estate, then respondent should not have included them as marital assets. Conversely, if these assets were marital assets, then respondent testified falsely under oath in an attempt to mislead the opposing party. Respondent's testimony can only be reconciled by accepting the premise that respondent will say whatever is expedient to protect his interest at the given moment or circumstance.

Respondent was not forthcoming regarding the true nature of his relationship with Ms. Rhoualmi during his dissolution of marriage case. During the support hearing in his divorce case, respondent testified that he and Ms. Rhoualmi were not lovers (B-Ex. 1 Tab 27 p. 110). During the civil litigation in the Shelton case, respondent needed to assert his Fifth Amendment rights when questioned about whether the relationship was sexual (ROR A25). Respondent's lack of honesty also was revealed during his testimony at the final hearing. He testified that he tried to sever his relationship with Ms. Rhoualmi in August 2005 after she returned to Florida from Europe and that he had little communication with her (ROR A33 – A34; T Vol. VIII pp. 941, 950-951). He, however, had admitted in his Answer to the bar's Complaint that, during this time, he had an ongoing friendship with Ms. Rhoualmi. He also testified, under oath, during his deposition in his divorce that Ms. Rhoualmi spent several days living with him in his San Mateo home in September 2005 (B-Ex. 1 Tab 29 pp. 9-10). Respondent's testimony at the final hearing that he did not begin speaking to Ms. Rhoualmi again until after Mr. Lippes included him as a party in the Shelton suit in 2006 (T Vol. VIII pp. 950-951) is contradicted by his sworn testimony during his deposition in his divorce concerning her residence in September 2005 (B-Ex. 1 Tab 29 pp. 9-10).

Despite the fact that respondent's misrepresentations and false testimony were made in connection with his personal matters, case law indicates that disbarment is an appropriate sanction. This Court has stated that it considers "a lawyer who intentionally lies under oath to have committed an extremely serious offense . . . that such conduct warrants severe discipline. . . ." *The Florida Bar v. Cibula*, 725 So. 2d 360, 364 (Fla. 1998). Although Mr. Cibula received a 91 day suspension for his testifying falsely under oath during contempt proceedings arising from his failure to pay alimony, he did not engage in the additional violations engaged in by respondent. Specifically, Mr. Cibula did not make misrepresentations to others or in the context of representing a client.

In *The Florida Bar v. Rightmyer*, 616 So. 2d 953 (Fla. 1993), an attorney was disbarred for pleading no contest to three counts of perjury arising from his deposition and trial testimony in a civil mortgage foreclosure suit and for failing to maintain his trust account in compliance with the Rules Regulating The Florida Bar. Although respondent was not charged with perjury, clearly he testified falsely under oath on multiple occasions and, similar to Mr. Rightmyer, it was in connection with personal matters. The fact that charges were not pursued against respondent does not mitigate the seriousness of his misconduct. "No breach of professional ethics, or of the law, is more harmful to the administration of justice

or more hurtful to the public appraisal of the legal profession than the knowledgeable use by an attorney of false testimony in the judicial process. When it is done it deserves the harshest penalty." *Rightmyer*, 725 So. 2d at 955.

In Count I of the bar's Complaint, respondent violated his fiduciary duties owed as personal representative of his father's estate and/or to his mother as her attorney-in-fact. Respondent personally benefitted from his use of his parents' money in making various profitable real estate investments. In Count V, he violated his fiduciary duties owed as personal representative and trustee of the Taylor estate and Taylor trust and his duties to the estate beneficiaries and to the trust beneficiaries. Respondent's girlfriend, Ms. Rhoualmi, and a former client, Robin Monahan, benefitted by being allowed to live in the Taylor home either rent free or for an amount below market value. Attorneys have been disbarred for violating their fiduciary duties not involving the practice of law.

In *The Florida Bar v. Della-Donna*, 583 So. 2d 307 (Fla. 1989), an attorney was disbarred for violating his fiduciary duties as personal representative for two estates and as trustee for related trusts. Mr. Della-Donna engaged in a course of conduct where he misused the judicial system for his personal advancement. Mr. Della-Donna's actions were motivated by his personal and financial self-gain and enrichment. His actions brought one beneficiary to the brink of financial ruin and

resulted in the diminishment of estate and trust assets. Similarly, respondent's use of his parents' money was for his own financial gain. He treated the money as if it was his own to do with as he pleased. Had his investments not been profitable, his father's estate and/or his mother likely would have recovered little, if any, of the money from respondent.

In *The Florida Bar v. Maynard*, 672 So. 2d 530 (Fla. 1996), an attorney was disbarred for his actions as trustee, in addition to other acts of misconduct. As trustee, Mr. Maynard made unsecured loans to himself from the corpus of a trust, as well as loans to other friends and employees of his law practice, all under the guise as being "good investments" for the trust that would garner higher returns than more prudent investments. Most, but not all, of the loans appeared to have been repaid, although Mr. Maynard was not able to provide a full accounting. Respondent, likewise, made an unsecured "loan" to himself and never provided a full accounting. Respondent loaned himself $463,429.00 either from his father's estate or from his mother's funds (T Vol. IX pp. 1043-1044). He made this "loan" at a time when he was personal representative of his father's estate and attorney-in-fact for his mother in violation of his fiduciary duties. Like Mr. Maynard, respondent repaid his "loan," although not in full and without interest (T Vol. VII pp. 825, 843-844; T Vol. IX pp. 1043-1044; R-Ex. 72; R-Ex. 74). Neither

respondent's father's estate nor his mother derived any benefit from this loan. In fact, his father's estate suffered the loss of investment income after respondent removed $161,698.55 on March 26, 2003 from his parents' brokerage account, leaving a balance of $54.86 (R-Ex. 68). Clearly, the loan to respondent was not a prudent investment for either his father's estate or his mother. Similarly with the Taylor estate, respondent's decision as personal representative to lease the Taylor home at no cost or below market value to his girlfriend and his former client was not a wise use of a significant asset of the estate.

In Count II, both the referee and the civil court in the action that gave rise to this grievance found that respondent assisted Ms. Rhoualmi in financially and emotionally exploiting William Shelton, an elderly and infirmed man. Mr. Shelton consulted with respondent regarding zoning issues for the real property that Ms. Rhoualmi later convinced Mr. Shelton to transfer an interest in to her. The civil court in the resulting litigation specifically found respondent's testimony lacking in credibility (B-Ex. 1 Tab 2 p. 2). Respondent's attempt to conceal from the court his involvement in Ms. Rhoualmi's actions was prejudicial to the administration of justice. Further, such conduct, when considered in conjunction with respondent's actions in his dissolution of marriage case, as set forth in Count III of the bar's Complaint and in conjunction with his other misrepresentations as set forth more

fully herein, warrants disbarment. Respondent attempted to obscure and conceal the ownership of marital assets for the purpose of defrauding his wife in the dissolution of marriage action (ROR A37, A38). Additionally, respondent's actions in transferring marital properties into various entities, that on their face appeared to be unrelated to respondent, and in utilizing marital assets for his own personal benefit was prejudicial to the administration of justice. Respondent's actions caused his wife to incur unnecessary attorney's fees and resulted in extensive legal actions, including filing civil actions against Ms. Rhoualmi, Ms. Martinot, and his sister, Karen Swann (ROR A39). Such misconduct has led to disbarment in other cases.

In *The Florida Bar v. Klein*, 774 So. 2d 685 (Fla. 2000), an attorney was disbarred for engaging in a course of conduct in connection with the practice of law that was prejudicial to the administration of justice. The misconduct arose during Mr. Klein's representation of his homeowner's association in various lawsuits and legal disputes. Mr. Klein's particular community was an older adult development that had deed restrictions which prohibited children. After the deed restriction amendments Mr. Klein prepared were legally challenged, he engaged in a course of conduct involving filing frivolous documents and proceedings, failing to respond to valid discovery requests, filing a bankruptcy petition for the

homeowner's association and then attempting to fraudulently transfer assets to a new legal entity he created. The purpose of the new legal entity was to avoid payment of the fees and costs assessed against the association in connection with Mr. Klein's failed litigation attempts.

Although respondent's misconduct was in his divorce case, his attempts to obstruct the orderly administration of justice are similar to Mr. Klein's misconduct. Mr. Klein's actions, like that of the respondent, were driven by his own interests in the outcome of the case and, like respondent, he lacked objectivity. This Court particularly was concerned about Mr. Klein's transfer of the association's funds, finding that such conduct evidenced dishonesty and a lack of fitness to practice and to uphold the law. Likewise, respondent's conduct in forging his wife's name on a home equity line of credit application, and thereafter using said money for his own benefit in contradiction to their separation agreement, overshadowed his obligation to uphold the highest standards of the profession. This Court found that disbarment was the only appropriate penalty for Mr. Klein's misconduct and should find likewise with respect to respondent's misconduct. Similar to Mr. Klein, respondent engaged in extensive efforts to transfer assets to entities created in the names of persons other than himself in an attempt to prevent his wife from reaching those assets. In aggravation, Mr. Klein, like respondent, was an experienced practitioner,

had a selfish motive, engaged in a pattern of misconduct and refused to acknowledge the wrongful nature of his misconduct. Additionally, Mr. Klein's client, the association, was in a vulnerable position because Mr. Klein was either an officer or member of the board of directors during the time period in question and he was indifferent to making restitution of the fees and costs assessed against the association as a result of his misconduct. In mitigation, Mr. Klein was quite elderly and suffered from serious health problems. Unlike Mr. Klein, respondent presented only his lack of a disciplinary history as mitigation at the final hearing.

In *The Florida Bar v. Kaufman*, 684 So. 2d 807 (Fla. 1996), an attorney was disbarred for his conduct in a civil case filed against him. Mr. Kaufman engaged in tactics intended to thwart discovery of his assets by testifying falsely about his assets and their whereabouts, by transferring his assets to another account, and by dissipating his assets. In aggravation, Mr. Kaufman engaged in dilatory conduct in an attempt to obstruct the orderly progression of the bar's disciplinary proceedings against him and had a prior disciplinary history. This Court found that Mr. Kaufman's misconduct involving fraud, perjury and deception warranted disbarment. Likewise, respondent's testimony was found not to be credible by the civil court in Mr. Shelton's case as well as by the civil court in his dissolution of marriage case. In the dissolution case, respondent clearly attempted to impede his

wife's ability to discover assets by not cooperating with discovery requests and by holding a significant amount of valuable real estate in the names of various limited liability companies he created in the names of other people but that he controlled.

With respect to Count IV, it is clear that respondent's serious misconduct warrants disbarment wherein he involved his client Christiane Martinot and her company, Green Ville, LLC, in various transactions intended to hide respondent's assets from his wife. His actions resulted in Ms. Martinot and Green Ville, LLC being named as parties to his dissolution of marriage case. In *The Florida Bar v. Crabtree*, 595 So. 2d 935 (Fla. 1992), Mr. Crabtree represented a client in a series of complex fiscal transactions intended to repatriate $1.5 million from Europe to the United States in such a manner that the true source of the funds would not be disclosed. There was no allegation that Mr. Crabtree's actions were illegal. In order to accomplish his client's directives, Mr. Crabtree involved another of his clients in numerous transactions designed to accomplish the repatriation of the funds. Mr. Crabtree took his fees and an interest in the transactions without fully explaining to his clients his part and share in the transactions. Nor did he fully disclose that they were all involved in the same transactions. Mr. Crabtree also wrote letters designed to mislead anyone who might investigate the transactions. In aggravation, unlike respondent, Mr. Crabtree had a prior disciplinary history.

Respondent was charged in both Counts IV and V with self-dealing to the detriment of his clients, Ms. Martinot and Natalia Taylor's estate and trust. Such misconduct can warrant disbarment, especially in light of the aggravating factor that this was an ongoing pattern and that respondent's use of Ms. Martinot, in particular, was designed to hide marital assets from his wife. Respondent made no written disclosures to Ms. Martinot regarding the potential conflict of interest in using her company, Green Ville, LLC. Nor did he make any written disclosure to the Taylor beneficiaries informing them that he had agreed to rent the Taylor home to his girlfriend and to a former client for little or no money. The beneficiaries had no way to discover that these rental agreements were not arm's length transactions.

In *The Florida Bar v. Swofford*, 527 So. 2d 812 (Fla. 1988), an attorney was disbarred for arranging for a usurious loan transaction in one matter and for making an unconscionable profit from the sale of a home he purchased from a client in a second matter. In the first case, Mr. Swofford arranged and prepared documents for a lender and advised him with regard to two loan transactions that were usurious. In the second case, he represented the personal representative for an estate where he agreed to purchase the decedent's home, a major asset of the estate, for considerably less than its fair market value. Mr. Swofford knew the purchase price was too low because, at the time he entered into the purchase

agreement with the personal representative, he already had a contract to re-sell the house for a considerable profit.

Respondent engaged in two instances of perpetrating a fraud on a financial institution. In Count I, the referee found respondent obtained a $700,000.00 loan from Bank of America secured by a home located in San Mateo, Florida, that respondent misrepresented was owned by First Coast Land and Title, LLC, respondent's solely owned business entity (ROR A22; B-Ex. 1 Tab 106; R-ex. 91 p. 7). Respondent knew at the time he made the loan application on September 22, 2005 that on June 27, 2005, he had conveyed the San Mateo home to another of his solely owned business entities, K. R. H. Investments, LLC (ROR A22; Answer to Complaint; B-Ex. 1 Tab 100; R-Ex. 91 p. 5). In Count III, the referee found respondent forged his wife's signature on an application for a home equity line of credit (ROR A41; B-Ex. 1 Tab 29 p. 86; B-Ex. 1 Tab 33; B-Ex. 1 Tab 111 p. 2) without advising the lender that he was signing his wife's name for her on the application (B-Ex. 1 Tab 29 p. 88).

Forgery, standing alone, can warrant disbarment. See *The Florida Bar v. Solomon*, 589 So. 2d 286, 287 (Fla. 1991), where an attorney forged his deceased mother's signature on a homestead tax exemption application and forged both his parents' signatures on a homestead application the following year. Further, this

Court has not hesitated to disbar attorneys who have made misrepresentations to lenders in order to obtain financing. In *The Florida Bar v. Cramer*, 678 So. 2d 1278 (Fla. 1996), an attorney was disbarred for perpetrating a fraud on a financial institution. After Mr. Cramer unsuccessfully attempted to obtain financing to lease office computer equipment, he signed, with consent, another person's name to two leases for the equipment. Mr. Cramer also falsely stated in the lease agreements that the individual named in the leases would be the recipient of the office equipment when, in fact, the true recipient was Mr. Cramer. The lender approved the financing based on Mr. Cramer's misrepresentations. Eventually the leases went into default. It was only after the lender sent the signatory on the leases a demand letter that the lender learned of Mr. Cramer's forgeries. Although the referee found Mr. Cramer had the individual's permission to sign his name to the leases, this fact did not exculpate Mr. Cramer, who knowingly made a misrepresentation of fact to the lender in order to obtain the leases he previously had been denied due to his financial condition. This Court found that, irrespective of whether other persons also were involved in the fraudulent scheme, respondent's actions violated the Rules Regulating The Florida Bar and warranted discipline. In mitigation, Mr. Cramer was suffering from serious health problems, cooperated during the final hearing and admitted the uncontested allegations.

These factors, however, were outweighed by the aggravation present, namely his prior disciplinary offenses for similar acts of misconduct, his initial failure to respond to the bar and his refusal to acknowledge the wrongful nature of his misconduct. This Court considered that, although Mr. Cramer was not criminally convicted for his actions, his "total conduct in this incident" coupled with his prior disciplinary history warranted disbarment. Although respondent does not have a prior disciplinary history, the sheer number of additional acts of misconduct and rule violations present here warrant the imposition of the severe sanction of disbarment rather than a 91 day rehabilitative suspension.

Two of the Florida Standards for Imposing Lawyer Sanctions found by the referee call for disbarment. Standard 4.61 provides that disbarment is appropriate when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another person regardless of injury or potential injury. Respondent deceived Mr. Shelton regarding respondent's true relationship with Ms. Rhoualmi and assisted her in obtaining Mr. Shelton's money and real property. Respondent's deception was solely for his benefit and that of his young girlfriend. In addition, respondent deceived the beneficiaries of the Taylor estate with respect to his rental of the Taylor house in that he was not forthcoming about the terms of the leases he entered into with his girlfriend and former client. Ms. Rhoualmi and

Ms. Monahan benefitted from respondent's actions at the expense of the Taylor estate. Respondent also deceived Ms. Martinot by manipulating her into agreeing to permit him to use her name and her limited liability company to hide assets from his wife. Respondent never advised her concerning any potential conflict of interest or of any potential that she and her company could be sued by his wife.

Standard 7.1 calls for disbarment when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public or the legal system. All of respondent's actions were for his own benefit or the benefit of his girlfriend. His course of conduct caused serious injury to the legal system through the institution of a significant amount of litigation concerning Mr. Shelton and a significant amount of litigation and discovery efforts by opposing counsel in respondent's divorce case.

As previously stated, the referee found five aggravating factors. Under Standard 9.22(b), there was a dishonest or selfish motive (ROR A72). Clearly, respondent's actions were taken to benefit either himself or his girlfriend. There was a clear pattern of misconduct under Standard 9.22(c) in that this was not an isolated instance of misconduct, but rather, an ongoing pattern of untruthfulness and self-dealing over a period of years. There were multiple offenses under

Standard 9.22(d), as the Referee found there were five separate counts of misconduct, all involving some aspect of respondent's personal behavior and two involving clients (ROR A4-A5). Two of the victims were particularly vulnerable under Standard 9.22(h) (ROR A73). Although respondent insisted his mother was competent, he testified under oath during his deposition in his dissolution of marriage proceeding that she suffered from Alzheimer's disease (B-Ex. 1 Tab 29 pp. 118-120). Such a condition can impair a person's judgment and make him or her susceptible to undue influence despite the fact the individual may still be legally competent. Certainly the circumstances surrounding respondent's use of more than $400,000.00 for his own benefit, without any documentation memorializing the loan by setting forth a repayment time frame or interest payments, brings into serious question the sufficiency of his mother's competency to agree to such terms. Mr. Shelton's vulnerability was adjudicated by the court during the guardianship proceedings and his susceptibility to undue influence was proven (B-Ex. 1 Tab 1). Finally, respondent has substantial experience in the practice of law under Standard 9.22(i) because he was admitted to The Florida Bar in 1975 (ROR A72; T Vol. VII p. 796). The only mitigating factor was respondent's lack of a prior disciplinary history under Standard 9.32(a) (ROR A73).

A judgment must be fair to society, fair to the respondent, and severe enough to deter others who may be tempted to become involved in like violations. *The Florida Bar v. Spear*, 887 So.2d 1242, 1246 (Fla. 2004), citing *The Florida Bar v. Lord*, 433 So. 2d. 983, 986 (Fla. 1983). The egregious nature of respondent's misconduct in this matter, in conjunction with the following cases, support the disbarment as the appropriate sanction. See *The Florida Bar v. Bennett*, 276 So.2d 481, 482 (Fla. 1973); *The Florida Bar v. Brown*, 905 So.2d 76, 82 (Fla. 2005); and *The Florida Bar v. Valentine-Miller*, 974 So. 2d 333, 338 (Fla. 2008), which uphold the proposition that attorneys are held to the highest ethical standards not only because the Rules of Professional Conduct mandate such a level of conduct, but more importantly, so as to not damage the public's trust in the legal profession.

CONCLUSION

When choosing to increase discipline recommended by a referee, this Court has stated that "if the discipline does not measure up to the gravity of the offense, the whole disciplinary process becomes a sham to the attorneys who are regulated by it." *The Florida Bar v. Wilson*, 425 So. 2d 2, 4 (Fla. 1983). The referee's recommendation of a 91 day suspension is disproportionate to the level of respondent's egregious misconduct. The nature of respondent's misconduct reflects adversely on the reputation and dignity of the legal profession and warrants disbarment.

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact and recommendation of a 91 day suspension and instead enter an order disbarring respondent and assessing in favor of the bar costs totaling $16,327.05.

Respectfully submitted,

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By:

____
Frances R. Brown-Lewis
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Brief and Appendix have been sent by regular U.S. Mail to the Clerk of the Court, The Supreme Court of Florida, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1927; a copy of the foregoing has been furnished by regular U.S. Mail to Respondent's Counsel, James Curtis Rinaman, Jr., at Marks Gray , P. A., Post Office Box 447, Jacksonville, Florida 32201-0447; and a copy of the foregoing has been furnished by regular U.S. Mail to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, this _______day of May, 2012.

Respectfully submitted,

____
Frances R. Brown-Lewis, Bar Counsel

CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN

Undersigned counsel does hereby certify that the Initial Brief is submitted in 14 point proportionately spaced Times New Roman font, and that the brief has been filed by e-mail in accord with the Court's order of October 1, 2004. Undersigned counsel does hereby further certify that the electronically filed version of this brief has been scanned and found to be free of viruses.

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Frances R. Brown-Lewis, Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. SC11-836
[TFB Case No. 2008-31,207(07B)]

v.

HENRY T. SWANN, III

Respondent.

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APPENDIX TO COMPLAINANT'S INITIAL BRIEF

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