IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

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

HENRY T. SWANN, III,

Respondent.
_____/

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On June 8, 2006, (R2); Harold S. Lippes, Esquire, filed a verified Complaint to the Florida Bar accusing Respondent of; 1. Potential criminal conduct; 2. Other potential criminal or dishonest conduct; 3. Breach of fiduciary duties; 4. Trust violations and other misconduct; 5. Other misconduct (B111): On July 10, 2006, Mr. Lippes filed a more detailed version of his Complaint with exhibits (R9). Most of Mr. Lippes accusations are included in the allegations of the Florida Bar in the Complaint filed herein against Respondent.

On May 3, 2007, the Bar filed a response to Mr. Lippes, with a copy to Respondent, advising that on the basis of a diligent and impartial analysis on all the information available as of this date, the Florida Bar has found no present basis for further inquiry and has found that none of the investigation resulted in the Respondent being prosecuted or being convicted. In regard to Mr. Lippes allegations about borrowing money from his father's estate, signing his wife's name to a mortgage, and his handling of the Natalie Taylor matter, the objective evidence of that is insufficient to support a determination that Respondent acted unethically; and that with respect to Mr. Swann's actions in the Shelton matter, the Bar believes that this matter is more appropriately addressed by a court of competent jurisdiction. If a court of competent jurisdiction makes a determination that Mr. Swann violated the law, the rules of attorney conduct, or in any way perpetrated a fraud, the Bar will be happy to revisit the matter. Based on the foregoing, this case is now closed. (R15)(T352-353).

On April 28, 2011, The Florida Bar filed its Complaint against Respondent in these proceedings. On November 14, 2011 through November 18, 2011, a final hearing was held in this matter.

The pleadings, notices, motions, orders, and transcripts, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case. Additionally, all items filed in evidence at the final hearing, including

recorded testimony and exhibits (herein the bar's exhibits will be referred to as TFB-Ex. 1 Tab____ and respondent's exhibits as R-Ex. ___) also constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

The following attorneys appeared as counsel for the parties.

For The Florida Bar - Frances R. Brown- Lewis and
Patricia Ann Toro Savitz
For The Respondent - James C. Rinaman, Jr.

B. Findings of Fact as to Each Item of Misconduct of Which the Respondent Is Charged: After considering all the pleadings and evidence, pertinent portions of which are commented on below and supported by the record evidence, this referee finds the following by the standard of clear and convincing evidence:

The referee heard testimony from the following witnesses who attended the final hearing in this matter: Harold S. Lippes and respondent, Henry T. Swann, III. The referee also considered testimony, by affidavit or deposition, from the following witnesses: Karen Swann (deposition, TFB-Ex. 1 Tab 40), Kadija Rhoulami (deposition, R-Ex. 59), Steven Brust (affidavit, TFB-Ex. 1 Tab 125),

Christiane Martinot (affidavit, TFB-Ex. 1 Tab 126), and Dan Coxwell (deposition, R-Ex. 57). Further, the referee considered respondent's Answer to the Complaint, sworn testimony taken in connection with his dissolution of marriage proceeding during a hearing on August 24, 2005 (TFB-Ex. 1 Tab 27) and during his deposition on December 9, 2005 (TFB-Ex. 1 Tab 29).

In addition to the testimony, the bar submitted one composite exhibit containing 126 documents and respondent submitted exhibits 1-104.

The Complaint in this particular matter contains five separate counts and each count involves some aspect of respondent's personal behavior. Two of the counts involve respondent's clients. Specifically, Count One pertains to respondent's breach of his fiduciary duties as the personal representative for his father's estate and/or as fiduciary for his elderly mother. Respondent used estate monies and/or assets that passed directly to his mother for his own personal investments, for a loan to a friend, and for his personal purposes and profit. Count Two involves respondent's actions in conjunction with his girlfriend, Kadija Rhoualmi, with whom he admits to having a personal adult relationship. Despite respondent's protestations, the facts establish that he knew or should have known that Ms. Rhoulami was financially and emotionally exploiting one of his elderly and infirmed clients, William Shelton. The fraud perpetrated on Mr. Shelton resulting in Mr. Shelton transferring substantial property to Ms. Rhoulami. In

Count Three, respondent took actions prior to and during his dissolution of marriage case with the conscious intention, effort and design to obscure ownership and hide marital assets. In addition, he forged his wife's name on a loan application and perpetrated a fraud on a lender. In Count Four, respondent involved his client, Christiane Martinot, in questionable business transactions involving the assets of his father's estate that led to her being concerned about tax consequences and drawing her into his contentious dissolution action. Respondent's actions were done without the proper client disclosure and for the purpose of hiding assets from his wife in the dissolution case. Count Five involves respondent's conduct as the personal representative of the Natalia Berwick Taylor probate estate and as the trustee of the Natalia Berwick Taylor trust. Respondent took actions to personally benefit himself and his girlfriend, Kadija Rhoualmi, without proper disclosure to the beneficiaries and without consideration regarding the benefits to the estate and/or the trust.

I find it particularly noteworthy that two separate circuit courts in different cases found respondent's testimony to be evasive and lacking in credibility (TFB-Ex. 1 Tab 2 p. 2; TFB-Ex. 1 Tab 26 p. 1). As set forth more fully below, I find respondent's testimony in these proceedings to be contradictory either to the documents in evidence or to his previous testimony and/or statements. These contradictions in testimony by respondent and his propensity for self-dealing and

other self-serving conduct confirm the earlier courts' position that his testimony lacks credibility.

Conduct such as that engaged in by respondent taints how the legal profession is viewed by members of the public and by people who seek the professional services of an attorney, as evidenced by the following statements from the Supreme Court of Florida:

In The Florida Bar v. Bennett, 276 So.2d 481, 482 (Fla. 1973), the Court stated:

> Some may consider it "unfortunate" that attorneys can seldom cast off completely the mantle they enjoy in the profession and simply act with simple business acumen and not be held responsible under the high standards of our profession. It is not often, if ever, that this is the case. In a sense, "an attorney is an attorney is an attorney", much as the military officer remains "an officer and a gentleman" at all times.

Further, in *The Florida Bar v. Bennett*, 276 So.2d 481, 482 (Fla. 1973), the Court stated that attorneys "must be on guard and act accordingly, to avoid tarnishing the professional image or damaging the public which may rely upon their professional standing." In *The Florida Bar v. Brown*, 905 So.2d 76, 82 (Fla. 2005), the Court emphasized that "attorneys must be and are held to the highest of ethical standards and, unlike non-attorney citizens, are subject to discipline for a breach of those standards." In *The Florida Bar v. Valentine-Miller*, 974 So. 2d 333, 338 (Fla. 2008), the Court stated that "[l]awyers are required to have high ethical standards because members of the public are asked to trust lawyers in their

greatest hours of need. Without such standards, the entire legal profession would be in jeopardy as public trust would dissipate."

Accordingly, as to each count of the Complaint the referee makes the following findings:

As to Count I

1. Respondent's father died on December 31, 2002 in Georgia. In 2003, respondent was appointed personal representative for his father's Estate (Answer to Complaint; R-Ex. 67) for which respondent's elderly mother was the sole beneficiary. Respondent, as personal representative, used $463,429.00 estate monies and/or his mother's assets to benefit himself and depending upon the circumstances varied his sworn testimony as to whether these investments were for his own benefit or for the benefit of his mother.

2. Respondent created an Estate account at a local bank into which he deposited funds that belonged both to the Estate and funds that passed directly to his mother (R-Ex. 75; T Vol. VIII pp. 819; R-Ex. 67; R-Ex. 68; R-Ex. 70; R-Ex. 72; R-Ex. 77). There was a brokerage account held jointly by his parents, with right of survivorship, which was worth approximately $250,000.00 at the time of respondent's father's death. (R-Ex. 68; T Vol. VII p. 819).

3. Respondent comingled Estate and non-estate assets in this Estate checking account and used funds to pay non-estate related expenses related to his mother's care and bills (R-Ex. 75).

4. Respondent testified in these proceedings that he borrowed the $463,429.00 from his mother (T Vol. VII p. 818). Some of the monies came from the Estate account and $161,698.55 came from the aforementioned brokerage account, leaving a balance of only $54.86 in the account (T Vol. VII pp. 819-820; R-Ex. 68).

5. From the totality of the evidence presented herein, it is clear that respondent used the $463,429.00 for his own personal investments, for a loan to a friend, and for his personal purposes and profit. Specifically, he bought four properties in either his own name or in the name of business entities he controlled. None of the investments were made in the name of his father's Estate or in respondent's name as personal representative of his father's Estate or in his mother's name or in respondent's name as trustee for his mother (T Vol. IX pp. 1043-1044).

6. Respondent, however, in his June 30, 2006 letter to the bar (R-Ex. 8 p. 3) indicated that he used these funds for his mother's benefit. Specifically, he indicated that as "personal representative [he] had the ability, and a power of attorney, to invest the estate funds for the ultimate benefit for the beneficiary.

[Respondent] did so and the estate, and [his] mother's interest, was enhanced as a result."

7. In his prior testimony and deposition in his dissolution case, respondent also claimed that the $463,249.00 was invested on his mother's behalf so that there would be sufficient funds for her current and anticipated 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 any profit from the investments were to the benefit of his father's Estate and/or his mother (TFB-Ex. 1 Tab 27 pp. 79, 113; TFB-Ex. 1 Tab 28). Respondent, during his deposition in his dissolution of marriage case, testified that the money (the $463,249.00) he had invested for his father's Estate had grown to a little over $900,000.00 (TFB-Ex. 29 p. 119) and that these gains belonged to his mother and not to himself (TFB-Ex. 29 p. 129).

8. Respondent testified that he repaid $400,000.00 of the $463,429.00 he borrowed (T Vol. IX pp. 1043-1044) and that he used the remainder to pay his mother's bills (T Vol. IX pp. 1043-1044). Respondent, who has shown that his truthfulness is suspect, produced no evidence to support this claim that he had used this money to support his mother. The Estate's account records (R-Ex. 75) do not reflect a deposit of $63,429.00, and it was established that this was the account that respondent used to pay his mother's bills. Despite his earlier position that he was

financially supporting his mother, the evidence clearly indicated that the financial support for his mother's care was from his mother's own funds or Estate funds (R-Ex. 75).

9. There is no evidence that the respondent repaid the loan with interest or that he paid the Estate and/or his mother any of the profits from the various real estate investments he made with the $463,429.00 he borrowed from the Estate and/or from his mother. In fact, the only person who benefitted from respondent's investments was respondent and thereafter his wife, after she discovered, with the assistance of her attorneys, the various properties.

10. Further, respondent structured the transactions involving the $463,429.00 in such a way as to confuse true ownership of the monies and/or assets, to confuse the entity or person responsible for capital gain taxes.

11. In addition, despite the large sum of money involved, respondent did not create or cause to be created any documentation memorializing the loan(s) (T Vol. VII p. 821).

12. He borrowed the money either from the Estate while he was personal representative, and thus had a conflict of interest, or from his mother while he was her attorney-in-fact (R-Ex. 78), thus violating the fiduciary duty he owed her.

13. Although respondent argued in these proceedings that he borrowed the money from his mother as a loan (T Vol. VII p. 818), and that he remained responsible for paying all capital gains taxes on any investments because the investments were his, not his mother's (T Vol. VIII pp. 931-932), respondent produced no tax returns to show he paid taxes on these capital gains.

14. The first of the four real estate investments occurred on April 1, 2003, when respondent used approximately $198,000.00 to purchase a home (hereinafter referred to as "Coquina Key") in the name of Beach Street Properties, a limited liability company that he wholly owned and controlled (Answer to Complaint; TFB-Ex. 1 Tab 28; TFB-Ex. 1 Tab 29 p. 102; TFB-Ex. 1 Tab 77; T Vol. VIII p. 893; TFB-Ex. 1 Tab 73; R-Ex. 95; T Vol. VII p. 803).

15. During his deposition in his dissolution of marriage case, respondent testified that he did not use money from his father's Estate to purchase Coquina Key for himself, but rather, he was acting in his fiduciary capacity for his mother in investing the money on her behalf because she needed money to maintain herself in a nursing home (TFB-Ex 1 Tab 29 p. 103). Respondent specifically testified, under oath, that he was "acting as fiduciary for [his] mother's money that was hers" (TFB-Ex. 1 Tab 29, p. 103).

16. Respondent further testified under oath during his deposition in his dissolution of marriage case that he did not title Coquina Key in his mother's name

because “when you sell property in someone else’s name in Florida, you’ve got to go through a lot of machinations” (TFB-Ex. 1 Tab 29 p. 103).

17. During the final hearing in these proceedings, respondent testified that he borrowed $198,000.00 from his mother to purchase Coquina Key (T Vol. VIII p. 893), with $100,000.00 of that coming from the brokerage account held jointly by his parents (T Vol. VIII p. 894).

18. Respondent’s sworn testimony during his deposition in his dissolution of marriage proceeding concerning who was to benefit from the Coquina Key property investment was directly contrary to his sworn testimony in these proceedings. The one fact that respondent has not switched positions on is that he used money from his mother and/or his father’s Estate to purchase the investment properties.

19. On April 1, 2003, Beach Street Properties immediately conveyed Coquina Key to respondent (TFB-Ex. 1 Tab 78). On September 3, 2003, respondent used Coquina Key to obtain a personal loan in the amount of $230,000.00 from Washington Mutual Bank (TFB-Ex. 1 Tab 29 p. 107; TFB-Ex. 1 Tab 79; R-Ex. 82 p. 3; Answer to Complaint; TFB-Ex. 1 Tab 29 p. 107; TFB-Ex. 1 Tab 79).

20. On or about October 16, 2003, respondent purchased a second investment property, hereinafter referred to as "Surf Club", (TFB-Ex. 1 Tab 28;

TFB-Ex. 1 Tab 80; R-Ex. 89 p. 1) with monies from his mother and/or his father's Estate and with $193,000.00 of the $230,000.00 loan from Washington Mutual (TFB-Ex. 1 Tab 29 p. 109; R-Ex. 89). He also obtained a loan and mortgage on the Surf Club property in his own name to cover the remainder of the purchase price (Answer to Complaint; TFB-Ex. 1 Tab 81; R-Ex. 89). Title to Surf Club was issued in respondent's name and remained on the title until he sold the property (TFB-Ex. 1 Tab 80; R-Ex. 89 p. 1; TFB-Ex. 1 Tab 28; TFB-Ex. 1 Tab 83). The respondent did not use the remaining $37,000.00 of Washington Mutual loan to repay his mother or his father's Estate.

21. Respondent sold Surf Club on January 15, 2004, for a net profit of $143,634.00 (Answer to Complaint; TFB-Ex. 1 Tab 29 p. 110; TFB-Ex. 1 Tab 83; R-Ex. 89). Respondent claimed in his dissolution case that he credited this amount towards his father's Estate and/or his mother (TFB-Ex. 1 Tab 29 pp. 102, 109). Besides his flow chart, respondent never produced any documentation to substantiate that these funds were paid to his father's Estate or to his mother **(**TFB-Ex. 1 Tab 28). Further, respondent's testimony herein indicates that this was a misrepresentation to the Court as these were not the funds used to repay his mother or his father's estate.

22. On or about May 28, 2004, respondent, through Beach Street Properties, purchased the third investment property, hereinafter referred to as

"Atlantic View," with monies from his mother and/or his father's Estate (Answer to Complaint; TFB-Ex. 1 Tab 28; TFB-Ex. 1 Tab 29 p. 112). Respondent intended for his wife to believe this purchase was made for the benefit of his father's Estate and/or his mother (TFB-Ex. 1 Tab 28).

23. The total purchase price for Atlantic View was $525,000.00 (Answer to Complaint). Respondent used $225,251.00 of his father's Estate funds and/or his mother's funds to pay part of the purchase price and obtained a mortgage on the Atlantic View property in the approximate amount of $300,000.00 to pay the balance of the purchase price (Answer to Complaint).

24. On June 7, 2004, respondent sold Coquina Key, the first investment property, and received $32,055.00 in cash at closing (TFB-Ex. 1 Tab 29 pp. 113-114; TFB-Ex. 1 Tab 83; TFB-Ex.1 Tab 84; TFB-Ex. 1 Tab 85; TFB-Ex. 1 Tab 88; R-Ex. 82 pp. 24-27; R-Ex. 81 p. 24). He also took back a wrap around mortgage from the buyers in the amount of $535,000.00 (TFB-Ex. 1 Tab 29 p. 113; TFB-Ex. 1 Tab 86; R-Ex. 82 pp. 15; 24). He did not credit the $32,055.00 to his father's Estate and/or his mother.

25. The mortgage on Coquina Key had a due on sale clause (TFB-Ex. 1 Tab 79 p. 11 paragraph 18). The mortgage held by Washington Mutual Bank on Coquina Key provided that the mortgage was assumable only after notice to and approval by Washington Mutual Bank (TFB-Ex. 1 Tab 79 p. 11 paragraph 18).

Respondent did not advise Washington Mutual Bank of the sale of the property or of his issuance of a wrap around mortgage to the buyers.

26. Respondent did not pay off the Washington Mutual Bank first mortgage on Coquina Key until 14 months after selling the property (TFB-Ex. 1 Tab 90; TFB-Ex. 1 Tab 96; R-Ex. 82 p. 32).

27. As shown on the settlement statement dated June 10, 2004 (R-Ex. 82 p. 24), respondent acted as closing agent for sale of the Coquina Key property and, as such, was obligated to timely disburse the monies according to the closing statement but failed to properly and timely execute his duties (TFB-Ex. 1 Tab 29 p. 124).

28. Respondent admitted during the final hearing in these proceedings that on May 24, 2005, he received $545,000.00 from the Coquina Key buyers (R-Ex. 82 pp. 29-30). Under examination, he conceded that he could have paid off the Washington Mutual Bank mortgage on that day but that he did not pay it until August 12, 2005 with proceeds from the sale of another property (T Vol. VIII p. 896).

29. Respondent's only explanation for this almost two month delay in paying Washington Mutual was that he wanted to make sure the check would be honored by the bank because it was a title company check rather than a cashier's check (T Vol. VIII p. 896). Further, respondent testified that the Washington

Mutual Bank mortgage had not been recorded and, as a result, the buyers received clear title (T Vol. VIII p. 898). The facts, however, indicate otherwise. The Washington Mutual Bank mortgage was recorded on September 9, 2003, as clearly indicated in TFB-Ex. 1 Tab 79. Respondent's testimony was not supported by the official records and therefore was not credible.

30. Respondent misused the funds intended to satisfy the first mortgage held by Washington Mutual Bank on the Coquina Key property for his personal purposes and violated his fiduciary duties as closing agent.

31. Next, respondent, acting through Beach Street Properties, sold Atlantic View for $750,000.00 and used a portion of the sales proceeds to satisfy the $300,000.00 mortgage on the property (Answer to Complaint; TFB-Ex. 1 Tab 29 p. 114).

32. Respondent used a portion of the funds generated by the sale of Atlantic View to purchase the fourth investment property (hereinafter referred to as "Ocean Hammock"), associated with the funds from his father's Estate and/or his mother. He purchased Ocean Hammock for approximately $900,000.00 on or about October 8, 2004 (Answer to Complaint; TFB-Ex. 1 Tab 28; TFB-Ex. 1 Tab 91).

33. During the August 24, 2005 hearing in his dissolution of marriage case, respondent testified that he borrowed an additional $400,000.00 from his

father's Estate to purchase Ocean Hammock (TFB-Ex. 1 Tab 27 p. 79). At no time during the August 24, 2005 hearing did respondent testify that he had borrowed the money from his mother, which is at odds with his position in these disciplinary proceedings.

34. Respondent titled Ocean Hammock in his own name (Answer to Complaint; TFB-Ex.1 Tab 91) rather than in the name of his father's Estate and/or his mother.

35. On October 8, 2004, respondent obtained a $450,000.00 loan, in his own name, from the Bank of St. Augustine secured by a mortgage on Ocean Hammock (Answer to Complaint; TFB-Ex. 1 Tab 92). The mortgage was subject to being paid in full upon the sale of the property and was not assumable (TFB-Ex. 1 Tab 92 p. 2 paragraph 9).

36. Although respondent used funds belonging to his father's Estate and/or his mother to purchase Ocean Hammock, he included this property in the marital settlement agreement he prepared in anticipation of his wife filing a divorce action (Answer to Complaint; TFB-Ex. 1 Tab 36). He did not indicate therein that his mother and/or his father's Estate may have an equitable interest in the property.

37. On or about July 12, 2005, respondent purportedly sold Ocean Hammock for $605,000.00, by a warranty deed he prepared, to Green Ville, LLC,

a limited liability company owned by respondent's client, Christiane Martinot (Answer to Complaint; TFB-Ex. 1 Tab 28; TFB- Ex. 1 Tab 93; R-Ex. 81 p. 2). Respondent, however, controlled Green Ville, LLC and directed Ms. Martinot's actions as it related to real estate matters material to these proceedings (Answer to Complaint; TFB-Ex. 1 Tab 29 p. 116; TFB-Ex. 1 Tab 74; R-Ex. 94; T Vol. VIII p. 918; TFB-Ex. 1 Tab 126).

38. In July 2005, Ms. Martinot, as general manager of Green Ville, LLC, executed a balloon mortgage in favor of respondent's father's Estate in the amount of $400,000.00 secured by Ocean Hammock (TFB-Ex. 1 Tab 94; R-Ex. 81 p. 4). The mortgage was to accrue interest of 8% per annum and the principal was due on September 30, 2005 (R-Ex. 81 p. 7). The mortgage and note were recorded on July 21, 2005 in Flagler County, Florida (R-Ex. 81 pp. 4,7)

39. This was the first time respondent took any action to secure the monies he had borrowed from his mother and/or father's estate. Respondent took no other steps to ensure the funds he had borrowed from his father's Estate and/or his mother would be protected or to ensure its repayment in the event respondent died or was rendered incapacitated while the investments were titled in entities other than his father's Estate and/or his mother.

40. On or about August 3, 2005, respondent prepared a warranty deed transferring Ocean Hammock from Green Ville, LLC to K. R. H. Investments,

LLC as nominee title holder (Answer to Complaint; TFB-Ex. 1 Tab 29 p. 116; TFB-Ex. 1 Tab 95; R-Ex. 81 p. 17).

41. K. R. H Investments, LLC was a limited liability company respondent created, owned and controlled (Answer to Complaint). Respondent named Kadija Rhoualmi as the manager (Answer to Complaint; TFB-Ex. 1 Tab 75).

42. Respondent did not advise Bank of St. Augustine, the first mortgage holder, of the sale of Ocean Hammock nor did he pay off the first mortgage at the time he sold the property to Green Ville, LLC (T Vol. VIII p. 934) nor when he sold the property to K. R. H. Investments, LLC as nominee title holder.

43. Respondent tried to justify not telling Bank of America of the sale of Ocean Hammock and timely paying the mortgage, by stating that the bank's mortgage document's terms provided that the loan was callable at the option of the lender in the event of a sale, and thus he had no obligation to repay the loan unless the bank "called it" (T Vol. VIII p. 934). In light of the due on sale clause in the first mortgage held by Bank of St. Augustine on Ocean Hammock, respondent should have advised the lender of the sale (TFB-Ex. 1 Tab 92 p. 2 paragraph 9). The evidence clearly reflects respondent's ability to try and justify his deceitful and dishonest actions.

44. On August 3, 2005, K. R. H. Investments, LLC sold Ocean Hammock to E. C. N. Properties, LLC, by a warranty deed prepared by respondent (Answer to Complaint; TFB-Ex. 1 Tab 95; R-Ex. 81 p. 19). Although the manager of K. R. H. Investments, LLC was Ms. Rhoualmi, Ms. Martinot signed the warranty deed as manager of K. R. H. Investments, LLC (Answer to Complaint; TFB-Ex. 1 Tab 75; TFB-Ex. 1 Tab 95).

45. On or about August 12, 2005, Green Ville, LLC, through respondent, satisfied the $400,000.00 mortgage on Ocean Hammock by wiring funds directly to respondent's mother's checking account (Answer to Complaint; R-Ex. 74).

46. It was evident that the transfers prior to the sale of Ocean Hammock to E.C. N. Properties, LLC were done by respondent merely to conceal the property from his wife in the dissolution proceeding. It was only when the property was sold to E. C. N. Properties, LLC that respondent satisfied the Bank of St. Augustine mortgage (TFB-Ex. 1 Tab 29 pp. 123-124; TFB-Ex. 1 Tab 97).

47. Attorney John Council closed the sale of Ocean Hammock from Green Ville, LLC to K. R. H. Investments, LLC and the sale of the property from K. R. H. Investments, LLC to E. C. N. Properties, LLC (TFB-Ex. 1 Tab 29 pp. 121-122; TFB-Ex. 1 Tab 97).

48. Respondent claims that Mr. Council waived his fee of $10,000.00 from the closings of the Ocean Hammock property and in exchange for the waiver, respondent agreed to loan him $120,000.00 from the closing (T Vol. VIII p. 878).

49. Respondent secured the loan to Mr. Council by a mortgage on Mr. Council's home that was payable in full on March 1, 2006 (Answer to Complaint; TFB-Ex. 1 Tab 28; TFB-Ex. 1 Tab 29 p. 122; R-Ex. 90). Respondent accepted security for the loan as an asset of his father's Estate (TFB-Ex. 1 Tab 28; TFB-Ex. 1 Tab 29 pp. 122, 130).

50. On or about June 27, 2005, respondent, through First Coast Land and Title, LLC, purchased a home, hereinafter referred to as the "San Mateo house" (Answer to Complaint; TFB-Ex. 1 Tab 98; TFB-Ex. 1 Tab 99; R-Ex. 91 pp. 1-4) allegedly as an investment for his father's Estate and/or his mother (TFB-Ex. 1 Tab 29 p. 130).

51. Respondent owned and controlled First Coast Land and Title, LLC but created it in the name of Kadija Rhoualmi (TFB-Ex. 1 Tab 76; R-Ex. 93; T Vol. VII p. 803; T Vol. VIII p. 918).

52. Respondent used some of the funds belonging to his father's Estate and/or mother and some of his own personal and marital funds to purchase the San Mateo house (TFB-Ex. 1 Tab 27 p. 63-64; TFB-Ex. 1 Tab 28; TFB-Ex. 1 Tab 29 pp. 106-115).

53. On June 27, 2005, First Coast Land and Title, LLC conveyed the San Mateo house to another of his cloaked entities, K. R. H. Investments, LLC (Answer to Complaint; TFB-Ex. 1 Tab 100; R-Ex. 91 p. 5). Respondent acted as closing agent for the San Mateo transaction and prepared the warranty deed (Answer to Complaint).

54. On September 22, 2005, First Coast Land and Title, LLC as record title holder (Answer to Complaint), through respondent, obtained a $700,000.00 loan from Bank of America, secured by the San Mateo house (TFB-Ex. 1 Tab 106; R-Ex. 91 p. 7). Respondent knew First Coast Land & Title did not own the San Mateo house when he made the application for the mortgage and signed the application in his individual capacity and as manager of First Coast Land and Title, LLC (TFB-Ex. 1 Tab 100; R-Ex. 91 p. 5).

55. Respondent lived in the San Mateo house for a period of time during the pendency of his dissolution of marriage proceedings without paying rent to his father's Estate and/or to his mother (Answer to Complaint).

56. On or about October 17, 2005, respondent used the San Mateo house to secure a loan from Bank of America to purchase a condominium (hereinafter referred to as the "Cinnamon Beach condominium") (Answer to Complaint; TFB-Ex. 29 p. 41; T Vol. VIII p. 917).

57. Respondent encumbered the San Mateo house in the purchasing of the Cinnamon Beach condominium for his personal benefit without regard that the San Mateo house should have been treated as an asset of his father's Estate and/or his mother (TFB-Ex. 28; TFB-Ex. 1 Tab 29 pp. 98, 101, 133).

58. Respondent included the San Mateo house in the February 8, 2006, property settlement agreement in his dissolution of marriage case as one of the properties to be jointly titled in the names of respondent and his wife as tenants by the entireties with the intent to sell the property and to "maximize profitability for both parties" (TFB-Ex. 1 Tab 36).

59. Therefore, respondent agreed to allow his wife to have one-half of the sales proceeds of the San Mateo house (Answer to Complaint) using money from his father's Estate and/or his mother with no indication that his mother, or any other beneficiary of the Estate, knew of this arrangement or agreed to it.

60. Respondent's sister, Karen Swann, was not involved in the administration of her father's estate until respondent resigned as personal representative and she became the personal representative in September 2005 (TFB-Ex. 1 Tab 40 p. 35 and Composite Exhibit No. 206 p. 2). She had no knowledge of what respondent was doing with regard to their father's estate nor any knowledge regarding what respondent was doing with their mother's assets. She had to depend on respondent doing the correct thing (TFB-Ex. 1 Tab 40 p. 35).

61. Although reluctant to criticize her brother, it is apparent from her testimony that Ms. Swann became concerned about what respondent was doing with their father's estate and her mother's assets (TFB-Ex. 1 Tab 40 p. 31). The record is clear that respondent did not file an inventory or an accounting in the estate in a timely manner. It was not until December 20, 2006, when he admonished his sister for not closing the estate, that he finally filed the inventory and accounting along with a motion to have his sister removed as personal representative (TFB-Ex. 1 Tab 10 pp. 14, 36-37; TFB-Ex. 1 Tab 37; TFB-Ex. 1 Tab 38; TFB-Ex. 1 Tab 39).

62. Respondent, as personal representative for his father's Estate and/or as attorney-in-fact for his mother, utilized Estate funds and/or his mother's funds as if they were his own and extensively commingled Estate assets and/or his mother's assets with his own in such a manner as to obscure true ownership of the investments and the profits from the investments thus creating capital gains tax issues for his father's Estate and/or his mother. Respondent's actions concerned his sister and had the potential, if not the actual effect, of jeopardizing the monies needed for the care of his elderly mother.

COUNT II

63. Under the worst case scenario, respondent assisted his girlfriend, Kadija Rhoualmi, in financially and emotionally exploiting his elderly and infirmed client, William Shelton, Sr. The alternative is that respondent allowed such a situation to exist in his law office that allowed his secretary to prepare deeds for Ms. Rhoualmi without permission and that respondent paid for the recording of one of those deeds without proper review. This referee after considering the respondent's lack of honesty during the prior court proceedings[1], and herein, the overwhelming circumstantial evidence, respondent's own admission and the court's ruling in Shelton civil litigation, finds that respondent knowingly assisted his girlfriend in obtaining Mr. Shelton's money and real property (TFB-Ex. 1 Tab 1 pp. 3, 5, 8, 25).

64. Respondent in his September 11, 2008 letter to the bar indicated he met Ms. Rhoualmi in 2003 and hired her to clean his office (R-Ex. 61p. 1). Ms. Rhoualmi, a Moroccan citizen, was living in Florida at the time (Answer to Complaint) and was in her thirties (R-Ex. 59 p. 10).

[1] Respondent was far from forthcoming regarding his true relationship with Ms. Rhoualmi during his divorce proceeding and in the civil litigation brought on behalf of Mr. Shelton. He denied having a sexual relationship with Ms. Rhoualmi during the divorce proceeding but had to take the Fifth during the civil proceeding brought on behalf of Mr. Shelton when questioned regarding the nature of his relationship with her (TFB-Ex. 1 Tab 21 pp. 2-15; T Vol. IX pp. 104-105).

65. Some time prior to March 1, 2004, he provided Ms. Rhoualmi with free legal services in connection with her application for United States citizenship (Answer to Complaint). Respondent had a close personal friendship with Ms. Rhoualmi (Answer to Complaint) and at least by mid 2004, an “adult” relationship with Ms. Rhoualmi, (TFB-Ex. 1 Tab 1 p. 3) which to this referee means they were sexually involved. This is further substantiated by the fact that respondent vacationed with her in the Virgin Islands during the Summer of 2004, vacationed in Las Vegas, Nevada in December 2004, all while he was married (TFB- Ex. 1 Tab 1, p. 4). Respondent also testified to traveling to New Orleans with Ms. Rhoualmi supposedly to look at French bakeries because they were interested in opening a similar establishment in Florida (TFB-Ex. 1 Tab 29 p. 25). Respondent also provided Ms. Rhoualmi with legal advice in litigation involving Mr. Shelton and on at least one occasion referred to her as his client in connection with the lawsuit brought against her by Mr. Shelton (TFB-Ex. 1 Tab 27 p. 62; R-Ex. 20 p. 2).

66. In April 2005, Ms. Rhoualmi sent Mr. Shelton to respondent for legal assistance presumably with a zoning issue on property (hereinafter referred to as the "nursery property") owned by Mr. Shelton. Mr. Shelton paid respondent $1,000.00 (Answer to Complaint; TFB-Ex. 1 Tab 19; T Vol. VIII pp. 935-398). Mr. Shelton and his former wife, whom he remained friends with until his death (T

Vo. I p. 84), had contracted to sell the nursery property to a developer for $3,171,168.00 (TFB-Ex. 1 Tab 1 p. 5) with a closing date of October 21, 2005 (TFB-Ex. 1 Tab 1 p. 5).

67. At the time he consulted with respondent, Mr. Shelton was approximately 71 years old and was in poor health with a long history of atherosclerosis affecting both his heart and his brain (TFB-Ex. 1 Tab 1 pp. 3-5).

68. During their consultation, Mr. Shelton advised respondent that he was interested in dating Ms. Rhoualmi but knew she and respondent were close friends (Answer to Complaint). Respondent failed to advise Mr. Shelton that respondent had provided legal services to Ms. Rhoualmi (Answer to Complaint) and this referee believes respondent lied about the current nature of his relationship with Ms. Rhoualmi.

69. Approximately one week after meeting with respondent, Mr. Shelton was hospitalized suffering from a transient ischemic attack (TFB-Ex. 1 Tab 1 p. 5).

70. Mr. Shelton was released from the hospital on May 2, 2005 and on May 6, 2005, he executed a warranty deed transferring his interest in his home from himself to himself and Ms. Rhoualmi as joint tenants with right of survivorship (TFB-Ex. 1 Tab 1 p. 5; TFB-Ex. 1 Tab 14).

71. On the face of the deed, it indicates that it was prepared by respondent (TFB-Ex. 1 Tab 14). The clerk's office stamp shows the deed was recorded on May 9, 2005 and the total recording fee was $27.70.

72. Respondent testified in the ensuing civil litigation brought against Ms. Rhoualmi by Mr. Shelton's family that his secretary, Isabel Garcia, either printed out the deed form and gave it to Ms. Rhoualmi to complete or prepared the deed at Ms. Rhoualmi's request without his assistance (TFB-Ex. 1 Tab 1 p. 5).

73. It is uncontroverted that respondent signed check number 2133 drawn from his office account and dated May 9, 2005 made payable to the clerk's office for $27.70, the same recording amount for the aforementioned deed (TFB-Ex. 1 Tab 24; T Vol. VIII pp. 944-945). This fact supports Attorney Harold Lippes' testimony herein that he learned the recording fee for this deed was paid by this check from respondent's office (T Vol. I pp. 72, 93-94).

74. Further, the handwriting on the check is strikingly similar to respondent's signature on the check, indicating that respondent prepared the entire check. In addition, the handwriting on the check and the handwritten notation on the deed (TFB-Ex. 1 Tab 14) appear to be identical. It is clear that respondent prepared the check himself contrary to respondent's testimony herein that the check was prepared for his signature by his secretary (T Vol. VIII pp. 944-945).

75. Mr. Shelton was re-hospitalized on May 27, 2005 and discharged the next day (TFB-Ex. 1 Tab 1 p. 5). Less than five days later, June 1, 2005, Mr. Shelton executed a second deed conveying the same nursery property from himself to himself and Ms. Rhoualmi as joint tenants with right of survivorship (TFB-Ex. 1 Tab 1 pp. 5-6; TFB-Ex. 1 Tab 15).

76. The June 1, 2005 deed for the nursery property did not indicate who prepared it but appeared to be the same form used by respondent and exactly like the one Ms. Rhoualmi had Mr. Shelton execute on May 2, 2005 (TFB-Ex. 1 Tab 15).

77. In his February 13, 2008 letter to the bar, respondent advised it was Mr. Shelton, not Ms. Rhoualmi, who picked up the deeds from his office and that Ms. Garcia apparently prepared them as a favor for Mr. Shelton, at Mr. Shelton's request (R-Ex. 60 p. 2). According to respondent, he learned of the two deeds in July 2005 (R-Ex. 61p. 1).

78. According to respondent, Ms. Garcia worked for him between January and June 2005 and she left for a job receiving more money and providing benefits (R-Ex. 61p. 1). During his testimony in these disciplinary proceedings, respondent claimed that he and Ms. Garcia were very close, so much so that he would sign anything she put in front of him (T Vol. VIII pp. 944-945). I find respondent's testimony lacking credibility that he would sign, without reading,

anything placed in front of him by an employee who had only worked for him 5 months.

79. Prior to the final hearing in these disciplinary proceedings, respondent indicated that Ms. Garcia had left his employ under good terms. Respondent expediently changed his position during the final hearing and for the first time indicated that he fired Ms. Garcia when he learned of the two deeds and after a heated argument regarding her preparation of the deeds (R-Ex. 61; T Vol. VIII pp. 941, 946; T Vol. IX pp. 1012-1015, 1017-1020).

80. Under intense questioning in these disciplinary proceedings, respondent conceded that his testimony herein did not comport with that given in his deposition in his dissolution of marriage case (T Vol. IX p. 1017). The sum total of these glaring discrepancies renders respondent's testimony not credible.

81. During the first week of July 2005, Mr. Shelton was hospitalized and underwent a medical procedure intended to improve the blood flow to his brain (TFB-Ex. 1 Tab 1 p. 6). He was discharged and returned home on or about July 6, 2005 (TFB-Ex. 1 Tab 1 p. 6). The following day, on July 7, 2005, Ms. Rhoualmi drove Mr. Shelton to his bank where he added her name to his checking account and to a certificate of deposit (TFB-Ex. 1 Tab 1 p. 6; TFB-Ex. 1 Tab 111 p. 3).

82. On July 8, 2005, Ms. Rhoualmi withdrew virtually all of the money from Mr. Shelton's checking account and cashed the certificate of deposit

(TFB-Ex. 1 Tab 1 p. 6; T Vol. II pp. 177-178). She deposited all of the funds to a checking account solely in her name (TFB-Ex. 1 Tab 1 p. 6; TFB-Ex. 1 Tab 111 p. 3; T Vol. II pp. 177-178).

83. A day after removing virtually all of the funds from Mr. Shelton's checking account and cashing his certificate of deposit, respondent and Ms. Rhoualmi drove to Georgia (Answer to Complaint) where respondent picked up a Porsche he had purchased. According to respondent the timing of this trip was merely a coincidence and that Ms. Rhoualmi was merely being a good friend in assisting him in getting the car to Florida**.** Like the Court in the Shelton case, this referee does not believe such was merely a coincidence.

84. On July 11, 2005, two days after returning from Georgia, respondent drove Ms. Rhoualmi to the Jacksonville airport from which she flew to Europe (Answer to Complaint) where she remained until late August 2005. Respondent testified that he had taken Ms. Rhoualmi to the airport the day before but while there they were confronted by Mr. Shelton and Ms. Rhoualmi missed her original flight (T Vol. VIII p. 938). It was at that time the true nature of respondent's relationship with Ms. Rhoualmi was revealed and his complicity in obtaining Mr. Shelton's property was revealed when he bragged to Mr. Shelton that he not only had "his girl" but also "his land" (TFB-Ex. 127 p. 4; T Vol. VIII pp. 944-945).

85. After Ms. Rhoualmi left the country, Mr. Shelton realized she had exploited him and contacted his son, Bill Shelton, Jr. They hired counsel to seek an emergency injunction freezing Ms. Rhoualmi's checking account and preventing her from encumbering Mr. Shelton's home and nursery properties (TFB-Ex. 1 Tab 111 pp. 3-4).

86. On July 18, 2005, counsel for Mr. Shelton filed a motion for temporary injunction and a civil suit against Ms. Rhoualmi seeking rescission of the two deeds and damages based on fraud and undue influence (TFB-Ex. 1 Tab 4 p. 7). The court granted the motion for temporary injunction against Ms. Rhoualmi on or about July 19, 2005 (TFB-Ex. 1 Tab 7).

87. In addition to the civil suit, Mr. Shelton and/or his son brought the matter to the attention of the Florida Department of Children and Families (hereinafter referred to as "DCF") to investigate the allegations of exploitation of the elderly (hereinafter referred to as the "DCF investigation") (TFB-Ex. 1 Tab 1 p. 7; R-Ex. 56).

88. Respondent was interviewed by DCF (Answer to Complaint; T Vol. VIII p. 939) concerning his role in assisting Ms. Rhoualmi's alleged exploitation of Mr. Shelton (TFB-Ex. 1 Tab 1 p. 7; TFB-Ex. 1 Tab 29 pp. 19-20).

89. Upon learning of the civil suit and DCF investigation, respondent traveled to Europe in August 2005 and met with Ms. Rhoualmi (Answer to

Complaint; T Vol. VIII pp. 939-940). Respondent was in the midst of divorce proceedings when he flew off to Europe presumably on vacation (T Vol. VIII pp.939-940). Further, according to Ms. Rhoualmi, respondent came to Spain at her request. (R-Ex. 59, T Vol. VII pp, 761, 766: TFB-Ex. 1 Tab 129).

90. Respondent testified that he briefly met with Ms. Rhoualmi at the airport in Seville, Spain (T Vol. VIII pp. 939-940). He advised her of his concerns that she and he might face arrest upon their return to the United States on charges of exploitation of the elderly (TFB-Ex. 1 Tab 1 p. 7; TFB-Ex. 1 Tab 29 pp. 19-20; TFB-Ex. 1 Tab 29 pp. 19-20). Ultimately, the DCF investigation was concluded without any formal action being taken (Answer to Complaint).

91. After her return to the United States in or around late August 2005, Ms. Rhoualmi resumed her relationship with Mr. Shelton and led him to believe she wanted to marry him (TFB-Ex. 1 Tab 1 pp. 8-10).

92. During this same time, respondent had an ongoing "personal relationship" with Ms. Rhoualmi as evidenced by the fact that she spent several days living in respondent's home in San Mateo, Florida in September 2005 (Answer to Complaint; TFB-Ex. 1 Tab 29 p. 9). This is contrary to respondent's testimony during the final hearing regarding disciplinary proceedings, wherein respondent claimed that after Ms. Rhoualmi returned from Europe in August 2005, he tried to sever his relationship with her. He claimed he had little contact with her

until 2006 when Mr. Lippes joined him as a party in the civil suit Mr. Shelton filed against Ms. Rhoualmi in St. Johns County, Florida (T Vol. VIII pp. 950-951).

93. On October 24, 2005, Ms. Rhoualmi and Mr. Shelton obtained a marriage license (TFB-Ex. 12).

94. On or about November 10, 2005, Ms. Rhoualmi drove Mr. Shelton to Attorney Lippes' office. Mr. Lippes represented Mr. Shelton in pending litigation against her. She presented Mr. Lippes with a premarital agreement (drawn up by an attorney that respondent had directed her to) (T Vo. I pp. 75-76, 80; T Vol. V pp. 487-489). This agreement was extremely one-sided in her favor and contained a provision that the nursery property would be listed for sale with Fun Coast Realty, LLC, with Jon Zolsky, realtor, as the exclusive agent for sale of the property (T Vol. V pp. 487-489).

95. Respondent held a real estate license at that time which was registered with Fun Coast Realty, LLC (Answer to complaint; R-Ex 66).

96. Mr. Lippes requested that Ms. Rhoualmi leave his office so that he could speak alone to Mr. Shelton. Mr. Lippes testified in these disciplinary proceedings that he believed that Mr. Shelton was being unduly influenced by Ms. Rhoualmi and that respondent was orchestrating things from behind the scene (T Vol. I p. 73; T Vol. V pp. 487-488). This premarital agreement never was signed.

97. When her effort to have the first pre-nuptial agreement executed failed, Ms. Rhoualmi on or about November 17, 2005, hired attorney Richard K. Thibault to prepare a pre-nuptial agreement and will favoring Ms. Rhoualmi (TFB-Ex. 1 Tab 1 pp. 9-10; TFB-Ex. 1 Tab 12; TFB-Ex. 1 Tab 13). Mr. Shelton executed both documents on November 17, 2005.

98. On November 18, 2005, he and Ms. Rhoualmi were married (TFB-Ex. 1 Tab 1 pp. 9-10).

99. In December 2005, Mr. Shelton was examined by two physicians who determined he was incompetent to make financial and legal decisions (TFB-Ex. 1 Tab 9 pp. 1-2).

100. The civil court entered its final judgment on November 16, 2007 *in In re Estate of Shelton*, Case No. 2006-CP-1845, finding that Ms. Rhoualmi's "real intention was to obtain Mr. Shelton's money and property" (Answer to Complaint; TFB-Ex. 1 Tab 1 p. 3).

101. The court further found the following:

> [Rhoualmi] accomplished this, in part, with the active assistance of Henry T. Swann III . . ., an attorney with whom she became romantically involved by mid-2004 (Swann testified that he had an "adult relationship" with Rhoualmi). This "adult relationship" included vacationing in the British Virgin Islands in the summer of 2004 and vacationing in Las Vegas, Nevada, in December 2004, all while Swann was married and Rhoualmi was falsely professing her love and desires to Shelton. (TFB-Ex. 1 Tab 1 pp. 3-4).

102. During the proceeding in the civil litigation, Ms. Rhoualmi testified that inclusion of Fun Coast Realty, LLC as the exclusive listing agent was merely coincidental. The court therein found it was not coincidental (TFB-Ex. 1 Tab 1 p. 9). I also find it unlikely that using Fun Coast Realty, LLC as the listing agent was coincidental. Rather, it further evidences respondent's participation in the scheme to defraud Mr. Shelton and the benefit he would receive from Ms. Rhoualmi's fraudulent acts against Mr. Shelton.

103. The court found that the marriage between Mr. Shelton and Ms. Rhoualmi was a sham (TFB-Ex. 1 Tab 1 p. 12). The court also found that Ms. Rhoualmi had entered into the marriage in hopes of being able to orchestrate the dismissal of the civil suit pending against her.

104. The court ordered that both deeds Mr. Shelton executed in favor of himself and Ms. Rhoualmi be rescinded (TFB-Ex. 1 Tab 1 p. 26).

105. Further, the civil court found that respondent acted in concert with Ms. Rhoualmi to take advantage of Mr. Shelton (TFB-Ex. 1 Tab 1 p. 26).

106. It is apparent that respondent continued to act in concert with Ms. Rhoualmi even during the civil litigation. This is demonstrated by respondent's own electronic mail message dated May 3, 2006 to Ms. Rhoualmi's attorney in the civil case communicating strategy in the case (TFB-Ex. 1 Tab 24, document

marked as Respondent's exhibit 103-M to the Lippes' deposition of August 25, 2011).

COUNT III

107. Respondent, despite being an officer of the court, took actions prior to and during his dissolution of marriage designed to obscure and conceal the ownership of marital assets and to defraud a lender (TFB-Ex. 1 Tab 25; TFB-Ex. 1 Tab 125).

108. Respondent and his wife separated on or about May 31, 2005 (TFB-Ex. 1 Tab 26).

109. Attorney Steven Eric Brust represented respondent's wife along with co-counsel Carol A. Caldwell in the dissolution matter of *Swann v. Swann*, Case No. DR-05-1041-36, filed in the Seventh Judicial Circuit Court in and for St. John's County, Florida.

110. Mr. Brust testified at the final hearing via his sworn affidavit (TFB-Ex. 1 Tab 125). Mr. Brust provided detailed information regarding the extensive legal work necessary because of respondent's actions in transferring marital properties into various entities, that on their face seemed unrelated to respondent, and in utilizing marital assets for his own personal benefit.

111. Multiple lis pendens were filed on behalf of respondent's wife seeking orders to prevent respondent from selling or transferring properties which

could be deemed part of the marital assets and subject to the jurisdiction of the court. The lis pendens were filed regarding properties owned and controlled by respondent and titled in the name of his entities, his sister, Christiane Martinot, and/or Kadija Rhoualmi.

112. The respondent titled these properties in a manner intended to defraud respondent's wife of marital assets. The filing of multiple lis pendens were taken as a necessary step to protect his client and preserve the marital assets.

113. Respondent took marital assets and property and transferred them to various other entities in an effort to conceal them during the dissolution matter.

114. For example, respondent transferred Ocean Hammock from Green Ville, LLC to K. R. H. Investments, LLC solely for the purpose of avoiding the filing of a *lis pendens* against the property by respondent's wife in connection with their dissolution of marriage action which was pending at the time of the transfer. The *lis pendens* would have prevented respondent from selling the property to a *bona fide* buyer (TFB-Ex. 1 Tab 29 p. 117). Respondent appears to have acted improperly with what was arguably marital property.

115. In addition, respondent sold Ocean Hammock without informing his wife (TFB-Ex. 1 Tab 27 pp. 82-83; TFB-Ex. 1 Tab 29 p. 5) and when Mr. Council repaid the loan, respondent did not share the proceeds with the wife (TFB-

Ex. 1 Tab 28). It is clear that at the time he sold Ocean Hammock, he knew Ocean Hammock was marital property. His actions became an issue in the divorce.

116. In these proceedings, respondent tries to explain his failure to tell the wife about the sale and conveying marital property during the pendency of the divorce by claiming this may have violated the spirit of the law but it ultimately benefited the marriage since he was going to make a big profit and he had so much debt at the time (T Vol. VIII p. 884). He also tried to excuse his behavior by indicating that he did this because he was hurt and angry at his wife for filing for the divorce (T Vol. IX p. 1038). Respondent claimed that he transferred the properties back into his name because he came to his senses after the temporary support hearing in the divorce case (T Vol. VIII pp. 867, 874, 901). Rather, it is because his actions had been exposed during the temporary support hearing.

117. At one point it was necessary for respondent's wife to pursue civil action against respondent, Kadija Rhoualmi, Christiane Martinot, Karen Swann and all the entities created by respondent which were used to conceal the purchase and sale of properties as well as the proceeds associated with these transactions.

118. Reasonable attorney's fees and costs were incurred by respondent's wife as part of the legal work Mr. Brust was required to perform to uncover and protect the marital assets.

119. Prior to the hearing on Temporary Matters held before Judge Patrick G. Kennedy on August 24, 2005, Mr. Brust made reasonable efforts to schedule respondent for deposition and conduct preliminary discovery, without success. Further, respondent failed to file the required financial affidavit.

120. The Temporary Matters hearing was concluded on August 24, 2005 before Judge Kennedy. Respondent testified at the afore-referenced hearing.

121. The court entered a Temporary Support Order on August 25, 2005 (TFB-Ex. 1 Tab 26). The court found that respondent failed to file the required financial affidavit and produce any documentation regarding his income.

122. The court further found respondent's testimony to be extremely evasive, found him not to be a credible witness and his finances to be murky.

123. Based on respondent's testimony and the evidence from the hearing, the court found that he bought and sold several parcels of property. Further, there was no evidence as to what exactly were respondent's holdings, in what entities they may be held or if any assets were concealed outside the United States.

124. The court required respondent to reimburse his wife for legal fees and costs, as well as additional estimated fees, incurred by respondent's wife, based in part on the complexity of the case and the lack of cooperation by respondent.

125. An example of respondent's unethical conduct in his dissolution matter involved a home equity line of credit. On June 24, 2005, respondent applied for a home equity line of credit with USAA Federal Savings Bank secured by the marital home with a maximum limit of $150,000.00 (Answer to Complaint; TFB-Ex. 1 Tab 29 p. 86; TFB-Ex. 1 Tab 33).

126. Respondent signed his wife's signature on the application for the home equity line of credit (TFB-Ex. 1 Tab 29 p. 86; TFB-Ex. 1 Tab 33; TFB-Ex. 1 Tab 111 p. 2). Respondent did not advise the lender that he was signing his wife's name for her on the loan application (TFB-Ex. 1 Tab 29 p. 88).

127. Respondent obtained $150,000.00 from the line of credit from USAA Federal Savings Bank and deposited the funds to his personal checking account (TFB-Ex. 1 Tab 29 p. 94).

128. Once the funds were deposited into respondent's personal account, he wrote a check for $150,000.00 payable to Mr. Zolsky, his friend who owned Fun Coast Realty, LLC (Answer to Complaint; T Vol. VIII p. 869; T Vol. IX pp. 1029-1030). Mr. Zolsky deposited this check to an account he controlled and issued a check to the Bank of St. Augustine to purchase the mortgage held by the bank on respondent's law office condominium (Answer to Complaint; T Vol. VIII p. 869; T Vol. IX p. 1030).

129. Respondent failed to use the loan proceeds to pay the mortgage on the marital home pursuant to the separation agreement respondent and his wife entered into on April 12, 2005 (R-Ex. 52 p. 2).

130. Respondent testified at the final hearing in these disciplinary proceedings that he did not owe anything to Mr. Zolsky, although it appeared in the public record that Mr. Zolsky held the mortgage on respondent's law office (T Vol. VIII p. 869; IX p. 1030).

131. Respondent used the equity in the marital home, without his wife's permission, to eliminate his personal debt regarding the mortgage on the office condominium where his law practice was located.

132. In his deposition in the dissolution of marriage case taken on December 9, 2005, respondent testified that he obtained another loan from a bank secured by the San Mateo house despite the fact he knew his wife had filed a notice of *lis pendens* against the property (TFB-Ex. 1 Tab 29 p. 41). Respondent also knew he had used at least some marital funds to purchase the San Mateo house.

133. Respondent transferred the title to the San Mateo house to another of his limited liability companies shortly prior to the *lis pendens* being recorded. As a result, respondent's wife recorded the notice of *lis pendens* against the wrong owner of the property (TFB-Ex. 1 Tab 29 p. 41).

134. Respondent did not advise the lender of the existence of the notice of *lis pendens* against the property (TFB-Ex. 1 Tab 29 p. 41). Respondent's actions resulted in the lender not discovering the existence of the notice of *lis pendens* (TFB-Ex. 1 Tab 29 pp. 41-42).

135. When asked during his deposition whether he advised the lender that a *lis pendens* had been filed but that it might not have appeared in the public records search, respondent's reply was "Well, they didn't ask me" (TFB-Ex. 1 Tab 29 p. 42).

136. As a result of respondent's omissions of material fact, the lender made a loan to respondent secured by the San Mateo house, property that the lender believed to be free of any encumbrances (TFB-Ex. 1 Tab 29 pp. 41-42).

137. Respondent also made misrepresentations in his testimony during the Temporary Matters hearing on August 24, 2005 when he testified that he did not transfer the title of the San Mateo house from one limited liability company to another (TFB-Ex. 1 Tab 27 pp. 63-64). This was clearly untrue. (TFB-Ex. 1 Tab 98; TFB-Ex. 1 Tab 100).

138. The warranty deed dated June 27, 2005 shows that the San Mateo house was purchased in the name of First Coast Land and Title (TFB-Ex. 1 Tab 98; R-Ex. 91 p. 3). On the same date, the San Mateo house was transferred by First Coast Land and Title to K. R. H. Investments (TFB-Ex. 1 Tab 100; R-Ex. p. 5).

The first deed shows it was recorded on July 1, 2005 and the second deed was recorded on August 5, 2005, 20 days prior to respondent's testimony in the Temporary Matters hearing.

139. K. R. H. Investments, LLC was a company wholly controlled by respondent. He used the company to hold title to properties which he purchased for his own benefit (Answer to Complaint; TFB-Ex. 1 Tab 29 p. 33; T Vol. VIII p. 918). Ms. Rhoualmi, respondent's client and girlfriend, was named the registered agent and managing member. On paper she occupied all officer positions in this limited liability company (Answer to Complaint; B-Ex. 1 Tab 75; R-Ex. 92).

140. Respondent utilized at least some marital funds in purchasing the San Mateo house and attempted to hide this asset from his wife in the dissolution of marriage proceeding by taking title to the property in the name of an entity allegedly owned by Ms. Rhoualmi but in reality controlled by respondent (TFB-Ex. 1 Tab 25 pp. 3-4; B-Ex. 1 Tab 125).

141. At the final hearing, respondent stated that although his wife knew about the San Mateo house and he never attempted to hide it from her, he was "being a jerk" about whether or not she was entitled to an interest in the property (T Vol. VIII p. 963). During these proceedings, respondent was trying to mitigate the consequences of his shell game antics in moving title to the San Mateo house.

142. Respondent also took advantage of his sister's trust. He involved Ms. Swann in his scheme to hide assets from his wife by transferring several of the investment properties which were marital properties into her name. He concealed these activities by having the deeds sent to his address rather than to his sister's address in Georgia. His actions resulted in his sister being infused in the divorce proceeding.

143. In his December 2005 deposition, respondent testified that he did not recall whether he listed the San Mateo house as an asset on his $1 million loan application to Colonial Bank on or about November 14, 2005 and that it was not his intent to deceive the lender into believing it was his asset alone (B-Ex. 1 Tab 29 pp. 134-135). His actions indicate otherwise.

144. Respondent also used real property hereinafter referred to as the "Fairwinds Shores condominium" to secure this $1 million loan from Colonial Bank (B-Ex. 1 Tab 104). Respondent had purchased the Fairwinds Shores condominium using his father's estate assets (T Vol. VIII p. 965). He purchased the property through Beach Street Properties, LLC. Respondent wholly owned and controlled this limited liability company (T Vol. VIII p. 965).

145. Respondent did not disclose the Fairwinds Shores condominium during his dissolution of marriage action (T Vol. VIII p. 960).

146. Respondent's actions created confusion regarding the beneficial owner of the Fairwinds Shores condominium since according to respondent, the property was purchased with his father's Estate assets.

147. Respondent's explanation at the final hearing in these disciplinary proceedings was that he created the "flow chart" for his December 2005 deposition that contained the various properties in order to track nonmarital assets. Respondent included the Fairwinds Shores condominium as part of the aggressive position he was taking for negotiation purposes (T Vol. VIII pp. 960-961; T Vol. IX pp. 1043-1044). He neglected to clarify matters that although he may have used monies from his father's estate to purchase the property, the monies were obtained as a loan to respondent.

148. Respondent's testimony from both his deposition and hearing in the dissolution matter is troubling, at best. Respondent's testimony clearly established that he failed to disclose marital assets and engaged in conduct involving misrepresentation. This was especially evident as it pertained to the line of credit to which he signed his wife's name.

149. Respondent, despite being an officer of the court, took actions prior to and during his dissolution of marriage designed to obscure the ownership of marital assets and to defraud a lender (TFB-Ex. 1 Tab 25; TFB-Ex. 1 Tab 125).

COUNT IV

150. Respondent involved his client, Christiane Martinot, in business transactions involving assets of his father's estate without the required disclosures for business transactions with clients as set forth in The Rules Regulating The Florida Bar.

151. Respondent's business transactions with Ms. Martinot were for the purpose of hiding assets from his wife in his dissolution of marriage action (TFB-Ex. 1 Tab 105; TFB-Ex. 1 Tab 125; TFB-Ex 1 Tab 126).

152. In addition, respondent created K. R. H. Investments, LLC on or about March 29, 2005, in the name of Kadija Rhoualmi, his girlfriend (Answer to Complaint; TFB-Ex. 1 Tab 75; R-Ex. 92). Ms. Rhoualmi was named as the registered agent, managing member, and occupied all officer positions for K. R. H. Investments, LLC (Answer to Complaint).

153. Respondent controlled K. R. H. Investments, LLC at all times material. Respondent used the company to hold title to properties, as nominee title holder, which he purchased for his own benefit (Answer to Complaint; TFB-Ex. 1 Tab 29 p. 33; T Vol. VIII p. 918).

154. Respondent's business transactions with Ms. Rhoualmi were, in part, for the purpose of hiding assets from his wife in his dissolution of marriage

action. Although in the bar proceeding respondent denied being Ms. Rhoualmi's attorney, the evidence proves otherwise.

155. For example, respondent asserted the attorney-client privilege in his answers to interrogatories served on him in *Estate of Shelton v. Rhoualmi*, Case No. CA-05-572 in St. Johns County, Florida (TFB-Ex. 1 Tab 10, pp. 11, 18) when asked whether he prepared any pleadings, discovery requests, motions or discovery responses for Ms. Rhoualmi for use in her defense in the case. This was prior to respondent being named as party in the case.

156. Respondent also testified, under oath, during the hearing in his dissolution of marriage case on August 24, 2005 that Ms. Rhoualmi was his client (TFB-Ex. 1 Tab 27 p. 98).

157. Finally, respondent also referred to Ms. Rhoualmi as being his client in an electronic mail message to Joseph Reza (R-Ex. 20 p. 2; T Vol. IX p. 1027).

158. Despite respondent's insistence that Ms. Rhoualmi was not his client, the record evidence clearly establishes otherwise.

159. On or about June 27, 2005, respondent involved K. R. H. Investments, LLC in taking title to the San Mateo house (TFB-Ex. 1 Tab 100; R-Ex. 91 p. 5). Respondent also used funds from his father's estate and/or his mother

in purchasing the San Mateo house but the manner in which he titled the property obscured this fact.

160. On or about August 5, 2005, respondent amended the articles of organization for K. R. H. Investments, LLC to name Ms. Martinot, respondent's client, as the president, vice-president, secretary and treasurer for said limited liability company. Respondent continued to completely control the company (Answer to Complaint; R-Ex. 92 p. 3).

161. As manager of K. R. H. Investments, LLC, Ms. Martinot executed the August 3, 2005 deed conveying Ocean Hammock to E. C. N. Properties, LLC, which respondent had purchased as an investment for his father's estate and/or his mother (TFB-Ex. 1 Tab 96; R-Ex. 81 p. 19).

162. According to Ms. Martinot's testimony, via her sworn affidavit, she was not involved in K. R. H. Investments, LLC. Instead, she simply lent her name to the company because respondent asked her to do so. Ms. Martinot's duties and responsibilities were only on paper. It did not involve any actual work (TFB-Ex. 1 Tab 126).

163. Ms. Martinot further testified that when respondent removed her name from K. R. H. Investments, LLC, and amended the paperwork, he told her that he was "coming clean" in his divorce.

164. As a result of respondent's transactions, Ocean Hammock was owned by K. R. H. Investments, LLC which was a "pass through entity" and respondent should have reported the capital gains on his personal income tax return (T Vol. VIII p. 931-932). However, while respondent testified to these facts he failed to introduce any evidence to substantiate his claim. Further, it was clear that his actions in involving Ms. Martinot in the company caused her concern regarding whether she would have any tax liability (TFB-Ex. 1 Tab 126).

165. On August 15, 2005, respondent loaned his friend, Joaquin "Jack" Nunez and his business, Forever Homes, Inc., $120,000.00 from K. R. H. Investments, LLC (Answer to Complaint). However, at the time respondent made the loan, Ms. Martinot still occupied all officer positions in the limited liability company.

166. On or about October 17, 2005, respondent purchased the Cinnamon Beach condominium for $750,000.00 with a loan from Bank of America in the amount of $345,000.00 secured by the San Mateo house (Answer to Complaint; T Vol. III p. 916) and other loans (B-Ex. 1 Tab 29 pp. 44-46).

167. Respondent testified during his December 2005 deposition that $30,000.00 of the purchase money for the Cinnamon Beach condominium came from Green Ville's account "out of some money owed to [him] by . . . Green Ville" (TFB-Ex. 1 Tab 29 p. 46). The implication was that Green Ville was a company

independent from respondent and that the monies contained in the account belonged to Green Ville.

168. Ms. Martinot also testified that respondent asked her to keep some of his money and property in Green Ville. According to Ms. Martinot, respondent formed the company on her behalf to help with her real estate business. Ms. Martinot had some of her real estate holdings in Green Ville.

169. Respondent asked her to do this so that his wife could not take everything. Respondent assisted Ms. Martinot in opening a bank account for Green Ville. Respondent would have her sign papers and checks for the Green Ville account.

170. Ms. Martinot did not receive any money from the Green Ville bank account. The money in the account belonged solely to respondent. Further, he was authorized to use the funds, despite the fact the funds were on deposit in the Green Ville account.

171. Thus, respondent's testimony in his December 2005 deposition was misleading in that the $30,000.00 did not belong to Green Ville and the company did not "owe" him any money (TFB-Ex. 1 Tab 29 p. 46; TFB-Ex. 1 Tab 126).

172. Respondent testified at the final hearing that he had complete control over Green Ville's checking account and, after he completed the sale of the

Ocean Hammock property, he no longer needed Green Ville and turned the company back over to Ms. Martinot (T Vol. VIII p. 924).

173. It was apparent that respondent was seeking to hide assets from his wife in the dissolution of marriage case. Respondent deposited his funds in the account of his client's company (TFB-Ex. 1 Tab 126 p. 3).

174. Respondent's use of Ms. Martinot and Green Ville in his various real estate transactions resulted in both Ms. Martinot and her company being included as third parties in respondent's dissolution of marriage, although ultimately they were dismissed as parties (Answer to Complaint; TFB-Ex 1 Tab 125; TFB-Ex. 1 Tab 126).

COUNT V

175. In his capacity as personal representative of the Natalia Berwick Taylor probate estate and as trustee of the Natalia Berwick Taylor Trust, respondent took action to personally benefit himself and Ms. Rhoualmi, his client and girlfriend. He took these actions without proper disclosure to the beneficiaries and without consideration as to whether it would benefit the estate or trust beneficiaries.

176. In or around 1993, Natalia Berwick Taylor retained respondent to prepare a declaration of trust that she executed on April 12, 1993 naming Lois J. Thomas as trustee (TFB-Ex. 1 Tab 41).

177. Ten years later, respondent prepared a will that Ms. Taylor executed on June 22, 2003, naming respondent and Frances Reside as co-personal representatives, each entitled to fees of not less than 5% of the estate (Answer to Complaint; TFB-Ex. 1 Tab 41). The will left all of Ms. Taylor's tangible property to Ms. Reside with the remainder of the estate going to the Natalia Berwick Taylor Trust (hereinafter referred to as the "Trust") (Answer to Complaint; TFB-Ex. 1 Tab 41).

178. Respondent also prepared a revised trust for Ms. Taylor that she executed a few days later on June 25, 2003, naming respondent and Ms. Reside as co-trustees (Answer to Complaint; TFB-Ex 1 Tab 41).

179. One year later, on June 25, 2004, respondent prepared an amendment to the trust naming himself solely as trustee and Ms. Reside as the successor trustee (Answer to Complaint; TFB-Ex. 1 Tab 41).

180. Ms. Taylor died on October 12, 2005. Respondent filed the will for probate (Answer to Complaint; TFB-Ex. 1 Tab 42) and on or about November 5, 2005 was appointed as co-personal representative (TFB-Ex. 1 Tab 43).

181. One of the assets of the estate was Ms. Taylor's home located at 42 Abbott Street in St. Augustine, Florida (hereinafter referred to as the "Taylor home") (Answer to Complaint; TFB-Ex. 1 Tab 42).

182. Respondent allowed Ms. Rhoualmi to live in the Taylor home either rent free or paying rent in an amount below fair market value. Ms. Rhoualmi lived in the Taylor home from on or about March 7, 2006 through March 31, 2006 (Answer to Complaint; B-Ex. 1 Tab 111 p. 2; TFB-Ex. 1 Tab 118 p. 4).

183. On or about March 16, 2006, respondent permitted another former client, Robin Monahan, to move into the Taylor home with the oral agreement that Ms. Monahan live rent free for two months and thereafter to pay the monthly rental amount directly to Ms. Rhoualmi (TFB-Ex. 1 Tab 24- document labeled as Respondent's exhibit 103-A to Lippes' deposition dated August 25, 2011; TFB-Ex. 1 Tab 111 pp. 2, 9; T Vol. I p. 120).

184. Respondent had an obligation to protect the Taylor home from vandalism and keep it insured. However, respondent also had a fiduciary duty to ensure the estate was receiving fair market value for the rental and he failed to do so with the rental agreement with Ms. Rhoualmi and by Ms. Monahan paying Ms. Rhoualmi.

185. Respondent did not disclose to either the estate or the trust beneficiaries the full details of his rental arrangements for the Taylor home (TFB-Ex. 1 Tab 62; R-Ex. 9 p. 6; R-Ex. 30 p. 1). Respondent's correspondence to one of the estate beneficiaries on February 23, 2006 was misleading and did not fully disclose the circumstances regarding the rental of the house (R-Ex. 97).

186. Although, the trust beneficiaries had no vested interest in the Taylor home as relatives of Ms. Taylor, they were particularly interested in ensuring that her final wishes regarding the house be carried out pursuant to her will (TFB-Ex. 1 Tab 62; R-Ex. 30 p. 1; T Vol. II p. 154; T Vol. III p. 278).

187. Respondent failed to provide the beneficiaries with a timely accounting of the trust assets (TFB-Ex. 1 Tab 58). Moreover, respondent had no explanation for his delay in first contacting the trust beneficiaries after Ms. Taylor's death (T Vol. VIII p. 970).

188. According to the testimony of attorney Lippes, he became involved in the Taylor matter as a result of the investigation regarding the exploitation of his elderly client, Mr. Shelton, by Ms. Rhoualmi and respondent.

189. In an attempt to locate Ms. Rhoualmi as part of the pending circuit court matter filed against her, Mr. Lippes discovered that she was residing in the Taylor home. In addition, another one of respondent's clients was also living in the home. According to the public record the address on file for tax purposes was respondent's law office (T Vol. I pp. 106-107).

190. Mr. Lippes subsequently spoke with the beneficiaries and learned respondent's communication with the trust beneficiaries had been poor subsequent to Ms. Taylor's death (TFB-Ex. 1 Tab 111 p. 9). At least one trust beneficiary,

Joseph Reza, complained to respondent on May 5, 2006 about the lack of communication.

191. Mr. Reza advised that as of May 5, 2006, respondent's communication with him had consisted of one electronic mail message (TFB-Ex. 1 Tab 63 p. 4). Another trust beneficiary, Sara Willis, had repeatedly asked respondent to send her a copy of Ms. Taylor's will without results (R-Ex. 24 p. 1).

192. In or around May 2006, the trust beneficiaries, through Mr. Lippes demanded respondent provide a full accounting of the trust and that he resign as trustee and personal representative for the Taylor Estate (Answer to Complaint; TFB-Ex. 1 Tab 59; T Vol. II p. 143).

193. Respondent provided an interim accounting for the estate on May 15, 2006 showing a net value of $14,606.43 in cash and $355,000.00 in non-cash assets, which consisted primarily of the Taylor home (Answer to Complaint; TFB-Ex. 1 Tab 46). This was the first accounting in the probate matter.

194. The trust beneficiaries and will beneficiaries ultimately reached an agreement and respondent was discharged in or around March 2008 (TFB-Ex. 1 Tab 56).

195. Respondent nevertheless failed to provide the beneficiaries with a timely accounting of the trust assets (TFB-Ex. 1 Tab 58). Moreover, respondent

had no explanation for his delay in first contacting the trust beneficiaries after Ms. Taylor's death (T Vol. VIII p. 970).

196. Mr. Lippes did not charge the beneficiaries a legal fee for his services regarding the trust. He currently remains as counsel until the proceeds from the trust have been fully distributed.

197. In these disciplinary proceedings, respondent sought to cast blame on Mr. Lippes rather than taking responsibility for his own actions in the Taylor and Shelton matters (T Vol. IX p. 1027).

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

COUNT I

a. 3-4.3 The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state

of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.

b. 4-1.7(b) A lawyer shall not represent a client if the lawyer's exercise of independent professional judgment in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest.

c. 4-3.4(a) A lawyer shall not unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act.

d. 4-8.4(a) for violating or attempting to violate the Rules of Professional Conduct or knowingly assisting or inducing another to do so, or doing so through the acts of another.

e. 4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a

criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule.

f. 4-8.4(d) A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

COUNT II

a. 3-4.3 The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.

b. 4-1.7(b) A lawyer shall not represent a client if the lawyer's exercise of independent professional judgment in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest.

c. 4-5.3(b) (2005) With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar: (1) a partner in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (B) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

d. 4-8.4(a) for violating or attempting to violate the Rules of Professional Conduct or knowingly assisting or inducing another to do so, or doing so through the acts of another.

e. 4-8.4(d) A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

COUNT III

a. 3-4.3 The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state

of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.

b. 4-3.4(a) A lawyer shall not unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act.

c. 4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule.

d. 4-8.4(d) A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion,

national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

COUNT IV

a. 3-4.3 The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.

b. 4-1.1 A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

c. 4-1.7(b) A lawyer shall not represent a client if the lawyer's exercise of independent professional judgment in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest.

d. 4-1.8(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, except a lien granted by law to secure a lawyer's fee or expenses, unless:(l) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

e. 4-8.4(a) for violating or attempting to violate the Rules of Professional Conduct or knowingly assisting or inducing another to do so, or doing so through the acts of another.

f. 4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional

misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule.

g. 4-8.4(d) A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

COUNT V

a. 3-4.3 The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state

of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.

b. 4-1.1 A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

c. 4-1.7(b) A lawyer shall not represent a client if the lawyer's exercise of independent professional judgment in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest.

d. 4-8.4(d) A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.1 Failure to Preserve the Client's Property

4.12 Suspension is appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

4.3 Failure to Avoid Conflicts of Interest

4.32 Suspension is appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

4.6 Lack of Candor

4.61 Disbarment is appropriate when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another regardless of injury or potential injury.

4.62 Suspension is appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to a client.

5.1 Failure to Maintain Personal Integrity

5.13 Public reprimand is appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

7.0 Violations of Other Duties Owed as a Professional

7.1 Disbarment is appropriate 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.

7.2 Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

V. CASE LAW

The Supreme Court of Florida "has moved towards stronger sanctions for attorney misconduct" in recent years." *The Florida Bar v. Rotstein*, 835 So. 2d 241, 246 (Fla. 2003).

I considered the following case law prior to recommending discipline:

The Florida Bar v. Baker, 810 So. 2d 876 (Fla. 2002) – 91 day suspension for forging his wife's name to several documents not related to the practice of law. The couple owned a home in which they did not live that became the subject to foreclosure. Mr. Baker decided to sell the home and located a buyer. Mr. Baker and his wife were estranged and she lived in another state where she had obtained a restraining order against him. Prior to the closing, at which he was represented by counsel, Mr. Baker forged his wife's name to several documents relating to the sale, including the warranty deed, without his wife's knowledge or consent. Mr. Baker then directed his legal secretary to notarize the documents without revealing they had been forged. Mr. Baker did not reveal to his attorney who handled the

closing that the documents contained forged signatures or that they had been improperly notarized. Mr. Baker deposited the proceeds from the sale to his personal account to which his wife had no access. Mr. Baker revealed his sale of the property to his wife several months after the closing. The Court found that suspension, rather than disbarment, was warranted because Mr. Baker's misconduct did not involve the practice of law and he did not commit a fraud on the court. Mr. Baker did not profit from the sale of the home because he used the funds to pay a marital debt.

The Florida Bar v. Laing, 695 So. 2d 299 (Fla. 1997) – 91 day suspension for engaging in a business transaction with clients involving a conflict of interest, among other acts of misconduct involving neglect, inadequate communication, failure to promptly deliver funds, failure to appear for trial in his own DUI case, conviction for resisting arrest without violence, misuse of trust funds, and deceitful acts. In the conflict of interest matter, Mr. Laing was hired to represent a client who wished to be released from her lease obligation and purchase agreement for real property and to obtain the return of the payments she had made in connection with the contract. Mr. Laing took advantage of the monies previously paid by his client in his taking over the option and eventual occupancy and purchase of the property. He failed to make the required conflict of interest disclosures to his client. In relation to his purchase of the property from the seller, he engaged in a

series of tactics in order to obtain a more favorable position, including attempting to have more documentary taxes placed on the deed that the purchase allowed in order to obtain a higher mortgage. The seller was represented by competent counsel and the matter eventually was settled by litigation. The referee found that the fact that respondent did accomplish for his client what she might not have been able to win in court did not relieve respondent of his responsibility to follow the Rules Regulating The Florida Bar and advise her in writing of their potentially conflicting interests. In aggravation, Mr. Laing had a prior disciplinary history. Although Mr. Laing's misconduct in these matters consisted primarily of technical violations, the Court found a 91 day suspension was warranted due to the cumulative effect of the multiple violations.

The Florida Bar v. Crabtree, 595 So. 2d 935 (Fla. 1992) – Disbarment for engaging in a conflict of interest and in making misrepresentations to third persons. The attorney was hired to repatriate $1.5 million from Europe for a client without disclosing the source of the funds. He involved another client in the complex series of transactions designed to accomplish this task without advising the two clients that he was representing both of them in the same transactions. Mr. Crabtree received a personal interest in the assets and failed to fully disclose to the clients his interest or the fact that they were all involved in the same transactions. Mr.

Crabtree wrote phony letters designed to mislead anyone looking into the transactions. There were not allegations that his misconduct was illegal.

The Florida Bar v. Collier, 506 So. 2d 389 (Fla. 1987) – Six month suspension for dealings with a trust beneficiary, who also happened to be his father-in-law, where his wife would receive the corpus of the trust upon the death of the beneficiary. Mr. Collier had his father-in-law execute a waiver and relinquishment of his interest in the trust in order for the attorney's wife to receive the corpus of the trust immediately. At the time, other family members were concerned that the father-in-law was suffering from dementia. Mr. Collier did not advise his father-in-law to seek the advice of independent counsel prior to executing the documents Mr. Collier had prepared and was aware that his father-in-law derived the majority of his income from the trust. Less than one month later, the father-in-law was found incompetent and his son was appointed as his guardian, over the objection of Mr. Collier who sought to have either himself or his wife appointed. The guardian brought suit alleging that Mr. Collier and his wife, as attorney for the trust and as trustee, paid themselves excessive fees over a period of many years. Mr. Collier acted as attorney for the trustee, his wife, despite the fact he was a material witness and was a party in interest. He engaged in prolonged dilatory action to try and delay the suit rather than furnish an accounting of his

activities to the guardian. Mr. Collier made a misrepresentation to the court on at least one occasion to try and have a hearing continued.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. 91 day suspension with proof of rehabilitation required prior to reinstatement.

B. Payment of The Florida Bar's costs in these proceedings.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following:

A. Personal History of Respondent:

Age: 62

Date admitted to the Bar: December 18, 1975. Respondent also is admitted to practice law in Georgia. Respondent was a certified public accountant in Florida but allowed his license to lapse in 2003. Respondent was a licensed real estate sales associate in Florida but allowed his license to expire.

B. Aggravating Factors: 9.22

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

(h) vulnerability of victim (respondent's elderly mother may not have been sufficiently competent to approve his use of Estate funds to invest in various real properties under the name of respondent or one of his business entities and Mr. Shelton was particularly vulnerable due to his lack of mental capacity and susceptibility to undue influence by Ms. Rhoualmi); and

(i) substantial experience in the practice of law.

Prior Discipline: None

C. Mitigating Factors: 9.32

(a) absence of prior disciplinary record.

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Copy Costs	$649.87
Bar Counsel Costs	$2,377.57
Court Reporters' Fees	$10,215.75
Investigative Costs	$1,833.86
Administrative Fee	$1,250.00
TOTAL	**$16,327.05**

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in

this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 9th day of February, 2012.

/s/ Brent D. Shore
Brent Douglas Shore, Referee
Duval County Courthouse
330 East Bay Street, Suite 300
Jacksonville, FL 32202-2921

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; and that copies were mailed 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; Kenneth L. Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; Frances R Brown-Lewis, Bar Counsel, The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050; on this __9th__ day of __February_____, 2012.

_/s/ Brent D. Shore_____
Brent Douglas Shore, Referee