IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

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

HENRY T. SWANN, III

Respondent.
_____/

REPLY AND CROSS-ANSWER BRIEF

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SYMBOLS AND REFERENCES

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

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

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

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

ARGUMENT

ISSUE I

THE SERIOUS CUMULATIVE NATURE OF RESPONDENT'S MISCONDUCT WARRANTS DISBARMENT RATHER THAN A 91 DAY SUSPENSION AND IS SUPPORTED BY COMPETENT SUBSTANTIAL RECORD EVIDENCE DETAILED IN THE REPORT OF REFEREE

In reviewing a referee's recommendation as to discipline, this Court's scope of review is broader than that afforded to a referee's factual findings because the ultimate responsibility for imposing the appropriate sanction rests with this Court. *The Florida Bar v. Gwynn*, 37 Fla. L. Weekly S121 (Fla. Feb. 16, 2012). Although this Court does not ordinarily second-guess a referee's disciplinary recommendation, that recommendation must have a reasonable basis in the case law and the Florida Standards for Imposing Lawyer Sanctions. *Gwynn* 37 Fla. L. Weekly at S121 (Fla. Feb. 16, 2012). Further, when this Court "reviews the recommended discipline, it does so mindful of its obligation to impose a sanction that is consistent with the purposes of lawyer discipline." *The Florida Bar v. Adorno*, 60 So. 3d 1016, 1031 (Fla. 2011). As demonstrated in the record by competent and substantial evidence, respondent acted with a selfish motive and disregard for the high standards of this profession. Due to respondent's cumulative egregious misconduct, coupled with the corrupt motive and fraudulent intent

present in his misconduct, the bar submits that the purposes of lawyer discipline best would be met by disbarment.

Respondent misapprehends the requirements for this Court's review of a referee's recommendation as to discipline. His reliance on R. Regulating Fla. Bar 3-7.7(c)(5) is misplaced. Rule 3-7.7(c)(5) requires the party seeking review "to demonstrate that a report of a referee sought to be reviewed is erroneous, unlawful, or unjustified." The bar is not seeking to overturn the report of referee herein. Rather, the bar submits that the goals of discipline would be better served by this Court imposing disbarment upon respondent instead of a 91 day suspension. Further, the case law and Standards for Imposing Lawyer Sanctions support disbarment.

The purposes of lawyer discipline are threefold. The judgment must be fair to society by protecting the public from unethical conduct while not depriving it of the services of a qualified attorney. The judgment must be fair to the accused attorney in sufficiently disciplining him or her for the misconduct and in encouraging rehabilitation. The discipline also must be sufficiently severe to deter other attorneys who might be prone to engage in similar acts of misconduct. *Adorno*, 60 So. 3d at 103. This Court enumerated a fourth purpose of lawyer discipline in *The Florida Bar v. Larkin*, 447 So. 2d 1340, 1341 (Fla. 1984),

namely, the creation and protection of a favorable image of the profession. A favorable image of the profession requires the profession impose visible and effective disciplinary measures when serious violations occur.

Respondent abused his position as an attorney to benefit himself at the expense of others. He violated his fiduciary duties by self-dealing and violated his duties as an officer of the court by making misrepresentations under oath. His misconduct was not isolated. It was ongoing for at least three years and it is clear that, even now, he does not appreciate the gravity of his actions. Respondent used his experience and knowledge as an attorney to manipulate to his own advantage the judicial system he was sworn to uphold.

Standard 3.0 of the Florida Standards for Imposing Lawyer Sanctions provides that the following factors shall be considered in determining the appropriate sanction to be imposed: (a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors. *The Florida Bar v. Helinger*, 620 So. 2d 993, 995 (Fla. 1993).

Respondent engaged in serious acts of misconduct over an extended period of time, some of which adversely affected clients and some of which adversely affected the legal system. He violated the fiduciary duty he owed to his mother as

her attorney in fact. He was obligated to safeguard his mother's assets and not use them for his own benefit but the evidence shows he did otherwise. Respondent attempted to excuse his misconduct by indicating that his mother later ratified his actions. It is apparent that respondent had considerable influence over his mother and this fact makes his actions even more reprehensible. Respondent also violated the fiduciary duty he owed as personal representative of his father's estate. Respondent was to safeguard estate assets and not use them for his own benefit. The evidence shows he did otherwise.

Respondent's inability to adhere to the standards of ethical conduct extended beyond his actions with regard to his mother's assets and his father's estate assets. Respondent also violated his professional duty when he assisted his girlfriend and client Kadija Rhoualmi in taking advantage of his elderly client, William Shelton. In addition, respondent disregarded his duty as an officer of the court when he engaged in conduct intended to defraud his wife in their dissolution of marriage case. As an officer of the court, respondent violated his duty to testify truthfully under oath during his dissolution of marriage case. Respondent also violated his professional duty to avoid a conflict of interest with respect to his actions regarding his client Christiane Martinot. His failures further extended to his violation of the fiduciary duty he had as closing agent and the fiduciary duties he owed to the

Taylor estate. These are all important, fundamental professional duties. The record clearly supports that respondent repeatedly and consistently put his own interests ahead of those persons who had reposed their trust in him to look out for their best interests. Respondent repeatedly acted purposefully to make his personal, pecuniary interests more important than the interests of his mother, his father's estate, his clients, the court and the legal profession.

Respondent next contends that if there was any misconduct, the referee should have found additional mitigating factors. The referee herein found numerous aggravating factors, and only one mitigating factor, namely respondent's lack of a prior disciplinary history [Florida Standard for Imposing Lawyer Sanctions 9.32(a)] (ROR A73). A referee's findings as to aggravation and mitigation carry a presumption of correctness. This Court has upheld such findings unless it is shown that they are clearly erroneous or without support in the record. *The Florida Bar v. Roberto*, 59 So. 3d 1101, 1105 (Fla. 2011).

Little mitigating evidence was presented by respondent at the final hearing. Respondent now contends that the referee should have considered as mitigation that he was undergoing treatment for acute Parkinson's Disease and that he was under severe emotional distress resulting from his wife's attorney's vigorous pursuit of him in the divorce proceedings. The bar submits that his wife's attorney's

vigorous pursuit of him in the dissolution action was occasioned by respondent's extensive efforts to conceal marital assets. He should not be allowed to use as mitigation any emotional distress resulting from his unethical misconduct. Further, respondent did not present evidence to show that his mental state was impaired in any manner or that any impairment had a causal connection to his ethical misconduct. The evidence shows that respondent actively participated in the litigation involving Ms. Rhoualmi and in the litigation concerning his wife. Further, during the time in question, respondent orchestrated various complex real estate transactions between his entities and third parties. There is no evidence of respondent's mental state being impaired or that any impairment existed that should excuse his intentional, egregious ethics violations.

An appeal in a bar disciplinary case is not a trial *de novo*. *The Florida Bar v. Niles*, 644 So. 2d 504 (Fla. 1994). Therefore, respondent's attempt to introduce new evidence as to mitigation in his brief is not appropriate. Respondent had the opportunity at the final hearing to present evidence as to mitigation but deliberately chose not do so (T Vol. VIII p. 930). Furthermore, The Florida Bar served interrogatories on respondent on October 7, 2011 inquiring as to what mitigating evidence he anticipated presenting at the final hearing. In particular, The Florida Bar's interrogatory number 4 requested respondent to "list any and all reasons for

mitigation which will be presented to the referee." In his answer served on October 31, 2011, respondent stated that he did not anticipate presenting any mitigating evidence other than the summarized anticipated testimony set forth in response to interrogatory number 2, none of which concerned respondent's physical health or his emotional state during his divorce.

In aggravation, the referee found that respondent had a dishonest or selfish motive for engaging in his acts of misconduct [Florida Standard for Imposing Lawyer Sanctions 9.22(b)] (ROR A72). He also engaged in a pattern of misconduct [Florida Standard for Imposing Lawyer Sanctions 9.22(c)] (ROR A72) and there were multiple offenses [Florida Standard for Imposing Lawyer Sanctions 9.22(d)] (ROR A73). The referee also found that there was victim vulnerability in that respondent's elderly mother may not have been sufficiently competent to approve respondent's use of his father's funds and/or her own funds to invest in various real properties under the name of respondent or one of his business entities. Moreover, Mr. Shelton, respondent's elderly client, was particularly vulnerable due to his lack of mental capacity and susceptibility to undue influence by Ms. Rhoualmi [Florida Standard for Imposing Lawyer Sanctions 9.22(h)] (ROR A73). Lastly, respondent is experienced in the practice of law [Florida Standards for Imposing Lawyer Sanctions 9.22(i)], having been admitted to The Florida Bar in

December 1975 (ROR A72-A73). Additionally, the evidence indicated that respondent also was admitted to practice law in Georgia in 1975 (T Vol. VII p. 769). He also was a certified public accountant and a licensed real estate sales associate in Florida until he allowed his licenses to either expire or lapse (ROR A72). Clearly, respondent's training and experience alone indicate his actions were knowing and deliberate as opposed to negligent or incompetent. Moreover, evidence as to respondent's emotional and physical health would be insufficient to warrant lesser discipline in light of the significant aggravating factors found by the referee. While afflictions such as substance abuse, or in respondent's case, alleged emotional or physical problems, may explain an attorney's misconduct, they do not excuse the attorney's actions. *The Florida Bar v. Golub*, 550 So. 2d 455, 456 (Fla. 1989).

The potential or actual injuries caused by respondent's various acts of misconduct were great. The fact that respondent involved his client Ms. Martinot in his misconduct is particularly egregious. Ms. Martinot was included as a third party in respondent's dissolution of marriage case and was served with a subpoena in that case during her granddaughter's birthday party while Ms. Martinot had a "houseful of people" (B-Ex. 1 Tab 126). Similar to the attorney in *Adorno*, respondent exposed his client to potential harm. She also suffered great concerns

regarding potential difficulties with the Internal Revenue Service as a result of respondent's use of her limited liability company to hide assets from his wife (B-Ex. 1 Tab 126). In addition, respondent's mother lost interest income from her investment account after respondent removed all but $54.86 from the account for his own use (R-Ex. 68). Respondent did not pay his mother the interest she would have earned had he left the money in the investment account. Further, she received no benefit from his real estate investments nor did he pay her interest on the "loan" to himself.

Respondent's actions in his dissolution case also harmed the legal system. His misconduct resulted in unnecessarily protracted legal proceedings that consumed court resources and time. The court entered an *ex parte* order against respondent on November 7, 2005 compelling discovery (B-Ex. 1 Tab 129). Respondent's wife had to move the court for contempt/discovery sanctions against respondent only one month later on December 6, 2005 after respondent again refused to produce all of the documents requested and ordered to be produced (B-Ex. 1 Tab 129). Respondent transferred marital assets to various other entities in an effort to conceal them from discovery in the dissolution of marriage proceedings. Opposing counsel in the dissolution of marriage case stated that that respondent failed to file the required financial affidavit or produce any documentation

regarding his income prior to the hearing on temporary matters (B-Ex. 1 Tab 125). Particularly egregious was respondent's disingenuous sworn testimony during the hearing on temporary matters that resulted in the court finding him not to be a "credible witness" (B-Ex. 1 Tab 26). The referee herein also found that respondent's testimony was not credible (ROR A16, A30) "We find it troubling when a member of the Bar is guilty of misrepresentation or dishonesty, both of which are synonymous for lying. Honesty and candor in dealing with others is part of the foundation upon which respect for the profession is based. The theme of honest dealing and truthfulness runs throughout the Rules Regulating The Florida Bar and The Florida Bar's Ideals and Goals of Professionalism." *The Florida Bar v. Poplack*, 599 So. 2d 116, 118 (Fla. 1992).

When the facts of a case show egregious misconduct, particularly where an attorney acts with a selfish motive, this Court has imposed significant terms of suspension. *The Florida Bar v. Doherty*, 37 Fla. L. Weekly S241 (Fla. March 29, 2012). All of respondent's misconduct was grounded in his own selfish motives. Respondent invested his mother's money and/or money from his father's estate for his sole benefit. Neither his mother nor his father's estate enjoyed any benefit from respondent's profitable real estate ventures. He intentionally hid assets from his wife so that he would not be forced to surrender any portion of them to her in the

dissolution of marriage case and he involved a client in his scheme. He also helped his girlfriend/client defraud one of his elderly clients. In another matter, respondent took advantage of his position as personal representative for an estate and as trustee for a trust to benefit himself and/or his girlfriend. Respondent has shown no remorse for his actions. The egregious nature of respondent's cumulative misconduct, his selfish motive for his actions, and the particular aggravating factors, with the absence of any significant mitigation, warrant the imposition of the harsher sanction of disbarment, as opposed to a long term suspension.

Respondent was dishonest in his dealings with others and with the legal system. Such serious misconduct calls into question respondent's fitness to practice law. The case law and the Florida Standards for Imposing Lawyer Sanctions support disbarment in this case.

ISSUE II

THE REFEREE'S REPORT IS LAWFUL AND NOT ERRONEOUS AS IT IS BASED ON THE SERIOUS CUMULATIVE NATURE OF RESPONDENT'S MISCONDUCT AND IS SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE

In his Answer Brief and Brief on Cross Petition for Review, respondent seeks to challenge the referee's findings of fact. He argues that the referee improperly relied on the testimony of Harold Lippes, in part, because the bar initially had dismissed Mr. Lippes' bar complaint against respondent due to insufficient evidence and because respondent was more credible. He also argues that the evidence before the referee did not support a finding of misconduct by the respondent.

A referee's findings of fact regarding guilt carry a presumption of correctness and are upheld unless shown to be erroneous or without support in the record. *The Florida Bar v. Maurice*, 955 So. 2d 535, 539 (Fla. 2007). To succeed in challenging a referee's factual findings, a party must show there was a lack of evidence in the record to support such findings or that the record clearly contradicted the referee's conclusions. *The Florida Bar v. Glueck*, 985 So. 2d 1052, 1056 (Fla. 2008). This burden cannot be met by merely pointing out contradictory evidence in the record when there also is competent substantial evidence in the record to support the factual findings. *Glueck*, 985 So. 2d at 1056.

It would appear that respondent believes his testimony should be accepted over that of the bar's witness, Mr. Lippes. It boils down to a question of witness credibility. A referee's assessment of a witness's credibility is reviewed only for abuse of discretion. *The Florida Bar v. Maurice*, 955 So. 2d 535, 539 (Fla. 2007). This Court long has held that it defers to the referee's evaluation and resolution of conflicts in the evidence because it is the referee who is in the best position to make these assessments. *The Florida Bar v. O'Connor*, 945 So. 2d 1113, 1117 (Fla. 2006).

The referee clearly chose to believe the testimony of attorney Harold Lippes rather than that of respondent. Further, Mr. Lippes' testimony was consistent with the documentary evidence. Respondent's testimony during the temporary needs hearing and his deposition in his dissolution of marriage case was contradictory. In addition, during the final hearing in this disciplinary proceeding, respondent's testimony was inconsistent with his previous position and frequently at odds with the documentary evidence (ROR A8-A10, A16). The referee's findings herein were not based solely on Mr. Lippes' testimony, but rather, were based on the voluminous documentary evidence submitted by both parties. Respondent has failed to meet his burden of presenting clear and convincing evidence that the

referee's judgment in this respect was incorrect. *The Florida Bar v. Carricarte*, 733 So. 2d 975, 978 (Fla. 1999).

With respect to the Shelton matter, respondent's characterization of the bar's "dismiss[al]" of Mr. Lippes' "complaint" due to "insufficient" evidence is not determinative of whether this was a valid disciplinary matter. The bar closed its investigative inquiry into Mr. Lippes' grievance against respondent at staff level (R-Ex. 15). Pursuant to Rule 3-7.3(d) of the Rules Regulating the Florida Bar, dismissal by bar counsel did not preclude further action by the bar. The bar re-opened the matter after the civil court entered its order finding that respondent assisted Ms. Rhoualmi in unduly influencing and defrauding Mr. Shelton (B-Ex. 1 Tab 1; R-Ex. 60).

Although respondent could not challenge the trial court's final judgment in the Shelton case directly, he did so through Ms. Rhoualmi, who filed a motion for rehearing (B-Ex. 1 Tab 2). The trial court denied this motion for rehearing, specifically finding that respondent's sworn testimony at the trial lacked credibility (B-Ex. 1 Tab 2 p. 2). Respondent argues that, because he was not a party to the civil proceeding between Mr. Shelton and Ms. Rhoualmi, the trial court's orders finding respondent's testimony not to be credible (B-Ex. 1 Tab 2) and that he had assisted Ms. Rhoualmi in defrauding Mr. Shelton (B-Ex. 1 Tab 1) were not

determinations by the court that respondent had engaged in any actionable misconduct. This position is without merit.

There is no requirement that a court must make a formal adjudication of perjury for the bar to proceed with disciplinary proceedings when a court calls into question an attorney's truthfulness when testifying under oath. The civil trial court made a factual finding regarding respondent's testimony during the case between Mr. Shelton and Ms. Rhoualmi. It is not material to these bar disciplinary proceedings that respondent was not a party in the underlying litigation or that the civil judgment was not against him. While respondent may not have had the opportunity to challenge that factual finding in the civil case, he was afforded that opportunity in this disciplinary case. After hearing the evidence, including respondent's testimony about the issue, the referee chose not to give credence to respondent's explanation. Respondent's reliance on *Norville v. Bellsouth Advertising & Publishing Corp.*, 664 So. 2d 16 (Fla. 3d DCA 1995), is misplaced where the trial court erred in permitting Bellsouth to recover against Dr. Norville's noncorporate property despite the fact that Dr. Norville had not been included personally as a party in the litigation.

Similarly, respondent's reliance on *Alger v. Peters*, 88 So. 2d 903 (Fla. 1956), is misplaced. The case holds that the rights of an individual cannot be

adjudicated in a judicial proceeding to which the individual has not been made a party and from which the individual has been excluded. Mr. Lippes' voluntarily dismissal of respondent as a party in the Shelton civil suit filed in St. Johns County (B-Ex. 1 Tab 11) because he no longer needed respondent as a party in order to achieve his client's objective of recovering Mr. Shelton's assets from Ms. Rhoualmi (T Vol. I pp. 77-78) has no bearing on respondent's professional duties under the Rules Regulating The Florida Bar.[1] The focus of these disciplinary proceedings differs from that of the Shelton civil proceedings. Of concern to the bar and this Court is respondent's untruthful testimony as a witness, not as a party.

All of respondent's actions as set forth in the report of referee have involved varying degrees of dishonesty. As this Court most recently stated in *The Florida Bar v. Draughon*, 37 Fla. L. Weekly S434 (Fla. June 28, 2012) ". . . basic fundamental dishonesty is a flaw, one which cannot be tolerated by a profession that relies on the truthfulness of its members."

Respondent's characterization in his brief that he handled his mother's funds as an investment for her benefit is at odds with his sworn testimony at the final hearing in this matter that his mother knowingly loaned him the $463,429.00 without any restrictions on how he used it (T Vol. VII p. 818). Respondent's

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1 Respondent testified in the Shelton case filed in Duval County. It was in that case that the trial court made its findings regarding respondent's lack of credibility.

testimony concerning the nature and source of these funds has been contradictory since he first testified during the August 24, 2005 special needs hearing in his divorce case. At that time, he testified that he borrowed the money from his father's estate, and additional funds from Ms. Martinot, in order to buy the Ocean Hammock property, and that he signed a note in favor of his dad's estate for this loan (B-Ex. 1 Tab 27 pp. 79-80). A few months later, however, during his December 9, 2005 deposition in his divorce case, he testified that he invested the money on his mother's behalf because she needed income to maintain herself in a nursing home (B-Ex. 1 Tab 29 p. 103). Finally, at the final hearing in this disciplinary matter, he testified that he borrowed the money from his mother (T Vol. VII p. 818). Respondent's conflicting sworn testimony on this one issue, standing alone, severely damages his credibility and, because it involves sworn testimony, constitutes serious misconduct.

Further, considering that respondent only returned $400,000.00 to his mother (R-Ex. 74), she suffered a loss of $63,429.00 on this "investment." According to the flow chart respondent prepared (B-Ex. 1 Tab 28), his personal asset value increased to $599,477.00 "due to the capital from [respondent's] dad's estate" and he admitted that he still owed $63,429.00 to the estate (or to his mother) (B-Ex. 1 Tab 28). Respondent kept this significant profit for himself and

his mother lost the opportunity to gain interest had respondent left the funds in his parents' original investment account. While acting as a fiduciary, respondent received a large, interest free, unsecured loan. Self-dealing by a fiduciary is a serious act of misconduct and strikes at the very heart of the role of a fiduciary to safeguard another's best interests.

Respondent argues that his conduct in transferring marital property is not supportive of unethical misconduct. He states that his actions in connection with his transfer of marital assets were *de minimums* because he voluntarily reacquired joint title to all the real properties a few weeks later. He maintained that, as a result of his reacquiring the properties, his wife suffered no harm. Respondent did not voluntarily decide to reacquire the properties he previously had conveyed. Rather, he made the decision to do so only after his scheme had been revealed when respondent's wife's counsel made considerable discovery and investigation. The fact that his wife was willing and able to take the necessary steps to uncover respondent's fraudulent actions, and that she was successful in challenging his property transfers, cannot be used by respondent to mitigate his misconduct. Even more egregious is the fact that respondent's actions resulted in his client, Ms. Martinot, being included as a third party in respondent's dissolution of marriage case, along with Ms. Rhoualmi and the various legal entities involved in these

fraudulent property transactions (B-Ex. 1 Tab 125). Respondent does not appear to appreciate the gravity of using Ms. Martinot, an innocent client, to further his fraudulent actions.

The evidence also shows that respondent violated his fiduciary duty as a closing agent for the sale of the Coquina Key property. He failed to promptly satisfy the Washington Mutual first mortgage (ROR A15). Respondent's argument in his brief that the two month delay in satisfying the first mortgage arose from his concern that the title company's check needed to be cleared for payment by the bank is without merit. Respondent did not make this argument to the referee. Further, two months to verify that the check had been processed for payment and not susceptible to being returned for insufficient funds appears unreasonable and respondent's last minute reaching for straws. During these disciplinary proceedings, respondent admitted that he never used the funds he received from the buyers to pay off the first mortgage (T Vol. VIII p. 896). Instead, he used the proceeds from his sale of the Ocean Hammock property to pay off the first mortgage for Coquina Key (T Vol. VIII p. 896). There never was an indication that he was waiting to make sure the title company's check had cleared. The record clearly supports the referee's finding that respondent's actions demonstrated his misuse for his own purposes of the funds he received for satisfying the first

mortgage and that his actions were without regard for his fiduciary obligations as closing agent. It was only after he received additional money, two months later from an unrelated transaction, that he finally paid off the first mortgage on the Coquina Key property.

The record is replete with other competent substantial evidence of the serious cumulative nature of respondent's misconduct. With respect to the Taylor trust and estate, respondent was in a position as the co-personal representative for the estate, attorney for the estate, and trustee to take actions to benefit himself and/or Ms. Rhoualmi with minimal oversight. Respondent filed an accounting with the court on May 15, 2006 showing that he had received a total of $800.00 in rent for the Taylor home (B-Ex. 1 Tab 46). Yet his complaint for eviction filed in July 2006 against Robin Monahan, a former client, stated that his oral month to month rental agreement with Ms. Monahan provided for her to pay $500.00 per month between March 2006 and May 2006 and $850.00 per month thereafter with the provision that if respondent terminated the rental agreement with at least 60 days notice, Ms. Monahan was relieved of paying any rent for the final 60 days of her lease (B-Ex. 1 Tab 47). According to respondent's complaint for eviction, Ms. Monahan paid him $850.00 total for rent (B-Ex. 1 Tab 47), for March and April 2006, contrary to respondent's statement to the court in his interim accounting that

she paid $800.00 (B-Ex. 1 Tab 46). According to Ms. Monahan's answer to the complaint for eviction, she paid rent for an additional month, May 2006, and made the payment directly to respondent (B-Ex. 1 Tab 47).

Respondent did not reveal to the beneficiaries that the persons to whom he rented the Taylor home were his girlfriend and a former client. Respondent also did not reveal to the beneficiaries his potential conflict of interest in these rental agreements that were not made at arm's length. At no point in either of his letters of February 15, 2006 (R-Ex. 96) and February 23, 2006 (R-Ex. 97) did respondent advise either the co-personal representative, Francis Reside, or the one beneficiary, St. Francis House, of the amount of rent he was charging Ms. Rhoualmi or of the fact that she was his girlfriend who was in need of a place to live. In fact, respondent was charging her no rent. Although he mentioned the lease to Ms. Monahan in his letter of May 29, 2006 to Joseph Boles, Jr., the attorney for the residuary beneficiaries of the trust, (R-Ex. 101), he made no mention of the rental terms and, because the lease agreement was oral, respondent could not provide a written lease agreement. While standing alone, respondent's actions may have been less worrisome, but when viewed in light of his course of conduct involving less than candid statements and self-dealing, his conduct becomes more troubling.

Respondent continually put his personal interests ahead of his professional obligations as an attorney and officer of the court.

Respondent has failed to meet his burden to show that the referee's findings of respondent's serious cumulative misconduct is erroneous or without support in the record. *The Florida Bar v. Maurice*, 955 So. 2d 535, 539 (Fla. 2007). In fact, respondent has demonstrated his failure to abide by the high standards required of attorneys with the privilege of practicing law in the state of Florida. He has displayed a disregard for the legal profession which relies on the integrity of its members to be honest in their dealings before the court and in their personal lives. The serious nature of respondent's misconduct and the aggravating factor warrants the extreme sanction of disbarment.

CONCLUSION

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

Respectfully submitted,

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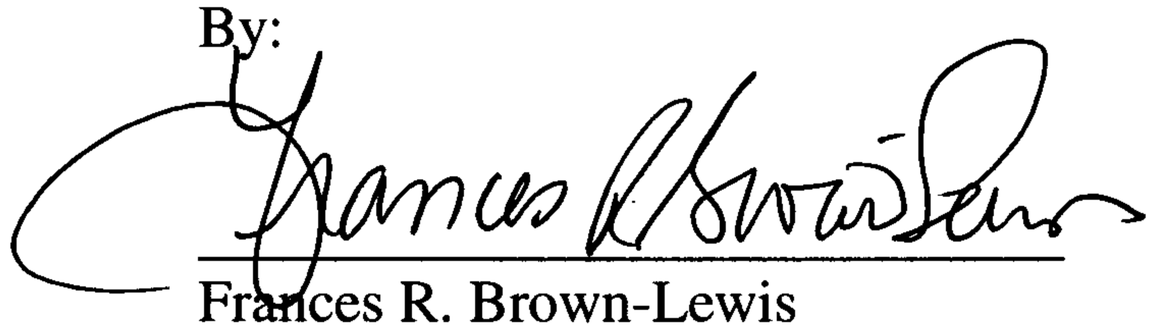

Frances R. Brown-Lewis
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Reply and Cross-Answer Brief has been sent by regular U.S. Mail to the Clerk of the Court, The Supreme Court of Florida, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1927; a copy of the foregoing has been furnished by regular U.S. Mail to Respondent's Counsel, James Curtis Rinaman, Jr., at Marks Gray , P. A., Post Office Box 447, Jacksonville, Florida 32201-0447; and a copy of the foregoing has been furnished by regular U.S. Mail to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, this 13th day of July, 2012.

Respectfully submitted,

Frances R. Brown-Lewis, Bar Counsel

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

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

Frances R. Brown-Lewis, Bar Counsel