IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No.: SC17-1391
Fl. Bar File No.: 2016-70, 106 (11J)

v.

JONATHAN STEPHEN SCHWARTZ,

Respondent.

APPENDIX TO

THE FLORIDA BAR'S

INITIAL BRIEF

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INDEX

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(Before a Referee)

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Supreme Court Case
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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 July 27, 2017, The Florida Bar filed its Complaint against Respondent in these proceedings. The Honorable Celeste Hardee Muir was initially appointed as the referee in this cause. On April 4th and 18th, 2018, a final hearing was held in this matter. On May 21, 2018, the referee served her Report of Referee finding the Respondent not guilty of professional misconduct.

The Referee's report was appealed by The Florida Bar and the parties' briefs were submitted to the Florida Supreme Court. On November 7, 2019, this Court entered an Opinion specifically disapproving the referee's findings of fact and

recommendation that Respondent did not violate any Bar rules. By Order dated the same day, the Court further ruled that the matter be remanded to a newly appointed referee for further proceedings.

On November 25, 2019, the undersigned was appointed as the new referee. On August 21, 2020, a sanctions hearing was held in this cause.

All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

At the sanctions hearing, Respondent submitted documentary evidence in the form of letters of support and good works, and presented the testimony of these witnesses: Pamela Barrett; Nancy Browne; Richard Browne; Hon. Al Milian, Circuit Judge (appearing pursuant to subpoena); Dr. Bruce Frumkin; Crystal Beale; Michael Graham; William Heck; Gloria Heck; Patricia Rossato; Michelle Clarke; Stella Schwartz; and Respondent Jonathan Stephen Schwartz.

The following attorneys appeared: Jennifer R. Falcone, Esq., Bar Counsel appeared for The Florida Bar, and for the Respondent, Benedict P. Kuehne, Esq., and Richard Baron, Esq. appeared, and Barry Wax, Esq., also appeared.

II. FINDINGS OF FACT

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.

Narrative Summary of Case. As previously noted, in its November 7, 2019 Opinion, the Florida Supreme Court held, "We disapprove the referee's findings of fact and recommendation that Schwartz did not violate any Bar rules in his use of two defense exhibits during a pre-trial deposition, and we remand to a newly appointed referee for further proceedings consistent with this opinion." *The Florida Bar v. Schwartz*, 284 So.3d 393, 394 (Fla. 2019)

Accordingly, the narrative summary of the case is taken directly from the factual and legal findings made by the Florida Supreme Court in its November 7, 2019, Opinion:

> Schwartz is primarily a criminal defense attorney who was admitted to The Florida Bar (Bar) in 1986. He became the subject of these Bar proceedings based upon his use of two defense exhibits during a pretrial deposition conducted on February 13, 2015, while representing the defendant in the case of *State v. Virgil Woodson*, Circuit Case No. 13-2013-CF-012946-0001-XX (Miami-Dade County, Florida). The exhibits at issue included two photocopied versions of black and white police photo lineups in which the victim had originally signed her name and identified the defendant by circling both the defendant's photograph and the designation below it of subject number five. The exhibits also included the signature of the police officer who conducted the photo lineup. The disciplinary issue here centers on the fact that Schwartz altered the photo lineup by replacing his client's image in one exhibit with the image of an alternate suspect whom witnesses other than the victim had identified as the perpetrator and by changing the client's image in the other

> exhibit by imposing the alternate subject's hairstyle on the client's image. Although the images in the exhibits were altered in this manner, they nonetheless retained the circle around subject number five and the signatures of the victim and police officer below the photographs.

Id. at 395. In discussing the prior Referee's findings and recommendations, the Court noted the undisputed facts that Respondent "knowingly and deliberately created the defense exhibits by altering photocopies of the police lineups and showing them to the victim at the deposition." *Id.* at 396.

Accordingly, the Court held:

> Our consideration of the defense-altered exhibits leads to the inevitable conclusion that they are deceptive on their face. . . . The exhibits retained the witness's circle identifying subject number five in the lineup as the perpetrator and the victim's and detective's signatures. By their very nature, they conveyed the false message that the substituted photograph was the photograph that had been previously identified by the victim.

Id. at 396-397.

III. RECOMMENDATIONS AS TO GUILT.

In the Court's Opinion entered on November 7, 2019, Respondent was found guilty of violating the following Rules Regulating The Florida Bar:

Rule 3-4.3 (Misconduct and Minor Misconduct), and

Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I reviewed and considered the following Standards prior to recommending discipline:

5.1 FAILURE TO MAINTAIN PERSONAL INTEGRITY

(a)(6) Disbarment is appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

(b) Suspension. Suspension is appropriate when a lawyer knowingly engages in . . . other conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

6.1 FALSE STATEMENTS, FRAUD, AND MISREPRESENTATION

The following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation:

(a) Disbarment is appropriate when a lawyer:

(1) with the intent to deceive the court, knowingly makes a false statement or submits a false document; or

(2) improperly withholds material information and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

(b) Suspension. Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld and takes no remedial action.

700 VIOLATIONS OF OTHER DUTIES OWED AS A PROFESSIONAL

7.1 DECEPTIVE CONDUCT OR STATEMENTS AND UNREASONABLE OR IMPROPER FEES

(a) 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.

(b) 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.

800 PRIOR DISCIPLINE ORDERS

8.1 VIOLATION OF COURT ORDER OR ENGAGING IN SUBSEQUENT SAME OR SIMILAR MISCONDUCT

The following sanctions are generally appropriate in cases involving prior discipline:

(a)(2) Disbarment is appropriate when a lawyer has been suspended for the same or similar misconduct and intentionally engages in further similar acts of misconduct.

(b) Suspension is appropriate when a lawyer has been publicly reprimanded for the same or similar conduct and engages in a further similar act of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In *The Florida Bar v. Adorno*, 60 So.3d 1016, 1035 (Fla. 2011), the Court reiterated its obligation to impose sanctions consistent with the purposes of lawyer discipline. In *Adorno*, the Supreme Court imposed a 3-year rehabilitative suspension arising from the lawyer's breach of a fiduciary duty owed to the putative class that prejudiced the class, when the lawyer settled on behalf of individual plaintiffs to the detriment of the putative class. The Supreme Court found that the attorney's actions regarding the disproportionate settlement amount, as well as the terms of the settlement, created a conflict of interest that prejudiced the remaining class members. Further, the lawyer abandoned the putative class via the settlement negotiations, hid the terms of the settlement agreement from the class through a nondisclosure agreement, and stopped litigating on behalf of the class as a result of a standstill agreement. The sanction of a 3-year suspension was deemed required since the lawyer's severe misconduct was deceitful and deceptive, prejudicial to the administration of justice, and inured to the lawyer's personal, financial benefit at the

expense of his clients. I do not consider *Adorno* to be analogous to this case.

In *The Florida Bar v. Cox*, 794 So.2d 1278 (Fla. 2001), the Court determined that, based upon significant mitigation presented, a one year suspension was the appropriate sanction for a criminal prosecutor with no prior discipline and great reputation, who allowed a fearful confidential informant to testify under a false name. There, the offending lawyer, a federal prosecutor, engaged in deceptive misconduct in direct response to a court order during a case that impacted the administration of justice and endangered the fairness of the proceedings against the defendant. The prosecutor gave a critical witness a fictitious name and assured her that she would not have to testify at trial, which she feared because of a Florida custody dispute with her former husband. Before trial, the magistrate ordered respondent to provide the informant's true name to the defense. Although that prosecutor knew the woman's name, he nonetheless informed the defense, the court, and the jury venire that the woman's name was the fictitious one. Her identity was only revealed midtrial, resulting in the defense moving for and receiving a mistrial, then dismissal of the indictment. The Florida Supreme Court concluded that the prosecutor's misconduct caused serious injury to the legal system and potentially serious injury to the defendant. While disbarment was the presumptive penalty, substantial evidence of mitigation resulted in the lawyer's suspension from the practice of law for a period of one (1) year. I do not consider *Cox* to be analogous

to this case because Respondent's conduct in this case was not presented to the tribunal.

- In *The Florida Bar v. Dunne*, 2020 WL 257785, the Court accepted a consent judgment imposing a one year suspension on a prosecutor who engaged in gamesmanship during the pre-trial discovery process by withholding information relevant to the defendant's insanity defense prior to deposing the defendant's mental health experts. When confronted by defense counsel and the court, Dunne misrepresented what she knew and when she knew it. Dunne had no prior disciplinary history. Although both the prosecutor and defense attorney must follow The Florida Bar Rules, I do not consider this case to be analogous to Respondent's case because the role of Dunne, as the prosecutor, is different than the role of Respondent as defense counsel.

- In *The Florida Bar v. Dupee*, 160 So.3d 838 (Fla. 2015), the Court determined a one year suspension was the appropriate sanction for an attorney's filing of an inaccurate financial statement of her client in a dissolution action knowing it was inaccurate, and for her withholding relevant financial documents requested in discovery. *Dupee* also failed to disclose the location of a coin collection over which there was disputed ownership. Respondent, *Dupee*, had no prior disciplinary history and presented evidence of good character and reputation. Likely, in a family law case, when assets are hidden, the tribunal cannot equitably

distribute or even consider those assets. I do not consider this case to be analogous to Respondent's case because in Respondent's case the initial lineup and the altered lineup were both available to the prosecutor at some point.

In *The Florida Bar v. Whitney*, the Florida Supreme Court imposed a one year suspension on an attorney, who engaged in dishonest and deceitful discovery tactics in his own defense in a legal malpractice action. The repeated misconduct in *Whitney* included that the disciplined lawyer making false representations to the tribunal in response to opposing counsel's motion to compel and not producing the required documents sought by the request for production. The lawyer's misconduct encompassed numerous instances pertaining to both client representation and discovery-related violations, warranting a one-year suspension. I do not consider *Whitney* to be analogous to this case. When discovery is hidden, the tribunal has no way to weigh or to consider the evidence.

- In *The Florida Bar v. Hmielewski*, 702 So.2d 218 (Fla. 1997), Respondent withheld his knowledge of the location of the records during the discovery process and accused the hospital of deliberately concealing the records, when the hospital was unable to produce same. *Hmielewski* even allowed his expert to file a report stating that the hospital's inability to produce the records in discovery was evidence of the hospital's malfeasance. This case is not analogous because

records were not hidden in this case, and the prosecutor had access to the original line-up.

- *In the Matter of Gross*, 759 N.E.2d 288 (Mass. 2001), at a calendar call for the case, the respondent allowed an alibi witness to come forward and impersonate the criminal defendant at the podium. The respondent hoped to obtain a misidentification that he could use in his defense of the case. When confronted, the respondent lied, and also requested the defendant and the alibi witness to lie and indicate they were simply "confused." In exchange for an agreement not to prosecute, the alibi witness testified that respondent suggested the impersonation scheme. The Massachusetts Supreme Court ordered that the respondent be suspended for a period of eighteen (18) months. This case is not analogous because the conduct did not occur in front of a tribunal, and Respondent did not attempt to cover up his misconduct or enlist others to lie on his behalf.

- In *The Florida Bar v. Bosecker*, 259 So.3d 689, 699 (Fla. 2018), the Court reiterated the long standing principle that, "the Court views cumulative misconduct more seriously than an isolated instance of misconduct, and cumulative misconduct of a similar nature warrants an even more severe discipline than might dissimilar conduct."

- In *Fla. Bar v. Walkden*, 950 So.2d 407, 410 (Fla. 2007), the Court stated, "As noted by the Bar, this Court views cumulative misconduct more seriously

than an isolated instance of misconduct. *Fla. Bar v. Carlon*, 820 So.2d 891, 899 (Fla.2002). In determining the appropriate discipline, we consider prior misconduct and cumulative misconduct, and treat cumulative misconduct more severely than isolated misconduct. Disbarment is appropriate where, as here, there is a pattern of misconduct and a history of discipline. Additionally, cumulative misconduct of a similar nature warrants an even more severe discipline than might dissimilar conduct. *Fla. Bar v. Vining*, 761 So.2d 1044, 1048 (Fla.2000)."

- In *The Florida Bar v. Peterson*, 248 So.3d 1069, 1081 (Fla. 2018), the Court reiterated general principles for imposing lawyer sanctions, and stated, "significantly, the Court has moved towards imposing harsher sanctions." (*citing Fla. Bar v. Rosenberg*, 169 So.3d 1155, 1162 (Fla. 2015) ("[S]ince the decision in *[Fla. Bar v.] Bloom*[, 632 So.2d 1016 (Fla. 1994)], the Court has moved toward imposing stronger sanctions for unethical and unprofessional conduct."); *Fla. Bar v. Rotstein*, 835 So.2d 241, 246 (Fla. 2002) ("In recent years, this Court has moved towards stronger sanctions for attorney misconduct."). See also *The Florida Bar v. Adler*, 126 So.3d 244, 247 (Fla. 2013)("Since then, this Court has moved towards stronger sanctions for attorney misconduct.").

- In *The Florida Bar v. Cocalis*, 959 So.2d 163 (Fla. 2007), the Court considered findings by the Fourth District Court of Appeal that condemned the attorney's actions as being unprofessional and misleading. The Court found the

lawyer violated Rule 3-4.3 (any act that is unlawful or contrary to honesty and justice). The Court determined that a public reprimand and participation in the Bar's practice and professionalism program on the terms recommended was the appropriate sanction.

- *The Florida Bar v. MacNamara*, 132 So.3d 165, 171 (Fla. 2013), involved repeated dishonesty by a respondent during litigation and resulted in a suspension for ninety (90) days. The lawyer misrepresented to the probate court that he had "filed a tax return with the IRS that was still being considered, when he knew he had not sent the IRS a signed filed tax return." *Id.* The lawyer sent a deliberately misleading cover letter to the IRS and failed to honestly inform his client about the status of the tax return. Also, that lawyer made repeated misrepresentations to the Bar by claiming he filed the tax return in March 2005, when he had not done so. The Court, however, did not impose a rehabilitative suspension.

- *The Florida Bar v. Committe*, 916 So. 2d 741 (Fla. 2005) involved a lawyer, who pursued frivolous claims and failed to comply with discovery, in order to harass the opposition. After numerous incidents of knowingly filing frivolous claims, the Court ruled that a 90-day suspension followed by one-year probation was appropriate.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be disciplined by:

A. Suspension from the practice of law for a period of ninety (90) days followed by a one (1) year term of probation. As special conditions of probation, Respondent should continue his therapeutic treatment with the counselor recommended by FLA, Scott Weinstein. Additional terms of probation include successful completion of The Florida Bar's Ethics School and Professionalism School within the period of probation. Also, Respondent must complete at least ten (10) hours in additional ethics CLE, over the required minimum, including The Florida Bar's 2019 and 2020 Masters in Ethics courses.

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(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 60

Date admitted to the Bar: August 13, 1986

Prior Discipline:

- Respondent received an admonishment for minor misconduct by the Eleventh Judicial Circuit Grievance Committee "B" by service of a Grievance Committee Report of Minor Misconduct dated March 29, 1995, in The Florida Bar File No. 1994-71,026(11B) for violation of Rule 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) of the Rules Regulating The Florida Bar.

- Respondent tendered a consent judgment and received a public reprimand by Order of the Florida Supreme Court dated April 10, 1997 in Supreme Court Case No. SC90-204; The Florida Bar File No. 1996-71,740(11B) for violating Rules 4-3.3(a) (A lawyer shall not knowingly make a false statement of material fact or law to a tribunal), 4-3.4(c) (A lawyer shall not knowing disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists), 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation), and 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) of the Rules Regulating The Florida Bar.

- Respondent received an admonishment for minor misconduct by the Eleventh Judicial Circuit Grievance Committee "B" by service of a Grievance Committee Report of Minor Misconduct dated December 19, 1996, in The Florida Bar File No. 1996-71,789(11B) for violation of advertising rule requirements of the Rules Regulating The Florida Bar.

- Respondent tendered a consent judgment and received a public reprimand by Order of the Florida Supreme Court of Florida dated June 20, 2002 in

Supreme Court Case No. SC02-787; The Florida Bar File No. 2001-71,404(11C) for violating Rules 4-3.1 (Meritorious Claims and Contentions), 4-3.3(a)(1) (A lawyer shall not knowingly make a false statement of material fact or law to a tribunal), 4-4.1(a) (A lawyer shall not knowingly make a false statement of material fact or law to a third person), 4-4.4 (Respect for Rights of Third Persons), 4-5.6 (Restrictions on Right to Practice), 4-8.4(a) (A lawyer shall not violate or attempt to violate the Rules of Professional Conduct), and 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation) of the Rules Regulating The Florida Bar.

- Respondent received an admonishment for minor misconduct by the Second Judicial Circuit Grievance Committee "S" by service of a Grievance Committee Report of Minor Misconduct dated May 23, 2007, in The Florida Bar File No. 2007-90,330(02S) for violation of advertising rule requirements of the Rules Regulating The Florida Bar.

- Respondent tendered a consent judgment and was suspended for a period 90 days by Order of the Florida Supreme Court dated May 29, 2012 in Supreme Court Case No. SC11-2143, The Florida Bar File No. 2011-70,673(17A) for violating Rules 4-1.8(e) (Financial Assistance to Client), 4-3.3(a)(l) (A lawyer shall not knowingly make a false statement of material fact or law to a tribunal), 4-4.1(a) (A lawyer shall not knowingly make a false statement of material fact or law

to a third person), 4-8.4(a) (A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another), 4-8.4(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), and 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules Regulating The Florida Bar.

Aggravating Factors:

- 3.2(b)(1) Prior Disciplinary Offenses. I recognize that admonishments imposed more than seven years prior are not considered aggravating factors. Accordingly, only the three following prior disciplinary offenses are applicable to this aggravating factor:

  - An April 10, 1997 public reprimand in Supreme Court Case No. SC90-204; The Florida Bar File No. 1996-71,740(11B) for four rule violations, including two rule violations involving dishonest or deceitful conduct.

  - A June 20, 2002 public reprimand in Supreme Court Case No. SC02-787; The Florida Bar File No. 2001-71,404(11C) for seven rule violations, including three rule violations involving dishonest or deceitful conduct.

- A May 29, 2012 suspension for a period of 90 days in Supreme Court Case No. SC11-2143, The Florida Bar File No. 2011-70,673(17A) for six rule violations including four violations involving dishonest or deceitful conduct.

- 3.2(b)(3) A Pattern of Misconduct. While all of Respondent's prior disciplinary offenses are not considered aggravating factors for purposes of factor 3.2(b)(1) (Prior Disciplinary Offenses), each of his prior disciplinary offenses may be considered for purposes of determining whether there is a pattern of misconduct. "The Court views cumulative misconduct more seriously than an isolated instance of misconduct, and cumulative misconduct of a similar nature warrants an even more severe discipline than might dissimilar conduct." *The Florida Bar v. Bosecker*, 259 So.3d 689, 699 (Fla. 2018). Several of Respondent's prior offenses involve dishonest or deceitful conduct:

  - In 1995, Respondent received an admonishment for filing a false motion for continuance in which he misrepresented the basis for the continuance as well as the prosecutor's agreement to same. Respondent aggravated his offense when he threatened a witness against him at the grievance committee. (TFB Ex. 2)

  - In 1997, Respondent received a public reprimand for failure to comply with numerous court orders, for which conduct he was held in contempt. That case involved two rule violations for dishonest or deceitful conduct, including Rules 4-3.3(a) (A lawyer shall not knowingly make a false statement of material fact

or law to a tribunal), and 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation). (TFB Ex 3)

- In 2002, Respondent received a public reprimand for making numerous unsubstantiated complaints against his former law partners, and made an additional misrepresentation to the judge stating that the former partners were under criminal investigation, despite having been informed by the police that there was no criminal investigation. Thereafter, when these matters were investigated by the Bar, Respondent misrepresented to the grievance committee that he filed a suit against the former partners when it could not be determined a suit was ever filed, and the former partners were never served with any such lawsuit. This case involved three rule violations for dishonest or deceitful conduct. (TFB Ex. 5)

- In 2012, Respondent received a ninety-day suspension with probation for a period of one year, for conduct involving Respondent's signing his client's affidavit and improperly notarizing same. This case involved three rule violations for dishonest or deceitful conduct. (TFB Ex. 7)

- 3.2(b)(9) Substantial Experience in the Practice of Law. Respondent was admitted to the Bar on August 13, 1986.

Mitigating Factors:

3.3(b)(7) Character or Reputation;

- Character or reputation, Standard 3.3(b)(7): In making this

recommended discipline, I also considered the testimony or letters of the following witnesses for Respondent: (1) Circuit Judge Alberto Milian, (2) Dr. Bruce Frumkin, (3) Scott M. Weinstein, Ph.D., (4) Dr. Richard and Nancy Browne (5) Pamela Barrett, (6) Arthur Brown (7) Gene Rosow (8) Gloria Heck (9) William Heck (10) Rosa Villadamigo (11) Rufus Dean (12) Louis Beale (13) Jo Ann Mayer (14) Carmen Gaskell, (15) Patricia Rossato, (16) Crystal Beale, (17) Michael Graham, (18) Michelle Clarke, and (18) Stella Schwartz. Letters written by the majority of witnesses are attached to the record.

The majority of the witnesses recognized Respondent as a competent lawyer, socially sensitive to people's needs, dedicated family man and hardworking attorney. Particularly, Respondent's wife, Stella Schwartz, indicated that Respondent lives for his practice, works long hours, and has been affected by the Bar case. Lastly, Pamela Barrett, the mother of Virgil Woodson, (the defendant in the line-up) testified that her son is attending college at Strayer University, and she is grateful to Respondent for allowing her son to be have a life outside of prison.

- Full and free disclosure to the bar or cooperative attitude toward the proceedings, Standard 3.3(b)(5): Even as Respondent challenged the disciplinary proceedings, he cooperated with The Florida Bar.

- The length of time this disciplinary case has been pending has extracted a considerable toll on Respondent. He indicated that he has had difficulties and has

spent sleepless nights, as a result the case.

- Respondent testified that he is trying to limit the number of cases and kind of cases as well attempting solve problems before they arise.

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

The Florida Supreme Court previously held that the Florida Bar, having been successful in this matter, shall be awarded their necessary taxable costs of this proceeding and shall submit their statement of costs, as well as a motion to assess costs against Respondent.

Dated this 15th day of OCTOBER, 2020.

Honorable Lizzet Martinez, Referee
County Court Judge
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Miami, FL 33125

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Supreme Court of Florida

No. SC17-1391

THE FLORIDA BAR,
Complainant,

vs.

JONATHAN STEPHEN SCHWARTZ,
Respondent.

November 7, 2019

PER CURIAM.

We have for review a referee's report recommending that Respondent, Jonathan Stephen Schwartz, be found not guilty of professional misconduct. We have jurisdiction. *See* art. V, § 15, Fla. Const. We disapprove the referee's findings of fact and recommendation that Schwartz did not violate any Bar rules in his use of two defense exhibits during a pretrial deposition, and we remand to a newly appointed referee for further proceedings consistent with this opinion. We also disapprove the referee's order that the parties bear their own costs.

BACKGROUND

Schwartz is primarily a criminal defense attorney who was admitted to The Florida Bar (Bar) in 1986. He became the subject of these Bar proceedings based upon his use of two defense exhibits during a pretrial deposition conducted on February 13, 2015, while representing the defendant in the case of *State v. Virgil Woodson*, Circuit Case No. 13-2013-CF-012946-0001-XX (Miami-Dade County, Florida). The exhibits at issue included two photocopied versions of black and white police photo lineups in which the victim had originally signed her name and identified the defendant by circling both the defendant's photograph and the designation below it of subject number five. The exhibits also included the signature of the police officer who conducted the photo lineup. The disciplinary issue here centers on the fact that Schwartz altered the photo lineup by replacing his client's image in one exhibit with the image of an alternate suspect whom witnesses other than the victim had identified as the perpetrator and by changing the client's image in the other exhibit by imposing the alternate subject's hairstyle on the client's image. Although the images in the exhibits were altered in this manner, they nonetheless retained the circle around subject number five and the signatures of the victim and police officer below the photographs. The Bar, in its complaint filed on July 27, 2017, alleged that Schwartz violated Rules Regulating the Florida Bar (Bar Rules) 3-4.3 (Misconduct and Minor Misconduct) and 4-

8.4(c) ("A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.").

The referee, in her report dated May 21, 2018, having heard testimony from the Bar complainant (former assistant state attorney Cristina Cabrera, who was lead prosecutor in the *Woodson* case), the court reporter at the deposition, Schwartz's co-counsel in representing Woodson (Judy McGuire), attorney Barry Wax (presented as an expert defense lawyer), and Schwartz, found that "[Schwartz] made a messy (but clearly not deceitful) effort to comply with *State v.* [*Mc*]*Williams*[, 817 So. 2d 1036 (Fla. 3d DCA 2002)], with only black and white copies of the state's photographic lineups that the state had given him in discovery." Report of Referee, at 7.

Turning to the alleged rule violations, the referee wrote that "a violation of Rule 4-8.4(c) requires proof of 'a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.' " *Id.* at 22. The referee found that

> the Bar's proof did not establish that [Schwartz] acted with any purpose or intent to deceive during the course of his handling the [victim's] deposition. The defense-created line-ups are not, in and of themselves, misleading, fraudulent, deceitful, or misrepresentations, and were not contrary to honesty or justice. Nor was the manner of use of the defense-created line-ups capable of misleading the witnesses.

Id. at 22-23. The referee found it significant that Schwartz "had only black and white photocopies of the state's evidence to work with," and that his substituting his client's face with that of an alternate suspect he had "previously disclosed to the state was consistent with honesty and justice." *Id.* at 23. The referee also relied upon the fact that the Bar admitted that there was not a single Bar disciplinary case on point.

By separate order, the referee denied Schwartz's Motion to Assess Costs and instead ordered the parties to bear their own costs.

ANALYSIS

The Court's review of the referee's findings of fact is limited, and if a referee's findings of fact are supported by competent, substantial evidence in the record, this Court will not reweigh the evidence and substitute its judgment for that of the referee. *Fla. Bar v. Frederick*, 756 So. 2d 79, 86 (Fla. 2000). That is, "[a] referee's findings of fact regarding guilt carry a presumption of correctness that should be upheld unless clearly erroneous or without support in the record." *Fla. Bar v. Barrett*, 897 So. 2d 1269, 1275 (Fla. 2005) (quoting *Fla. Bar v. Spann*, 682 So. 2d 1070, 1073 (Fla. 1996)). But as to the actual recommendations of guilt, the referee's factual findings must be sufficient under the applicable rules to support the recommendations. *See Fla. Bar v. Shoureas*, 913 So. 2d 554, 557-58 (Fla. 2005). Ultimately, the party challenging the referee's findings of fact and

recommendations as to guilt has the burden to demonstrate "that there is no evidence in the record to support those findings or that the record evidence clearly contradicts the conclusions." *Fla. Bar v. Germain*, 957 So. 2d 613, 620 (Fla. 2007).

Bar Rule 4-8.4(c): Bar Rule 4-8.4(c) provides in pertinent part that "[a] lawyer shall not . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." To sustain a violation of that rule, "the Bar must prove intent." *Fla. Bar v. Brown*, 905 So. 2d 76, 81 (Fla. 2005). The element of intent can be satisfied, however, "merely by showing that the conduct was deliberate or knowing." *Id.* Therefore, the motive underlying the lawyer's conduct is not determinative; instead the issue is whether he or she purposefully acted. *Fla. Bar v. Berthiaume*, 78 So. 3d 503, 510 n.2 (Fla. 2011); *Fla. Bar v. Riggs*, 944 So. 2d 167, 171 (Fla. 2006); *see also Fla. Bar v. Smith*, 866 So. 2d 41, 46 (Fla. 2004).

Here, the referee improperly focused upon Schwartz's asserted motive, which was to provide constitutionally effective assistance of counsel, apparently by attempting to undermine the victim's identification of Schwartz's client. As the above-cited case law makes clear, Schwartz's motive or purpose in acting is not determinative of a Bar Rule 4-8.4(c) violation. Indeed, if motive were the standard for evaluating whether the rule was violated, there would be no reason for "absence of a dishonest or selfish motive" to be a mitigating factor. *See* Fla. Std.

Imposing L. Sancs. 9.32(b). Thus, notwithstanding the referee's credibility findings and her finding that Schwartz did not subjectively intend to deceive the witness, this finding does not address the undisputed fact that Schwartz knowingly and deliberately created the defense exhibits by altering photocopies of the police lineups and showing them to the victim at the deposition. Those exhibits included the victim's circle of subject number five and the victim's and detective's signatures, along with a photograph of the so-called alternate subject replacing the defendant's image, and a photograph altering the defendant's image by imposing the alternate subject's hairstyle.

Our consideration of the defense-altered exhibits leads to the inevitable conclusion that they are deceptive on their face. The referee, without elaboration, concluded that the exhibits "in and of themselves" were not "misleading, fraudulent, deceitful, or misrepresentations." This conclusion is unsupported by the record and patently erroneous. The exhibits retained the witness's circle identifying subject number five in the lineup as the perpetrator and the victim's and detective's signatures. By their very nature, they conveyed the false message that the substituted photograph was the photograph that had been previously identified by the victim.

Controlling precedent governing defense discovery using photo lineups also does not legitimize Schwartz's conduct. In *McWilliams*, 817 So. 2d at 1036-37,

the Third District Court of Appeal addressed the propriety of defense counsel using two police lineups each containing one of the defendants during a deposition of a State witness. The State had objected to the defense's use of the lineups and refused to let the witness answer. As explained by the district court,

> [t]he defense moved the trial court for an order permitting them to use the police photo line-ups in depositions of all state witnesses who made an (alleged) out-of-court identification of the defendants[, and t]he trial court ruled that the defendants could use the police photo line-ups in the depositions of those state witnesses who identified either defendant from them.

Id. at 1036. In upholding the trial court's ruling, the Third District observed that the exhibits used by the defense "involved the actual police photo line-ups, not photo arrays prepared by the defense." *Id.* at 1037. And, in *State v. Kuntsman*, 643 So. 2d 1172 (Fla. 3d DCA 1994), the Third District held that Florida Rule of Criminal Procedure 3.220, Discovery, does not accord the trial judge the authority to compel a prosecution witness to view a defendant's photo array of thirty-eight photographs, absent strong or compelling reasons. *Id.* at 1173. That is, the discovery rule "is not intended to provide defendants with an opportunity to build their cases during the discovery process by 'creating' evidence, i.e. misidentifications." *Id.* at 1174.

Here, the referee erroneously concluded that Schwartz's conduct comported with the dictates of *McWilliams* and *Kuntsman*. Contrary to the referee's conclusion, that authority does not permit lawyers to use "police line-ups and to

create their own line-ups when needed to test the accuracy of witness identifications" in the manner done by Schwartz. Report of Referee, at 15. While Schwartz believed it necessary to test the witness's identification based upon evidence of another person being the actual perpetrator, a factual matter that we do not reweigh if supported by competent, substantial evidence in the record, *see Fla. Bar v. D'Ambrosio*, 25 So. 3d 1209, 1215 (Fla. 2009), that does not give rise to the right to use inherently deceptive lineups. To the contrary, the manipulation of the police photo lineups here is more akin to that not permitted in *Kuntsman* and is not the same as use of the actual police lineups as in *McWilliams*. While the referee focused upon the fact that the defense could only use black and white exhibits because that was what the State provided in discovery, she did not address Schwartz's use of the lineups retaining the victim's circle around subject number five and the signatures in concluding that Schwartz complied with *McWilliams*. Moreover, the referee's reliance upon Schwartz's expert for the legal conclusion that Schwartz acted properly under the case is misplaced. *See Cty. of Volusia v. Kemp*, 764 So. 2d 770, 773 (Fla. 5th DCA 2000) ("[A]n expert should not be allowed to render an opinion which applies a legal standard to a set of facts.").

Accordingly, notwithstanding the referee's credibility findings and her finding that Schwartz's subjective intent was not to deceive the witness, in light of Schwartz's intent in creating the deposition exhibits and the deceptive nature of the

exhibits themselves and that they do not comport with controlling case law, we disapprove the referee's recommendation and conclude that Schwartz violated Bar Rule 4-8.4(c).

Bar Rule 3-4.3: Bar Rule 3-4.3 provides in pertinent part: "The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as an attorney or otherwise . . . ." The Court has found that this rule has been violated where the attorney has engaged in misrepresentations, *Fla. Bar v. Stillman*, 606 So. 2d 360 (Fla. 1992); *Fla. Bar v. Williams*, 604 So. 2d 447 (Fla. 1992), or other misleading conduct, *Fla. Bar v. Beach*, 699 So. 2d 657 (Fla. 1997). While the referee repeatedly stated that Schwartz's use of the defense-created exhibits was either not contrary to, or was consistent with, honesty and justice, the exhibits themselves establish the opposite. In light of the discussion pertaining to Bar Rule 4-8.4(c), we disapprove the referee's recommendation that Schwartz did not violate Bar Rule 3-4.3.

Costs: Based upon our determination that Schwartz violated the Bar Rules as charged, we further disapprove the referee's determination that the Respondent and the Bar bear their own costs. *See* R. Regulating Fla. Bar 3-7.6(q)(3).

CONCLUSION

We conclude that the referee's conclusion that Respondent did not violate Rules Regulating the Florida Bar 3-4.3 and 4-8.4(c) was clearly erroneous. Therefore, we disapprove the referee's report and remand this case to a newly appointed referee for a hearing limited to a determination of recommended discipline. Finally, we also disapprove the referee's determination that the parties bear their own costs, and direct that the Bar submit its statement of costs, pursuant to Bar Rule 3-7.6(q)(5), following the additional proceedings before the newly appointed referee.

It is so ordered.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, LAGOA, LUCK, and MUÑIZ, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Original Proceeding – The Florida Bar

Joshua E. Doyle, Executive Director, The Florida Bar, Tallahassee, Florida, Adria E. Quintela, Staff Counsel, The Florida Bar, Sunrise, Florida, and Thomas Allen Kroeger, Bar Counsel, The Florida Bar, Miami, Florida,

for Complainant

Benedict P. Kuehne and Michael T. Davis of Kuehne Davis Law, P.A., Miami, Florida,

for Respondent

Scott M. Weinstein, Ph.D.
2335 East Atlantic Blvd.
Suite 410
Pompano Beach, Florida 33062
(954)818-0888
(954)568-0803

August 20, 2020

To Whom It May Concern,

I am submitting this letter at the request of Mr. Jonathan Schwartz. Mr. Schwartz contacted me in January of this year seeking to voluntarily join a weekly facilitated support group to help him process that emotional impact of his ongoing Bar disciplinary proceedings. Jonathan candidly discussed the matter that led him to seek the group's support after a favorable referee's finding sent to the Supreme Court of Florida was remanded back to for a new trial.

For some, the group experience is an opportunity to discuss shared professional experiences and is treated more like a weekly consultation meeting. For others, the experience takes on a deeper meaning whereby the individual utilizes the group process to explore all areas of one's life.

From the onset, Mr. Schwartz demonstrated a willingness to understand his contribution to the Bar's inquiries. Throughout his participation in the group, Mr. Schwartz continuously accepted the feedback from his peers and utilized the collective experience of the group members to explore his approaches to lawyering.

Mr. Schwartz's matter was supposed to be taken up sometime in the spring, but because of the COVID-19 pandemic is was delayed. The lengthy delay created an increased sense of trepidation in Mr. Schwartz. He requested individual sessions to supplement the group therapy in a further attempt to acquire a deeper understanding of himself and to explore alternative career paths should he be prevented from practicing law.

In my many years working with legal professionals, I have seldom come across an

individual so willing to avail himself to personal and professional scrutiny while facing the possibility of severe Bar sanctions. As he told the story of the case in question, he demonstrated both a deep commitment to a determined advocacy of his then client while also accepting the idea that he challenged the limits of the profession. While he admitted to pushing the boundaries, he firmly believes they were never crossed.

I believe that Jonathan's motive are without malice. Further, he is willing to actively examine his practice strategies, recognizing his enthusiastic advocacy for his clients may be seen by some as overly zealous. He has expressed a desire to maintain his therapeutic relationship which I believe will be helpful in his attaining his goals.

Respectfully Submitted,

Scott M. Weinstein
Scott M. Weinstein, Ph.D.
Florida Licensed Psychologist
Lic# PY4789

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

The Florida Bar,

Complainant,

vs.

Jonathan S. Schwartz

Respondent.
_____/

The Florida Bar File
No. 94-71,026(11B)

GRIEVANCE COMMITTEE
REPORT OF MINOR MISCONDUCT

I. COMMITTEE RECOMMENDATION: Pursuant to Rule 3-7.4(m), Rules of Discipline, the committee recommends that the accused receive an admonishment for minor misconduct. The admonishment shall be administered by service of this Grievance Committee Report.

The Committee also recommends that Respondent's designated area(s) of practice, i.e., not applicable (will) (will not) be withdrawn, and that redesignation be contingent upon not applicable.

II. SUMMARY OF THE MINOR MISCONDUCT [includes the Rules of Discipline and Rules of Professional Conduct deemed violated]:

It is the committee's belief that based upon the evidence made available to them that the following are the operative facts:

Count I: On February 11, 1994, Judge Silvernail issued an Order to Show Cause to the respondent, Jonathan Schwartz, for "failing to appear for Docket Sounding and otherwise deceiving the Court or permitting a fraud or deception on the Court" in State of Florida v. Sergio Reyes, Case No. 93-586839A, 18th Judicial Circuit, District of Brevard County, Florida.

A contempt hearing was held on February 15, 1994, during which the Court heard testimony of the following: Jennifer Ruiz, Assistant State Attorney; Jeff Thompson, Attorney; Nick Lessey, Attorney; Alan Diamond, Assistant State Attorney; Sergio Reyes, Defendant; and Jonathan Schwartz, Respondent.

Ms. Ruiz testified and presented documentation which suggests that Jonathan Schwartz submitted motions for continuances on two (2) separate occasions - one in written form on August 20, 1993,

TFB EXHIBIT
2

and the second motion was faxed to Attorney Jeff Thompson, and orally presented to the Court on September 13, 1993 - both of which contained misrepresentations that the defendant was in jail in another district, and that the State agreed to the continuances. According to the testimony and documents presented to the Court, the Defendant Reyes was released from jail on July 25, 1993, long before the motions were filed. Furthermore, Ms. Ruiz and Mr. Diamond testified that they did not agree to the August 20th and September 13th request for Continuance, respectively. Attorney Nick Lessey testified that on September 19. 1993, Jonathan Schwartz asked him to appear at the September 20th hearing on Schwartz's behalf. However, after learning of the prior problems in the case and upon realizing that he was deceived into believing that Mr. Diamond agreed to the continuance, he refused to make an appearance at the September 20th hearing on behalf of Jonathan Schwartz.

As a result, the Court decided to withhold adjudication of a finding of contempt against Jonathan Schwartz. However, the Court did order respondent to do the following:

1. Write a letter of apology to Ms. Ruiz;

2. Perform 100 hours of community service for a minority group (within 120 days); and

3. Pay $250.00 to the Brevard County Law Library.

The Respondent complied with the Court's Orders.

Respondent advised the Grievance Committee that as a result of his high volume practice he had permitted a paralegal to prepare motions for continuance and sign the Respondent's name. The Respondent would not review the document before it was filed. In the matter before the Grievance Committee the Respondent contends that it was his paralegal who prepared the motions in question. The Respondent now recognizes the absolute impropriety of this procedure.

Count II: Prior to the Grievance Committee hearing the Respondent was provided with a Report of Investigation which set forth interviews with various individuals, one of which was Respondent's former associate Arnold Preston. Soon after receipt of the Report, the Respondent telephoned Mr. Preston and advised him that he would telephone Mr. Preston's employer to advise the employer that Mr. Preston was a liar. Respondent did place the telephone call but did not ultimately speak with the employer. The Grievance Committee believed Respondent's actions constituted harassment and could serve to impede the orderly administration of the Grievance Committee function. The Respondent apologized for his conduct while advising he was acting out of anger.

The grievance committee find that Respondent's actions are not in accordance with the requirements of Rule 4-8.4 (d) (a lawyer shall not engage in conduct 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 account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, or age) of the Rules of Professional Conduct.

III. SUMMARY OF ADDITIONAL CHARGES: The additional charges, if any which will be dismissed if an admission of minor misconduct is accepted are summarized as follows: N/A

IV. COMMENT ON MITIGATING, AGGRAVATING, OR EVIDENTIARY MATTERS: The Committee believes that the following comment on mitigating, aggravating and evidentiary matter will be helpful to the Board of Governors in considering the tendered plea: not applicable.

V. COSTS: The Committee recommends that the cost of these proceedings be assessed against Respondent.

Administrative Costs: Rule 3-7.6(o)(l)(I)	$ 750.00
TOTAL:	**$ 750.00**

VI. COMMITTEE VOTE: A quorum of not less than three members of the committee being present, one of whom must be the chair or vice-chair, and another of whom must be a lawyer member, the committee by affirmative vote of a majority of the committee present voted in favor of the committee recommendation stated in item I above. In accordance with Rule 3-7.4(g), Rules of Discipline, the committee reports the number of committee members voting for or against, this report as follows:

In favor of the report: 6
Against the report: 1 (voted for probable cause)

DATED this 29th day of March, 1995

ELEVENTH JUDICIAL CIRCUIT
GRIEVANCE COMMITTEE 11"B"

By: Julio E. Jimenez
JULIO E. JIMENEZ, CHAIR

I CERTIFY that the original and all dispatched copies of this report with attachments, were sent to assistant staff counsel by U.S. mail this 29th day of March, 1995.

By: Julio E. Jimenez
JULIO E. JIMENEZ, CHAIR

I CERTIFY that the original and all dispatched copies of this report with attachments, were sent to assistant staff counsel by U.S.Mail this 1 day of April, 1995

By: _____
MANUEL MORALES
Designated Reviewer

RLC
4/15/97

Supreme Court of Florida

THURSDAY, APRIL 10, 1997

RECEIVED
APR 14 1997
Florida Bar
Miami
Lawyer Regulation

THE FLORIDA BAR,	*	
	*	
Complainant,	*	
	*	
v.	*	CASE NO. 90,204
	*	
JONATHAN STEPHEN SCHWARTZ,	*	
	*	
Respondent.	*	
	*	
* * * * * * * * * * * * * * * *	*	

The conditional guilty plea and consent judgment for discipline are approved and respondent is hereby reprimanded.

Judgment for costs in the amount of $750.00 is entered against respondent for which sum let execution issue.

Not final until time expires to file motion for rehearing and, if filed, determined.

A True Copy
TEST:

SUPREME COURT OF THE STATE OF FLORIDA

Sid J. White
Clerk, Supreme Court

KBB
cc: Ms. Randi Klayman Lazarus
Mr. John A. Boggs
Mr. Charles G. White

TFB COMPOSITE EXHIBIT 3

IN THE SUPREME COURT OF FLORIDA

The Florida Bar
File No. 96-71, 740(11B)

Supreme Court Case No.

THE FLORIDA BAR,

Complainant,

-vs-

JONATHAN STEPHEN SCHWARTZ,

Respondent.
_____/

CONDITIONAL GUILTY PLEA AND CONSENT JUDGMENT FOR DISCIPLINE

JONATHAN STEPHEN SCHWARTZ, Respondent, having been fully advised of his procedural rights under the Rules Regulating The Florida Bar, hereby tenders his Conditional Guilty Plea and Consent Judgment for Discipline pursuant to Rule 3-7.9(a), Rules of Discipline, and says:

1. Respondent, JONATHAN STEPHEN SCHWARTZ, is and at all times hereinafter mentioned was a member of The Florida Bar and subject to the jurisdiction and disciplinary rules of the supreme Court of Florida.

2. Respondent is currently the subject of a grievance filed against him which has been assigned The Florida Bar File No. 96-71,740(11B).

3. The Florida Bar File No. 96-71,740(11B), the complaint of The Florida Bar, probable cause was found by a grievance committee.

4. Respondent is aware of his right to a full and complete trial before a duly appointed referee, and hereby acknowledges his knowing and voluntary waiver of that right.

5. Respondent admits that the following facts are true and accurate and stipulates:

As to Case No. 96-71,740(11B):

A. That the Respondent was the defendant's counsel in State v. Constance Penate, Case No. 95-7514MM10A, in the County Court in and for Broward County, Florida.

B. That the Respondent failed to appear at several calendar calls for the case and had other attorneys appear for him and request continuances.

C. That after the Respondent failed to appear for six calendar calls, the Court informed the attorney standing in for the Respondent that he was expected to personally appear at the next calendar call. The Respondent on one occasion, and a full-time associate employed by the Respondent, appeared at other calendar calls.

D. That on November 16, 1995, the next calendar call, the Respondent failed to appear and another attorney asked to appear for the Respondent. The Respondent was in trial in the Circuit Court in Dade County in the case of State v. Roscoe Simpson. That the Court denied the motion for a continuance and set the case for a status conference on November 28, 1995.

E. That on November 28, 1995, the Respondent failed to appear for the status conference and failed to file a motion for continuance or contact the Court regarding his failure to appear. Respondent maintains that the re-set date was never actually conveyed to the Respondent by his staff.

F. That on February 1, 1996, the Respondent failed to appear for a scheduled hearing on the case and sent an associate to cover the hearing. The Respondent was in a jury trial in the U.S. District Court in Tallahassee at the time of this scheduled appearance and had asked that Court to notify Judge Diaz of his unavailability.

G. That at the hearing on February 5, 1996, the Respondent was served with an Order to Show Cause why he should not be held in contempt for his repeated failures to appear.

H. That on January 20, 1995, the Respondent also filed a Notice of Appearance in the case of State of Florida v. Elizabeth Mendez, Case No. 94-18593MM10A, in the County Court in and for Broward County, Florida.

I. Another attorney appeared at the calendar call scheduled for February 10, 1995. The matter was rescheduled for February 13, 1995, and when neither the Respondent nor his client appeared, a capias was filed. The Respondent sent notification to the client by letter at all available

addresses the fact that a capias had been issued. The client did not notify the Respondent until early November, 1995, of her whereabouts, and a motion to set aside bench warrant was not filed until November 9, 1995.

J. Respondent's office was notified that a hearing would be scheduled for December 15, 1995. There is an allegation in the Record that the Respondent was advised that no one would be permitted to stand in for him, but no testimony was elicited at the trial from any witness to substantiate that contention.

K. The Respondent sent a full-time associate whom he employed to the hearing on December 15, 1995, and that associate left when it was clear that the client had not appeared. The associate testified that he advised the Clerk to take the matter "off the calendar".

L. That the Respondent failed to appear at a hearing scheduled for February 1, 1996, and sent an associate to cover the hearing. The Respondent was involved in a jury trial in the U.S. District Court in Tallahassee at the time of the hearing and had asked that Court to notify Judge Diaz of his unavailability.

M. That at the hearing on February 5, 1996, the Respondent was served with an Order to Show Cause why he should not be held in contempt of Court for his repeated failures to appear in the Mendez case.

N. That at the hearing on the Order to Show Cause, the Respondent stated that he was never informed of the Court's Order that he personally appear at the Penate hearing on November 28, 1995.

O. That the Respondent also stated that he was never informed of the Court's Order that he personally appear at the Mendez hearing on December 15, 1995.

P. That Judge Robert Diaz found the Respondent did have notice to appear at the hearing and willfully and deliberately failed to appear in Court on November 28, 1995, in the Penate case and December 15, 1995, in the Mendez case.

Q. That on or about April 30, 1996, the Respondent was found in indirect criminal contempt for his repeated failures to appear in the Mendez and Penate cases.

6. Respondent admits that by reason of the foregoing facts, he has violated Rule 4-3.3(a) (A lawyer shall not knowingly make a false statement of material fact or law to a tribunal); Rule 3-4.4(c) (A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists); Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonestly, fraud, deceit or

misrepresentation); and Rule 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) of the Rules of Professional Conduct.

7. Pursuant to Rule 3-7.9(a) of the Rules Regulating The Florida Bar, Respondent hereby tenders a consent judgment for discipline wherein he agrees to the following discipline:

A. Public Reprimand

8. Respondent agrees to pay all costs reasonably incurred by The Florida Bar upon tender of this executed consent judgment.

9. Respondent agrees that the cost indicated below has been incurred.

Administrative fee . . . . . $ 750.00

10. Respondent recognizes that the disciplinary sanction to be imposed will ultimately be determined by the Supreme Court of Florida which will not be bound to follow the recommendation of either The Florida Bar or the Board of Governors in these proceedings. If the Supreme Court of Florida decides not to follow this recommendation, however, then the case will be returned for the filing of a formal complaint and proceedings thereupon before a Referee.

11. Respondent acknowledges that this document is tendered freely, voluntarily and without fear, threat or coercion.

DATED this 7th day of February, 1997.

CHARLES G. WHITE, ESQ.
Counsel for Respondent
2250 S.W. Third Ave., # 150
Miami, Florida 33129
Tel: (305) 856-1211
Fax: (305) 856-0171
Florida Bar No. 334170

Approved by:

JONATHAN S. SCHWARTZ
Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the above and foregoing Conditional Guilty Plea and Consent Judgment for Discipline was mailed to RANDI KLAYMAN LAZARUS, ASSISTANT STAFF COUNSEL, The Florida Bar, Suite M-100, 444 Brickell Avenue, Miami, Florida 33131, on this 7th day of February, 1997.

CHARLES G. WHITE, ESQ.
Counsel for Respondent
2250 S.W. Third Ave., # 150
Miami, Florida 33129
Tel: (305) 856-1211
Fax: (305) 856-0171
Florida Bar No. 334170

Approved by:

JONATHAN S. SCHWARTZ

THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

THE FLORIDA BAR,

Complainant,

vs.

JONATHAN S. SCHWARTZ,

Respondent.
_____/

The Florida Bar File
No. 96-71,789(11B)

GRIEVANCE COMMITTEE
REPORT OF MINOR MISCONDUCT

I. COMMITTEE RECOMMENDATION: Pursuant to Rule 3-7.4(m) Rules of Discipline the committee recommends that the accused receive an admonishment for minor misconduct. The admonishment shall be administered by service of this Report.

The Committee also recommends that Respondent's designated area(s) of practice, i.e., not applicable _____ (will) (will not) be withdrawn, and that redesignation be contingent upon not applicable _____.

II. Summary of the Minor Misconduct [includes the Disciplinary Rule(s) of The Florida Bar Code of Professional Responsibility and provision(s) of the Rules Regulating The Florida Bar deemed violated]: The respondent disseminated an advertisement which was not filed with the advertising section of The Florida Bar pursuant to the requirements of the Rules Regulating The Florida Bar. Additionally, said letter did not contain the requisite word "advertisement" in red ink. Respondent maintained in his response to The Florida Bar dated August 20, 1996 that he ran out of red ink and had rectified the situation by obtaining a red ink pad. The committee noted, however, that the stamped word advertising did not appear to be placed by hand and therefore the use of an "ink pad" was never in fact possible.

III. Summary of Additional Charges: The additional charges, if any which will be dismissed if an admission of minor misconduct is accepted are summarized as follows: N/A

IV. Comment on Mitigating Aggravating or Evidentiary Matters: The Committee believes that the following comment on mitigating, aggravating and evidentiary matter will be helpful to the Board of Governors in considering the tendered plea:

Respondent should be required to attend ethics school at the next scheduled class in respondent's geographical location as a condition of this report.

TFB EXHIBIT
4

V. Cost: The Committee recommends that the cost of these proceedings be assessed against Respondent.

Administrative Costs: Rule 3-7.6(k)(1), Rules of Discipline	$ 750.00
Total:	$ 750.00

VI. Committee Vote: A quorum of not less than three members of the committee being present, one of whom must be the chair or vice-chair, and another of whom must be a lawyer member, the committee by affirmative vote of a majority of the committee present voted in favor of the committee recommendation stated in item I above. In accordance with Integration Rule 3-7.3(F) the committee reports the number of committee members voting for or against, this report as follows:

In favor of the report: 7

Against the report: 0

DATED this 19th day of December, 1996.

ELEVENTH JUDICIAL CIRCUIT
GRIEVANCE COMMITTEE "B"

By: _____
VERONICA HARRELL-JAMES, CHAIR

I CERTIFY that the original and all dispatched copies of this report with attachments, were sent to assistant staff counsel by U.S. mail this ____ day of _____, 19___.

_____
VERONICA HARRELL-JAMES, CHAIR

I CERTIFY that the original and all dispatched copies of this report with attachments, were sent to assistant staff counsel by U.S. mail this 16 day of June, 1997.

_____
MANUEL R. MORALES
Designated Reviewer

Supreme Court of Florida

RECEIVED
JUN 24 2002
THE FLORIDA BAR - MIA

THURSDAY, JUNE 20, 2002

CASE NO.: SC02-787
Lower Tribunal No.: 2001-71,404(11C)

THE FLORIDA BAR vs. JONATHAN STEPHEN SCHWARTZ

Complainant(s) Respondent(s)

The Court approves the uncontested referee's report and reprimands respondent.

Respondent is further directed to comply with all other terms and conditions set forth in the report.

Judgment is entered for The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399, for recovery of costs from Jonathan Stephen Schwartz in the amount of $750.00, for which sum let execution issue.

Not final until time expires to file motion for rehearing and, if filed, determined.

A True Copy
Test:

Thomas D. Hall
Clerk, Supreme Court

kb
Served:

DAVID W. BIANCHI
DOUGLAS J. CHUMBLEY
JOHN ANTHONY BOGGS
CARLOS ALBERTO LEON
BARRY M. WAX
PAUL A. REMILLARD
HON. THOMAS M. CARNEY, JUDGE

TFB COMPOSITE EXHIBIT 5

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

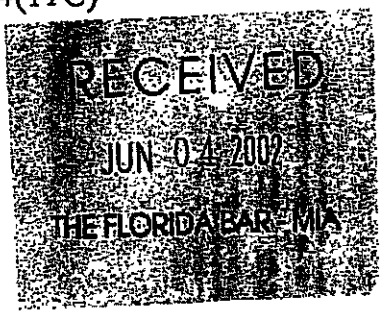
vs.

JONATHAN STEPHEN SCHWARTZ,

Respondent.
_____/

The Florida Bar File
No. SC02-787

Supreme Court Case
No. 2001-71,404(11C)



REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.6(g) of the Rules Regulating The Florida Bar, review of a consent judgment for discipline was undertaken. All of the pleadings, notices, motions, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record in this case.

The following attorneys appeared as counsel for the parties:

On behalf of The Florida Bar: Carlos Alberto León
The Florida Bar
444 Brickell Avenue
Suite M-100
Miami, Florida 33131
305/377-4445

On behalf of the Respondent: Paul A. Remillard
2840 Remington Green Circle
Suite D
Tallahassee, Florida 32308
850/656-7821

Barry M. Wax
3050 Biscayne Boulevard
Suite 901
Miami, Florida 33137
305/573-9573

Respondent submitted an Unconditional Guilty Plea and Consent Judgment for Discipline ("Consent Judgment") which provided for a Public Reprimand to be administered by publication in the Southern Second Reporter and 20 CLE hours (10 in ethics/professionalism and 10 others in whatever subject Respondent may choose) within six months from the date of the consent judgment.

The position of The Florida Bar, as approved by a Designated Reviewer of the Eleventh Judicial Circuit, is that Respondent's plea be accepted.

II. **FINDINGS OF FACT**: In this consent judgment, Respondent admits certain factual matters, which I hereby accept and adopt as the findings of fact in this cause to wit:

A. Grievance complainants, Evan A. Hoffman and Mark S. Sontag (hereinafter "Hoffman & Sontag") were employed by Respondent at the law offices of Schwartz and Fisher ("Schwartz & Fisher") from March 6, 2000, through March 7, 2001.

B. On or about March 7, 2001, Hoffman and Sontag departed from Schwartz & Fisher and subsequently formed Hoffman & Sontag, P.A.

C. Shortly after their departure, Respondent filed a series of grievances against Hoffman and Sontag (individually) with the Florida Bar.

D. Respondent's complaints alleged, among other things, that Hoffman and Sontag had burglarized Schwartz & Fisher's office in order to steal an envelope, that they had used the postage machine (after their departure) at his office, that they had mishandled several traffic ticket cases, that they had solicited Schwartz & Fisher's clients, and that one of them had harassed a secretary at the offices of Schwartz & Fisher.

E. All of Respondent's grievances were dismissed as unsubstantiated.

F. Additionally, during calendar call on one of Schwartz & Fisher's clients' cases, Respondent, in open court, announced that Hoffman and Sontag had "illegally sought and solicited clients, stole client's lists, letters, files" and that there was a criminal investigation pending against Hoffman and Sontag.

G. In fact, all Respondent had done was call the police and the State Attorney's Office about the alleged burglary and they had told him that it was a civil matter.

H. Moreover, on or about March 28, 2001, Respondent filed a complaint in Broward Circuit Court (case no. 01-005614 CACE 08) seeking damages against Hoffman and Sontag for their alleged breach of contract, misappropriation/theft of trade secrets, conversion, and tortious interference with contractual relations.

I. That same suit also asked for injunctive relief as Respondent attempted to enforce a prohibited non-compete agreement that ostensibly purported to prevent Hoffman and Sontag from practicing law in all of Miami-Dade County for a period of one year.

J. Respondent's suit was dismissed with leave to amend on July 12, 2001.

K. Instead of amending however, shortly thereafter, Respondent filed his Notice of Voluntary Dismissal on August 9, 2001.

L. Notwithstanding the foregoing, Respondent told the Investigating Member of Grievance Committee 11"C" that Respondent had filed a new complaint seeking damages and injunctive relief in Broward County Court this time alleging breach of contract, conversion, and tortious interference.

M. Respondent provided the Investigating Member with a copy of that complaint.

N. However, it was never served on Hoffman and Sontag and it is not even clear that it was ever actually filed.

III. **RECOMMENDATION AS TO GUILT:** Based upon Respondent's admissions, I recommend that Respondent be found guilty of violating:

- 4-3.1(meritorious claims and contentions);
- 4-3.3(a)(1)(make a false statement of material fact or law to a tribunal);
- 4-4.1(a)(make a false statement of material fact or law to a third person);
- 4-4.4(respect for rights of third persons);
- 4-5.6(restrictions on right to practice);
- 4-8.4(a)(violate or attempt to violate the Rules of Professional Conduct) and,

- 4-8.4(c)(engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED: Having reviewed the record of these proceedings, I find that Respondent's plea and the recommendation of The Florida Bar as to terms of discipline are both fair to the Respondent and in the best interest of the public. Accordingly, Respondent's Unconditional Guilty Plea and Consent Judgment for Discipline and the term of discipline recommended by The Florida Bar are accepted and hereby adopted as the recommendation of this Referee in this matter.

V. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED: I find that the following costs were reasonably incurred by The Florida Bar in these proceedings and should be assessed against Respondent:

Administrative fee	$ 750.00
	$ 750.00

It is recommended that the foregoing costs be assessed against Respondent. It is further recommended that execution issue with interest at a rate of 9% to accrue on all costs not paid within 30 days of entry of the Supreme Court's final order.

VI. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

Age: 42

Date Admitted to Bar: 8/13/86

Prior disciplinary record: Admonishment 5/3/95
Public Reprimand 4/10/97
Admonishment 6/13/97

DATED this 03 day of June, 2002.

/s/ THOMAS CARNEY

THOMAS M. CARNEY, Referee

Copies furnished to:

Carlos Alberto Leon, Bar Counsel
Paul A. Remillard, Attorney for Respondent
Barry M. Wax, Attorney for Respondent

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

THE FLORIDA BAR,

Complainant,

v. TFB File No. 2007-90,330(02S)

JONATHAN STEPHEN SCHWARTZ,

Respondent.
_____/

REPORT OF MINOR MISCONDUCT

I. Committee Recommendation: Pursuant to Rule 3-7.4(m), the committee recommends that you receive an admonishment. By accepting this admonishment, respondent is required to attend The Florida Bar's advertising workshop within 6 months of acceptance of this report and shall obtain pre-publication review and approval of all future advertisements for 1 year following the recommendation. All future advertisements must be submitted to The Florida Bar Standing Committee on Advertising prior to dissemination and must be approved before dissemination may occur. Administration of the admonishment shall be service of this Report.

II. Summary of the Minor Misconduct: Respondent disseminated a direct mail advertisement with numerous violations, including failure to file the advertisement for review prior to dissemination, misleading statements and statements improperly promising results. The advertisement also failed to contain the word "Advertisement" in red as required. Respondent has filed his advertisement for review and has brought it into compliance with Bar rules.

III. Recitation of Facts and/or Comment on Mitigating, Aggravating or Evidentiary Matters: Respondent received an admonishment previously for advertising violations similar to those in this matter.

IV. Admonishment: Jonathan Stephen Schwartz, your conduct has violated the Rules Regulating The Florida Bar. Pride in your profession demands that you not violate the Rules of Professional Conduct again. If you do, your present misconduct will be considered in future disciplinary proceedings.

TFB EXHIBIT
6

V. Costs: The cost of these proceedings is assessed against Respondent as follows:

Administrative Costs	$	1,250.00
TOTAL	$	1,250.00

Costs shall be due The Florida Bar within 30 days from acceptance of this report. If respondent does not pay the costs within 30 days after the report becomes final, he will be declared a delinquent member pursuant to Rule 1-3.6 and will become ineligible to practice law in Florida.

VI. Fees: The respondent shall pay the fee of $750.00 for the Advertising Workshop.

VII. Committee Vote: A duly authorized committee, in accordance with Rule 3-7.3(g), voted in favor of the recommendation stated in item I above. This vote does not include the vote of the lawyer investigating member, who by rule is not allowed to vote. In accordance with Rule 3-7.4(g), the committee reports the number of committee members voting for, or against, this report as follows:

In favor of the report	3
Against the report	0

Dated this 23rd day of May, 2007.

BY: _____
Don L. Horn, Chair
Statewide Advertising Grievance Committee

I HEREBY CERTIFY that the original of the Report of Minor Misconduct regarding TFB File No. 2007-90,330(02S) was sent to Bar Counsel by regular U.S. Mail, this 23rd day of May, 2007.

_____
Don L. Horn, Chair

Supreme Court of Florida

TUESDAY, MAY 29, 2012

CASE NO.: SC11-2143
Lower Tribunal No(s).: 2011-70,673(17A)

THE FLORIDA BAR vs. JONATHAN STEPHEN SCHWARTZ

Complainant(s) Respondent(s)

The uncontested report of the referee is approved and respondent is suspended from the practice of law for ninety days, effective thirty days from the date of this order so that respondent can close out his practice and protect the interests of existing clients. If respondent notifies this Court in writing that he is no longer practicing and does not need the thirty days to protect existing clients, this Court will enter an order making the suspension effective immediately. Respondent shall fully comply with Rule Regulating the Florida Bar 3-5.1(g). In addition, respondent shall accept no new business from the date this order is filed until he is reinstated. Respondent is further directed to comply with all other terms and conditions of the report and the consent judgment.

Upon reinstatement, respondent is further placed on probation for one year under the terms and conditions set forth in the report and the consent judgment.

Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from Jonathan Stephen Schwartz in the amount of $1,363.70, for which sum let execution issue.

Not final until time expires to file motion for rehearing, and if filed, determined. The filing of a motion for rehearing shall not alter the effective date of this suspension.

A True Copy
Test:

Thomas D. Hall
Clerk, Supreme Court

kb
Served:

KENNETH LAWRENCE MARVIN BENEDICT P. KUEHNE
MICHAEL C. GREENBERG HON. RONALD CHARLES DRESNICK, JUDGE

TFB COMPOSITE EXHIBIT 7

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JONATHAN STEPHEN SCHWARTZ,

Respondent.
_____/

Supreme Court Case
No. SC11-2143

The Florida Bar File
No. 2011-70,673(17A)

REPORT OF THE REFEREE ACCEPTING CONSENT JUDGMENT

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 November 3, 2011, The Florida Bar filed its complaint against respondent. The parties have presented to me a Conditional Guilty Plea for Consent Judgment, which has been approved by The Florida Bar Board of Governors' designated reviewer. After due deliberation, I have determined to recommend that respondent's Conditional Guilty Plea for Consent Judgment be approved, for the reasons set forth herein. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, and this Report 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.

B. Narrative Summary Of Case.

1. The following allegations and rules provide the basis for respondent's guilty plea and for the discipline to be imposed in this matter pursuant to his representation of Ms. Evelyn Ocampo (a Venezuelan resident), who traveled to Miami to retain respondent and who shortly thereafter returned to Venezuela, making her unavailable to sign documents necessary for her litigation, as noted below:

2. In or about August 2010, respondent filed a paternity action styled Evelyn Ocampo v. Yorvit Torrealba, Case No. 10-021994 FC-29, in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida.

3. Part of the August 3, 2010 filings was a Uniform Child Custody Jurisdiction Act Affidavit (hereinafter "UCCJA Affidavit"), notarized by respondent.

4. However, the lines on the affidavit stating the date and who appeared before respondent as the notary: "sworn to or affirmed before me on by" were left blank.

5. Chapter 117 of the Florida Statutes regulates a notary public's activities in the state of Florida. Florida Statute 117.05(c) states that the notarial certificate must state that "the signer personally appeared before the notary at the time of the notarization."

6. Respondent made a knowing misrepresentation with the August 3, 2010 affidavit, by filing the UCCJA Affidavit which contained a deficient notarization.

7. Respondent subsequently filed a second UCCJA Affidavit on his client's behalf with a notarization date of October 22, 2010.

8. In the space where the party was supposed to sign swearing under oath that the affidavit was true, the document was signed "JS for E. Ocampo" (respondent's initials) rather than with just Ms. Ocampo's signature.

9. Respondent then filed the second affidavit with the court, misrepresenting same as a valid affidavit although it was deficient pursuant to the statute, since it was signed with respondent's initials "for E. Ocampo."

10. The jurat that the party was supposed to be swearing to by their signature stated the following:

> I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

11. Respondent served a third financial affidavit dated October 25, 2010, upon opposing counsel.

12. The notarial certificate on the document originally read "Sworn to or affirmed and signed *before me...*" [Emphasis added].

13. In this document the words "before me" were crossed out and respondent affixed his signature and notary seal which had expired over a month before on September 19, 2010.

14. Florida Statute 117.05(c) states that the notarial certificate must state that "the signer personally appeared before the notary at the time of the notarization."

15. However, Evelyn Ocampo did not appear before respondent on October 25, 2010, since respondent admitted that she was in Venezuela.

16. Respondent also admitted that Ocampo signed the document in Venezuela and thereafter faxed a signed copy to respondent's office (the Venezuelan fax number can be seen at the top of the signature page).

17. The words "before me" were crossed out in the affidavit and thereafter respondent notarized the signature.

18. Additionally, in or about October 2010, a financial affidavit submitted to the court and opposing counsel by respondent, included an entry which stated "Loans from Attorney $4,000.00."

19. In respondent's March 23, 2011 response to The Florida Bar request for additional information, respondent's counsel admitted that "Mr. Schwartz loaned Ms. Ocampo money for living expenses when she was in jeopardy of being rendered homeless."

20. Lending money to a client in connection with a pending matter is prohibited.

III. RECOMMENDATIONS AS TO GUILT

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

By the conduct set forth above respondent violated R. Regulating Fla. Bar **4-1.8(e)** [A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.]; **4-3.3(a)(l)** [A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.]; **4-4.1(a)** [In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.]; **4-8.4(a)** [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so

through the acts of another.]; **4-8.4(b)** [A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.]; and **4-8.4(c)** [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation...].

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

6.12 Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action.

Further, in mitigation I find the following:

(a) Respondent has made a timely, good faith effort to rectify the consequences of his misconduct;

(b) Respondent has made full and free disclosure of his conduct;

(c) Respondent has had a cooperative attitude toward the proceedings; and

(d) Respondent is remorseful for his conduct in this matter.

(e) Respondent has continued to engage in substantial and significant good works and service for the profession and the community, including volunteer leadership at the Lotus House Women's Shelter, establishing the prison stress reduction project for the Miami-Dade Department of Corrections at the Metro-West

Pretrial Detention Facility and TGK. In addition, respondent has contributed pro bono work on behalf of the mentally disabled in the Probate and Criminal Divisions of the Eleventh Judicial Circuit.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Nuckolls, 521 So. 2d 1120 (Fla. 1988) -- 90-Day Suspension. Respondent submitted false affidavits about purchase prices of condominiums in order to allow client to obtain 100% financing.

The Florida Bar v. Corbin, 701 So. 2d 334 (Fla. 1997) -- 90-Day Suspension. Respondent submitted a motion for summary judgment to the court and knowingly misrepresented certain facts to the court in that motion. Although the referee recommended a 6 month suspension the Supreme Court found a 90 day suspension more appropriate.

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. Respondent shall be suspended from the practice of law for a period of 90 days with automatic reinstatement at the end of the period of suspension as provided in R. Regulating Fla. Bar 3-5.1(e).

B. Upon automatic reinstatement to The Florida Bar respondent shall be placed on probation for a period of 1 year.

C. Respondent agrees to be supervised by an attorney acceptable to The Florida Bar. The supervising attorney shall provide continuous monitoring of respondent's client case files and provide **quarterly** reports to The Florida Bar regarding the status of the client files and inform The Florida Bar if respondent is meeting his deadlines, returning phone calls and answering correspondence.

D. Respondent is responsible for submission of the quarterly reports to the headquarters office of The Florida Bar. The quarters are March 31, June 30, September 30 and December 31.

E. Respondent will pay a quarterly monitoring fee of $100.00 to The Florida Bar. All quarterly monitoring fees must be remitted within ten days after the end of each respective quarter in which the monitoring fee is due. All fees must be paid to the Bar's headquarters office in Tallahassee. *Failure to pay shall be deemed cause to revoke probation.*

F. Further, respondent shall be required to complete 10 additional hours of Continuing Legal Education in the area of Family Law.

G. Respondent shall provide proof of having attended same.

H. These courses must be completed no later than one year following the date of the Supreme Court's order.

I. Any and all expenses of the above conditions of probation are to be borne by respondent.

J. Respondent further agrees to pay The Florida Bar's costs in this matter.

VII. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following personal history of respondent, to wit:

Age: 53

Date admitted to the Bar: August 13, 1986

Prior Discipline: Respondent received an admonishment for Minor Misconduct in 1995; Respondent received an admonishment for advertising violations in 1997; Respondent received a public reprimand for a failure to appear as required in court proceedings by Order dated April 10, 1997; Respondent received a public reprimand for certain personal behavior arising from a business dispute by Order dated June 20, 2002; Respondent received an admonishment for advertising violations in 2007.

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

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

Administrative Costs	$1,250.00
Bar Counsel Travel Costs	$ 113.70
TOTAL	**$1,363.70**

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within thirty days of said judgment becoming final, respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 3 day of May, 2012.

Honorable Ronald C. Dresnick
Circuit Court Judge and Referee

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, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399-1927; and that copies were furnished by regular U.S. mail to Respondent's Counsel, Benedict P. Kuehne, at Law Office of Benedict P. Kuehne, PA, 100 SE 2nd Street, Suite 3550, Miami, FL 33131-2112; Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300; and Michael C. Greenberg, Bar Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, FL 33323 on this 3 day of May, 2012.

JUDGE RONALD C. DRESNICK

Honorable Ronald Charles Dresnick

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2021, the foregoing was filed and served via the State of Florida's E-Filing Portal to:

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Attorney for Respondent

/s/ Chris W. Altenbernd
Chris W. Altenbernd, Esq.