IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

PETER G. HERMAN,

Respondent.
_____/

Supreme Court Case No. SC17-2050

The Florida Bar File No. 2014-50,165 (17E)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein pursuant to R. Regulating Fla. Bar 3.7.6, the following proceedings occurred:

1. On November 16, 2017, the Florida Bar ("Bar"), pursuant to R. Regulating Fla. Bar 3-7.4 filed a formal complaint against Respondent alleging he violated the following: RR. Regulating Fla. Bar 3-4.2; 3-4.3; 4-3.3(a)(1); 4-3.4(a); 4-8.4(a); and 4-8.4(c) ("Complaint")(R1[1]).
2. By order dated November 12, 2017, the Supreme Court referred the matter to the Chief Judge of the Fifteenth Judicial Circuit for the

[1] All references to the Record will be denoted as "R" followed by the corresponding tab number. References to the party's exhibits contained at tabs 51 through 57 will be denoted as follows: "(R x, sub ex. y)" where "x" denotes the tab number and "y" denotes the corresponding exhibit number assigned by each party.

appointment of a referee, (R3) and the Chief Judge appointed the undersigned as referee on December 11, 2017 (R4).

3. On January 5, 2018, Respondent filed his Answer to the Complaint (R8).

4. The matter was bifurcated and proceeded to an evidentiary hearing beginning on June 21, 2018 and continuing through June 26, 2018. The Bar introduced exhibits one (1) through forty-six (46) into evidence without objection (R51-52). Respondent's exhibits one (1) through eighty-nine (89) were likewise admitted into evidence without objection (R53-57).

5. The undersigned granted the Bar's unopposed Motion to Take Judicial Notice of the following two Orders arising from Respondent's personal bankruptcy proceedings: *In Re Peter G. Herman* (Bankruptcy Court Case No. 12-13989-JKO[2]); and *Herman v. CIB Marine Capital, LLC* (USDC Case No.: 13-cv-62251-KMM)(collectively referred to as the "BK Orders")(R32).

6. As the undersigned has taken judicial notice of those cases, it is respectfully submitted that the undersigned may rely upon, and adopt the factual findings set forth in the BK Orders in making the necessary

[2] This case is reported at *In Re Herman*, 495 Bankr. 555 (S.D. Fla.)

findings and conclusions in this matter.[3] *See, The Florida Bar v. Gwynn*, 94 So.3d 425, 430 (Fla. 2012); *The Florida Bar v. Head*, 27 So.3d 1, 7-8 (Fla. 2010); *The Florida Bar v. Rood*, 620 So. 2d 1252, 1255 (Fla. 1993)("Referees are authorized to consider any evidence, such as the trial transcript or judgment from the civil proceeding, that they deem relevant in resolving the factual question.").

7. The following persons testified as witnesses at the hearing: For the Bar, Kenneth Welt, Jerry Markowitz, Esquire, and Respondent. For Respondent, Bart Houston, Esquire, Miles McGrance, Esquire, Roger Banks, Amy Galloway, Esquire, Alex Brown, Esquire, Honorable Thomas Lynch, Chad Pugatch, Esquire, Michael Powell, L. Louis Mrachek, Esquire and Respondent.

8. On October 22, 2018, the instant matter proceeded to a Sanctions Hearing at which the Respondent testified. In addition, both parties presented arguments as well as Supplemental Proposed Findings as to Recommended Sanctions.

[3] The undersigned has likewise taken judicial notice of evidence and testimony not presented to, nor considered, by the Bankruptcy Court, in particular, regarding: (1) Respondent's reliance on advice he received from his Bankruptcy counsel, Bart Houston, prior to filing and swearing to the accuracy and truth of his financial schedules and SOFA; (2) the Trustee's and CIB's knowledge of the contingency case judgments prior to the filing of Respondent's schedules; (3) the arguments raised by CIB in both the bankruptcy and state court proceedings; and (4) Respondent's testimony regarding his lack of knowledge of the transfers made by his then-spouse Pamela Herman and documentation for the accounts and expenses paid from the accounts. In addition, the undersigned takes judicial notice that in making factual findings, the Bankruptcy Court applied a lower standard of proof (preponderance of the evidence) as opposed to a clear and convincing standard which must be applied in this Bar matter

9. During the course of these proceedings, Joi L. Pearsall, Esquire, represented The Florida Bar and David B. Rothman, Esquire represented Respondent. The pleadings, hearing transcripts and all other papers filed in this cause, which are forwarded to the Supreme Court of Florida with this report, constitute the entire record.

II. FINDINGS OF FACT

A. Jurisdictional Statement.

10. 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 the Case.

Introduction and Background

11. This matter arises from the conduct of Respondent in connection with his personal bankruptcy proceedings. Specifically, the Complaint alleges that Respondent failed to accurately and truthfully disclose certain personal financial matters in his bankruptcy schedules ("the Schedules") as well as his Statement of Financial Affairs ("SOFA") (R 51, sub ex. 13) which he is required to file in support of his Chapter 7 personal bankruptcy Petition that he filed in the United States Bankruptcy Court on February 18, 2012. *In Re Herman, 495 Bankr. 555* (S.D. Fla.).

12. At the time, he was employed as a "Director" with Tripp Scott, P.A. ("Tripp Scott"). A Director is not a shareholder. As a Director, Respondent is paid a salary as determined by Tripp Scott's Compensation Committee. Additionally, Respondent receives an annual performance bonus. There is no written contract between Respondent and Tripp Scott regarding this compensation package.

13. *The CIB Judgment.* In December 2011, CIB Marine Capital, LLC ("CIB") obtained a deficiency judgment of approximately $4.5 million dollars against Respondent, based upon the non-payment of a loan that he personally guaranteed for Esquire Ventures, LLC, in connection with a real estate investment that failed in 2007. (R 52, sub. ex 28). CIB immediately began pursuing collection proceedings against Respondent on the CIB Judgment.

14. *The Contingency Fee Cases and $10 Million Fee.* Around this same time, Tripp Scott had been representing plaintiffs in substantially two separate and significantly large lawsuits pursuant to contingency fee agreements. Respondent was the co-lead counsel, along with another Tripp Scott attorney, Alex Brown, in each of these cases. The first was a suit against Home Depot for patent infringement ("HD Case"). The other case was against Security Mutual Life Insurance Company of New York

("SM Case")(collectively, the "Contingency Fee Cases").

15. The plaintiffs in those case prevailed. The jury in the HD Case awarded the plaintiff approximately $23.45 million and the one in the SM Case awarded the plaintiff $26 million. On October 13, 2011, the court entered a final judgment in the SM Case. Ultimately, the parties reached a settlement in the SM Case and a fully executed Satisfaction of Judgment was filed on March 13, 2012 (R 52, sub ex. 35). The Final Judgment in the HD case was affirmed by the Eleventh Circuit on November 14, 2011 (R 52, sub ex 40). Mandate was issued on February 12, 2012. Pursuant to the fee arrangements in the Contingency Fee Cases, Tripp Scott received approximately $10 million in combined legal fees ("$10 Million Fee").[4]

16. *The Pozzuoli Emails.* Beginning in December 2011 and continuing into early January 2012, Respondent sent approximately six (6) emails to the President of Tripp Scott, Edward Pozzuoli, as well as other members of the firm all of whom members of the Firm's Compensation Committee ("Pozzuoli Emails"). In those emails, Respondent discussed how the bonuses from the $10 Million Fee which should be distributed to those who worked on the two contingency cases, including himself and Brown.

[4] The fees were $4.1 million and $5.8 million for the HD and SM Case, respectively.

(R 52, sub exs. 25, 26).

17. He stated that he was "hearing rumors" regarding the distribution methodology of the bonuses. He also mentioned he wanted Tripp Scott to be "consistent" with its historical practices in considering the award of bonuses. In the December 6, 2011 email, Respondent stated that he wanted Tripp Scott to finalize the distribution methodology of the bonuses.

18. Then, in a December 15, 2011 email, Respondent stated that he was frustrated and disappointed that the people who had procured the $10 Million Fee were being "kept out of the loop." After meeting with Pozzuoli, Respondent sent him another email on December 21, 2011 describing the $10 Million Fee as a "heck of a lot of money that is going to result in everybody getting a great payday."

19. Respondent proposed to Pozzuoli that he and Brown should receive approximately $5.2 million due to their successful work on the Contingency Fee Cases. In reaching this amount, Respondent explained to Pozzuoli that it was $500 thousand lower than what he had proposed the day before. Respondent then goes on to further state that based upon his "profit analysis," "the number for both [Brown] and [Respondent] would end up being north of $7,000,000." (R 52, sub ex. 26).

20. In a December 21, 2011 email, Respondent stated, "[W]e have a huge amount of money coming in that will benefit us all" and "I don't want to sound like a broken record, but I was extremely serious that this should be resolved today. It's important to me" (R 52, sub ex. 26).

21. On January 8, 2012, Respondent sent Pozzuoli another email in which he stated, "As you know, I have been trying to get a resolution to the fair and proper distribution of the monies coming from [Contingency Fee Cases] for the last two months.... I believe the Firm should want me and [Brown] to have a feeling that we are being treated fairly and being rewarded fairly for this tremendous and unprecedented result." (R 52, sub ex. 27).

22. In response, Pozzuoli sent Respondent an email raising various questions regarding the Contingency Fee Cases. One such question was regarding the status of the Mayback Fee Dispute.[5] Respondent replied in a January 9, 2012 email that the Mayback Fee Dispute would not affect the receipt of the $10 Million Fee by Tripp Scott. This is because a court order had been entered to hold the Mayback's fee in abeyance and would not prevent entry of the Judgment in the HD Case. In fact, Respondent

[5] There was evidence presented at the Bar trial that another law firm, Mayback and Hoffman ("Mayback") was staking a claim against the legal fees for the HD Case ("Mayback Fee Dispute").

advised Pozzuoli that "the only thing that will probably happen will be that we will be receiving more money."

23. In that very same email, Respondent said that the final details of the settlement in the SM Case were being worked out, that he, Respondent, had complete control over when Tripp Scott would be receiving the settlement funds from that case, and that the money could have been in 2011, but the receipt was pushed out to 2012 for tax reasons. Respondent stated that the HD Case "should be resolved in the next 60 days if not sooner now that the judges are back from the holiday." (R 52, sub ex. 26).

24. In August 2012, after the meeting and subsequent discussions with the Trustee, the Tripp Scott Compensation Committee distributed bonuses to its employees from the $10 Million Fee. Respondent's share was $2.7 Million. However, he did not actually receive it and by agreement his bonus was placed into trust.

25. *The PH Transfers.* On or about November 29, 2011, Respondent liquidated approximately $46,000 in mutual fund investments held in an investment account titled in his name. On December 7, 2011, he deposited the proceeds into a checking account which he and his then-spouse, Pamela Herman, held jointly. The next day, December 8, 2011,

the funds in that joint account were transferred into an account held solely in Pamela's name. They were then transferred into yet another account held in her name. From this account, the funds were disbursed to various third parties. At the Bankruptcy proceedings, Respondent testified that a portion of these funds were used to pay his legal expenses while some went to pay workmen for improvements done to his condominium.

The Adversary Proceedings in the Bankruptcy Court and Appeal to the U.S. District Court

26. As creditor, CIB objected to the petition for discharge alleging that Respondent (1) intentionally concealed prepetition assets, (2) failed to disclosure prepetition transfers of assets, and (3) made false oaths in connection therewith. (R 51, sub ex. 11; R 53, sub ex. 22). Specifically, CIB claimed that Respondent intentionally failed to disclose the following two transactions on the Schedules and SOFA: (1) his bonus from the $10 Million Fee; and (2) the prepetition PH Transfers (R 53, sub ex. 22). As a result, on June 5, and June 6, 2013, the Bankruptcy Court held a trial on Respondent's bankruptcy petition at which the Court-appointed Bankruptcy Trustee, Kenneth Welt, intervened.

27. *Findings of the Bankruptcy Court.* On August 5, 2013, the Bankruptcy

Court entered a seventy-one (71) page Order denying Respondent's Petition for discharge based upon Respondent's failure to disclose both his bonus from the $10 Million Fee as well as the PH Transfers in his Schedules and SOFA. With respect to the omission of Respondent 's bonus from the $10 Million Fee, the Court found:

J. The Debtor's Intent to Hinder, Delay or Defraud his Creditors and Trustee Welt

> The ...Debtor omitted his interest in the $10 Million Fee and the Transfers from his Schedules (including Schedules B and I) and SOFA with the intent to hinder, delay or defraud his creditors. The Debtor purposefully did not disclose his interest in the $10 Million Fee with fraudulent intent in an attempt to prevent his creditors, primarily [CIB] and Trustee Welt, from discovering such interest so that he could keep his multi-million dollar bonus for himself and pay none of it to his bankruptcy estate or his creditors. The Court finds the Debtor's failure to disclose his interest in the $10 Million Fee in his Schedules and SOFA was intentional and based upon a motive to conceal his prepetition interest in the $10 Million Fee, to obtain all of the money in his prospective bonus for himself, and to pay none of it to his creditors, all at a time when [CIB] was executing on its multi-million judgment.
>
> The evidence shows that the Debtor has been the subject of the CIB Judgment in the approximate amount of $4.5 million since December 8, 2011. The Debtor knew the amount of the deficiency since at least mid-November 2011. The hearing on [CIB]'s deficiency judgment occurred on the same day (December 6, 2011) the Debtor commenced a protracted e-mail campaign with the President of Tripp Scott concerning allocation of the $10 Million Fee. The Debtor testified that when he filed bankruptcy, [CIB] was the only creditor that had a judgment against him. The Debtor also testified that [CIB] was the only creditor garnishing his wages at Tripp Scott and his bank accounts. The Debtor knew that he waived, in the Debtor Guaranty, any exemption claim that he could

have attempted to use to protect his interest in a bonus from the $10 Million Fee. Thus, disclosure of the interest in the $10 Million Fee and seeking to claim it as exempt would jeopardize retention of the multi-million bonus he expected to receive from his interest in the $10 Million Fee.

The evidence demonstrates that both the judgments and the fees in the Contingency Fee Cases were the largest the Debtor had ever received in his thirty-plus-year career as an attorney. The Debtor testified that in 2011 and 2012 he knew the gross amount of the fees Tripp Scott was entitled to receive under the contingency fee contracts in the Contingency Fee Cases was approximately $10 Million. The Pozzuoli Prepetition E-mails and the McLaughlin Prepetition E-mails show that the Debtor was contemplating how much of the $10 Million Fee he was going to receive for months, if not longer, prior to the Petition Date. The Brown Prepetition E-mails [6] show that on the Petition Date the Debtor knew Tripp Scott was going to receive the $10 Million Fee within weeks, if not days, after the Petition Date. In fact, Tripp Scott received all of the $10 Million Fee only weeks after the Petition Date and prior to the date on which the Debtor filed his Schedules and SOFA. The Debtor controlled when he filed his bankruptcy petition and the chapter of the Code under which he filed. He did not consider filing a Chapter 11 case in which he could have paid his creditors over time using the bonus generated from the $10 Million Fee.

According to the evidence from the Tripp Scott documents introduced at trial, $2 million was the lowest amount which the firm contemplated paying the Debtor of the $10 Million Fee. Tripp Scott actually paid him $2.7 million. The Debtor testified that prior to the $2.7 million bonus award for the fees generated by the Contingency Fee Cases, he was never awarded a single bonus in excess of one million dollars during his employment at Tripp Scott. Mr. Pozzuoli testified that the $2.7 million bonus award was by far the largest in relation to other Directors and was the largest bonus Tripp Scott had ever given out to any Director in his fifteen years with the firm.

[6] These email exchanges are part of the record in this case (R 52, sub ex. 41).

The Court finds based upon the demeanor of the Debtor at Trial, the documentary evidence presented at Trial, and the testimony of Mr. Brown and Mr. Pozzuoli, the Debtor filed his Chapter 7 bankruptcy case and concealed his inchoate interest in the $10 Million Fee and the Transfers with the actual intent to hinder, delay or defraud his creditors, principally [CIB], and Trustee Welt. The Chapter 7 bankruptcy case was the vehicle through which he sought to discharge the CIB Marine Judgment. The concealment of his interest in the $10 Million Fee from his Schedules and SOFA would (he hoped and anticipated) allow him to keep millions of dollars and be free from the CIB Judgment. The Debtor's testimony that he conducted legal research concerning whether his interest in the $10 Million Fee was property of the estate shows that he was seeking to conceal his interest which he knew was a prepetition contingent asset. The Debtor's statement that he believed he did not provide false information in his Schedules and SOFA is not credible. The Court finds that the Debtor's testimony that he believed he fairly disclosed his assets and liabilities is not believable. The Court finds, based upon the evidence, that the Debtor filed bankruptcy to discharge his prepetition debt, including the CIB Marine Judgment, and keep all of his interest in the $10 Million Fee…

(Bk Order, R 32, pp. 36-39).

28. With respect to Respondent 's failure to disclose the PH Transfers, the Court found:

I. The [PH] Transfers

[T]he Court finds that the [PH] Transfers were made to place the transferred funds out of the reach of the Debtor's creditors, which was accomplished by transferring the money to an account in which he held no legal interest…

Prior to the Petition Date, the Debtor had an investment account at American Funds… through which he held shares in [the Growth Fund Shares]. The Growth Fund Shares were assets of the Debtor that were purchased with the Debtor's savings…

On or about November 29, 2011, the Debtor caused his Growth Fund Shares, which constituted property of the Debtor, to be liquidated for an aggregate sale price of $46,278.25 (the "Sale Proceeds "). The Debtor received payment on the Sale Proceeds via two separate checks from American Funds in the amounts of $24,545.45 and $21,732.80 (the "American Funds Checks "), both of which were payable to the Order of "Peter G. Herman."...

On or about December 7, 2011, the Debtor caused the American Funds Checks to be deposited in an account at Wells Fargo Bank (Account No. XXXX9849), which was a joint account in the name of the Debtor, Peter G. Herman, and his ex-wife, Pamela M. Herman (the "Joint Account "). ... The Debtor listed his interest in the Joint Account on Schedule B of his Schedules. On the very next day, December 8, 2011, the Sale Proceeds in the Joint Account were transferred to a separate account held solely by Pamela M. Herman at Wells Fargo Bank... (the "First Pam Herman Account"). At the time immediately preceding the foregoing transfer, the First Pam Herman Account held only $30.11. The Debtor does not have any ownership interest in First Pam Herman Account, did not list any ownership interest in such account as an asset in his Schedules, and did not list the transfer of the Sale Proceeds to the First Pam Herman Account in his SOFA... On or about December 9, 2011, the Sale Proceeds were transferred from the First Pam Herman Account to a separate account held solely by Pamela M. Herman at Wells Fargo Bank ... (the "Second Pam Herman Account "). From the time of the foregoing transfer, and through the Petition Date, the Second Pam Herman Account was funded exclusively by the transfer of the Sale Proceeds and interest accruing thereon and did not contain any other funds. The Debtor does not have any ownership interest in the Second Pam Herman Account, did not list any ownership interest in such account as an asset in his Schedules, and did not list the transfer of the Sale Proceeds from the First Pam Herman Account to the Second Pam Herman Account in his SOFA...

As of the Petition Date, the Second Pam Herman Account contained only $90.07. In the 37 days preceding the Debtor's bankruptcy filing, the remainder of the Sale Proceeds were

transferred out of the Second Pam Herman Account as follows (collectively, the "Transfers "):

i. $5,000 (Withdrawal) on January 13, 2012;

ii. $1,500 (Withdrawal) on February 3, 2012;

iii. $30 (Wire Transfer) on February 10, 2012;

iv. $35,000 (Wire Transfer to The Kopelowitz Firm Trust Account[7]) on February 10, 2012;

v. $400 (Online Transfer to First Pam Herman Account) on February 14, 2012; and

vi. $4,300 (Withdrawal) on February 17, 2012.

[T]he Debtor did not list any of the foregoing Transfers on his Schedules or SOFA...

The testimony at Trial and the documentary evidence introduced showed that when the Transfers were made, [CIB] had obtained the final judgment of foreclosure against Esquire Ventures, and the Debtor admitted that [CIB] had filed the motion seeking a deficiency judgment against him. The Transfers were from the Debtor to Pam Herman's account in which the Debtor admitted he did not have an interest. The CIB Marine Judgment was not against Pam Herman. Thus, the Court finds that the Transfers effectuated a movement of funds from an account subject to [CIB]'s reach to an account out of [CIB]'s reach.

The Debtor's testimony about the Transfers was not credible. The Debtor was unable to explain the discrepancy between the $35,000 transfer Pam Herman made to The Kopelowitz Firm PA Trust Account and his disclosure of a $15,000 transfer to Kopelowitz in his SOFA. The Debtor could not identify where the additional $20,000 to the Kopelowitz Firm was disclosed in his Schedules or

[7] Bart Houston at the time was a member of the Kopelowitz Firm. Houston had been representing Respondent in the bankruptcy proceedings. Subsequently in November 2013, Chad Pugatch substituted in as Respondent's bankruptcy counsel.

> SOFA, and ultimately admitted that the $20,000 transfer was not disclosed. The Court further finds that the Debtor's testimony that certain transfers were made to pay workmen on his condominium was not credible, as no documents were admitted into evidence to support this contention, the Debtor did not identify who was paid, and these transfers were not disclosed in his Schedules or SOFA. The Debtor admitted at Trial that the Transfers in the amount of approximately $46,000 were not disclosed in his Schedules or SOFA.
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> (Bk Order, R 32, pp. 34-36).

29. Given this as well as Respondent's "level of sophistication," and applying what it determined to be prevailing bankruptcy law, the Bankruptcy Court concluded that Respondent "acted with intent to hinder, delay or defraud his creditors and Trustee Welt when he concealed his interest in the $10 Million Fee and the Transfers in his Schedules and Statement of Financial Affairs after the Petition Date." For these reasons, the Bankruptcy Court denied Respondent's Petition for discharge (Bk Orders, R 32, pp. 63; 66-67).

30. On September 29, 2014, the United States District Court for the Southern District of Florida, entered an order affirming the Bankruptcy Court's Findings of Facts and Conclusions of Law and Final Judgment in favor of CIB and the Bankruptcy Trustee against Respondent. In addition, based upon the "nature of the bankruptcy court's finding and this Court's affirmance," the District Court forwarded the BK Orders to

the US Attorney for the Southern District and to the Florida Bar (R 32, p. 19, *Herman v. CIB Marine Capital, LLC, supra.*).

31. Respondent appealed the BK Orders to the Eleventh Circuit Court of Appeals however, on December 19, 2014, he voluntarily dismissed this appeal (R 51, sub ex. 6) based apparently on reaching a settlement with CIB.

State Court Collection Proceedings on the CIB Judgment

32. After Respondent was denied his Petition for discharge, the state court proceedings to collect on the CIB Judgment, which had been partially stayed, resumed. CIB was represented in both the bankruptcy and state court proceedings by the law firm of Stearns Weaver ("Stearns Weaver").

33. In the Bankruptcy Court proceeding, Stearns Weaver had argued in support of CIB's objection to Respondent's discharge that at the time Respondent filed for bankruptcy, claims to any bonuses paid out by Tripp Scott were vested. However, in the state court garnishment proceedings, different attorneys from Stearns Weaver, on behalf of CIB, apparently stipulated that bonuses paid by Tripp Scott were discretionary (R 54, sub ex. 41).[8]

[8] Stearns Weaver apparently relied solely upon the testimony of Respondent, Alex Brown and Edward Pozzuoli from the Bankruptcy trial and submitted an evidentiary stipulation which states, in part, as follows:

In addition to his annual salary, debtor may also receive a discretionary bonus from the firm's excess

The Instant Bar Proceedings.

34. In the instant proceedings, Kenneth Welt provided the following testimony. He is a U.S. Bankruptcy Trustee in the Southern District of Florida. He has approximately thirty-two (32) years of experience and over the course of his career has handled over 100,000 bankruptcy cases. Welt is neither an accountant nor is he a lawyer. He was assigned to serve as the Court-appointed Trustee on Respondent's bankruptcy case upon the filing of the Petition. He has never worked for Tripp Scott. He did not know Respondent prior to having been assigned as Trustee.

35. As a Trustee, Welt relies upon a debtor to be complete and truthful when disclosing the debtor's assets in the Schedules and SOFA. This, he explained, is because it is neither possible nor is it the Trustee's responsibility to research the assets and income of every debtor.

36. Shortly after Respondent filed his Petition and prior to filing the

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income ... The compensation committee also determines bonuses at Tripp, Scott and has broad discretion to determine the amount of the bonus ... Bonus payments are not a part of Tripp Scott's lawyer employees annual salary ... There have been years during the course of his employment where the debtor received no bonus ... The allocation of bonuses each year is unique and dependent upon the year ...

There is no set policy for the distribution of money through bonuses at the end of the year ... Sometimes Tripp Scott has money to distribute as a bonus, sometimes it does not ... A bonus is not part of the Debtor's periodic earnings ... If a bonus is paid, it is often, but not always, paid at the end of the calendar year ...

Tripp, Scott's compensation committee has the ability to give a director a zero bonus for reasons other than finances ... There is a chance Debtor would have had a zero bonus because ultimately it is not until the comp committee sits and meets and discusses specifically what is going to be allocated and then how the allocation is going to go. That is solely under the Tripp Scott. It is solely within the province of the comp committee. It is the comp committee meeting that determines the when and how much and to whom gets the money; until that time, no one is entitled to anything. (R 54, sub ex. 42)

Schedules and SOFA, Welt met with Stearns Weaver. It was during this meeting that Welt became aware of the verdicts in the Contingency Fee Cases. He also met with members of Tripp Scott. Prior to this, Welt had no idea as to what amount, if any, Respondent would be receiving as his bonus from the $10 Million Fee.

37. In reviewing Respondent's Schedules, Welt did not see any disclosure by Respondent of his interest in the $10 Million Fee. Even though he was aware of the two verdicts before the Schedules and SOFA were filed, the Schedules should have included this. This is because they are not just used by the Trustee, but also because the information contained in them is for the benefit of all of Respondent's creditors. Indeed, Welt explained the purpose of the Schedules is to give a blueprint or menu for the Trustee to use in administering the estate for the benefit of those creditors.

38. Even if property may be exempt under state law, the debtor still has a duty to disclose it and then claim the exemption in bankruptcy court. While it is true that he and CIB were aware of the verdicts in the Contingency Fee Cases prior to the filing of the schedules, when CIB objected to Respondent's discharge, Welt was nonetheless forced to intervene in the adversary case. This is because Respondent had omitted

the PH Transfers that Welt believed he had a duty to disclose.

39. Welt was aware that the $10 Million Fee belonged to Tripp Scott. However, he believed that if Respondent had an arrangement with Tripp Scott to receive a portion of that fee, it could be a possible source from which the creditors may collect. Citing to a confidentiality agreement, Welt declined to answer on cross examination whether Tripp Scott advised him any bonus paid from the $10 Million Fee was discretionary.

40. *Respondent's Bankruptcy Attorneys.* Two attorneys represented Respondent during various stages of his bankruptcy proceedings as well as during the state court proceedings. First, Bart Houston gave the following testimony: He has been practicing law since 1986. Eventually he ended up practicing law with his father, who at one point was a bankruptcy judge in the Southern District. Houston's current practice entails representing debtors in various insolvency cases. Prior to this, he spent some twenty-eight (28) years exclusively practicing bankruptcy law, predominately in Chapter 11 reorganization and litigation cases.

41. Houston has known Respondent since 1977. Their relationship has been mainly professional. After the CIB Judgment was entered against Respondent, Houston represented him in negotiations with CIB in an attempt to settle the case. After these negotiations failed, CIB initiated a

wage garnishment action. It was at this point that Houston advised Respondent to file a Petition for Chapter 7 Bankruptcy. He testified that although Respondent is an experienced civil litigation attorney, he was "a bab[e] in the woods" when it came to bankruptcy law. In Houston's view, Respondent was "not knowledgeable about even the most basic of bankruptcy matters."

42. On February 18, 2012, Houston filed the Petition, which he described as a "skeletal filing." He moved for and obtained an extension or until March 16, 2012 in which to file Respondent's Schedules and SOFA. (R 51, sub ex. 8).

43. Prior to preparing the Schedules and SOFA, Houston reviewed the financial information provided to him by Respondent. He also met with Respondent several times. In addition, Houston conducted an investigation and analysis of the facts and circumstances related to the Contingency Fee Cases, the potential fees Tripp Scott would receive from them, and the structure of Tripp Scott's compensation system, including the payment methodology utilized for bonuses.

44. In conducting this factual investigation, Houston had discussions with Brown, Pozzuoli, and Respondent. He reviewed trust documents and Tripp Scott memos dealing with how performance bonuses were decided

by the Tripp Scott Compensation Committee. Based upon the information he obtained regarding Tripp Scott's compensation structure, Houston concluded that non-equity "Directors" of the firm, such as Respondent, did not have a legally enforceable entitlement to a bonus because, in his view, the bonuses were discretionary, and not vested.

45. Houston also reviewed bankruptcy case law and he confirmed his conclusion that Respondent did not have a vested right to a bonus. Therefore, any potential discretionary bonus would not be considered his property, but rather the property of Tripp Scott until such time as the bonus was actually awarded to Respondent.

46. Houston discussed the bonus issue with Respondent. He advised him that he did not have a legal property right or interest in these fees or any bonus arising therefrom at the point in time the Petition, Schedules and SOFA were filed. This, he explained, is because the $10 Million Fee had not been received by Tripp Scott and Respondent had not yet been awarded a bonus. Thus, Houston determined there was nothing to report on the Schedules. Houston discussed the cases upon which he relied with Respondent and that his opinion on this matter was "unequivocal."

47. Respondent advised Houston that he, Respondent, was not skilled in bankruptcy law so he deferred to Houston. Respondent independently

reviewed bankruptcy case law and advised Houston that he too reached the same conclusion that any disclosure of the interest in the $10 Million Fee was not required.

48. Houston testified that he did not disclose any reference to Respondent having an interest in the $10 Million Fees this under the "contingency cases" section of Schedule B because Respondent was not a plaintiff or an aggrieved party in the Contingency Fee Cases.

49. Question 17, on Schedule I (Current Income of Debtor) requires the debtor to "[d]escribe any increase or decrease in income reasonably anticipated to occur within the year following the filing of [the Schedules.]" In response to this question, Houston advised Respondent to state the following: "Annual performance bonus (historically 65,000 – 70,000)." (R 51, sub ex. 13). Houston chose the exact wording used. He had asked Respondent to average out the last three to four years of his annual performance bonuses.

50. Houston explained that he chose this methodology in order to put the Trustee on notice that Respondent could be expected to receive an intangible bonus within the next year. In his opinion, this disclosure was never intended to mislead anybody about Respondent's income, including his interest in the $10 Million Fee. He does not recall having

any other discussions with Respondent about this other than asking him to provide the average of previous annual bonuses received.

51. *The PH Transfers.* Prior to filing the Schedules and SOFA, Houston was aware of the $46,000.00 investment proceeds Respondent had deposited in the joint account. He opined that Respondent was likewise not required to disclose the transfer of the funds received from the investment account, which he described as an "insurance product," to the joint account. This is because it was not a "transfer" as it was going from Respondent to himself. Houston acknowledged that he listed both the investment/insurance account from which the $46,000 was received and the account to which the funds were deposited, which was the joint account in the Schedules. However, the transfers from the joint account to Pamela Herman's personal accounts were not listed because he was advised by Respondent that the latter was unaware of them prior to the filing of the Schedules and because they were not transfers made by him.

52. Houston discussed with Respondent the disbursement of the funds to pay for remodeling Respondent's condominium, as well as to pay Houston's legal fees. He advised Respondent that the payments to the contractors were made prior to filing his bankruptcy petition and this would not be

required to be disclosed because they were under the dollar threshold required for disclosure, which at that time was approximately $5,600.00.

53. According to Houston, Welt "knew about [the PH Transfers] early in the case," and he never sought to recover the transferred funds from Pamela Herman or the contractors she paid even though, as Trustee, he had the right to do so. Nor did the Trustee seek to recoup the $35,000.00 paid for Houston's legal fees because they were reasonable for this type of case. All accounts were ultimately disclosed, and Welt chose not to pursue the avoidance of these transfers.

54. To this day, Houston still believes the case law he relied upon in advising Respondent was on Respondent's side and noted that "the law has gotten stronger" in support of Respondent's claim that he was not obligated to disclose his interest in the $10 Million Fee. He did however concede that in hindsight after all that has happened, he might have considered handling the disclosures in the Schedules and SOFA differently.

55. Respondent's second bankruptcy attorney, Chad Pugatch, testified to the following: He has been practicing bankruptcy law for approximately forty-two (42) years. He took over representing Respondent in November 2013 following the entry of the BK Orders. Pugatch has

known Respondent professionally for approximately fifteen (15) to twenty (20) years. The two have worked as co-counsel as well as adversaries. In his view, Respondent is "totally honest, has great integrity and... an excellent reputation in the community for same."

56. He opined, "There was a plausible basis for Houston having given the advice [not to disclose Respondent's interest in the $10 Million Fee]." Pugatch opined that, based on his review of bankruptcy case law, a discretionary bonus that has not been received by the debtor prior to filing the bankruptcy petition is not required to be disclosed as an asset. But, because it is a "gray area," he opined that Houston "could have handled it in a more conservative way" by making "some kind of a disclosure on the bankruptcy schedules saying, it's not an asset as [of] the date of the bankruptcy, . . . and even if it was, it was exempt, but in the interest of disclosure, we're disclosing it." Nonetheless, Pugatch opined that Respondent, who is not a bankruptcy lawyer, was justified in relying on Houston's legal advice. Like Houston, Pugatch disagreed with the findings and legal conclusions set forth in the BK Orders.

57. Pugatch did not introduce evidence regarding Respondent's reliance on the advice of his counsel in the adversary bankruptcy proceedings. This he claims is because Houston did not timely plead this as a defense.

Although Respondent testified at the bankruptcy trial regarding his review of case law, he was precluded from testifying regarding any reliance on the advice he received from his Houston (R 51, sub ex 20, Bk Tr. pp. 102-105).

58. Both Houston and Pugatch agree that the Schedules were required to be prepared with information, as it existed on February 18, 2012, the date the Petition was filed, and not on March 20, 2012, the date on which the Schedules and SOFA were filed. They also agree that the $10 Million Fee had not been received by Tripp Scott on February 18, 2012, and when it was ultimately received, it belonged to Tripp Scott.

59. Regarding the state court proceedings, Pugatch reviewed the discovery he received from Stearns Weaver. It became clear to him that Stearns Weaver was aware of the verdicts in the Contingency Fee Cases prior to Respondent filing for bankruptcy, and that they must have informed Welt about it very early on. Pugatch's attempts to question Welt about this during his deposition, were met with objections based upon attorney-client privilege.

60. Pugatch filed a Motion for Summary Judgment in the Bankruptcy case in which he raised the issue of the inconsistent legal positions being taken by Stearns Weaver regarding Respondent's bonus in the state

proceedings. However, before that motion could be heard by the Bankruptcy Court, CIB reached a settlement with Respondent. Thus, the issue was never fully litigated in the Bankruptcy Court.

61. Pugatch was confident that the fact that the Motion for Summary Judgment would have alerted the Bankruptcy Judge to the inconsistent legal positions being taken by Stearns Weaver was, in his opinion, "absolutely" one of the reasons the case settled. That and the fact he was getting close to establishing that both Stearns Weaver and Welt were aware of the Contingency Fee Cases and Respondent's anticipated bonus prior to the filing of the Schedules. According to Pugatch, this was "significant" because, even if Respondent was required to disclose this on the Schedules it was, in his opinion "not a material omission."

62. *Respondent's Testimony.* Respondent essentially gave the following testimony: He has been a member of the Florida Bar since 1982. He started working at Tripp Scott in 1981 as a law clerk. At the time he filed the Petition he was employed as a Director. Attorneys employed with Tripp Scott are classified at different levels: associates, junior directors, directors, and senior directors.

63. During his career at Tripp Scott, Respondent represented clients in large cases. Beginning in 2000, Respondent began litigating commercial and

personal injury cases for Tripp Scott. Then in 2006, he took on intellectual property litigation and patent infringement cases.[9] The two judgments in the Contingency Fee Cases represent the largest judgments Respondent has ever obtained. As a Director, Respondent received as part of his compensation package an annual salary. In 2011 and 2012, his salary was between $220 and $230 thousand.

64. The SM Case ultimately settled for $26 million and a Satisfaction of Judgment on March 13, 2012 (R 52, sub ex. 35). Until this time, Tripp Scott had been in settlement discussions with the defendants in that case.[10]

65. At the time he wrote the Pozzuoli Emails, Respondent only held an expectation that Tripp Scott would receive the $10 Million Fee before the end of 2011, and that it would be available before the year-end performance bonuses were determined. According to Respondent, in these emails he was merely speaking up, not only for himself, but also for all the Tripp Scott employees who had worked on the Contingency Fee Cases. He claims the sole purpose of the Pozzuoli Emails was to discuss what would be fair to award as bonuses if the $10 Million Fee actually

[9] His biography was admitted at the Bar trial (R 55, sub ex. 71).
[10] Respondent testified that "in theory" he was involved with the SM settlement discussions. Brown handled the discussions directly. The email correspondence between Brown and attorneys for SM were admitted at the hearing ("Brown Emails") (R 52, sub ex. 41)

came into the Firm.

66. Respondent still believed that any receipt by Tripp Scott's of the $10 Million Fees was uncertain. This is true even though at the time he wrote these emails, he was aware that he had the potential to receive a large bonus for his work on the Contingency Fee Cases. He claims that his motivation in writing them were unrelated to the garnishment proceedings by CIB.

67. Respondent claims he made the decision to file for Chapter 7 Bankruptcy in February 2012 because he was unable to satisfy the CIB Judgment and CIB was becoming "very aggressive" in its collection efforts. Towards the end of 2011, the CIB Judgment creditor had begun initiating wage garnishment proceedings. Further, at the time he filed the Petition in February 2012, Tripp Scott had not yet received the $10 Million Fee and there was the ongoing Mayback Fee Dispute. This dispute continued several months past the date Respondent filed the Schedules.

68. When questioned on cross examination as to why he failed make any mention of his interest in the $10 Million Fee in any of the Schedules, Respondent answered that he was relying on the advice of his bankruptcy attorney. He also researched bankruptcy case law on the subject and read

those cases that Houston was relying upon. He concurred with his attorney that because only the members of the Tripp Scott Compensation Committee had the authority to award bonuses, any bonus he may have had in the $10 Million Fee was purely "discretionary." Thus, he believed he was not legally obligated to disclose it anywhere on the Schedules.

69. Respondent was then asked about his response to Question 17 of Schedule I, in which he indicated, "Annual performance bonus (historically 65,000 – 70,000)" (R 51, sub ex 13). He explained this amount represents what he actually received as a bonus in previous years and what he expected to receive in 2012. He emphatically denies any claim that this response to the question was done with the intent to deceive or mislead anyone.

70. *The PH Transfers.* Respondent testified that on or about November 29, 2011, prior to filing for bankruptcy, he received approximately $46,000.00 from the redemption of mutual funds held in his investment account. At that time, he was in the process of remodeling his condominium. Because he was engaged in significant out-of-town litigation, he asked his then ex-spouse, Pamela Herman, to manage the remodeling of his unit.

71. He testified that in early December 2011, in order to keep the remodeling job on track, and for convenience, he opened a joint savings account with Pamela Herman at Wells Fargo Bank and funded it with the investment proceeds, so that she could pay construction workers, as well as any other upcoming necessary expenses for the remodeling project. His bankruptcy attorney's fees were also paid from these proceeds.

72. The Schedules listed the account held jointly with Pamela Herman. However, they did not list any of these transfers. On the advice of his attorney, Respondent believed all of these disbursements would be considered expenses incurred "in the ordinary course" of his financial affairs, which he believed need not be disclosed as transfers in the SOFA and Schedules.

73. *Pamela Herman Affidavit and Deposition Testimony.* Pamela Herman was not called as a witness by either side in the instant proceedings. However, without objection, Respondent admitted her affidavit and deposition testimony that she provided as part of the discovery in this case. In her deposition, Pamela Herman testified that she transferred funds out of the joint account to her own accounts so that she would have the ability to issue checks if needed. (Pamela Herman Depo)(R 56, sub ex. 70, Tr. pp 8-9). She did not inform Respondent that she had

transferred the funds to her accounts prior to making payments on his behalf. (Pamela Herman Depo)R 56, sub ex. 70, Tr. P 12); (Pam Herman Aff.) (R 55, sub ex. Ex.77-I at p. 6).

74. She then disbursed approximately $11,000.00 in funds moved from the joint account to pay for expenses owed by Respondent for the completion of the remodeling project. (Pamela Herman Depo)(R 56, sub ex. 70, Tr. pp. 7, 14); (Pam Herman Aff.) (R 55, sub ex. Ex.77-I at p. 7). This is consistent with Respondent's testimony he gave at the bankruptcy trial that he was unaware Pamela Herman had moved the funds from their joint account to other accounts in her name prior to making the payments on his behalf. (R 51, sub ex. 21, Bankruptcy Tr. p. 230).

75. *The Expert Witnesses.* Each side presented their own expert witness on the subject of federal bankruptcy law.[11] Jerry Markowitz testified as an expert witness for the Bar. Essentially, he gave the following testimony: He is an attorney who has practiced in the area of bankruptcy law since he graduated law school in 1974. He has been a member of various professional committees and organizations in the area of bankruptcy law. In preparing for his testimony in this case, he reviewed the following: Respondent's bankruptcy Petition; the Schedules, statements and the

[11] The curricula vitae of both expert witnesses are part of the record. (R 52, sub ex. 34; R 55, sub ex. 72).

amendments thereto; the BK Orders; the Bankruptcy trial transcripts; and a substantial amount of bankruptcy caselaw.

76. The goal of a Chapter 7 proceeding is to liquidate assets belonging to the debtor and obtain a discharge in bankruptcy, which would forever free the debtor of his or her prepetition debts. The Bankruptcy Code requires a debtor utilizing the Schedules and SOFA to disclose the following: All of the debtor's creditors; a schedule of all assets and liabilities; a schedule of all current income and expenditures; and a statement of the debtor's financial affairs. All of this comprises the property of the debtor's estate.

77. Markowitz opined that the definition of property of the estate is very broad and expansive under bankruptcy law. To this end, all of the Schedules are designed to afford a debtor the means by which to disclose all assets that would constitute the property of the debtor's estate. Because they are submitted under oath, the Schedules and SOFA are official records provided to the Bankruptcy Court.

78. Additionally, a debtor must disclose any reasonably anticipated increase in income or expenditures over the twelve (12) month period following the date the Petition is filed. An asset or cash that a debtor has earned as income but has not yet received in hand, may be disclosed in various

places contained throughout the Schedules (R 51, sub ex. 14, at pp. 7; 35). As stated in the BK Orders, one such place would be in response to Question 17, Schedule I.

79. In addition, Respondent could have disclosed his interest in the $10 Million Fee in response to Questions 19, 21, and 35 of Schedule B as well as in Schedule C, if Respondent was claiming his bonus as exempt property.[12] According to Markowitz, the section of the Schedules dealing with contingent claims is intended for the debtor to disclose claims that have not yet been reduced to a certain amount. This is so the creditors and the Trustee can have an opportunity to find out whether the contingent claim is of any value. Markowitz opined that Respondent was required under the Bankruptcy Code to disclose his interest in the $10 Million Fee either in his Petition or one of the Schedules.

80. Regarding the PH Transfers, Markowitz opined that based upon his review of the BK Orders as well as the facts of Respondent's account, Respondent likewise was required to disclose these transfers in response to question 10 of the SOFA (R 51, sub ex. 14 at p. 22). This is because the transfers all occurred from an account that was titled in Respondent's name and they occurred within two (2) years of the date Respondent filed

[12] The BK Orders likewise reference specific sections in the Schedules where Respondent could have listed his interest in the $10 million fee (R 51, sub ex. 3).

his Petition. One of the joint accounts was disclosed in the Schedules and SOFA but the disclosure did not include any mention of these transfers.

81. In reaching these conclusions, Markowitz acknowledged that case law on the subject may be interpreted differently when it comes to determining whether these items were required to be disclosed. However, when a debtor is confronted with such a situation, the better rule in his opinion would be to disclose. This is true here because there would have been no detriment to Respondent to disclose his interest in the $10 Million Fee as well the PH Transfers, as opposed to not disclosing them at all.[13]

82. L. Louis Mrachek testified for Respondent. He provided essentially the following testimony: He has practiced in the area of bankruptcy law for 40 years. Like Markowitz, Mrachek reviewed numerous documents and pleadings filed both in this case as well as in the bankruptcy proceedings, including but not limited to the BK Orders as well as the case law cited therein.

83. Based upon his review of this case, the bankruptcy proceedings and federal bankruptcy code and case law, he reached the opposite conclusion

[13] The District Court Judge noted in his order, "Clearly, the better course of action in the case of a possible 'difference of opinion about the law' is to air on the side of disclosure." (R 32, at p. 14, fn. 9 (USDC Case No.: 13-cv-62251-KMM)).

that was reached by Markowitz as well as the findings and conclusions contained in the BK Orders. In Mrachek's opinion, Respondent's $2.7 million bonus from the $10 Million Fee was a mere "expectancy," as opposed to a "vested" interest. As such, he opined, Respondent was not required under bankruptcy law to disclose it in any of the Schedules or SOFA. Consequently, Respondent provided "no false oath" and therefore he truthfully answered all of the questions contained in the Schedules and SOFA.

84. In reaching this conclusion, Mrachek disagreed with both the findings and conclusions in the BK Orders as well as the Markowitz' interpretation of the bankruptcy case law. For instance, he noted that the Bankruptcy Court in Respondent's case had heard the testimony of Pozzuoli, Brown and Respondent that the bonus was purely discretionary and there was a possibility, given that fact, that the bonus could be zero. Yet, in his view, that same Court disregarded the testimony of these witnesses and instead relied solely upon the Pozzuoli Emails.

85. Mrachek explained that if the Bankruptcy Court had not done that, but rather relied upon the testimony of the three witnesses who testified at the bankruptcy trial, it would have been trapped by the applicable case law. He opined that the only way for the Bankruptcy Court to get around those

cases was to find as a matter of fact that there was no discretion in awarding the bonus. He even noted that the District Court Judge sitting as in an appellate capacity, acknowledged in his written opinion that he was constrained by the factual findings of the Bankruptcy Court Judge unless he found those findings were clearly erroneous.

86. In addition, Mrachek provided extensive testimony on his interpretation of various bankruptcy cases cited in the BK Orders. In his opinion, given the methodology utilized by Tripp Scott in awarding bonuses, the advice given by Houston that Respondent was not required to disclose anything regarding the Contingency Fee Cases on the Schedules was accurate. Neither Mrachek nor Markowitz actually attended the Bankruptcy proceedings. Nor, unlike the Bankruptcy Court Judge, did they have the opportunity to observe the demeanor of all of the witnesses who testified or see all of the evidence presented.

III. RECOMMENDATIONS AS TO GUILT

87. Because of the serious consequences attendant to a recommendation of discipline for a member of The Florida Bar, the quantum of proof necessary to support such a recommendation is required to be "clear and convincing." *The Florida Bar v. McCain*, 361 So. 2d 700, 706 (Fla. 1978); *The Florida Bar v. Rayman*, 238 So.2d 594, 598 (1970). This

intermediate level of proof "entails both a qualitative and quantitative standard":

> Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Inquiry Concerning Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting *Slomowitz v. Walker,* 429 So.2d 797, 800 (Fla. 4th DCA 1983)). Further, "to satisfy the element of intent it must only be shown that the conduct was deliberate or knowing." *Florida Bar v. Fredericks,* 731 So.2d 1249, 1252.

88. Further, it is well-settled that all members of the Bar must demonstrate honesty at all times even when, as here, they are proceeding as a litigant in a personal capacity:

> [W]hen lawyers are litigants they do not cast aside the oath they take as an attorney or their professional responsibilities … Not only does the law demand truthfulness under oath, but the obligations of our profession demand it. As former Justice Ehrlich has stated, ['Jour profession can operate properly only if its individual members conform to the highest standard of integrity in all dealings within the legal system.['J…

The Florida Bar v. Cibula, 725 So. 2d 360, 364–65 (Fla. 1998)(c.o.)(*see, R. Regulating Fla. Bar* 3-4.3 (stating in 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 a lawyer or otherwise..."); *see also, The Florida Bar v. Cramer,* 643 So.2d 1069 (Fla. 1994).

89. **Findings Based Upon Independent Review of Evidence.** Applying these well-settled standards, I find there is clear and convincing evidence which was presented in this case to establish that Respondent is in violation of the following Rules Regulating the Florida Bar:

90. **3-4.3** [The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise... may constitute a cause for discipline.]; **4-3.3(a)(1)**[A lawyer shall not knowingly: 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.]; **4-8.4(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.].

91. **Nondisclosure of Respondent's Bonus from the $10 Million Fee.** Respondent's conduct centers around two separate acts pertaining to his filings in his personal bankruptcy proceeding. The first is the nondisclosure of his interest in the $10 Million Fee in the Schedules and SOFA. The Bankruptcy Court found this omission was done with the intent to "hinder, delay or defraud his creditor." Based on the evidence and testimony presented in this proceeding, the undersigned finds Respondent's failure to disclose his interest in the $10 Million Fee was materially misleading. As such, the undersigned finds Respondent's conduct is a violation of *RR. Regulating Fla. Bar* **4-3.3(a)(1)**[A lawyer shall not knowingly: 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.]; and **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.].

92. As the Bar's expert testified, the goal of a Chapter 7 proceeding is to liquidate all assets belonging to the debtor, to the extent possible satisfy the claims of the debtor's prepetition creditors with the liquidated assets and discharge the debtor in bankruptcy which would forever free the debtor of his or her prepetition debts. In achieving this, the Bankruptcy Code requires a debtor to fully and candidly disclose all of his or her assets and liabilities utilizing the Schedules and SOFA, all of which collectively constitute the "property of the debtor's estate." This term is very broad and expansive under bankruptcy law. To this end, all of the Schedules and SOFA are designed to afford a debtor the means to accomplish this. Because the Schedules and SOFA are submitted under oath, the Schedules and SOFA are official records provided by Respondent to the Bankruptcy Court.

93. Additionally, the Schedules require that a debtor disclose any reasonably anticipated increase in income or expenditures that the debtor reasonably anticipates receiving over the (12) twelve-month period following the date Petition is filed. This would include an asset or cash that a debtor has earned but has not yet received in hand. Like assets and liabilities, there are various places contained throughout the Schedules where such income may be disclosed (R 51, sub ex. 14, at pp. 7; 35).

94. In this case, Respondent sought to discharge under Chapter 7 all of his prepetition debt, including the CIB Judgment. Yet, he did not *in any manner whatsoever* disclose his interest in the $10 Million Fee anywhere in either the Schedules or SOFA. Instead, he merely disclosed the following regarding any future income he reasonably anticipated receiving over the next twelve (12) months: "Annual performance bonus (historically 65,000 – 70,000)."

95. This disclosure was made despite the fact that at the time he did so Respondent knew that he was well positioned to actually receive a multi-million-dollar bonus from the $10 Million Fee. This is especially true since just a few weeks prior to the Respondent filing the Schedules and SOFA, Tripp Scott had actually received that fee. This conflicts with his claim that at the time he filed the Schedules and SOFA, any bonus from the $10 Million Fee was purely discretionary. Further, as was pointed out in the BK Orders by not disclosing his bonus, Respondent was in a position to retain for himself his $2.7 Million bonus free from any claim by his prepetition creditors, including CIB. From this it can be inferred that Respondent had a clear motive not to disclose this bonus in the Schedules. *See generally, Cramer, supra.* 643 at 1070 (Fla. 1994)(upholding referee's recommendation that attorney be found guilty

of violating Rule 4-8.4(c) where attorney knowingly and deliberately deposited legal fees into trust account in attempt to mislead IRS after receiving notice of intent to levy).

96. The undersigned emphasizes that this finding is not based just on the findings of the BK Orders. Rather, it's also based upon the testimony and evidence, including the Pozzuoli Emails, that were submitted in this case, To be sure, those emails speak volumes as to Respondent's state of mind around the time he filed his Petition, Schedules and SOFA. As stated, they unquestionably reveal there was never any serious doubt in Respondent's mind that he would be receiving a substantial bonus totaling in the millions of dollars as a result of his role as co-lead counsel in the Contingency Fee Cases. The only question left open was the final amount of his share of the $10 Million Fee. Indeed, Respondent testified this bonus was the largest single amount he had ever received over his career as an attorney. Given this, any claim by Respondent's that his decision not to disclose it *anywhere* in the Schedules and SOFA because he believed at the time it was a "discretionary" award, is contrary to the evidence submitted and is not credible.

97. In reaching this conclusion, the undersigned has not overlooked the Respondent's argument that his disclosure regarding his future income

was not done with the intent to mislead anyone, including the Bankruptcy Court, Trustee and/or his creditors. Indeed, as he points out, some of this evidence was unavailable to him during the bankruptcy proceedings. If it were, he argues, the findings of the Bankruptcy Court would have been markedly different. After carefully considering the evidence and testimony presented by Respondent in support of this claim, the undersigned does not find it credible.

98. **Inconsistent Legal Positions Taken by CIB in the Bankruptcy and State Court Proceedings.** As stated, Respondent claims that at the time he filed the Petition, the Schedules and SOFA, any interest that he may have had in receiving any bonus from the $10 Million Fee was solely at the discretion of Tripp Scott. In support of this, he presented numerous exhibits along with testimony demonstrating that in the State court proceedings, CIB argued that Respondent's claim to his bonus was "discretionary." On the other hand, in the bankruptcy proceedings, CIB argued that Respondent's claim was "vested." This contradictory legal position, he argues, proves that at the time he filed the Petition, Schedules and SOFA, he was reasonably justified in believing that any interest he may have had in the $10 Million Fee was uncertain at best. As such, he maintains, his failure to disclose anything regarding his

bonus from the $10 Million Fee was not a deliberate or calculated attempt to mislead his creditors.

99. The undersigned finds this argument unpersuasive. Regardless of the legal strategy used by CIB to advance its interest in the subsequent State Court proceeding, the fact remains that the Bankruptcy Court essentially found that under prevailing bankruptcy law at the time, Respondent was required to disclose his inchoate bonus from the $10 Million Fee. This is because, given all the facts and circumstances known to him at the time, it was an increase in income that Respondent reasonably anticipated that he would be receiving over the twelve-month period following the date of the Petition. As stated, the only thing uncertain at the time he filed his Petition and Schedules was the exact amount that he would be receiving and not whether he would be receiving at all.

100. That CIB made a legal argument in the subsequent state court proceedings that the bonus was discretionary does not change this in any way. It follows that regardless of what legal arguments CIB made in the Bankruptcy and subsequent State court proceedings, Respondent's disclosure that any reasonably anticipated increase in his income over the next twelve (12) months would be "historically 65,000 – 70,000," was simply not true.

101. **Knowledge of the Judgments in the Contingency Fee Cases by the Trustee and CIB.** Respondent also argues that the Trustee and attorneys representing CIB all were aware that Respondent and Tripp Scott had successfully secured the judgments in the Contingency Fee Cases. In fact, he maintains these verdicts were essentially common knowledge during the bankruptcy proceedings throughout the South Florida legal community. Based on this, he argues, Respondent could not have made the disclosure on Schedule I with the intent to mislead anyone since both the Trustee and CIB knew Tripp Scott had successfully obtained the judgments in the Contingency Fee Cases.

102. The undersigned disagrees for several reasons. First, the argument ignores the evidence that as early as December, 2011 Respondent was fully aware that he would be receiving a multi-million dollar bonus. Despite this, he chose not to disclose it in the Schedules that were filed months later. Whatever the Trustee and or the CIB may have known about the Contingency Fee Judgments around the time Respondent filed the Schedules does not alter this.

103. Additionally, as previously stated the goal of a Chapter 7 proceeding is to liquidate all the assets belonging to a debtor and obtain a discharge in bankruptcy. The result would be to forever discharge Respondent

from his prepetition debts, including the CIB Judgment. Any income or assets received by Respondent following this would be unreachable by the creditors. In order to achieve this result, Respondent was obligated under bankruptcy law to fully and candidly disclose in the Schedules and SOFA all of his assets, liabilities and income, including, income that he reasonably anticipated receiving over the twelve-month period following the date the Petition was filed. Because the Schedules and SOFA are submitted under oath, they are official records provided to the Bankruptcy Court.

104. As Welt testified, he relies on the debtor to be truthful when disclosing his or her assets in these filings. This is because it is neither possible for the Trustee to research the assets and income of every debtor nor for that matter is it the Trustee's responsibility to do so. Thus, while it may be true both the Trustee and the attorneys representing CIB were aware of the judgments in the Contingency Fee Cases prior to the time Respondent filed the Schedules and SOFA, neither had any idea as to what amount, if any, Respondent would be receiving from the Contingency Fee Cases as his bonus. Respondent on the other hand did and yet, he intentionally chose not to disclose it.

105. Lastly, based on the evidence presented Respondent had a motive not to disclose his bonus. As the Bankruptcy Judge pointed out, "[t]he concealment of his interest in the $10 Million Fee from his Schedules and SOFA would (he hoped and anticipated) allow him to keep millions of dollars and be free from the CIB Judgment." (Bk Order, R 32, pp. 34-36). It follows that while both the Trustee and CIB may have been aware of the verdicts in the Contingency Fee Cases, by not disclosing his interest in the $10 Million Fee, Respondent intentionally misled the Trustee and creditors.

106. **Reliance on Advice of Bankruptcy Counsel.** Respondent next argues that he never intended to mislead anyone because in disclosing his anticipated income, he was following the legal advice of his bankruptcy attorney. The undersigned rejects this argument for several reasons. First and arguably foremost, reliance on advice of counsel is not available as a defense in a Bar discipline proceeding. *See, The Florida Bar v. Louis,* 967 So.2d 108, 118 (Fla. 2007)("defense based on advice of counsel is not available to respondents in Florida Bar discipline cases unless specifically provided for in a rule or considered as a matter in mitigation."). Second, as the Bar argues, it is Respondent, and not his attorney, that is ultimately responsible for the accuracy of the factual

information contained in the Schedules and SOFA. Respondent and not his attorney is the one who declares under oath that the information contained in those items is true and accurate.

107. Additionally, the evidence in this as well as in the bankruptcy proceeding demonstrates that Respondent did not completely rely on the advice of his attorney. Indeed, Respondent is a highly experienced and skilled attorney. He has been a member of the Bar for over thirty (30) years. Further, his practice entails handling complex litigation, such as intellectual property. To be sure, one need only look to the Contingency Fee Cases as a good example of the degree of sophistication and skill Respondent possesses as a lawyer.

108. Given this, Respondent conducted his own legal research on the issue as to whether he was required to disclose his bonus from the $10 Million Fee in the Schedules and SOFA. This clearly undermines any claim that his decision not to disclose this rested entirely on the advice of his attorney. Thus, the claim by his bankruptcy attorney that Respondent was a "babe in the woods," and "not knowledgeable about even the most basic of bankruptcy matters" is completely without merit and not credible.

109. **The Expert Witnesses.** Both the Bar and Respondent each presented experts who testified on bankruptcy law relating to this issue. The undersigned finds that both witnesses are highly knowledgeable on the subject matter. Their respective presentations were extremely thorough and helpful. The Bar's expert opined that the legal reasoning relied upon by the Bankruptcy Court and District Court Judge was correct. On the other hand, Respondent's expert essentially disagreed with the legal conclusions reached in the BK Orders. The difference of legal opinion by these two learned experts serves only to underscore what the District Court Judge observed in his order: "Clearly, the better course of action in the case of a possible 'difference of opinion about the law' is to air on the side of disclosure." (R 32, at p. 14, fn. 9 (USDC Case No.: 13-cv-62251-KMM)).[14]

110. Further, any issue as to whether the legal findings set forth in the BK Orders are correct is a matter that would arguably be best suited for an appellate court.[15] Suffice it say it would be inappropriate for the undersigned in this proceeding to second-guess or even question those findings and then to conclude that Respondent lacked any intent to

[14] To be sure, Houston testified that looking back he might have done something different with the Schedules. The Bar's expert even acknowledged that the case law on this issue may be interpreted differently. In such a case, Markowitz opined the better rule is to disclose. This is especially true since there would be no harm to Respondent in doing so.

[15] Respondent did appeal the BK Orders to the Eleventh Circuit. However, he later voluntarily dismissed it.

mislead the Trustee and the creditors in submitting the Schedules and SOFA based on federal bankruptcy law.

111. **PH Transfers.** The other reason the Bankruptcy Court denied Respondent's Petition was that he failed to disclose the PH Transfers in the Schedules and SOFA. The question thus presented here is whether this omission amounts to misconduct as charged by the Bar. Having carefully considered the evidence presented and for the reasons stated below, the undersigned finds that the Bar has failed to meet its burden to prove that Respondent's failure to disclose these transfers amounts to misconduct charged in the Complaint.

112. First, the Bar relies on the findings of the Bankruptcy Court. However, as Respondent points out, evidence was presented in this proceeding that was not presented in the bankruptcy case.[16] Specifically, in this case both Respondent and his bankruptcy attorney, Bart Houston, testified that unbeknownst to Respondent, Pamela Herman had herself made the two transfers. The first was from the joint account to her own personal account. The second one was to a different account in her name alone.

[16] In fact, the BK Orders point out that the only evidence that Respondent was unaware of the PH Transfers was Respondent's testimony. The Bankruptcy Judge found Respondent's testimony not credible.

113. Respondent also introduced Pamela Herman's Affidavit (R 55, sub ex. 77-I) as well her deposition testimony given in these proceedings (R 56, sub ex. 70). Her sworn testimony is that Respondent was unaware that she had made these transfers from their joint account to her personal checking accounts. Lastly, Respondent submitted evidence indicating that work had in fact been performed on his condominium. This evidence went essentially unchallenged by the Bar in this proceeding. The Bar presented no evidence in this case that the Respondent himself somehow orchestrated these transfers to Pamela Herman's two personal accounts with the intent to defraud his creditors in the Bankruptcy case.

114. Secondly, as stated the issue presented here is not whether the BK Orders were legally correct in denying Respondent's discharge. Rather, the issue is whether by failing to disclose the PH Transfers, Respondent is guilty of violating the Rules charged in the Complaint. The Bar bears the burden of proving these allegations by clear and convincing evidence. *McCain*; *Rayman; Inquiry Concerning Davey*.

115. Based upon the evidence submitted, the undersigned concludes the Bar has not met this burden as it relates to the PH Transfers. Accordingly, it is respectfully submitted that Respondent be found not

guilty of violating any of the rules charged in this case as they relate to the PH Transfers.

116. **Conclusion.** For the foregoing reasons, the undersigned respectfully recommends that Respondent be found guilty of the following: **3-4.3** [The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise... may constitute a cause for discipline.]; **4-3.3(a)(1)**[A lawyer shall not knowingly: 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.]; **4-8.4(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.].

117. **Case Law**. The undersigned has considered the following case law: *The Florida Bar v. Gwynn*, 94 So.3d 425, 430 (Fla. 2012); *The Florida Bar v. Head*, 27 So.3d 1, 7-8 (Fla. 2010); *The Florida Bar v. Rood*, 620 So. 2d 1252, 1255 (Fla. 1993)("Referees are authorized to consider any evidence, such as the trial transcript or judgment from the civil proceeding, that they deem relevant in resolving the factual question."); *The Florida Bar v. McCain*, 361

So. 2d 700, 706 (Fla. 1978); *The Florida Bar v. Rayman*, 238 So.2d 594, 598 (1970); *Inquiry Concerning Davey*, 645 So. 2d 398, 404 (Fla. 1994); *Florida Bar v. Fredericks,* 731 So.2d 1249, 1252 ("To satisfy the element of intent it must only be shown that the conduct was deliberate or knowing."); *The Florida Bar v. Marable,* 645 So.2d 438 (Fla. 1994); *The Florida Bar v. Cibula*, 725 So. 2d 360, 364–65 (Fla. 1998); *The Florida Bar v. Cramer,* 643 So.2d 1069 (Fla. 1994); *The Florida Bar v. Louis,* 967 So.2d 108, 118 (Fla. 2007); *The Florida Bar v. Hall*, 49 So.3d 1254 (Fla. 2010); *The Florida Bar v. Kaufman*, 684 So. 2d 806 (Fla. 1996); *The Florida Bar v. Swann,* 116 So.3d 1225 (Fla. 2013).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

118. The undersigned considered the following Standards prior to recommending disciplinary measures to be applied:

Standard 3.0 Generally

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

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;

Standard 5.1 Failure to Maintain Personal Integrity

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate … in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

5.11(f) 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.

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

Standard 6.1 False Statements, Fraud and Misrepresentation

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Standard 3.0, 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 to a court:

6.11 Disbarment is appropriate when a lawyer:

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

b) 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.

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.

6.13 Public reprimand is appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld.

6.14 Admonishment is appropriate when a lawyer is negligent in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity and causes little or no actual or potential injury to a party or causes little or no adverse or potentially adverse effect on the legal proceeding.

V. AGGRAVATING AND MITIGATING FACTORS

119. The undersigned considered the following factors prior to recommending discipline:

Standard 9.2 Aggravation

9.22(b) dishonest or selfish motive. Respondent stood to gain $2.7 Million by not disclosing his interest in the $10 Million Fee.

9.22(g) refusal to acknowledge wrongful nature of conduct. Throughout the course of these proceedings, Respondent has failed to acknowledge that his disclosure regarding his future income and nondisclosure of his interest in the $10 Million Fee was wrong.

9.22(i) substantial experience in the practice of law. Respondent has been a member of the Florida Bar since 1982. Undersigned notes however that the bankruptcy law dealing with this issue is subject to differing opinions as was testified to by the expert witnesses. Thus, while the evidence in this matter is that Respondent undertook his own review of the bankruptcy caselaw related to the issues in his case, he does not practice bankruptcy law and to a great degree he relied upon the advice of his bankruptcy counsel, Bart Houston.

Standard 9.3 Mitigation

9.32(a) Absence of a prior disciplinary record.

9.32(c) Personal or emotional problems. Respondent testified that the entire ordeal including the Bankruptcy and instant proceedings has been traumatic for him.

9.32(d) Timely good faith effort to rectify consequences of misconduct. Based upon the evidence presented, after his Schedules were filed and throughout the bankruptcy proceeding, Respondent provided information and documents requested from the Trustee and CIB Marine regarding his interest in the $10 Million Fee. After Respondent was awarded his bonus, he moved to amend his Schedules. He also agreed to have the entire amount of the bonus held in trust until the matter was resolved.

9.32(e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. There has been no claim that Mr. Herman failed to provide full and free disclosure to The Florida Bar. As Mr. Herman has also been cooperative in the proceedings before this Referee, I find this mitigating factor has been met.

9.32(g) Character or reputation. Substantial testimony was presented by witnesses, including some highly reputable ones, regarding Respondent's good character and reputation in the legal community. Those witnesses include the following: Miles McGrane, Esq., Mr. Roger Banks (Respondent's client in the SM Case); Amy Galloway, Esq.; Alexander Brown, Esq.; Hon. Thomas Lynch (Ret.); and Mr. Michael Powell (Respondent's client in the HD Case). Additionally, Respondent has served on a Florida Bar grievance committee and served as the chair of the same committee. He has served as an officer of the Federal Bar Association for the Southern District of Florida.

9.32(k) Imposition of other penalties or sanctions. Clearly, Respondent was denied his Petition which allowed CIB to pursue Respondent's bonus. Respondent testified at the Sanctions Hearing that he and CIB settled, and Respondent was able to retain $500,000 of the bonus award. Additionally, Respondent testified that because of the instant proceedings, Respondent's practice has been substantially affected in that he is unable to appear *pro hac vice* in various federal district courts as

well as the Eleventh Circuit. Lastly, he testified that these proceedings have had a negative impact on his otherwise stellar reputation in the legal community.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

120. The undersigned respectfully recommends that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. A suspension for a period of eighteen (18) months. In reaching this recommendation, the undersigned is in no way condoning or minimizing the gravity of Respondent's conduct in his personal bankruptcy proceeding. However, undersigned has given substantial weight to the mitigating factors.

B. Additionally, respondent shall pay The Florida Bar's reasonable costs in the disciplinary proceedings.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

A. Personal History of Respondent:

Age: 61

Date admitted to the Bar: November 5, 1982

B. No past disciplinary record.

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

122. The undersigned finds the following costs were reasonably incurred by The Florida Bar:

Administrative Costs	$1,250.00
Investigative Costs	$165.00
Court Reporters' Fees	$10,097.10
Bar Counsel Costs	$410.13
Expert Witness Fee	$9,750.00
TOTAL	**$21,672.23**

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 15 day of November, 2018.

AUGUST A. BONAVITA, Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to JOHN A. TOMASINO, Clerk, Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927, a copy sent in Word format by electronic mail to ***e-file@flcourts.org***, and that copies were furnished by regular U.S. Mail to David Bill Rothman, Esq., Respondent's Counsel, Rothman & Associates, P.A., 200 S. Biscayne Blvd., Ste 2770, Miami, FL 33131-5300; via email at dbr@rothmanlawyers.com, jtm@rothmanlawyers.com; Joi L. Pearsall, Esq., Bar Counsel, The Florida Bar, Ft. Lauderdale Branch Office, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323; via email at jpearsall@florida bar.org, esanchez@floridabar.org; and Adria E. Quintela, Esq., Staff Counsel, The Florida Bar, Ft. Lauderdale Branch Office, Lake Shore Plaza II, 1300 Concord Terrace Suite 130, Sunrise, FL 33323; via email at aquintel@floridabar.org on this 15 day of November, 2018

AUGUST A. BONAVITA, Referee