

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

PETER G. HERMAN,

Respondent.

Supreme Court Case
No. SC-

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

_____ /

COMPLAINT

The Florida Bar, Complainant, files this Complaint against Peter G. Herman, Respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is, and at all times mentioned in the Complaint was, a member of The Florida Bar, admitted on November 5, 1982 and is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent practiced law in Florida, at all material times.

3. The Seventeenth Judicial Circuit Grievance Committee "E" found probable cause to file this Complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this Complaint has been approved by the presiding member of that committee.

4. Respondent owned an interest in an entity named Esquire Ventures, LLC.

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5. In 2007, Respondent personally guaranteed a loan of approximately \$6.8 million dollars for Esquire Venture, LLC.

6. Approximately two years later in 2009, Esquire Ventures, LLC did not pay the loan balance when it became due.

7. On or about December 8, 2011, CIB Marine Capital, LLC (hereinafter referred to "CIB Marine") obtained a deficiency judgment of approximately \$4.5 million dollars against Respondent, based upon the non-payment of the loan that he personally guaranteed for Esquire Ventures, LLC.

8. The \$4.5 million dollar judgment against Respondent was affirmed on appeal by the Florida Fourth District Court of Appeal on or about March 6, 2013.

9. On or about February 18, 2012, Respondent filed a Voluntary Petition for Chapter 7 Bankruptcy.

10. As part of his bankruptcy petition, on or about March 20, 2012, Respondent also filed his bankruptcy schedules and a Statement of Financial Affairs (hereinafter referred to as "SOFA").

11. At the time Respondent's bankruptcy petition was filed in 2012, Respondent was employed by the law firm of Tripp Scott, P.A. and he was non-shareholder director with Tripp Scott, P.A.

12. Respondent began his employment at law firm of Tripp Scott, P.A. in 1982.

13. Prior to filing for bankruptcy in 2012, Respondent was co-lead trial counsel on two separate contingency fee cases that together resulted in approximately \$10 million dollars in fees to be paid to the law firm of Tripp Scott, P.A.

14. On July 19, 2012, CIB Marine and the bankruptcy trustee initiated adversary proceedings objecting to the Respondent's bankruptcy discharge based upon intentional concealment of prepetition assets, nondisclosure of prepetition transfers and related false oaths.

15. On June 5, 2013 and June 6, 2013, the Bankruptcy Court held a trial on Respondent's bankruptcy petition.

16. In the Bankruptcy Court proceedings, Respondent was the "debtor" requesting discharge.

17. On or about August 5, 2013, the Bankruptcy Court denied Respondent's petition for discharge.

18. The Bankruptcy Court found that prior to filing his bankruptcy petition, Respondent had expressed his expectation with members of Tripp Scott, P.A. that he was entitled to share in the approximate \$10 million dollars in fees that was due to his employer Tripp Scott, P.A.

19. The Bankruptcy Court determined that while there was a question as to how much Respondent's bonus would be from the estimated \$10 million dollars

in fees, there was no question that he would receive a monetary benefit from the estimated \$10 million dollars in fees received by Tripp Scott, P.A.

20. The Bankruptcy Court found that Respondent's bankruptcy schedules and SOFA did not contain accurate information because Respondent failed to disclose his interest in the \$10 million dollars in fees to his employer Tripp Scott, P.A.

21. The Bankruptcy Court concluded that Respondent's interest in the \$10 million dollar fee was property of Respondent's bankruptcy estate and that Respondent's act of not disclosing his interest in the \$10 million dollar fee in his bankruptcy schedules was prejudicial to his creditors and the bankruptcy trustee.

22. After filing for bankruptcy, Respondent received \$2.7 million dollars from Tripp Scott, P.A. as his compensation for the contingency fee cases.

23. Also, on or about November 29, 2011, prior to filing for bankruptcy, Respondent liquidated investment funds and deposited these funds in a joint bank account held with his ex-wife Pamela Herman.

24. Respondent listed his joint bank account in the bankruptcy proceeding, however, said funds were transferred out of the joint bank account to two different accounts held solely by Pamela Herman.

25. Respondent did not have any interest in either one of Pamela Herman's accounts and he did not list those accounts on the bankruptcy schedules.

26. The Bankruptcy Court found that Respondent sought to hinder his creditors by transferring funds out of Respondent's jointly held bank account to an account out of CIB Marine's reach.

27. On or about 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 Marine and the Bankruptcy Trustee against Respondent.

28. Respondent had an obligation to be forthright in his filings with the Bankruptcy Court including disclosing his financial interests within the bankruptcy schedules and statements of financial assets that were filed as part of his voluntary bankruptcy petition.

29. By the conduct set forth above, Respondent violated R. Regulating Fla. Bar 3-4.2[Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline]; 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, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline]; 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.]; 4-3.4(a)[A lawyer must not: unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act]; 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.]; and 4-8.4(c)[A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.].

WHEREFORE, The Florida Bar prays Respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



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CERTIFICATE OF SERVICE

I certify that this document has been E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, using the E-filing Portal and that a copy has been furnished by United States Mail via certified mail No. 7016 2070 0000 2425 2488, return receipt requested to Respondent's Counsel, David Bill Rothman, whose record bar address is Rothman & Associates, P.A., 200 S. Biscayne Blvd., Ste. 2770, Miami, FL 33131-5300 and via email; and via email to Joi L. Pearsall, Bar Counsel, jpearsall@flabar.org; esanchez@flabar.org, on this 16th day of November, 2017.

Adria E. Quintela

ADRIA E. QUINTELA
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY
EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter is Joi L. Pearsall, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Ft. Lauderdale Branch Office, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323, (954) 835-0233 and jpearsall@flabar.org; esanchez@flabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323, aquintel@flabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES OF DISCIPLINE, EFFECTIVE MAY 20, 2004,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.