IN THE SUPREME COURT OF FLORIDA

CASE NOS. SC 19-488 and 19-1570
The Florida Bar File Nos. 2016-00,682 (2A) and 2019-00,088 (2A)

PHILLIP TIMOTHY HOWARD, J.D., Ph.D.,

Respondent,

v.

THE FLORIDA BAR,

Complainant.

INITIAL BRIEF OF RESPONDENT PHILLIP TIMOTHY HOWARD ADDRESSING FULUP/HALL AND HARRIS NO. SC-19-488 AND SC-1570

/s/ Phillip Timothy Howard
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PREFACE

In this Brief, the Respondent PHILLIP TIMOTHY HOWARD will be referenced to as Dr. HOWARD. Complainant, THE FLORIDA BAR will be referred to as TFB. The following symbols will be used:

(R:)—Record on Appeal
(T:)—Transcript of Hearing
(A:)—Appendix
(RR:)—Report of Referee
(TFB:)—The Florida Bar

POINT ON APPEAL

Upon review, "the burden shall be upon the party seeking review to demonstrate that a report of a referee sought to be reviewed is erroneous, unlawful, or unjustified." Rule 3-7.7(5), Procedures before the Florida Supreme Court. In the instant case, the Referee made a report that was erroneous, unlawful and unjustified since TFB failed to prove the charges alleged by clear and convincing evidence, and the Report of Referee was clearly and convincingly wrong as based on speculation and suppositions, and (as is the pattern and ethos among many Florida Bar attorneys and accepted by the Florida Bar and this Referee), criminal perjury and extortion.[1] For instance, the Report of Referee did "not" consider nor review

[1] In the August 19, 2021, Notice of Intent to Seek Review of the Report of Referee, Dr. Howard lists extensive speculation that the Report of Referee is erroneous, unlawful, or unjustified, stating as follows:

> Consider that the Report of Referee either did not accept or give weight to the following undisputed evidence:
>
> (1) The written, signed and notarized sworn directives in July of 2008 of the client, Jason Hall, who was deceased in 2012;
>
> (2) The written, signed and notarized sworn verification that deceased client, Jason Hall, was no longer a client as of early September of 2008;
>
> (3) The sworn and notarized statements, as well as testimony, by the only witnesses with direct

the sworn testimony of the only eye-witness fact witness, Dr. Howard, since it did not fit within the toxic narrative of the complainant, ex-wife of former client, and her attorney, Richard Greenberg, but not on facts.

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involvement with the deceased client, Jason Hall's intentions and capacities;

(4) That the Bar Complaint was not filed by the deceased client, Jason Hall;

(5) That the ex-wife, Dana Hall, didn't file a civil action based on her theory of breach of contract, which was the core of the Florida Bar Complaint;

(6) The written and signed verification by mother of ex-wife, Sandra Fulup, of complete acceptance of accounting with counsel review available, and final payment;

(7) The written verification in 2016 of criminal extortion of $353,000 by ex-wife, Dana Hall, of deceased client;

(8) That the ex-wife, Dana Hall, hadn't worked in nearly 10 years;

(9) That the ex-wife, Dana Hall, divorced the deceased client, Jason Hall, as soon as she could get money from the workers' compensation trial and payment;

(10) That the ex-wife, Dana Hall, was given the deceased client, Jason Hall's closed file in January of 2014, and ex-wife, Dana Hall, filed the extortionate Bar Complaint in July of 2016;

(11) That the ex-wife, Dana Hall, upon written request, wouldn't return the original file so that Respondent could verify the documents and Respond;

(12) That since the ex-wife, Dana Hall's $353,000 extortion demand was not paid, she and her mother, Sandra Fulup, filed a Bar Complaint in 2016;

(13) That since by 2016, there was no file nor bank records from 2008 for the attorney to respond to the Bar Complaint with;

(14) The accurate accounting of CPA on contract repayment (Attorney JB Harris' filing a Board of Accounting Complaint against CPA in order to further his unethical and criminal extortion scheme, when the matter did not involve Attorney JB Harris)

(15) The sworn transcripts of former client, Peggy Harris, documenting criminal perjury, fraud, and use of Bar by attorney JB Harris in using the Bar Complaint as extortion;

(16) The sworn transcripts of Peggy Harris that the Bar Complaint was never read by her, yet she signed under penalty of perjury that she read the Bar Complaint and all that was in the Bar Complaint was true and factual;

(17) That Attorney JB Harris manufactured the Bar Complaint by Peggy Harris as part of his extortion and schemed to have the Peggy Harris sign the Bar Complaint to accomplish his extortion; and

(18) That the Florida Bar and Referee know these facts yet knowingly, intentionally and immorally supported and are complicit in criminal extortion, perjury, and fraud.

Moreover, the Florida Supreme Court has determined that disciplinary process and proceedings are not to be used as a substitute for civil proceedings and remedies. This was a dispute concerning a September 5, 2008, contract[2] with a non-client and was a contract dispute on amounts, if any, was still owed, and was not appropriate for disciplinary process and proceedings.

Finally, this entire Florida Bar proceeding is indelibly tainted by criminal fraud, perjury, and extortion, and should not be permitted to stand.

STANDARD OF REVIEW

TFB bears the burden of proof throughout its prosecution and is required to prove all charges alleged in its Complaint by clear and convincing evidence. *See, e.g. The Florida Bar v. McCain,* 361 So. 2d 700 (Fla. 1978). Upon review, "the burden shall be upon the party seeking review to demonstrate that a report of a referee sought to be reviewed is erroneous, unlawful, or unjustified." Rule 3-7.7(5), Procedures before the Florida Supreme Court. In the instant case, the Referee made a report clearly and convincingly wrong, in that it was erroneous, unlawful and unjustified since TFB failed to prove the charges alleged by clear and convincing evidence, and the Referee did not consider nor apply the only reliable evidence presented.

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[2] Jason Hall's non-client funds were accounted for and distributed as he requested. If there were any concerns as to the loan and amounts the agreement provided that it is

> enforceable through a one-day binding private arbitration pursuant to Florida law to be resolved in Leon County. . . . **If there is any dispute concerning this agreement, the parties will provide written notice to the other and if not resolved within 5 working days, the parties will go to a mediation in Leon County within 20 working days, and if not resolved, to binding arbitration before one arbitrator acceptable to both parties, within 20 additional working days**. **Each party understands that it has the right and opportunity to have an attorney review this contract and agreement before signing and agreeing to its terms.**

If there were any concerns as to these loan amounts, the former client, Jason Hall or his estate had these appropriate remedies to pursue. No written notice or notice of a dispute was ever given.

I. CLEARLY AND CONVINCINGLY WRONG FOR FLORIDA BAR AND REPORT OF REFEREE KNOWING COMPLICIT PARTICIPATION IN CRIMINAL PERJURY AND EXTORTION

Aligning the coordinated toxic narrative strategy of the Florida Bar, Richard Greenberg, Roy Jeter, Dana Hall, Sandra Fulup and Shanee Hinson, with the Bar Complaint by Margaret "Peggy" Harris, the Referee in his Report of Referee accepts that:

> the Florida Bar **did not follow their own procedures**; **listened to and accepted false complaints** and have been part of **fostering/assisting extortion of money** from him [and severely understating in the face of explicit extortionate perjury of **a sworn complaint that the complainant never read** and was **solely drafted and submitted by an extortionate attorney**] Initial complaints may not have been completely accurate.

(RR: par. 75). Yet the Referee and Florida Bar do nothing to the perpetrators. Dr. Howard sought guidance from the Referee in how to handle the known criminal complicity of the Florida Bar and received nothing in response. In the Report of Referee the only statement pertaining to this criminal conduct was that it is "very concerning" [and] "unfortunate." (RR: par. 111 and 136).[3] That is the only sanction for criminal extortion and perjury to the

[3] In the March 18, 2021 Submission to the Florida Bar and Referee for Appropriate Sanctions, Dr. Howard wrote the Referee, stating:

> Respondent is also seeking guidance as to how to handle the significant jurisdictional concerns as to each Bar Complaint at issue. Bar Complaint 2019—00,088(2A) is an acknowledged perjurious, false and fraudulent Bar Complaint that was nevertheless pursued. Under oath the complainant repeatedly admits she committed perjury in her Bar Complaint that is riddled with false and fraudulent statements. This is covered in more detail at the end of this submission. As a limited example, this Bar Complainant states:
>
> > Q And so **when this was filed back in 2019**, April of 2019 **you had not read the Bar complaint at that time?**
> > A Correct.
> > Q And you would have not been able to tell your lawyers whether -- what was in the Bar complaint was true and correct or contained false statements because you hadn't read it?
> > A Correct.
> > **Q And we now know that it contains statements that you believe to be false?**
> > MR. DIAZ: Form.
> > BY MR. MONDE:
> > **Q Correct?**

A Correct.
Q Statements that you believe to be fraudulent, correct?
MR. DIAZ: Form.
THE WITNESS: Correct.
Q. Now that you know that, what steps have you taken to correct that?
A. At this point nothing that I recall.

See transcript attached to Exhibit G, *infra,* pp. 125-126. The next guidance needed concerns a Bar Complaint that was not authorized to be prosecuted by the rules of the Florida Bar as it is the same as a now settled and then pending civil action. The final guidance needed concerns Bar Complaint 2016—00,682(2A), where the statute of limitations jurisdictional hurdles for a Bar Complaint that had to be filed by the estate for the decedent-former client, and never was filed by the estate or the decedent client. None of these jurisdictional concerns were presented to the Referee, though known by Florida Bar attorneys.

. . .

Respondent Seeks Guidance from Referee in How to Address Violation of Florida Bar Standards by Attorneys for the Florida Bar, The Same Standards that Respondent Accepts Accountability For

Peggy Harris Admits Bar Complaint Was Never Read, Is Perjurious and False. JB Harris Fraudulently Used Bar Complaint To Gain Advantage in Civil Case.

The Peggy Harris Bar Complaint was never read by Peggy Harris, and was not drafted by Peggy Harris, but by J.B. Harris, despite Peggy Harris filing the Bar Complaint under oath and under penalty of perjury. Peggy Harris under oath acknowledges that the Bar Complaint she signed violated criminal perjury and has extensive false and fraudulent statements. Exhibit E. Peggy Harris admits that her Bar Complaint is fraudulent and her counsel raised her 5th Amendment rights:[3]

Q. **You're saying that you signed the Bar complaint without reading it?**
A. **Correct**. I know that's—that is my fault. I'm sorry I didn't read it.
. . .
Q. Part five says that, "Signature.): **Under penalties of perjury, I declare that the foregoing**
facts are true, correct and complete." Do you see that?
A. I do.
Q. And then your name is printed, correct?
A. Correct.
Q. **And then you signed your name, correct?**
A. You understood when you signed this that you were under penalty of perjury declaring the facts in the statement to be true, correct and complete?
A. Correct.
Q. There was no doubt in your mind about what you were signing, correct?
A. Apparently not—apparently so.
Q. I want to make sure I understand your answer.
A. Well, I—**I did not read it, so I was wrong** in not—putting this down, so—
Q. And I appreciate you're acknowledging that that was wrong. And I want to understand from you why you agree that was wrong to do. You understood when you signed this that you were taking an oath to tell the truth –
A. Correct.
Q.—Just like the oath you took this morning?
A. Right.

Q. And you understood the importance of an oath in a legal proceeding, correct?
A. Yes.
Q. I mean, our legal system, you agree, depends on people telling the truth, correct?
A. Correct.
Q. Our legal system depends on people telling the full truth and not being deceptive by leaving out certain key parts, correct?
A. Correct.
. . .
Q. You understand what perjury means, right?
A. Yes.
Q. You understand the penalties of perjury?
A. Yes.
Q. You understand that in some context perjury can be a criminal offense?
A. Um-hum.
Q. Yes?
A. Yes.
Q. Would you want any part of a judgment that you believed was based on false information?
. . .
A. No.
Q. That would be wrong?
A. Right.
Q. Would you want to be **any part of a judgment that you believed was <u>infected by or tainted by fraud?</u>**
A. I wouldn't like it.
Q. Would you want any part of it?
A. <u>No.</u>
. . .
Q And so **<u>when this was filed</u> back in 2019**, April of 2019 **<u>you had not read the Bar complaint at that time?</u>**
A Correct.
Q And you would have not been able to tell your lawyers whether -- what was in the Bar complaint was true and correct or contained false statements because you hadn't read it?
A Correct.
Q And we now know that it contains <u>statements that you believe to be false?</u>
MR. DIAZ: Form.
BY MR. MONDE:
Q Correct?
<u>A Correct.</u>
<u>Q Statements that you believe to be fraudulent</u>, correct?
MR. DIAZ: Form.
THE WITNESS: <u>Correct.</u>
Q. Now that you know that, what steps have you taken to correct that?
A. At this point nothing that I recall.

Id., at pp. 23-27, 84-85, 125-126. Attorneys for the Florida Bar knew this. This is material information for the Referee that was withheld by the Florida Bar from the Court. Is this something that the Florida Bar should have immediately acknowledged and presented to the Referee? Is there jurisdiction to prosecute an admitted perjurious, fraudulent and knowingly false Bar Complaint? Doesn't this nullify jurisdiction? In *The Florida Bar v. Cox*, 794 So. 2d 1278 (Fla. 2001), a prosecutor was suspended for 1 year for withholding the name of a confidential informant. The fact of a fraudulent, perjurious, and false Bar Complaint is far more significant to a prosecution than withholding the name of a confidential informant. How is this handled by the

Florida Bar and Supreme Court?

Attorneys and former clients that submit sworn bar complaints under penalty of perjury, when not read by the former client or complainant, and are admitted to be fraudulent, are **not to be given legitimacy by the Florida Supreme Court, the Florida Bar nor the Referee, and such complaints are worthy of nothing but sanctions and dismissal**. Yet in this case, the Referee and The Florida Bar give support and authorization to this criminal and extortionate practice and supports this criminal use of the Florida Bar and the Florida Bar's known support of this criminal extortion.

The Referee's only concern is that "Initial complaints **may not** have been completely accurate." (RR: par. 76). That is the only concern in the face of admitted fraud and perjury

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Referee and the Florida Supreme Court?

Corey Fuller and William Floyd Bar Complaints Merely Copied Civil Complaint. Used Bar Complaint To Gain Advantage in Civil Case

The Florida Supreme Court has ruled that the Florida Bar is not a venue to pursue civil remedies as another venue for political or legal leverage, and based on this standard, appropriately discharged Corey Fuller and William Floyd complaints in the attached letter dated January 15, 2020. Exhibit H. Mr. Hughes, as The Florida Bar representative, stated:

> I must conclude that your complaint constitutes a civil dispute as there are **no allegations independent of the enclosed civil complaint** and as a result, must be resolved through the civil system. The Supreme Court of Florida has ruled that the disciplinary process and proceedings are not to be used as a substitute for civil proceedings and remedies.
> . . .
> Consequently, I have closed our record in this matter.
>
> *Id* (emphasis added).

Nothing has changed in the facts and circumstances of these Bar Complaints. When the decision was made to continue to pursue these Bar Complaints, there was no explanation of what new facts existed or why. If the Florida Supreme Court ruling applies, consistent with the letter ruling, how are these matters handled?

If, as a consequence, these parties were not entitled to use the Florida Bar as a method to gain advantage of a civil action that had been proceeding for nearly two years at the time. What happens? Notwithstanding violation of the confirmed Florida Bar and Supreme Court standards, the Florida Bar went forward with the prosecution. How does the Florida Supreme Court handle this?

by both the complainant and the attorney in an extortion scheme? That is the level of integrity, intelligence, and objectivity that the Florida Rules of Professional conduct, the Referee and the Florida Supreme Court demands by its Referees, Florida Bar attorneys, and Florida Bar prosecutors?

With this non-existent standard of truth and justice, it is not surprising that Florida Bar extortion is a nationally known plague upon the legal profession in Florida, that is not part of the legal culture in other states, such as New Jersey. In fact, it is the acknowledge standard legal practice within The Florida Bar to use the threat and filing of Florida Bar complaints as an extortion and leverage tool.

The Referee and Florida Bar finds this as acceptable and non-sanctionable conduct by the Florida Bar, the complaining former client, who admits that fraud took place, and the extortionate attorney, who admits that he wrote the fraudulent and perjured bar complaint, and the Florida Bar who works with the criminal enterprise participants as the substantive leverage to accomplish the extortion. The Referee and The Florida Bar do nothing to the perpetrators of this written, documented and undisputed criminal perjury and fraud, nor sanction or report for criminal prosecution the attorneys perpetrating this fraud nor the Florida Bar, for doing and supporting the same.[4] Yet, they claim that Dr. Howard, who complied with the written and sworn instructions of his former deceased client, bringing over $11 million to these two clients,[5] is now to be disbarred?

[4] Continuing this extortion model of Professional Liability complaints, as he has been rewarded by the Florida Bar, Referee, and the Florida Supreme Court for this criminal perjury, fraud and extortion, Florida Bar Attorney JB Harris, filed a Professional Liability complaint against accountant John Harvard, to the Florida board of accountancy. John Harvard's accounting exposed the flaws in the Florida Bar's accounting. Notwithstanding the importance of John Harvard's accounting to the Jason Hall loan, JB Harris had no interest in John Harvard's accounting, as he has no factual involvement with Jason Hall, other than to further his extortion and theft scheme to attack and take fees and case interests from Dr. Howard. Disbarment of Dr. Howard is J.B. Harris' stated goal, after receiving over $320,000 in monthly salary payments and bonus funds through April of 2019, and paid and future fees of $ millions.

[5] In the March 28, 2021 Submission to the Florida Bar and Referee for Appropriate Sanctions, the benefits to the

Is this the deeply distorted standard of justice now being administered by the Florida Supreme Court?[6]

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clients were detailed:

> There was no injury to Peggy Harris. Rather, Peggy Harris received a $10 million verdict and nearly $400,000 of expenses and 3,000 hours of work for free by Respondent. Respondent protected the testimony of Richard Harris despite numerous obstacles by counsel for the tobacco industry and his "end of life" deposition directly led to the $10 million verdict. Respondent even paid counsel for Peggy Harris $21,000 a month during his representation of Peggy Harris, while he filed numerous bar complaints and continues to extort Respondent. Respondent has received and will receive nothing for his $400,000 in risk, his 3,000 hours of work, the pay of his counsel to work in the Peggy Harris case, and the pay for costs.
>
> There was no injury to Jason Hall the client of Respondent. Jason Hall never filed a Bar Complaint and Jason Hall never had a complaint against Respondent. In fact, Jason Hall would have recovered nothing, [not the nearly $1.2 million for his ex-wife, children and himself] "but for" the work of Respondent. The core transaction at issue, namely, whether the attorney client relationship had ended as a result of a sworn direction from the client and written end of representation, such that the former client's loan with Respondent was no longer under Florida Bar ambit was in 2008. It is now 2021.

Dr. Howard set up a $241,904 annuity for Jason Hall; a $50,000 college annuity for the Jason Hall's two children; $160,000 cash for Jason Hall; $300,000 for past due medical bills; $300,000 for Medicaid Set Aside annuity for future medical expenses; the pay-off of the mortgage on his home for over $100,000; and provided payment on anything else needed with no difficulty when asked. (T: 281-285, 330).

[6] In this instance, "if the law's power is used to condemn, the law's power is itself condemned." If this duplicitous, known complicity and enforcement of unjust criminal extortion, while being blind to its own complicity and incentivized distortion of the facts and law, and intentional blind approach by the Referee and his clearly and convincingly wrong Report, to the facts, is the standard of the Supreme Court, the Referee, and Florida Bar, there is no legitimacy to these institutions nor to Florida Bar attorneys. These institutions and their lawyers have not gained the courage, integrity, nor the psychological, existential, and intellectual depth to acknowledge, as Augustine of Hippo first phrased, and Martin Luther expounded upon in his lecture on Romans, that everyone's motivations are "wickedly, curvedly, and viciously seeks all things, even God, for its own sake," as found in St. Augustine's term, "*incurvatus in se*". This will be another a case study documenting that "*incurvatus in se*" is alive and well in the clearly and convincingly wrong Florida Bar and Courts of Florida.

Dr. Howard knows this blindness and "*incuratus in se*" first-hand. He has seen the entire Florida Supreme Court clearly and convincingly wrongly violate the rule of law and immorally deny the facts and written documents when its institutional interests trumped the facts and law. Dr. Howard filed and litigated Governor Lawton Chiles' tobacco complaint and appeals. The Florida Supreme Court ruled 7-0 that the $100s of millions in funds initially received from Big Tobacco went directly to the State of Florida, without going into an independent account and without an accounting of fees and costs, based on the plain reading of the fee contract.

> **The contract for legal services plainly states that upon the settlement becoming [**17] final *all* monies are to be transmitted to the State.** The **contract** further provides that "payment for the legal services covered by this **contract** shall be based on a contingency **fee** percentage of the dollars recovered and reimbursed to the Department." **Contract** for Legal Services, Attachment I, P C.1. Moreover, pursuant to the Settlement Agreement, all payments made by the Settling Defendants are made for the benefit of the State. The initial payments were paid into an escrow account in order to protect the Settling Defendants' interest in the funds until the Settlement Agreement became final. Thereafter, payments are to be made to the State.

II. REPORT OF REFEREE CLEARLY AND CONVINCINGLY WRONG TO BASE ITS RULING ON UNRELIABLE EVIDENCE, SPECULATION AND ABJECT FAILURE TO REQUIRE COMPETENT SUBSTANTIAL EVIDENCE

While a referee's findings of fact are presumed correct and will be upheld by this Court unless they are clearly erroneous or without support in the record. *The Florida Bar v. Scott,* 566 So. 2d 765 (Fla. 1990); *The Florida Bar v. Colclough,* 561 So. 2d 1147 (Fla. 1990); *The Florida Bar v. Bajoczky,* 558 So. 2d 1022 (Fla. 1990). Fla. Bar v. Rosen, 608 So.2d 794 (Fla. 1992). The competent substantial evidence standard "is not satisfied by evidence which merely creates a suspicion or which gives equal support to inconsistent inferences." *Fla. Rate Conference v. Fla. R. R. & Pub. Utils. Comm'n*, 108 So. 2d 601, 607 (Fla. 1959). "Speculation has been held not to constitute competent substantial evidence. *See Fla. Rate Conf. v. Fla. R.R.& Pub.Utils.Comm'n,* 108 So.2d 601, 607 (Fla. 1959)("Surmise, conjecture or

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State v. Am. Tobacco Co. 723 So.2d 263, 268 (Fla. 1998) (emphasis added). This was an abject violation of facts, law and morality, as Dr. Howard drafted both the contract and the memorandum signed by the parties to interpret the contract, and both documents clearly stated (consistent with standard Florida Bar rules that fees go into a trust account and after accounting and closing statement are distributed) that the funds did not go to the State of Florida until the funds went into an independent account, independent accounting took place, and the net funds after fees and costs were paid, would go to the State of Florida. This failure to follow the law and facts and adopt interpretations that advance greed and power of institutions are constant.

As another example, Dr. Howard has seen the Florida Bar clearly and convincingly wrongly turn an ethics violation blind eye towards paying nearly $1 billion to five Texas law firms and the Levin Papantonio law firm, when these firms never appeared in the Florida case, never signed a fee agreement with the State of Florida and did no work on the Florida case. The University of Florida Law School is even now named the *University of Florida Levin College of Law* based on these ethical violations.

The Florida Bar system of professional regulation clearly and convincingly wrong complicity in known criminal extortion is devolving to and stuck on a spectrum of "dying crabs in a bucket" to how low can you go in extortionate grabbing and pulling down fellow bar members to put yourself on top of another dying crab in this dying bucket.

To escape "*incurvatus in se*"—the permanent condition of the hearts of men and their institutions, one must transcend to "*simil justus et peccator*." Only with this balance of acknowledging "*incurvatus en se"* with *"simil justus et peccator*," (simultaneously justified and sinner) can an individual or an institution gain the courage, integrity, and psychological, existential, and intellectual depth to acknowledge their indelible blindness and corruption, while also receiving love and restoration not on its works, because these works always turn-in on itself to self-justification, and self-glory of dying things, leading to ultimate death, but on the power, love, suffering, justification, and resurrection of the non-created creator Living God, as shown in the resurrection of his perfect, sacrificial son, Jesus Christ, that defeated every existential and material death found in existence.

speculation have been held not to be substantial evidence."); *Dept. of Highway Safety & Motor Vehs. v. Trimble,* 821 So.2d 1084, 1087 (Fla. 1st DCA 2002). *Callwood v. Callwood*, 211 So.3d 1198, 1202-1203 (Fla. 4th DCA 2017). The evidence below demonstrates that "the referee's factual findings are unsupported and that his credibility assessments are incorrect," consequently, the Report of Referee must be overturned. *Fla. Bar v. Swann*, 116 So.3d 1225 (Fla. 2013).

A. CLEARLY AND CONVINCINGLY WRONG TO REJECT JOHN HARVARD, CPA'S ACCURATE ACCOUNTING

Consistent with blind adoption of toxic narratives, and the Referee and The Florida Bar turning a blind eye to criminal fraud, perjury, extortion, and evidence documenting the validity of Dr. Howard, The Florida Bar and the Referee claim that accountant, John Harvard's independent accounting, documenting value and valuations of legal work and precise accounting of every check and payment, based on approximately 300 hundreds of pages of undisputed documents attached to his accounting, link by link for each item with document(s) for each link to each item, 99% of which is also used by the Florida Bar's accountant, Roy Jeter, and admitted into evidence[7] (T: 433-540) (RR: Respondent's Exhibit 1), as "theoretical", "speculative, non-fact-based or unfounded".

[7] Detailed in the Submission to the Florida Bar and Referee for Appropriate Sanction on March 18, 2021, it is clear that John Harvard's accounting is 99% the same as Roy Jeter's accounting:

> The Referee accepted the accounting of the Florida Bar over John Harvard and cites three items at issue from the 97 items documenting the accounting. Accounting spreadsheet, correlated per item in order with approximately 300 pages of checks, ledgers, satisfaction of liens, estate and tenant work done, and verification of payments attached to spreadsheet, and summary report are attached as Exhibit F and found at this link: https://www.dropbox.com/scl/fi/jy6xfmk07wgqrz71oxk3y/10-30-20-a-Jason-Hall-Accounting-Revisd-by-TH.xlsm?dl=0&rlkey=sr3fsw0wv74ham4383fdk5orw. The three items that raised concerns by the Referee were documented from an affidavit documenting reduction in a lien from TMRMC, and the best available evidence, such as Florida Supreme Court decision on worker's compensation fees that found 10% fee limitation unconstitutional, and the value of work performed, and costs expended that were not paid for. The remaining 94 items in the accounting had documents attached to validate each item and were not challenged by the Florida Bar, including that Respondent did estate and landlord tenant work and was not paid, yet still rejected by the Referee. *Id.*

In contrast with 99% of the evidence being the same, the Referee finds Roy Jeter's accounting, thoughtful, detailed, and accurate. The Referee clearly and convincingly wrongly adopted the wholly inaccurate accounting of Roy Jeter, which accounting requires a corpus of $838,000 and double entry of non-existent funds, to show the balance claimed by the Florida Bar. (T: 238-239). This is despite Roy Jeter's unfounded speculation as to the intent of Dr. Howard, having never met him, nor his involvement with any of the facts at issue in the action. (TFB: Report of Roy Jeter). There are only only **four** items that vary between the two accountings. Namely, the **undisputed** and factually admitted legal work done by Dr. Howard, with only the quantum meruit value of the estate, landlord tenant, and mediation divorce legal work, and the reduction of the Tallahassee Memorial Healthcare demand for $281,158, being disputed by the Florida Bar, and admitted into evidence (T: 433-540) (RR: Respondent's Exhibit 1).

The Report of Referee, without basis in evidence, incorrectly stated that John Harvard's accounting and calculations "rest almost exclusively on what [Dr. Howard] told him." (RR: 5; 73-74). Notwithstanding that 99% of the evidence that Roy Jeter relies upon is the same evidence that John Harvard relies upon. The Referee did not consider nor accept that John Harvard exposed that Roy Jeter's theoretical accounting only works if there is an assumed $832,828 original corpus of funds, and that the expenditure of $148,145.60 during the first four months, as non-existent, which outcome is clearly speculative, non-fact based, and unfounded. [8] The Referee could not allow this evidence in the case, as it threatens the

[8] The October 30, 2020 Independent Accounting Report by CPA, John Harvard, states as follows:

> **Qualifications**
> I am a Certified Public Accountant licensed in the State of Florida since 2004. I am also a member of the Florida Institute of Certified Public Accountants and the American Institute of Certified Public Accountants. I have majors from Florida State University in Accounting and Finance, and I have a minor in Real Estate. I have worked in Public Accounting since 2002 and began my own firm in 2007. My practice areas include individual and business tax and financial statement preparation, reviews, and audits. I have also been recognized as an expert in three jurisdictions.

My Engagement

I was engaged by Mr. Howard to review the documents he provided to determine if the settlement funds of $632,282 from the Jason Hall case were distributed for the benefit of his client, Jason Hall. I was provided supporting documents for each transaction by Mr. Howard's office and asked to objectively review the supporting documents and determine the total funds disbursed for the benefit of Mr. Hall. I was later asked to review Mr. Jeter's report dated March 27, 2018 and provide any insight on what Mr. Jeter represented in his report. The documentation that was provided to me for my review included accounting records provided by Mr. Howard (Exhibit A), Mr. Jeter's report dated March 27, 2018 and Mr. Jeter's deposition dated September 29, 2020.

Findings

Per my review I confirmed the starting point of the net settlement amount of $632,828. This amount matched both Mr. Jeter's and Mr. Howard's reports. Per my review of Mr. Howard's accounting and review of supporting documents of each transaction related to this case, I was able to determine Mr. Howard's firm had support for $632,794.94 of payments to Mr. Hall or for the benefit of Mr. Hall as represented in Exhibit A. Due to the length of time from 2008 to 2020 and because many bank records are no longer available at this time, the supporting documents are limited and are represented in several different forms. However, I believe Mr. Howard has I provided a reasonable amount of documentation due to the bank retention limitations.

The one item not accounted for in Mr. Howard's documentation was the accrual of interest on the loan amount of $70,953.97 for the time period of September 8, 2008 to March 30, 2014. The Original Loan Amount was determined as follows:

Total payments settlement funds for Mr. Hall	$632,794.94
Total trial cost payments made for the benefit of Mr. Hall	$561,840.97
Amount loaned to Mr. Howard	$ 70,953.97

The interest accrual per my calculation is $25,530.98 for this period of time per Exhibit B. The interest is based on the 10% annual interest per the loan document that was in Mr. Jeter's report labeled Exhibit F. Per the original agreement Mr. Howard was loaned $200,000, **but what was not known at the time of signing the loan document was Mr. Howard had paid significantly more on behalf of Mr. Hall and therefore the loan to Mr. Howard should reflect all of the payments for the benefit of Mr. Hall. This is the point where Mr. Jeter chose to disregard payments Mr. Howard paid or fees earned on behalf of Mr. Hall. Exhibit G of Mr. Jeter's report represents total payments of $148,145.60 and acknowledges the payments or fees earned, yet he deems them unallowed based solely at his discretion**. There were a few other nonexclusive examples of **Mr. Jeter's conclusions of Mr. Howard's intent that were a strong and not supported by facts that I could duplicate**. A couple of examples are as follows:

1. Page 3 of Jeter report "The respondent deceived Jason Hall into believing the only way interest could be earned on the settlement funds was by giving the settlement funds to the respondent to use at the respondent's discretion." **I saw nothing definitive that supported Mr. Howard's intent to deceive Mr. Hall.**
2. Page 6 of Jeter report the heading used **"False Accounting for Loan from Settlement Funds" The word false is strong and seems to imply Mr. Howard intended to misrepresent.**
3. Page 7 of the Jeter report **"The respondent falsely reported the repayment of the loan principle and incorrectly calculated interest amount in the 2016 accounting." Again, the word falsely seems to imply Mr. Howard intended to misrepresent**.

In addition, Mr. Howard provided documentation of $38,034.19 of unpaid legal bills or costs that were not collected from Mr. Hall. Therefore, my conclusion is that Mr. Howard has accounted for

entire underpinning of the Florida Bar's case and goes explicitly against the toxic narrative constructed by the complainants and Florida Bar, as absorbed by the Referee and incorporated within the Report of Referee. The Referee's unmitigated and unrelenting erroneous, clearly and convincingly unlawful and unjustified findings in the Report of Referee is breathtaking, with *ad hominem*[9] and criminal conduct accepted and solid evidence disputed or not given any credence.

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payments of $632,794.94 and unrecovered legal costs of $38,034.19 totaling $670,829.13. Below is a summary with my calculation of what was due to Mr. Hall:

Net Settlement Amount	$632,828.00
Accrued Interest on Loan	$ 25,530.98
Total Amount Due to Mr. Hall	$658,358.98
Total Trial Cost Paid	$561,840.97
Loan Payments Paid	$70,953.97
Unpaid Legal Fees and Cost to Howard	($38,034.19)
Amount Due to Mr. Howard	($12,470.15)

(Respondent's Exhibit 1) (emphasis added). Next, the section 440.34, Fla. Stat., fee schedule limit on workers compensation fees for the case was 10%. Jason Hall desired to provide additional potential fees through any amounts saved from negotiations and letters with those that sought approximately $300,000 in payments from the recovery, with a 20% reasonable commercial amount for any funds saved. These fees complied with Rule 4-1.5. Fees and Costs for Legal Services, as they are reasonable and were based on forthright disclosure to the client. The fee schedule limit of 10% is unconstitutional pursuant to the Florida Supreme Court's decision in *Castellanos v. Next Door Co*., 192 So. 3d 431 (Fla. 2016). As part of his valuation of legal services provided, on all services not charged, but received by the client, and worthy of quantum meruit valuation, John Harvard included the current true value of the work done, conservatively estimated at 15% when contingency fees range from 33% to 40%, but for the unconstitutional fee limit that existed in 2008.

[9] Mr. Jeter claims, as a non-fact witness accountant, that "it is fairly obvious" that any records Dr. Howard provided were "evidence of deception." The Report of Referee admitted this evidence. Jeter Dep. At 116:12-25; 117:1-4; that Jason Hall was "on drugs" and "not in his right faculties," therefore enabling Dr. Howard to steer Jason Hall to direct Dr. Howard to deposit settlement funds into a non-trust account. Jeter Dep. at 108:11-13. This factual interpretation is not the prerogative of the accountant, nor the Florida Bar, nor even the Referee, without a factual basis. Those with factual involvement with Jason Hall are the only witnesses that can testify as to Jason Hall's condition in the Summer of 2008, and the only witness to that is Dr. Howard. The bias and suppositions of Roy Jeter, not part of his expertise, nor capacity as a witness, demonstrates that his opinion as an expert is not valid and not admissible, yet is clearly and convincingly wrong to be accepted by Referee.

B. CLEARLY AND CONVINCINGLY WRONG TO DENY CLIENT'S AUTHORITY TO DESIGNATE FUNDS NOT YET RECEIVED AS NON-CLIENT, AND NON-REIMBURSABLE FUNDS TO BE DISTRIBUTED ACCORDING TO HIS WRITTEN DIRECTIONS

There is no Florida Bar Rule prohibiting a client, under oath, in writing, from classifying his **future settlement funds**, **prior to receipt**, as **non-client funds**, non-refundable, and to be distributed by his attorney in accordance with the written, sworn directions of the former client. That is what was done in this case. The Referee admits that there is potential "rule compliance," though strained, and then pivots to the default toxic narrative that there is "an intentional avoidance of the rules." *Id.*

The Report of Referee's core basis for a series of Florida Bar Rule violations derive from the testimony of a non-fact, non-lawyer, accountant for the Florida Bar, Roy Jeter, that found sworn, written and signed directives from the client, Jason Hall, and Dr. Howard, on July 15, 2008, and September 5, 2008, who never filed a Florida Bar Complaint, and verified by two fact witnesses with direct involvement with the deceased client, as **"nonsense**" (T:628-631, 634-636) (RR: par. 3, 4 and 12). This is because these sworn client directives do not fit within the pre-programmed structure applied by the non-lawyer accountant in his routine Florida Bar prosecutions, nor within the 7-year constructed toxic narrative of the non-working former ex-wife of former client, Dana Hall, and her attempt at extorting $355.031, as supported by TFB.[10] Respondent's Response to Request to Produce, Howard 060.

[10] Documenting the extortion and the contract demand by ex-wife Dana Hall and her mother-in-law, Sandra Fulup, the Referee even finds that their extortionate demand is nearly $100,000 too high, even using the obviously distorted $832,828 clearly inaccurate accounting of Roy Jeter, when only $632,828 was ever received, for a total balance of $266.830.28 instead of the $353,031 demanded by ex-wife Dana Hall and her mother-in-law, Sandra Fulup. (RR: par. 63).

C. CLEARLY AND CONVINCINGLY WRONG NOT TO INCLUDE TESTIMONY OF THE ONLY FACT WITNESS

The Referee's erroneous, unlawful and unjustified report is documented in that **he didn't include the sworn testimony of Dr. Howard in his Report, yet did so for every other witness**. **Dr. Howard is the only fact witness that was there for all operative fact interactions and transactions with the deceased Jason Hall.** No other witness had the core interactions with the decedent Jason Hall. Yet, Dr. Howard's testimony is not included in the Report of Referee.

Of course, if the Referee **doesn't include testimony from** both sides, especially the **"only"** fact witness to the events at issue, Dr. Howard, who knew the knowledge, intent and directions of the decedent former client, Jason Hall, there will of course be "overwhelming testimony against [Dr. Howard]." Such approach by a Referee is clearly and convincingly wrong.[11] (RR: 57). That is why the Referee states, "The evidence shows respondent is far closer to the Fla. Bar's portrayal of him: than to the attempted image he tries to portray of a "protector" of Jason Hall and his assets." (RR: par. 71). The Referee makes this statement even in the face of fact witnesses that he finds credible that state the exact opposite, namely Kim Matthews:

> Throughout the entire time that the law firm represented Jason Hall and his estate, to my knowledge**, the firm did all in its power to ensure that both Jason Hall and his estate were properly represented and their interests pursued.**

[11] "The factual findings of a referee may . . . be disturbed [if] clearly and convincingly wrong. *Bajoczky*. As former Chief Justice Ehrlich has noted, a referee's recommendation 'is a recommendation and nothing more. It does not carry the authority or weight of a finding of fact by the referee.'" *Bajoczky,* 558 So. 2d at 1025. *Fla. Bar v. Belleville*, 591 So.2d 170 (Fla. 1991). "In reviewing a referee's recommended discipline, this Court's scope of review is broader than that afforded to the referee's findings of fact because, ultimately, it is our responsibility to order the appropriate sanction. *See Fla. Bar v. Anderson*, 538 So. 2d 852, 854 (Fla. 1989); *see also* art. V, § 15, Fla. Const." *Fla. Bar v. Abrams*, 919 So.2d 425 (Fla. 2006).

(RR: par. 71).

D. CLEARLY AND CONVINCINGLY WRONG FOR REPORT OF REFEREE TO RELY ON NON-FACT WITNESSES

Three witnesses with no involvement with the operative facts, and two attorneys coordinated their strategy, evidence, and testimony in a joint meeting with the Florida Bar prosecutor and former Florida Bar prosecutor, with the Florida Bar auditor and expert, Roy Jeter, attending. (T: 617-618). None of these witnesses nor their attorneys are fact witnesses to the intent, knowledge or communications with the deceased former client's sworn, notarized, written directions, and contract executed over 13 years ago. Their coordination of non-relevant facts of the intent and knowledge of the deceased prior client during their non-relevant time-period, simply can't mean that there is "overwhelming testimony against [Dr. Howard]." Yet, clearly and convincingly wrong, this is what the Referee determined as "overwhelming testimony."

E. CLEARLY AND CONVINCINGLY WRONG FOR REPORT OF REFEREE TO DISTORT THE COMMUNITY SERVICE AND CAPACITY TO RESOLVE ANY OBLIGATIONS TO ANY CLIENT

With the extortionate, and fraudulent, perjured toxic narrative coursing through TFB and infecting the Referee, the Referee clearly and convincingly wrongly distorted the purpose of even the one piece of testimony from Dr. Howard referenced in the report, stating:

> Respondent detailed how in many cases he received (or was part of a team to receive) many millions of dollars in fees year by year. **No one asked him those income questions**, but he detailed tobacco cases; oil spill cases; workman's compensation cases; and earnings from teaching around the world, etc.
>
> As a result of his prosperity, [Dr. Howard] engaged in many benevolent activities, feeding the hungry, ministering as a chaplain, working to create and export sustainable agricultural endeavors, coaching young people, being an active church member, to name just a few. These are good works, and worthy of consideration.

(RR: 56).[12]

[12] In his March 18, 2021 Submission to the Florida Bar and Referee for Appropriate Sanctions, it was detailed that:

> Respondent's prior Bar complaints benefited others, were morally centered, but missed technical aspects. They delt with: (1) Transposing signatures with authority on the fee contract for the $26 billion Florida recovery from the tobacco industry and the $3.2 billion award of legal fees. Though he provided the date of authority on the contract, and all counsel had a copy of the contract for 5 years and were paid $3.2 billion based on the same contract, he failed to site with permission and authority on 4 of 12 signatures of co-counsel; (2) Overpaying one of his clients approximately $4,000 (who is also a friend, even now) from his trust account; (3) and Requiring a person that stole $50,000, verified by 13 affidavits, to agree to counseling for a settlement, with Respondent stating that he would go to authorities if the person who stole didn't agree to counseling.
>
> **Rehabilitate the Lawyer**
>
> One key purpose of the lawyer disciplinary proceedings is, where appropriate, to rehabilitate the lawyer. In the instant action, Respondent has learned from these Bar complaints and others. In the past 33 years, Respondent has engaged in moral guard rails in his career but has run afoul of technical aspects of the Florida Bar Rules, and in managing staff
>
> **Interim Rehabilitation**
>
> Respondent, in his life forging has found renewed clarity, vigor and power in advancing professional, moral and theological guard rails for every aspect of his life. This rehabilitation is comprehensive and demonstrates new birth. Consider the following:
>
> Deep Community Service—Spiritual and Temporal:
>
> Respondent is a Florida Certified Volunteer Chaplain working for the Florida Department of Children and Families and works with the Florida Governor's Office of Adoption and Child Protection. Exhibit A. He ministers to those in prison at Wakulla Correctional Institution. He ministers in poor neighborhoods providing food (over 400 boxes of food, including milk, oranges, potatoes, tomatoes, cheese, hotdogs, chicken, yogurt, and orange juice, while ministering to spiritual and emotional needs, this past Saturday alone), reuniting of families, location of jobs, medical care, and counseling. He ministers to high school athletes, football and basketball teams. Including acceptance of humble salvation by two entire varsity football teams and having over 20 of the players being baptized at his home. He ministers to those starving in Pakistan and works and funds a prototype farm in Tallahassee, Florida, and in Quetta, Pakistan to create sustainable food sources for those starving and in need. He is a non-sectarian teacher and developing theologian along the lines of C.S. Lewis and Tim Keller and is active at both New Creation Church of Tallahassee, a non-denominational charismatic and currently 99% black church, and Blessed Sacrament Parish, a Catholic Church, where he was baptized, received first communion, confirmed and graduated from its school. He goes into crisis communities facing racial injustice and murders that cry for healing and restoration. He gives his time and money for others. He doesn't take nor is motivated to do so.
>
> Consider the following sworn statements from those that know and work with Respondent, Dr. Howard, on a daily basis. Senior Pastor Mike Smith under oath states:
>
> 5. Phillip "Tim" Howard is a member of my congregation and has been for going on 4 years. I pastor and minister to and with him, and I fellowship with him. We have both ministered to others in sensitive and confidential matters of the soul, heart, and temporal needs. Here is what I know about Tim.
> 6. From what I understand, Tim's Christian experience has gone from Baptist, to Catholic, Methodist, Charismatic and secular atheism. And for a man in our day to have studied and taught at universities, such as Harvard, Northeastern, Boston University, Oxford and Florida State, and trained nearly 100 doctorates, my heart is overjoyed when we wake up on Saturday morning to feed the less fortunate right here in the Bond community, to share our faith in the parking lots of our local supermarkets, and to have blessed conversations with anyone of God's created beings, shows me that the transforming power of Jesus Christ is alive and at work in him. As a pastor, there is nothing more pleasing and attractive in the people that you get a chance to shepherd than those qualities.
> 7. I have had the privilege of talking with Tim and to share in some of the successes and challenges that he has faced. As a black pastor for me to see commercials about Big Tobacco coming down

and later in my ministry to meet a man that brought that corporate giant down, says a lot about his potential his ability to produce and him as a person.

8. Since I have met him, I have known him to be nothing but generous. Pouring thousands of dollars into the church, into ministries overseas, and thousands of dollars to the people that he works for. And me understanding what has been presented against him, I have not seen him ask for a single dime in four years of knowing him. All he has does is give. I had to make him to tell me if he needed gas money since this ordeal has ensued.

9. I am not going to go into too much than to say in my pastoral discernment, I don't see a man that is a thief or is a taker, and I could be wrong, but what I have witnessed is a brother who all of his life has been taught to work hard, love hard and give hard. I hope that these words fall into consideration of the powers that be in their deliberations and contentions for the life of someone with these qualities.

10. Tim has served our congregation and our city, he has walked with me, he is part of our New Creation praise team, evangelism team, prayer team, Youtube channel, broadcasts from Capital of Florida, to Minneapolis, Minnesota to Quetta, Pakistan, and there is more to come.

11. Tim assists me with the Fellowship of Christian Athletes ministering to 100s of local high school athletes and as men, trying to better our communities with the message we love. One of the joys of our time serving is having the opportunity baptize the Rickards High School football team at his home and the next year those same young men winning the State High School Championship. This shows me he is authentic and is open as all believers need to be.

12. If there is a deeper investigation into his life, I think you will find that these qualities existed prior to his conversion.

13. Tim is a State of Florida Certified Volunteer Chaplain, sanctioned by the Florida Department of Children and Families and the Governor's Office of Adoption and Child Protection through the Share Your Heart Florida Campaign. In this capacity, we have given over 400 boxes of food in the Bond community.

Exhibit B. Pastor and Minister Melvin Youmans under oath describes Dr. Howard as follows:

3. I have been a Living God Christian pastor and minister for 30 years with numerous churches and currently with New Creation Church Tallahassee.

4. I have been evangelizing and ministering to the homeless, inmates, praise, prayer, and poor for decades. I have personally seen the Living God heal the blind in prison and cast out demons from the possessed. I was invited by the Catholic Church, Good Shepherd Parish in Tallahassee, to teach them about the power of the Holy Spirit and how to stand against evil and taught them for several months.

5. Phillip "Tim" Howard and I have been ministering together going on 4 years now. In fact, I am the one that prayed over his back prior to the Living God healing him.

6. Tim and I regularly go into Wakulla Correctional Institution to share the good news, with salvations and baptism of the Holy Spirit taking place.

7. Tim and I evangelize throughout neighborhoods and in the Walmart parking lot, regularly seeing the Living God work.

8. Tim and I minister to those in the Bond community, near FAMU, and bring healing, salvation and power to those that receive free meals and prayer.

9. Tim and I work on a farm at former Assistant State Attorney Sid White's house and property, that I am leading as a prototype for starving Christians in Pakistan and other under resourced parts of the world. We have a chicken farm and crops. We have funded the sustainable farm in Quetta, Pakistan with Good News Pastor Kashif Rasheed Masih, who ministers to Christian orphans and widows, as well as young Christian girls that have been kidnapped and violated in order to be sullied, abandoned, and forced to convert to Islam.

10. Tim and I participate as bible study teachers and engage in regular intercessory prayer.

11. Tim is generous with my personal needs and gives to any project that the Living God has sought us to pursue.

12. Tim loves the Living God and serves him in many fronts and locations.

Exhibit C. Attached are photographs from the ministering, teaching, praising, feeding and loving that Respondent, Dr. Howard engages in on a daily basis. Exhibit D. These are the are the truthful and factual activities and motivations of Respondent, Dr. Howard.

<u>Senior Bar President and Mentor Guiding Respondent:</u>

Respondent now works with a senior attorney with 47 years of experience in the practice of law and is a former Bar President. If Respondent would have had an experienced senior attorney to counsel with, instead

of making his best decisions as a sole practitioner, he would not have made the staffing and judgement mistakes that led to these Bar complaints. He has since remedied these structural failures.

Respondent has not had a Florida Bar sanction in over 15 years. Respondent now has and works with experienced senior counsel to consult with to avoid the mistakes that he made as a sole practitioner.

Appropriate Sanctions Based on Prior Rulings by the Florida Bar

Respondent has extensive rehabilitation and community service. Consider the following:

Respondent provides extensive annual *pro bono* and Christian services to numerous parties:
Local Citizens' Divorces;
Local Citizens' Criminal Cases, Estate Cases, and Family Law Disputes;
Latin American Laborer Driving and Worker Permits and Immigration;
Employment Discrimination Guidance

Graduate and Doctoral Education:
Ph.D. in Law, Policy and Society, with a Dissertation on Cause Lawyer Leadership in Florida's Tobacco Litigation, with methodologies that applied Theology, Law, Policy, Quantitative, Qualitative and Mixed Methods, Historical Methods, Leadership, Economics, Sociology, Conflict Resolution, Critical Thinking. Dr. Howard also teaches and explores Sustainable Economic Development with Graduate Students and business incubators designed to lift the poor from poverty, and more to global and national students, such as:

African Chieftains and Queen Mothers from Ghana and Nigeria;
Civil Rights Leaders, President, Graduate Students and Pastors in Honduras;
Civil Rights Leaders in Venezuela;
International Monitor of Fair Elections in El Salvadore and Honduras;
Judges in the United States;
U.S. Senators, U.S. Governors, Chancellors, University Presidents, Provosts, Deans, Nationally and Internationally;
Graduate Students in India (New Dehli, Mumbai, Chennai, Hyderbad);
Graduate Students, Business Leaders and Civic Leaders in Pakistan (Lahore);
Business Leaders and Government Officials.

Public Interest Litigation that benefits Floridians, Americans and the global population in a deep and substantial way:

Florida Sovereignty Lands Standards for $10 billion of State property as Special Assistant Attorney General; Florida Environmental Protection as Assistant Attorney General. *Coastal Petroleum v. American Cyanamid*, 492 So. 2d 339, (Fla. 1986); See AGO 88-22 (June 1, 1988), defining the Ordinary High Water Line ("OHWL") and methodology to secure sovereignty lands as applied by § 253.03(7), Fla. Stat. *See* Reimer, Monica, *The Public Trust Doctrine: Historic Protection for Florida's Navigable Rivers and Lakes,* Florida Bar Journal, Vol. 75, No. 4, April 2001.

Florida Supreme Court State Court's Administrator Special Counsel;

Florida Health Care protecting senior citizens in nursing homes and expanding health care coverage for millions of Floridians, and identifying and prosecuting health care fraud and abuse;

Finalist for U.S. Attorney for the Northern District of Florida;

Florida Medicaid Tobacco Case--$27 billion for the State of Florida, removal of billboards and child advertising. *Chiles v. The American Tobacco Co., et* al. (No. 95-1466-AO) ("Complaint"); *Agency for Health Care Admin. v. Associated Indus. of Florida, Inc.,* 678 So.2d 1239, 1239, cert. denied, 65 U.S.L.W. 3629 (Fla. Mar. 17, 1997).

Removing cancer causing benzene from soft drinks nationally. *See Coke Sued as Part of Benzene War*, Los Angeles Times, August 26, 2006; *Coca-Cola settles lawsuit over benzene, Associated Press,* May 14, 2007.

Recovering $300 million from tobacco companies for individual victims (husbands, wives, children and families) of addiction, cancer and death. *Engle v. R.J. Reynolds Tobacco Co.,* No. 9408273 CA (20) (D. Fla.

Missing the entire point of the testimony, despite his claim of the detailed notes but not comprehending the evidence as it streams before him since he is concentrating on notes, and not comprehension of the evidence, the Referee didn't comprehend that this testimony was provided to show that Dr. Howard is not the "master manipulator" with "depths of Dr. Howard's fraud and subterfuge [that] cannot be overstated," as framed by the ex-wife of the client, Dana Hall, her attorney Richard Greenberg, Roy Jeter, the Florida Bar Accountant, The Florida Bar attorney, Shanee Hinson, and adopted by the Referee. This evidence was submitted in order to demonstrate that Dr. Howard was not motivated by the need nor desire for money or greed, but to serve others, regardless of his prosperity *vel non*, and would have

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Oct. 31, 1994), http://legacy-dc.ucsf.edu/tid/wbn15f00. *R.J. Reynolds Tobacco Co. v. Engle*, 672 So. 2d 39 (Fla. Dist. Ct. App. 1996). *R.J. Reynolds Tobacco Co. v. Engle*, 122 F. Supp. 2d 1355 (S.D. Fla. 2000). *Engle v. Liggett Group, Inc.,* 945 So.2d 1246 (Fla. 2006). *R.J. Reynolds Tobacco Co. v. Engle*, 122 F. Supp. 2d 1355 (S.D. Fla. 2000). *Evans v. Lorillard Tobacco Company*, 465 Mass. 411 (Mass. 2013), including recovery for 13,000 Engle Trust claimants, 100 individual cancer cases, and winning or settling scores of tobacco trials and cases.

BP Oil Spill--$100 million for 5,000 injured clients. *In re* Oil Spill, No. 10-MDL-2179 (E.D. La. Jan. 23, 2015); 21 F. Supp. 3d 657, 668–69 (E.D. La. 2014). *See In re* Oil Spill, 77 F. Supp. 3d 500, 525 (E.D. La. 2014) (finding that 4 million barrels of oil were released into the Gulf but only considering 3.19 million barrels for civil penalties). Damage to 100s of thousands of businesses and individuals in the Southeast United States from Florida to Texas.

Locating and sealing of the source of nuclear isotopes, and toxic nuclear cleaning chemical plumes in water, food, air and ground, causing cancer clusters and leukemia in children and families near the nuclear facility, shutting down elementary, middle and high schools in Southern Ohio. *Walburn, et al., v. Centrus, et al.,* Case No. 20-cv-4621 (S.D. Ohio 2020).

Elementary through High School Coach:

25 years as a coach of flag football, soccer, baseball, pee wee football, junior football, middle school football and track, high school football, track and basketball, training and mentoring 1,000s of young men and women.

Most recently a Fellowship of Christian Athletes Mentor Coach at Rickards High School, which team won the State Championship in 2020, and Jefferson County High School (2020-to present date).

Former Lincoln High School basketball coach for State finalist and State semi-finalist team; former FAMU High School DRS Offensive Line Football (District Champs) and Track Throws Coach; former Gadsden County High School Offensive Line Football Coach.

Exhibit E. This is all done while Respondent is providing Food, Medical Care, Jobs, Counseling, Family Reunification, Housing for the Homeless, Addicts, Ill, and Hurt in the Community as referenced above and as found in Exhibits A through E.

easily paid this relatively small amount concerning this case, if in fact he owed "any" amount, and that is why he suggested an independent Florida Bar arbitration to address any accounting concerns. What Dr. Howard would "not" pay is anything to an unemployed money motivated extorter, no matter how toxic the narrative nor how complicit TFB is with her extortion scheme.

F. CLEARLY AND CONVINCINGLY WRONG TO NOT INCLUDE THE SWORN TESTIMONY OF THE ONLY FACT WITNESS

What is the justification and legal basis for this failure to address this sworn testimony of the **only fact witness**, Dr. Howard, that knows everything during the operative time in the Summer and Fall of 2008 through decedent's death in 2012, involving the representation, post representation, and intent of Jason Hall? No other fact witness relied upon by the Referee knows anything about the representation, post representation, and intent of Jason Hall. What is the factual and legal justification for not interpreting the testimony as documenting no intent nor need to take advantage of Jason Hall? What is the justification for accepting the Florida Bar's "master manipulator" narrative, and letting "smoke define the fire" approach? These failures are erroneous, unlawful and unjustified, and create a *defacto kangaroo court*.

G. CLEARLY AND CONVINCINGLY WRONG TO CLAIM THAT DR. HOWARD IS NOT OBLIGATED TO COMPLY WITH LEGAL CLIENT DIRECTIVES

An attorney is to comply with his client's directives so long as they are legal, not in violation of any known Florida Bar Rule. The client is "the ultimate authority to determine the purposes to be served by legal representation, . . ." Rule 4-1.2(a)("a lawyer shall abide by a client's decisions concerning the objectives of representation, . . ."). Consistent with Florida Bar Rule 4-1.8(a) and 4-1.7(b), Dr. Howard gave full disclosure in writing, gave client an opportunity to consult independent counsel and to place funds in a separate interest

bearing account in his name, obtained client's consent in writing under oath and notarized, and ceased representing the client in writing,[13] prior to the net loan of $70,953.97.

Dr. Howard also made sure this instruction given to him by his former client was explicit and unassailable, as being under oath and penalty of perjury (T:203) (TFB Exhibits 3 and 4) and was done to protect Jason Hall from blowing this small amount of his settlement proceeds (approximately 6% of the settlement proceeds) that existed after medical provider liens were paid. (T:195, 358). These are the undisputed facts of this case. (TFB Exhibits 3 and 4) (RR: par. 3-4) (T:). These sworn statements documenting that the funds were "non-client" funds. Thus, as "non-client" funds they could not be trust funds under Florida Bar Rules Chapter 5.

H. CLEARLY AND CONVINCINGLY WRONG TO SANCTION ATTORNEY FOR NOT HAVING RECORDS FROM 2008 TO RESPOND TO EXTORTIONATE DEMAND OF $353,031 ORCHESTRATED BY NON-CLIENT, DANA HALL, WHEN FORMER CLIENT NEVER FILED A BAR COMPLAINT, FILE WAS CLOSED YEARS EARLIER, AND RECORDS WERE NOT RETURNED AFTER A WRITTEN REQUEST

Dr. Howard has had the handicap of responding to this July 2016 Bar Complaint and demand for $353,031, without having the file or records, including access to bank records back in 2008, as the file had been given to the representative of the estate in early 2014, since the file was closed because representation of the client on the workers compensation matter had ceased in August of 2008, (T:229) and from any other matter, including the divorce, on September 2, 2008 (T:233-234, 238) (TFB Exhibit 5). *See* Rule 4-1.15 (retention of files for 6 years, which ended September 2, 2014). No bar complaint was filed by the former client, ever, nor Sandra Fulup, the representative of the estate, within the 6-

[13] "Doubt about whether a **client**-lawyer **relationship** still exists should be clarified by the lawyer, preferably **in writing**, so that the **client** will not mistakenly suppose the lawyer is looking after the **client**'s affairs when the lawyer has ceased to do so."
In re Amendment to Rules Regulating Fla. Bar, 605 So.2d 252 (Fla. 1992)

year limitations period found in Rule 3-7.16. The ex-wife complainant, Dana Hall, who was never client, would not return the file, and bank records were not available by the time the July 2016 Bar Complaint took place. (T:230).

I. CLEARLY AND CONVINCINGLY WRONG FOR REPORT OF REFEREE TO RELY ON RANK SPECULATION

The Referee incorrectly states as fact, without any evidential proof, and contrary to Dr. Howard's sworn testimony—the only factual eye-witness—but consistent with the false toxic narrative of unemployed ex-wife Dana Hall, unemployed Sandra Fulup (as coached by Dana Hall), and TFB, as coordinated in their meeting(s) (T:617-618), constructed over a period of 7 years, that:

> Respondent did not give Jason Hall the option of opening a separate, interest bearing trust account in his name. Rather, he explained that he would be better able to negotiate discounts on the outstanding medical bills and personal debts and would provide funds to Jason and Dana as needed from his operating account.

(RR: par. 5).

Presenting speculative opinion testimony from a non-witness accountant is not competent substantial evidence and the Report of Referee's clearly and convincingly wrong ruling turns on this "speculative nonsense"[14] opinion by the Florida Bar accountant.[15]

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[14] As stated in *Arkin Construction Co. v. Simpkins*, 99 So.2d 557, 561 (Fla. 1957), a "conclusion or opinion of an expert witness based on facts or inferences not supported by the evidence in a cause has no evidential value." Without any evidence relating the injection to the claimant's accident, the gap between the infection and the accident could only be bridged by speculation and conjecture. Causal relationship must be supported by competent and substantial evidence, not mere speculation. *City of Jacksonville Police Department v. Hobbs*, 246 So.2d 561 (Fla. 1971); *Simmons v. Stanley*, 197 So.2d 514 (Fla. 1967). *Vict. Hosp. v. Perez*, 395 So.2d 1165 (Fla. 1st DCA 1981).

[15] The speculation of the Florida Bar as accepted by the Referee is found in Roy Jeter's statements:

> Q. Okay. So it's your position that it's fairly obvious that, because Mr. Howard did not provide you with the written options that he discussed with his client, that he didn't give him the options, and that because he didn't do that, he somehow deceived his client? That's the position?
> A. I think the fact that Dr. Howard created these records is evidence of a deception.

Jeter Dep. at 116:12-25; 117 (1-4).

Dr. Howard didn't testify that he would be better able to negotiate discounts based on this loan. This is another erroneous, unlawful and unjustified finding in the Report.

If in fact, the sworn, written and factually verified July 15, 2008, September 5, 2008, instructions and non-client status of the deceased Mr. Jason Hall, who never filed a Florida Bar Complaint, are taken as valid evidence, then the "speculative nonsense" opinion evidence of a non-fact witness that never met nor worked with Mr. Jason Hall, is not valid and there was no violation of trust accounting, nor violation of any client representation duties.

Dana Hall, economically motivated, moved for divorce immediately after settlement funds were received by Jason Hall, and a mediated separation and divorce process was completed on September 2, 2008.

The former client, Jason Hall, died on May 3, 2012, and never had a complaint concerning Dr. Howard nor filed a bar complaint against Dr. Howard. (RR: par. 8) (T: 238). Dana Hall hasn't worked since Jason Hall's death in 2012, and in July of 2016, after having the closed files for over two and one-half years, sent an extortionate demand of $355,031 against Dr. Howard (T: 228). Respondent's Response to Request to Produce, Howard 036-037, 047).

J. CLEARLY AND CONVINCINGLY WRONG FOR REPORT OF REFEREE TO DENY MONTH OF ACCOUNTING REVIEW PROVIDED PRIOR TO CLOSING OUT JASON HALL'S ACCOUNT BALANCE

After nearly one month of accounting review by the estate representative Sandra Fulop and ex-wife Dana Hall (T:199, 360-361402-408), Respondent's Response to Request to Produce, Howard 051, on December 23, 2013, "wanted to close out Jason's financial part of his estate," (T:191, 405-), and before three witnesses with review of a print-out of several pages of quickbook check entries and payments, (T:192), in an hour meeting, approved

accounting of any and all funds held, (T:193, 402-408) (R: Exhibit 15) which necessarily included the loan funds since they were from the same non-client $632,828 fund corpus, stating:

> Sandy Fulup
> 6600 Donerail Trail
> Tallahassee, FL 32308
>
> **RE: Full and Final Distribution of Jason R. Hall Non-refundable, Non-Client Funds**
>
> This letter **is to document and finalize this firm's distribution of any non-client funds held for Jason R. Hall**. After providing Sandy Fulup, as personal representative to the estate of Jason R. Hall and Dana Hall as the legal guardian of the minor children (heirs to the estate of Jason R. Hall**), a detailed briefing of all remaining non-client funds, as well as having the opportunity for independent counsel to review and advise, you have agreed that the outstanding balance is $16,200.** If any outstanding medical bills are satisfied without any further payment, a portion of the amount of those bills will also be refunded to you as well.
>
> *Sandra A. Fulup*
>
> Sandy Fulup as Personal Representative to the Estate of Jason R. Hall

(RR: par. 10) (T:205-206). A check was cut for that amount. (T:192). Dr. Howard had always paid without any difficulty, legitimate request from either his former client or ex-wife Dana Hall. (T: 361). Contrary to the express written language of "**any non-client funds held for Jason R. Hall**," the Referee states that "Terms of repayment of the loan were **not included in any accounting** or any of respondent's discussions with Ms. Hall and/or Ms. Fulup." (RR: par. 11). These were the same $638,828 corpus of funds and all funds were accounted for since the same corpus of funds included the loan to Jason Hall, included the interest on the residual savings from reduced medical costs. (T:228-229). Based on the termination of representation, and distribution of any and all funds and interest from the original corpus of $638,828, the file was closed. (T:238).

Consistent with Dr. Howard's testimony, Kim Mathews, whom the Referee relies on

states under oath that:

4. I was the office manager and paralegal for Howard & Associates from April 2002 through July 2014 and handled all of the banking during my employment. I was the only employee at the firm for the duration of Jason Hall's worker's compensation action, which settled in mid 2008.

5. I was the key paralegal for the pro bono work on Jason Hall's estate case from the time of Jason Hall's death in May 2012 until I left the firm in 2014. At that time, to my knowledge, **the only pending financial issue regarding funds held by Howard & Associates was Medicaid's demand for payment for which the amount requested had been held pending verification of the amount they were requesting.**

6. I am familiar with the allocation of funds for both of Jason Hall's cases, including Tallahassee Memorial Hospital's request for reimbursement of funds paid by their Charity Care program for Jason Hall's initial medical procedures, payments made directly to or on behalf of Jason Hall as the requested funds held (at Jason Hall's request) by Howard & Associates, and ongoing accounting to Jason Hall, Dana Hall, and Sandra Fulop as she became the Personal Representative of Jason Hall's estate.

7. Jason Hall's worker's compensation settlement [April of 2008] included $300,000 for payment of any past due medical bills. **An agreement was made between Jason Hall and Tim Howard where Howard & Associates would receive a 20% fee for any savings realized by the firm's negotiations of these bills**.

8. Upon the settlement of Jason Hall's worker's compensation action [April of 2008] **Tallahassee Memorial Hospital sent a letter seeking reimbursement of the payments made by their Charity Care program for Jason Hall, which was approximately $250,000. I contacted Tallahassee Memorial Hospital's billing department and explained that the worker's compensation settlement amount was based on these payments having been paid by the charity and that there were no funds available for reimbursement**. Tallahassee Memorial Hospital sent no further communication regarding the matter.

9. Jason Hall, knowing his drug use and potential loss of resources for his economic security, wanted a return on his money and wanted Tim Howard to provide this for him. Jason Hall ended the attorney-client relationship to accomplish this, and although I do not recall the exact language of the document, **I notarized Jason Hall's signature on a letter designating that the remaining funds held by Howard & Associates from his worker's compensation settlement as non-client and non-refundable funds.** These funds were referred to as such for the remainder of my employment at Howard & Associates.

10. Throughout the time that Howard & Associates held his funds for Jason Hall he would come to the office on a regular basis requesting funds for various needs. When he came by the office, his drug and alcohol abuse was apparent, as well as the abuse by many of the individuals around him, he was counseled to stop and remove himself from association with these individuals that were obviously using him.

11. Spiraling from alcohol and drug use, Jason Hall died in a car wreck in May 2012 and **to assist the family Howard & Associates represented the estate at no cost. Sandra Fulop, grandmother to the minor children, was appointed the Personal Representative of the estate. The firm also addressed a landlord tenant dispute, and assisted in analyzing the condition and repairs of the decedent's home for sale for the estate.**

12. **Subsequent to Jason Hall's death I had several meetings with Dana Hall where I provided accounting documents while Tim Howard had limited direct involvement other than to make sure that I provided all accounting and documents that were available to me at the time of meeting with her for full disclosure.**

13. Finally in December 2013, Sandra Fulop and Dana Hall met with Tim Howard and Ankur Mehta, another firm employee at the time, **where a review of the payments to and on behalf of Jason Hall were provided and a balance due to Jason Hall's estate was submitted to Sandy Fulop in the amount of approximately $16,000.**

14. A short time later a smaller sum was submitted to Sandy Fulop for payment of past due property taxes due on Jason Hall's home, in the amount of approximately $3,000 that had not been paid prior to finalizing the amounts held by Howard & Associates.

15. Based on the file being closed, and full disclosure and all documents previously provided for review and accounting, Dana Hall and Sandra Fulop weres given the original files.

16. **Throughout the entire time that the law firm represented Jason Hall and his estate, to my knowledge, the firm did all in its power to ensure that both Jason Hall and his estate were properly represented and their interests pursued.**

Respondent's Response to Request to Produce, Howard 4-7, 101-104.

K. CLEARLY AND CONVINCINGLY WRONG TO DENY EVIDENCE DOCUMENTING FIRM'S EFFECTIVE STRATEGY IN AVOIDING TMH DEMAND FOR $281,158

The Referee next incorrectly states that "respondent did not provide any evidence to support his claim that he earned a lien negotiation fee for negotiating the Tallahassee Memorial Hospital Lien Amounts. However, the respondent paid himself a $56,251.58 lien negotiation fee from the settlement funds." (RR: 18). On July 15, 2008, Jason R. Hall approved the Tallahassee Memorial Hospital lien savings amounts, was aware of the same demand made after the April 15, 2008 Worker's Compensation settlement, and strategy for denial of the Tallahassee Memorial Hospital Lien, and with this knowledge, approved both

the legal strategy and fee, and confirmed the same under oath and in writing, approving as follows:

> This firm **will receive a commercial contingency fee of 20% of any savings from the approximately $300,000 in medical expenses that this firm negotiates payments on. It is estimated that <u>this firm will save the client approximately $250,000, which will result in a commercial fee of approximately $50,000</u>**, and an approximate net return of $200,000 to the client, with a portion of the savings to reduce debt of the client, and the remaining to be placed in **an annuity for the client's benefit, as coordinate by this firm, with to funds to remain in the determined account until paid to the annuity**.

Id. (TFB Exhibit 3) (T:67-68) (emphasis added). Thus, contrary to the Referee's report, the client knew of the approximate $200,000 in planned savings from the prior legal strategy against Tallahassee Memorial Hospital, was aware of the amount of fee, and approved the same. Moreover, Tallahassee Memorial Hospital demanded in writing $281,158 from Jason Hall, once they knew that Dr. Howard's work for his Jason Hall's worker's compensation case was successful. (T:154-155). Kim Mathews, from the law firm informed Tallahassee Memorial Hospital that "the settlement had been reached with the understanding that that bill had already been paid by a charity and was no longer a bill for Jason Hall, so there was no money included in the settlement to pay that bill." (T:155). This was before the settlement funds came in and prior to the July 15, 2008 sworn directives from Jason Hall. Respondent's Response to Request to Produce, Howard 4-7. The Referee later reverses what he states in paragraph 18, and now **acknowledges some credible evidence, and that "[Dr. Howard's] correspondence/communications with the Hospital (See Kim Matthews; paragraphs 44-46) may have been a factor in the hospital not seeking to reinstate (seek to collect) their bill" (RR: 38)** this stating:

> Kim Matthews recalled that **the hospital attempted to seek payment after the case settled, and per [Dr. Howard's] instructions, she notified the hospital billing department that the settlement was based on no bill being owed** to the hospital at the time of settlement (since the bill had already been

written off).

(RR: 45). This didn't mean that the hospital could or would not pursue the claim. Dr. Howard's legal strategy, approach and instructions, were effective.

III. REPORT OF REFEREE CLEARLY AND CONVINCINGLY WRONG IN ITS RULING ON MARGARET "PEGGY" HARRIS BAR COMPLAINT[16]

A. CLEARLY AND CONVINCINGLY WRONG TO FIND ANY VIOLATION OF RULE 4-1.1 (Competence) AND RULE 4-1.3 (Diligence) BY CLEAR AND CONVINCING EVIDENCE

TFB incredulously alleges that despite his decades of substantive experience as a foundational figure in both the legislation and litigation from which the *Engle* litigation and its progeny arose and as plaintiff's 'counsel in thousands of *Engle* cases, somehow Dr. Howard was "not experienced in handling complex tobacco litigation cases." Complaint at 6. TFB failed to offer even an iota of evidence to support that allegation. To the contrary, Mr. Williams testified that Dr. Howard's professional history, earned accolades and personal interactions made clear to him that Mr. Howard was a well-experienced tobacco ·litigator. Dr. Howard's own testimony, even in a truncated recitation of his extensive curriculum vitae, made obvious that the depth and breadth of his *Engle* experience is likely unparalleled.

Mrs. Harris never stated any belief that Dr. Howard was incompetent, noting instead only her unfounded belief that her husband's complex matter should have progressed to trial quicker. She testified that Dr.·Howard had "fairly regular" communications with both her and her husband throughout the course of his representation and that both Dr. Howard and Mr. Williams spent time - in person - at the Harris home preparing Mr. Harris for his depositions. Oddly, in singular support for her contention that Dr. Howard improperly

[16] Dr. Howard has paid for the transcripts pertaining to the Margaret "Peggy" Harris Bar Complaint and proceedings in December of 2020, and will update this Initial Brief with citations upon their receipt.

demanded payment for certain hard costs, Mrs. Margaret Harris pointed to a short July 10, 2018, email that simply advised Mrs. Margaret Harris that certain trial-related costs (including a week-long rental of housing near the courthouse costing $10,000) had been satisfied and offered those prepaid arrangements to Mrs. Margaret Harris's counsel for their use. *See* Exhibit 4. Mrs. Margaret Harris testified that she did not recall receiving (nor did she produce) any bill, invoice or actual demand made by Dr. Howard for the repayment of those expenses or any threat in relation thereto. To her credit, Mrs. Margaret Harris testified that Dr. Howard in fact did not demand $12,000 for her husband's autopsy and related preservation costs, a reality which TFB chose to ignore when it expressly pled that Dr. Howard "requested reimbursement" of that cost from Mrs. Margaret Harris. Complaint at p. 11.

Mrs. Margaret Harris further testified that Dr. Howard "reached out" to her "several times" around May 2018, but that she "did not have any interest in speaking with him." *See, e.g.* Exhibit 3. Despite this fact, Dr. Howard undertook reasonable efforts to have Matt Hinson, a probate specialist, handle the ongoing probate matter. To that end, Dr. Howard pursued Matt Hinson's legal services and paid his fee at no cost to the Estate.

Other than her testimony concerning the satisfactory preparations unde1taken by Dr. Howard and his team for her husband's depositions and her beliefs as to the July 10, 2018, email, Mrs. Margaret Harris's testimony was notably lacking any certainty as to any of the other allegations advanced by TFB's pled narrative. Undeterred, TFB generally alleges, without specifying any particular conduct, that Dr. Howard's representation of Mr. Richard Harris and/or his eventual Estate was not reasonably diligent and that he did not perform "preparation reasonably necessary for the representation." *See Rules* 4-1.3 and 4-1.1. In so doing, TFB intentionally ignored the critical and undisputed facts that: (i) but for Dr.

Howard's actions in developing Mr. Richard Harris's case during his life and in expertly preserving his trial testimony prior to his death, the $10 million plaintiff's verdict could not have been achieved; and (ii) no prejudice resulted from the temporary closure of the probate case.

B. CLEARLY AND CONVINCINGLY WRONG TO FIND ANY VIOLATION OF RULE 4-5.1 (Supervision) BY CLEAR AND CONVINCING EVIDENCE

Mr. Jaakan Williams testified as to his impressive credentials and work history, elements which no doubt allowed him to achieve his current position as the State's Attorney for Williams County, North Dakota. He specifically testified that he acquired material experience in depositions and in managing sizeable case-loads during his tenure as assistant general counsel for two separate Florida state agencies over a nearly seven year period prior to joining

Dr. Howard's law firm. TFB 's misguided efforts to portray Mr. Jaakan Williams as a novice practitioner incapable of handling a caseload with adequate supervision were exposed by the testimony received. Mr. Jaakan Williams testified that although he had no experience with probate cases prior to joining Dr. Howard's firm, he similarly had no prior experience in election matters or alcohol and tobacco enforcement actions before being hired in roles to carry out those duties for two state agencies.

Mr. Jaakan Williams did as attorneys are expected to do: reasonably apply acquired legal training and acumen·to the task at hand in order to provide the legal services required. Indeed, Mr. Jaakan Williams expressly testified that he provided competent and adequate representation to the Harris' to the best of his abilities. Undeterred by this fact, in J.B. Harris' effort, adopted by TFB and Referee, to smear Dr. Howard with the fallacious contention the Mr. Jaakan Williams was not adequately trained or supervised, TFB ignored the widely recognized tenet that

> [p]erhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate presentation in a wholly novel field through necessary study.

Comment to Rule 4-1.1.

As to the *Harris* tobacco litigation, Dr. Howard encouraged Mr. Jaakan Williams's involvement in numerous ongoing tobacco trials and integrated him into the firm's numerous representations. Mr. Williams was afforded unfettered access to the complement of collaborative materials and Listserv communications regularly shared among Dr. Howard and his fellow veteran *Engle* plaintiffs' counsel throughout Florida.

At Dr. Howard's direction, Mr. Jaakan Williams met with Mr. Richard Harris on numerous occasions prior to the commencement of his discovery deposition on Monday, June 19, 2016. As assigned by Dr. Howard, Mr. Jaakan Williams reviewed various materials with Mr. Harris in an effort to facilitate accurate sworn testimony. Mrs. Margaret Harris testified that Mr. Jaakan Williams "did a good job" in his overall preparation of Mr. Richard Harris. Following each of the three days of the discovery deposition, Mr. Jaakan Williams discussed the day's testimony with Dr. Howard and they shared evaluations of Mr. Richard Harris's condition and performance.

Dr. Howard testified that he utilized these discussions and collaborations - along with his extensive knowledge of Mr. Richard Harris's personal background and the representations previously made during the course of the litigation - to draft proposed errata sheets. Those errata sheets addressed only one day of discovery deposition testimony and were drafted in conformity with prior sworn statements made by Mr. Richard Harris.

Mr. Jaakan Williams testified that Dr. Howard sat at Mr. Harris's bedside following the discovery deposition and read the suggested errata sheets to Mr. Richard Harris "line by line." Mr. Richard Harris appeared to all present to be "cognizant and aware" at all times

during the reading and Mr. Richard Harris did not voice or indicate any disagreement with the suggested revisions. Mr. Jaakan Williams further testified - and it is undisputed - that Mr. Richard Harris signed each page of the recited errata sheets by his own hand. Now, coming some four years after the fact, Mr. Jaakan Williams' illusory testimony that he was "concerned" about the existence of the discovery deposition errata sheets is highly suspect and should be disregarded. Notably, Mr. Jaakan Williams admitted, despite such a purported "concern," he never raised the issue with anyone prior to being contacted by TFB, he continued to work for Dr. Howard for another 18 months following the discovery deposition and he researched and worked on the firm's response to a motion to strike those very errata sheets.

As to the probate representation, Mr. Jaakan Williams testified that Dr. Howard would periodically "check in" with him on various probate matters and that he would provide regular status updates. Mr. Williams further testified that despite the fact that Dr. Howard discussed the firm's probate cases with him and made training resources available to him, he did not avail himself of any CLEs or similar materials to further develop his probate practice because he had acquired adequate training to handle the probate matters to which he was assigned.

As to the events which led to the short-lived dismissal of the probate matter, Dr. Howard's testimony is entirely supported by Matt Hinson's testimony which, in turn, conformed with Matt Hinson's detailed letter submission to TFB's grievance committee dated April 19, 2019. *See* Exhibit 5. Well before any affirmative action we action was taken by the Probate Court, after some initial confusion as to whether the subject *Harris* case was among the matters Matt Hinson had already agreed to handle (as there were two *Harris* Engle tobacco cases being addressed at the same time) a mere 24 hours later, Mr.

Howard asked Matt Hinson to appear in the *Harris* probate matter. When Matt Hinson did not respond to Dr. Howard's request in the negative, Dr. Howard regrettably then proceeded under the assumption that Matt Hinson would be handling the probate matter. It was a reasonable albeit unfortunate assumption which continued until Dr. Howard was notified by the Probate Court of a non-appearance in May 2018 and, as a result, the probate matter had been dismissed. Dr. Howard testified that he took immediate action to cure the dismissal; a *pro forma* remedy which Matt Hinson confirmed is "pretty procedural," results in no harm to the estate and which (at least in board certified probate attorney Matt Hinson's notable nine years of experience) has never been denied by any Probate Court in Florida. To get the curative pleading on file, Dr. Howard paid Matt Hinson his agreed upon fee and the matter would have been rapidly resolved had it not been for JB Harris bruskly demanding that Matt Hinson "stand down" and take no further action to reinstate the probate case.

The malevolent and indelible fingerprints of attorney JB Harris, a bitterly disgruntled former colleague of Dr. Howard, became evident during the final hearing. Mrs. Richard Harris admitted that the bulk of her hyperbolic submission to TFB set forth "JB's ideas and beliefs," not her true feelings as it was drafted entirely without her revisions. Mr. Jaakan Williams communicates regularly with JB Hanis to "keep abreast" of issues impacting Dr. Howard and is aware that Dr. Howard and JB Harris are actively litigating a fee split contract for certain cases. He further admitted that JB Harris discussed various submissions to TFB with him. Sadly, Dr. Howard has become JB Harris's target and TFB and Referee's report has parroted allegations which Mrs. Harris herself has disavowed.

Here, by alleging wrongdoing without sufficient proofs, TFB has contorted this into a biased referendum on Dr. Howard by furthering the baseless rantings of an inexplicably vengeful former employee. The Referee adopted this contorted smoke instead of focusing on

the facts before it. Attorneys must deal in facts and law; TFB and the Referee as guardian of legal practice in Florida should be held to no less than the same standard. Because the testimony and proofs received fail to establish by clear and convincing evidence that Mr. Howard violated any *Rule,* Respondent respectfully submits that Respondent has met its burden of proof that the Referee's report be dismissed as clearly and convincingly wrong, erroneous, unlawful, and unjustified.

IV. CLEARLY AND CONVINCINGLY WRONG REPORT OF REFEREE IN RESPONSE TO SANDRA FULUP/DANA HALL BAR COMPLAINT

Dr. Howard represented Mr. Jason Hall for years, and while Dr. Howard was teaching constitutional law at Boston University, worked tirelessly to win him a sizeable award, the largest workers' compensation recovery in the region's history, from a daunting workers' compensation claim, where Mr. Jason Hall was tested positive for marijuana use on the day of the accident, and as a result, no law firm would represent him.

During the course of the resulting professional and personal relationship that was forged between Dr. Howard and Mr. Jason Hall, Mr. Jason Hall shared aspects of his lifestyle and detailed his unique financial preferences. Among those notable preferences was the management of a small portion of the monies saved by Dr. Howard's negotiations and legal positions taken to reduce payment of Mr. Jason Hall's medical expenses, which was discussed and considered before the documents and agreements were executed, so that Mr. Jason Hall could have some supplemental income for a period of time.

This small supplemental income of $70,953.97 net, was in addition to Mr. Jason Hall's home worth over $159,000, that was paid for, the $281,000 annuity of over $1,250 a month that was paid for, his social security disability income of $1,250 a month, the $300,000 annual Medicare coverage of $13,000 annually, and $50,000 college funds for his

children that was paid for, and the significant assets given to his ex-wife, Mrs. Dana Hall, (who orchestrated this Bar Complaint due to no employment in nearly 10 years and seeking to extort Dr. Howard out of $353,000), that all came from Dr. Howard's representation of Mr. Jason Hall.

Mr. Jason Hall came to trust Dr. Howard and appreciated the holistic perspective and guidance he offered. Perhaps knowing that his financial objectives and directives could be viewed as out of the norm by some not familiar with his lifestyle and preferences, Mr. Jason Hall's directions were required by Dr. Howard to be researched, and reduced to signed and notarized writings, so that his intentions were clear and unquestioned, and complied with the Rules Regulating the Florida Bar. Mr. Jason Hall purposefully instructed Dr. Howard to terminate their attorney-client relationship for the worker's compensation claim on August 5, 2008, and for any and all other legal matters (his divorce) on September 2, 2008, and to transfer and manage the medical costs savings in a certain way that best fit his personalized and long-term needs.

Now nearly 10 years after his death in 2012, and after any potential civil causes of action against Dr. Howard have expired, and final accounting was completed and signed in writing and all funds paid on December 223, 2013, Mr. Jason Hall's ex-wife and former mother-in-law now seek to realize a financial benefit by demanding in July of 2016 $353,000, and if the extortion was not paid, to recast Mr. Jason Hall's and Dr. Howard's relationship and dealings as unlawful and otherwise improper, even though they were not fact witnesses and had nothing in writing signed or verified by the client, Mr. Jason Hall. Over a period of 4 years, assisted by counsel for Ms. Dana Hall and Ms. Sandra Fulup, Richard Greenberg, a former Florida Bar prosecutor, perjurer J.B. Harris, TFB, and its auditor, Mr. Roy Jeter, adopted and refined their jaundiced view, and the Referee adopted

their jaundiced view by broadly speculating and supposing leading to an erroneous, unlawful, and unjustified Report, instead of following the facts to where they actually lead.

Despite the voluminous investigative productions and extensive trial testimony received, no reliable proofs were established to show the Dr. Howard did anything other than follow Mr. Jason Hall's explicit directives and serve his expressed needs. Try as it might, a revisionist history of Dr. Howard's actions cannot change the existing facts or impart malicious intentions where they simply did not exist. It is an unfortunate reality that hammers often only see nails, and as a result, Dr. Howard has been swept into the instant action and the Referee adopted the TFB's speculative position with a raft of rules violations for which no liability has been shown.

The evidence received at the final hearing fell far short of satisfying the clear and convincing burden, and the Referee's adoption of speculation and suppositions resulted in a Report of the Referee being erroneous, unlawful and unjustified.

The TFB Complaint alleged one violation of Chapter 3 (Discipline), ten violations of Chapter 4 (Professional Conduct) and five violations of Chapter 5 (Trust Accounts). Chapters 3 and 4, naturally, require proofs of violation from the former or existing client of an attorney. Here, testimony made plain that all subject events concerning the Estate of Mr. Jason Hall occurred during Ms. Fulop's term as Personal Representative yet Ms. Fulop's only issue with Dr. Howard concerns the satisfaction of a loan agreement entered into <u>after</u> Mr. Jason Hall had terminated his attorney-client relationship with Mr. Howard.

The alleged violations of Chapter 5, are all premised upon TFB's fundamental refusal to even consider, never mind militate, the express written and notarized directives of Mr. Jason Hall to his then-attorney, Dr. Howard. As explained by Mr. Jeter in his testimony, Chapter 5 <u>only</u> applies to trust funds so if no funds are held in trust, there can be no

violation of any Chapter 5 regulation.

The Referee received hundreds of pages of documents in the hearing on this matter which were all made possible by Dr. Howard's wholesale giving of Mr. Jason Hall's files to Mrs. Dana Hall and Mrs. Sandra Fulup, in January of 2014, since Mr. Jason Hall ceased being a client in the late summer and early fall of 2008. Among these documents were four core documents which the Referee has purposely chosen to materially discount or entirely ignore: (1) Mr. Jason Hall's July 15, 2008 notarized single page directive to Dr. Howard instructing him to treat the remaining funds that Dr. Howard saved from the medical expense negotiations as non-client, non-refundable funds, see Exhibit 4; (ii) Mr. Jason Hall's July 15, 2008 notarized two page directive to Dr. Howard instructing him how his funds were to be treated and itemizing ce1iain allocations he wanted made, *see* Exhibit 3; (iii) Mr. Jason Hall's September 5, 2008 notarized termination of Dr. Howard's legal services, *see* Exhibit 5; and (iv) the September 5, 2008 loan agreement between Mr. Jason Hall and Dr. Howard, *see* Exhibit 7 (collectively, "Core Documents").

It is uncontroverted that these documents all bear Mr. Jason Hall's signature and that they memorialize his intentions and the express directions he gave to Dr. Howard. Sadly, the Referee has chosen to ignore these direct client documents seemingly because they do not advance the TFB contrived narrative of improper influence and misappropriation. Indeed, the Referee cherry-pick circumstances and documents in an effort to show that—despite all the presented evidence to the contrary—Mr. Jason Hall was somehow unable to understand and direct the management of his own affairs. The Referee would have the Supreme Court to believe that Mr. Jason Hall was sophisticated enough to participate in and further the litigation of a very difficult workers' compensation lawsuit to realize a significant financial award, manage the financial details of his divorce with his ex-wife, Mrs. Dana Hall, had the

foresight to thoughtfully direct and approve the structuring and management of the over $1 million in award funds, which resulted to provide for his annuities and to satisfy numerous obligations to creditors and family members, yet that he was simultaneously not competent enough to direct his long-time counsel and confident as to how he wanted certain remaining funds saved from medical costs negotiations and legal strategy to best suit his unique lifestyle and needs. Without every meeting Mr. Jason Hall, the Referee adopted the position of TFB auditor Roy Jeter, who demeaned Mr. Jason Hall's directions as "nonsense" and "irrational" and with similar abandon the Referee chose to ignore Dr. Howard and Kim Mathews repeated sworn and first-hand knowledge of the deceased Mr. Jason Hall's directives and intentions.

Here, in a bar proceeding formally commenced in 2016—more than a decade after Mr. Jason Hall's workplace accident and more than eight years after Mr. Jason Hall gave his detailed and fully informed written and sworn directive to his then counsel, with the hearing more than twelve years after the operative facts and more than eight years after Mr. Jason Hall deceased, the Referee chose to ignore all such circumstances, accepting the uncontroverted and clearly expressed client directive as "nonsense" and imposed a deceitful intent upon Dr. Howard without appreciable support with starkly absent and insufficient proofs.

V. THE MERITS

A. CLEARLY AND CONVINCINGLY WRONG FOR THE REFEREE TO FAIL TO REQUIRE THE FLORIDA BAR TO SHOW ANY VIOLATION OF CHAPTER 3 BY CLEAR AND CONVINCING EVIDENCE

The Complaint alleges and Report of Referee adopts that Dr. Howard committed misconduct and minor misconduct in violation of *Rule* 3:4-3 by his general actions concerning Mr. Jason Hall and his eventual Estate. Without specifying any particular act or

course of conduct, by alleging violation of this Rule TFB contends and the Report of Referee adopts that Dr. Howard committed an "unlawful" act or an act that is "contrary to honesty and justice." *Ibid.* The evidence fails to show that Dr. Howard committed any such acts. Indeed, the proofs have shown quite the contrary because Dr. Howard has been entirely forthright in not only his communications with TFB but with Mr. Jason Hall and the Personal Representatives of his Estate. *See, e.g.* Exhibit 14. Indeed, it would be hard to reasonably consider Dr. Howard's multitude of correspondences and voluminous productions to TFB as anything but over-inclusive, collaborative and facilitating. He took no actions to occlude or hide any of his activities, rather; Dr. Howard ensured that all subject actions with Mr. Jason Hall were properly understood and thoroughly memorialized in sworn writings. *See, e.g.* Exhibits 3, 4, 5 and 7.

B. CLEAR AND CONVINCING FAILURE TO SHOW ANY VIOLATION OF CHAPTER 4 BY CLEAR AND CONVINCING EVIDENCE

The Referee adopts TFB allegations that Dr. Howard failed to provide "competent representation to a client" in violation of *Rule* 4-1.1 and that he did not act "with reasonable diligence and promptness" in violation of *Rule* 4-1.3, yet no substantive evidence in support of those allegation was presented. Mr. Jason Hall never complained about the nature or quality of the legal services provided by Dr. Howard, Ms. Dana Hall lodged no complaints about Dr. Howard's services during her brief term as personal representative of Mr. Jason Hall's Estate and Ms. Sandra Fulop took no issue with Dr. Howard's services. In fact, Ms. Sandra Fulop's testimony made clear that her only dissatisfaction was rooted in her belief that Dr. Howard did not satisfy his contractual obligations under the loan agreement which Dr. Howard produced to Ms. Dana Hall. *See* Exhibit 7. As such, no cognizable claims have been made against Dr. Howard concerning the competency with which he provided his legal services.

The Referee also adopted the TFB allegation that Dr. Howard failed to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation" in violation of *Rule* 4-l.4(b). The only discernable subject circumstances even suggested by TFB was that Mr. Jason Hall did not understand what he was asking Dr. Howard to do with his own money. Such an unsupported proposition was directly controverted by the testimony that Mr. Jason Hall never expressed a lack of understanding to anyone, including his ex-wife and former mother-in-law. Thus, any conjecture as to what Mr. Jason Hall understood and the sufficiently with which Dr. Howard explained certain matters to him fail to rise above reckless speculation.

The Referee adopted the TFB allegation that Dr. Howard entered into an agreement for a "clearly excessive fee" constituting "clear overreaching or an unconscionable demand by the attorney" in violation of *Rule* 4-1.5(a)(1). Here, the agreed upon 20% fee for "any savings from the approximately $300,000 in medical expenses" is certainly within the norm for a contingent and no proofs have been provided to show that such percentage was either atypical or impermissible.

As for the services provided, TFB spent considerable time focusing upon the more than $281,158 in medical liens asserted by Tallahassee Memorial Hospital ("TMH") for Mr. Jason Hall's care. Notably, TFB failed to produce any representative from THM to assert that THM initially adjusted the medical costs to a charity care forgiveness status. Instead, TFB relied solely upon the testimony of Ms. Dana Hall who (i) only vaguely recollected receiving letters from THM which noted the charity care designation; and (ii) who claimed to have no knowledge of the fact that after the workers' compensation award funded, THM tried to remove the initial charity care designation and to collect its expended costs. The Referee adopted this speculative testimony of a non-witness to the facts.

Unrefuted testimony from both Dr. Howard and his former paralegal, Kim Matthews, confirmed the subsequent communication from THM to revive its liens and the fact that Dr. Howard's refusal to accede to THM's change of heart and his threat to litigate resulted in TMH's full surrender of its collection rights. Moreover, despite TFB's contention, Dr. Howard testified that Kim Matthew's sworn affidavit recounting her interactions with TMH was produced to TFB over the course of their extensive investigation and audit and placed into evidence before the Referee. Unfortunately, Ms. Matthews' affidavit and testimony appears to have been set of sworn instruments which Referee elects to ignore.

The Complaint also alleges Dr. Howard created a conflict of interest by purportedly borrowing trust funds from Mr. Jason Hall in violation of *Rule* 4-l.8(a). To support this accusation, TFB would need to show and the Referee accept, at a minimum, that: (i) Mr. Jason Hall was a client at any relevant time, (ii) that the transaction involved trust funds and not regular fungible funds; and (iii) that Mr. Jason Hall engaged in a business transaction with, or gave a self-adverse interest to, Dr. Howard. TFB was only able to show that a business transaction existed; a showing only made possible because Dr. Howard himself gave Ms. Dana Hall, Ms. Sandra Fulop and TFB a copy of the signed loan agreement itself. As shown by Dr. Howard's testimony and by the September 5, 2008 termination of services letter, Mr. Jason Hall was not a client at the time the loan agreement was funded and entered. *See* Exhibits 5 and 7. Similarly, because Mr. Jason Hall had explicitly directed Dr. Howard not to hold the savings of his medical expenses in trust, the portion of the subject funds which constituted the corpus of the loan were <u>not</u> trust funds. TFB failed to produce any evidence to materially contradict either of these two established pivotal elements and, as such, this claim was not established.

TFB makes the unqualified claims, which were adopted by the Referee, that Dr.

Howard "knowingly made a false statement of material fact or law to a third person" and "knowingly made a false statement of material fact in connection with a disciplinary matter, in violation of *Rules* 4-4.1(a) and 4-8.l(a) respectively, but failed to establish at final hearing what those supposed false statements were. Notwithstanding this, the Referee adopted TFB's position. Indeed, Mr. Jason Hall never contended that Dr. Howard made a false statement to him and no testimony elicited from Ms. Sandra Fulop or Ms. Dana Hall identified any such statements. Testimony from TFB's auditor was similarly silent on any false statements made by Dr. Howard; rather, it was noted that Dr. Howard submitted numerous correspondences and made researched arguments therein but made no statements which were proven at trial to be false.

TFB claims and the Referee adopts the position that Dr. Howard engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of *Rule* 4-8.4(c) alleging that he produced a "false accounting" of third-party medical liens, *see* Complaint paragraph 46, he provided a "dishonest accounting" for his loan with Mr. Jason Hall, see Complaint at paragraph 61, and he "falsely certify[ed] that he had not received or held client funds for years ending in 2011 and 2012, see Complaint at paragraph 68. Each of these claims went unproven at the final hearing, yet the Referee adopts them without evidence.

First, TFB contends, and the Referee adopts that Dr. Howard falsely accounted for the third-party medical liens because they refuses to acknowledge his document productions to it, along with his testimony and the testimony of Kim Matthews which buttress the fact that his firm successfully negotiated down medical liens to result in a realized savings to Mr. Jason Hall.

Second, TFB contends, and the Referee adopts Dr. Howard's accounting of his loan with Mr. Hall was "dishonest" but did not show that Dr. Howard was anything but forthright

concerning the loan, its existence and its status. Indeed, it was Dr. Howard who produced the original loan document to Ms. Dana Hall along with the entirety of Mr. Jason Hall's file after his death. It was Mr. Howard who repeatedly discussed the loan, its interest and repayment with both Ms. Jason Hall and Ms. Sandra Fulop (the actual personal representative of Mr. Jason Hall's Estate) and it was Dr. Howard who repeatedly referenced and explained the loan status in his multiple correspondences to TFB. There was no showing made that Dr. Howard was anything but open and honest with Mr. Jason Hall during the entirety of their professional and personal relationship.

Third, TFB contends and the Referee adopts that Dr. Howard falsely certified that he had not received or held client funds for years ending 2011 and 2012, but it failed to show either of the central elements to that offense. Namely, it has not shown that Dr. Howard actually received client funds which were to be held in trust and it failed to show that Dr. Howard ever certified such circumstances for the years ending 2011 and 2012. TFB attempted to elicit testimony from its staff auditor concerning certain bar membership forms purportedly submitted by Dr. Howard but those form documents did not contain Dr. Howard's signature or any other indicia that they were submitted by Dr. Howard. As such, those documents were not authenticated and not admitted into evidence. TFB took no steps to attempt to cure the inadmissibility prior to submitting its case and, thus, not only was a false certification not shown, no certification by Dr. Howard at all was shown at the final hearing.

Among its more outrageous claims against Dr. Howard, TFB contends and the Referee adopts that Dr. Howard engaged in conduct "prejudicial to the administration of justice" in violation of *Rule* 4-8.4(d). Such a charge typically involves acts of humiliation or discrimim1tion aimed at participants in the judicial process but aside from a single reference

to this rule in the Complaint at paragraph 69, it is not referenced anywhere else in the Complaint nor was it the subject of testimony at the final hearing. As no testimony was received that could provide even a colorable basis for violation of such a rule by Mr. Howard, it should have been dismissed out of hand. Yet the Referee did not and his ruling was erroneous, unlawful, and unjustified.

CONCLUSION

The Report of Referee's core basis for a series of Florida Bar Rule violations derive from the "speculative nonsense" opinion inference testimony of a non-fact, non-lawyer, accountant for the Florida Bar that found sworn, written, signed by Jason Hall in the summer of 2008 directives from the deceased client, who never filed a Florida Bar Complaint, and was verified by two contemporaneous fact witnesses with direct involvement with the deceased client, as "nonsense".

The sworn, written, signed by Jason Hall, and factually verified instructions and non-client status of the deceased Jason Hall from the summer of 2008, who never filed a Florida Bar Complaint, as verified by two contemporaneous fact witnesses, were unrebutted by any fact witness or evidence from the Florida Bar.

"Speculative nonsense" opinion inference testimony from a non-fact witness accountant that was not involved with the facts in the summer of 2008, is not competent substantial evidence and the Report of Referee's entire ruling turns on this "speculative nonsense" opinion by the Florida Bar accountant. If the sworn, written, signed by Jason Hall, and factually verified, by two fact witnesses, instructions and non-client status of the deceased Jason Hall, who never filed a Florida Bar Complaint, are evidence, then the "speculative nonsense" opinion evidence of a non-fact witness that never met or worked with Jason Hall, much less in the summer of 2008, is not rebuttal testimony, but is mere

speculation. "Speculative nonsense" testimony is "not competent substantial evidence" and "contradict[s] clear direct evidence." *Realauction.com, LLC, v. Grant St. Group, Inc*., 82 So.3d 1056, 1059 (Fla. 4th DCA 2011), *citing Kam Seafood Co. v. State,* 496 So. 2d 219 (Fla. 1st DCA 1986). As a result, it is clearly and convincingly wrong, erroneous, unlawful, and unjustified to for the Referee to rely on "speculative nonsense" opinion testimony and infer that Jason Hall was a client after the summer of 2008, that Jason Hall didn't do a non-client loan after representation ceased, and that trust funds were held for Jason Hall,

Respectfully submitted on this 4th of November, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of Novembe 2021, I electronically filed the foregoing with the Clerk of the Court for the Second Judicial Circuit, in and for the State of Florida, Leon County, by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Phillip Timothy Howard
Phillip Timothy Howard, Esq.