

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

BRIAN P. RUSH,
Respondent.

Supreme Court Case
No. SC20-1685

The Florida Bar File
No. 2018-10,741 (13B)

Received, Clerk, Supreme Court

FEB 10 2022

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

The Florida Bar filed a formal complaint against Respondent on November 17, 2020. The Honorable Linda R. Allan was appointed to serve as Referee on November 20, 2020. Respondent filed his Answer and Affirmative Defenses on December 7, 2020. The parties and the Referee asked for an extension of time to file the report of referee from the Supreme Court of Florida, and the same was granted until October 15, 2021. Due to scheduling issues, Judge Allan was withdrawn as Referee, and the

undersigned, the Honorable William Douglas Baird, was appointed to serve as Referee on April 15, 2021. There followed several months of discovery and motion practice.

The parties held a final hearing to determine guilt on September 22, 23, 24, 27, 28, 29, and 30, and October 4, 2021. The following witnesses testified on behalf of The Florida Bar in its case in chief: Respondent Brian Rush, Esq., Guy Burns, Esq., Todd Taylor, Richard Petitt, Esq., Aloyma Sanchez, Esq., Phillip Hobby, Jack Suarez, and Devon Rushnell. The following witnesses testified on behalf of Respondent in his case in chief: Reginald Mesimer, Kevin Lee, Michael Rocha, Esq., expert witness Henry Campbell, Esq., and Respondent Brian Rush, Esq. The referee received into evidence the following exhibits from The Florida Bar: TFB Exhs. 1, 3-7, 9-25, 26A-26I, 26K-26S, and 27-30. The Referee received into evidence the following exhibits from Respondent: R. Exhs. 1, 3-5, 7-16, 28, 29, 32, 34, 38, 39, 43, 45, 46, 59, 61, 62, 76-79, 90, 91, 93, 94, 99, 101, 102, 107, 110, 122, 123, 125, 133, 141-143, 145, 147, 148, 150-155, 165, 166, 168, 170-173, 178-182, 198, 201-308, 311, 313-320, 323, 328-333, 336, 342, 352, 353, 388, 389, 422 and 437.

On October 5, 2021, the parties and Referee asked for a second extension of time from the Supreme Court, which was granted until January

18, 2022. On November 9, 2021, the parties set a sanction hearing for January 5, 2022. The Referee issued Preliminary Findings of Fact and Conclusions of Law Following Trial on December 27, 2021, finding Respondent guilty of misconduct justifying disciplinary measures. On January 4, 2022, Respondent filed a Motion to Stay Proceedings, which was heard and denied on January 5, 2022, and the sanctions hearing was completed as scheduled that day. The parties and Referee requested a third and final extension of time to file the final report of referee, which was granted until February 18, 2022. All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Kimberly Anne Walbolt, Esq., Katrina S. Brown, Esq., and Shelia Marie Tuma, Esq.

For the Respondent: Dale R. Sisco, Esq. and Brian P. Rush, Esq.

II. FINDINGS OF FACT

A. Jurisdictional Statement

Respondent is, and at all times mentioned during this Investigation was, a member to The Florida Bar subject to the jurisdiction and Disciplinary Rules of the Florida Supreme Court.

B. Narrative Summary

References to The Florida Bar's Exhibits will be made by "TFB Exh." followed by the exhibit number and page number if referenced. References to Respondent's exhibits will be made by "R Exh." followed by the exhibit number and page number if referenced. References to the transcript of the final hearing held September 22, 23, 24, 27, 28, 29, and 30, and October 4, 2021 will be made by "Trial Tr." followed the relevant volume and page number(s). ¹

¹ The following page numbers of the transcripts correspond to the dates of the final hearing as follows: September 22, pages 1 to 228; September 23, page 229 to 433; September 24, pages 434 to 612; September 27, pages 613 to 759; September 28, pages 760 to 928; September 29, pages 929 to 1071; September 30, pages 1072 to 1242; and October 4, pages 1243 to 1380.

Introduction

This matter involves a member of the Florida Bar who the Referee finds violated the Standards of Conduct and Rules of Professional Conduct of the Rules Regulating Members of The Florida Bar.

The Respondent, Brian Rush, Esq., was retained to represent two limited liability companies that owned property in Hillsborough County. A portion of that property was the subject of an eminent domain action by the Florida Department of Transportation. Respondent was employed to represent the companies in that action. The description of the conduct and events that led to the Referee's finding of violations is long and complicated, involving individuals and interests beyond just the Respondent and his client. The culmination of the events described herein lead the Referee to two overarching conclusions regarding the Respondent's conduct.

1. Respondent conducted his representation in a manner that promoted his financial self-interest, namely his desire for a greater attorney's fee than he would otherwise receive, over his obligation to serve the interests and objectives of his client.

2. Respondent prepared and entered a written representation contract with the client that contained confusing, contradictory, and self-serving provisions. Respondent relied upon the uncertainties and

ambiguities created by his contract to threaten and intimidate his client and others in order to pursue his objective of greater attorney's fees, to the detriment of, and in direct opposition to, the objectives of his client.

What follows is a brief introduction to individuals who played a significant role in matter that resulted in this proceeding. That will be followed by a description of the relevant evidence and testimony that the Referee considered in determining the wrongful nature of the Respondent's conduct.

Respondent

Respondent, Brian Rush, Esq., is an experienced litigation attorney. He was admitted to the Florida Bar in 1982, and worked at various law firms in Tampa until 1987 when he formed his own P.A. In addition to practicing law, he was an elected member of the Florida House of Representatives from 1986 to 1994. As a portion of his litigation practice, he has represented landowners in eminent domain cases since approximately 1986 or 1987.

The Client

The Respondent's clients were two Florida limited liability companies, North Park Isles, PTC, LLC, which owned a 400-plus acre property off Sam Allen Road near Plant City, Hillsborough County, initially known as North

Park Isles, and JT North Park, LLC which was the management company for the property (collectively "North Park Companies"). The Companies were owned by three managing members: Jack Suarez, Bob Suarez, and Todd Taylor.

The principal individuals, other than Respondent, who were relevant to the investigation will be briefly described, followed by a narrative of events and circumstances that led to the Referee's recommendations.

Todd Richard Taylor

Mr. Taylor is a real estate investor. In the 1980s he worked as a salesman for Jack Suarez, another principal individual in this matter, at Suarez Housing Company, a real estate development firm. Later, Mr. Taylor shared ownership, along with Jack Suarez and his brother Bob Suarez, of the two Florida limited liability, North Park Companies that owned and managed the 400-acre property off Sam Allen Road near Plant City, Hillsborough County, initially known as North Park Isles. An eight-to-nine-acre parcel of that property was to become the subject of a road-widening eminent domain action by the Florida Department of Transportation ("FDOT"). Mr. Taylor was a friend and former client of the Respondent. As one of the managing members of the North Park Companies, Mr. Taylor signed an Agreement

with Respondent in 2014 for representation regarding the anticipated eminent domain action. He acted as the North Park Companies' primary representative until April 2018, when Jack Suarez became the sole managing member. Mr. Taylor testified at the trial and the Referee found his testimony credible and consistent with the evidence and the testimony of other witnesses.

Jack Suarez

Mr. Suarez is an experienced builder and residential developer. He and his brother Robert built and developed significant residential properties beginning in the 1970s. Around 2008 or 2009, the Suarez brothers and Mr. Taylor, through the North Park Companies, bought the 400-acre property off Sam Allen Road. Jack Suarez had little or no involvement with the eminent domain action regarding the property until approximately February or March 2018. Thereafter he became the sole managing member of the North Park Companies. Jack Suarez testified at the trial and the Referee found his testimony credible and consistent with the evidence and the testimony of other witnesses.

Devon Sterm Rushnell

Mr. Rushnell is a professional engineer and residential real estate developer. He first became interested in the North Park Isles property in 2003 and

purchased it in 2004 with Mr. Taylor. Mr. Rushnell at that point owned a 90% interest in the property and Mr. Taylor owned the remaining 10%. Mr. Rushnell successfully rezoned the property for residential development but encountered financial difficulties, which resulted in a default of his bank loan secured by the property. The Suarez brothers stepped in, formed The North Park Companies with Mr. Taylor, and assumed the loan obligation and ownership of the property in 2006. In 2013, Mr. Rushnell contracted to repurchase the property from the North Park Companies for \$8,000,000. In August 2016, Mr. Rushnell assigned his purchase contract rights to the property to a company owned by another developer, Jeff Hills, for \$10,000,000. Although not an owner after 2006, Mr. Rushnell remained active in the negotiations and issues regarding the property and the FDOT condemnation action because of his contract interests. Mr. Rushnell testified at the trial and the Referee found his testimony credible and consistent with the evidence and the testimony of other witnesses.

Richard Thomas Petitt, Esq

Mr. Petitt is a Tampa attorney whose main area of practice is real estate litigation. He has handled hundreds of eminent domain matters since his admission to the Florida Bar in 1991. In 2018 he was employed by the North

Park Companies as co-counsel with the Respondent regarding the eminent domain action Mr. Petitt continued to represent the North Park Companies through completion of the eminent domain litigation, and thereafter regarding the Respondent's binding arbitration action against his former Clients. Mr. Petitt testified at the trial and the Referee found his testimony credible and consistent with the evidence and the testimony of other witnesses.

Aloyma Sanchez, Esq.

Ms. Sanchez is an attorney employed as Assistant General Counsel for the Florida Department of Transportation. She has been a licensed attorney in Florida since 1987. Prior to her position with FDOT, Ms. Sanchez was for 23 years a Federal prosecutor in the United States Attorney's Office in Miami. Ms. Sanchez was the FDOT attorney who represented the agency in the eminent domain litigation regarding the North Park Isles property. Ms. Sanchez testified at the trial and the Referee found her testimony credible and consistent with the evidence and the testimony of other witnesses.

Narrative of Events

This matter relates to Respondent's representation of two Florida limited liability companies, the above-described North Park Companies, in

an eminent domain action brought by the Florida Department of Transportation (“FDOT”). The eminent domain action concerned an eight-to-nine-acre portion of a 400-acre plus property off Sam Allen Road in Plant City, Florida (the “North Park Property”) owned by North Park Isles, PTC, LLC.

JT North Park, LLC was the management company for North Park Isles, PTC, LLC. R Exh. 40, page 2.

The property was purchased from a bank that held a land development loan on it during the 2008-09 credit crunch. Trial Tr. vol. 4, 651. Since their formation, the North Park Companies were owned and managed by three managing members: Todd Taylor, Jack Suarez, and Robert Suarez (collectively, the “Members”). R Exh. 38, 39.

July 2013 – August 2016

In July 2013, prior to the initiation of the eminent domain action, JT North Park, LLC entered a contract to sell the 400-plus acre property to Plant City Acquisitions, LLC, a company owned by Mr. Rushnell, for \$8,000,000. R Exhs. 178-182.

Mr. Taylor, as a managing member of the North Park Companies, and Mr. Rushnell, as the contract purchaser, engaged in negotiations with the

FDOT for relocation of a planned drainage pond to be constructed on the portion of North Park Property that was the subject of the anticipated taking. Trial Tr. vol. 5, 776-77. Mr. Taylor and Mr. Rushnell were successful in having the pond location design changed pursuant to their request. Trial Tr. vol. 2, 274, 777.

In the early Fall of 2014, Mr. Taylor suggested to the other Members of the North Park Companies that he wanted to retain the Respondent to represent the Companies' interests for the anticipated eminent domain action. Jack Suarez questioned the need for legal representation, feeling that the FDOT would provide "just compensation" for the property taken. Mr. Taylor said he felt that the Members might recover a significant amount and that hiring Respondent would not cost anything since the FDOT would pay the attorney's and expert's fees. Mr. Suarez told Mr. Taylor to go ahead if that's what he wanted to do. Trial Tr. vol. 4, 654.

Mr. Taylor was a trusting friend and former client of Respondent. Mr. Taylor had no experience with either eminent domain law or interpretation of legal representation contracts. Based upon his friendship and prior unrelated legal representation by Respondent, he put his faith in the Respondent to act in the best interests of the North Park Companies. Trial Tr. vol. 2, 277-79

On September 25, 2014, Mr. Taylor signed an agreement for representation with Respondent on behalf of the North Park Companies in the eminent domain action. TFB Exh. 7. Respondent drafted the "Agreement for Representation Eminent Domain" for Mr. Taylor's execution. TFB Exh. 7. Trial Tr. vol. 1, 34-35, 277. Although Mr. Taylor had consulted with the two other managing Members about retaining Respondent, he did not show them the representation agreement before executing the same. Trial Tr. vol. 2, 276-78. Mr. Taylor admitted that he did not read the agreement in its entirety before signing it. He testified that he trusted Respondent to protect his best interests because they were friends who had an extensive social, as well as a positive working, relationship and history. Trial Tr. vol. 2, 277-79. Respondent had represented Mr. Taylor in the past and Mr. Taylor admitted that he had never completely read, nor did he understand much of the terminology contained in, all his prior Fee Agreements with Respondent. Even if he had chosen to read it, the eminent domain representation agreement would likely have been virtually indecipherable to a layperson such as Mr. Taylor. Mr. Taylor testified that he signed the contract Respondent gave him, as he had done in all prior instances. Trial Tr. vol. 2, 289-93; R Exhs. 1, 3, 4, 5, 7, 8, 9.

Respondent's representation agreement provided in part:

[a]s set forth in this Agreement, Attorney's fees and costs for this representation will be limited to the amount paid to Attorney by the condemning authority of the State of Florida or the Department of Transportation or their agents (the 'government' or the 'condemning authority') through a settlement or the amount awarded by the Court if Attorney cannot reach a settlement of their claim for fees [emphasis in original]. TFB Exh. 7, page 1.

Respondent's agreement also contained a provision that stated, "[c]lient shall at all times have the right to terminate Attorney's services upon written notice to that effect, but Client would then be obligated to pay to Attorney the reasonable value of his services." TFB Exh. 7, page 3. The language of Respondent's representation agreement and specifically the termination provision later became a significant point of contention between Respondent and the Members. Jack Suarez testified at the final hearing that he "couldn't ascertain what the fees were going to be" when he first read the representation agreement in March 2018. Trial Tr. vol. 4, 654-56.

In addition to the conflicting terms as described above, the agreement contained two significant additions to what had been standard provisions that appeared in prior representation agreements with Mr. Taylor. R Exhs. 1,3,4,5,7,8,9.

First, in all prior agreements, the Respondent included a paragraph stating that each party has received a copy, has read it before signing and has not relied upon Respondent in deciding to execute it. In the fee agreement for the eminent domain matter, that paragraph was modified by the addition of the following sentence: "Notwithstanding any Rule of Construction, this agreement shall be construed equally in regard to each party."

The effect of that provision appeared designed to deprive the Client of the long-recognized rule of construction that allows ambiguous terms to be construed against the drafter, in this case the Respondent.

Secondly, all prior representation agreements contained a paragraph that allowed the Respondent to recover a reasonable fee if a dispute arose. In the eminent domain agreement, the following sentence was added: "Client specifically waives any claim for attorney's fees against Attorney."

This provision appears designed to negate the otherwise reciprocal right to seek prevailing party attorney's fees if the agreement provides them for one of the parties. § 57.105(7), Fla. Stat.

Both additions to this otherwise boilerplate language in the eminent domain representation agreement sought to deprive this Client of significant

statutory and case law rights in the event of a dispute over its interpretation or enforcement.

The representation agreement also authorized Respondent to retain experts on the North Park Companies' behalf, specifically engineer Reginald Mesimer and appraiser Richard Harris, who Respondent regularly referred to as "my" experts. TFB Exh. 7, page 2; R Exhs. 14, 15, 202. Respondent also later hired John Greer, an inactive Class B Contractor, developer, and former Client, to conduct an analysis regarding the effect of the FDOT taking on the North Park Property. R. Exh. 16.

August 2016

In August 2016, Mr. Rushnell through his company, Plant City Acquisitions, LLC, assigned its interest in the purchase contract for the North Park Property to North Park Development, LLC, a company owned by Jeffrey Hills for \$10,000,000. Trial Tr. vol. 5, 805-6; R Exhs. 178-182. Thereafter, Mr. Rushnell remained closely involved in the eminent domain action because of his long history with the project, and his sales contract interests. Trial Tr. vol. 5, 779.

August 2016 – April 2018

On May 19, 2017, the FDOT initiated the eminent domain action for the taking of the subject portion of the North Park Property in Hillsborough County Case No. 2017-CA-4759. On October 24, 2017, the court entered an order of taking. TFB Exh. 26A. Counsel for the FDOT, Ms. Sanchez, testified that eminent domain is a bifurcated proceeding, and the only issue that remained after entry of the order of taking was the compensation for the property taken. Trial Tr. vol. 3, 440.

Respondent determined that he would make a case for an award of non-monetary damages from the FDOT. His theory of the case was that the eminent domain taking, primarily the designed placement of a drainage pond, would so restrict access to the remaining 400 acres that it would essentially destroy its development value. Under those circumstances, he suggested that FDOT had two options: (1) leave the project as designed, which would result in an enormous loss in the value of the remaining 400 acres, or (2) move the drainage pond to allow access to development, in which case the enhancement of value restored would result in an award of statutory attorney's fees based upon a mid-range value of over \$8,000,000. TFB Exh. 10, 15, 14. To support his theory regarding non-monetary damages, Respondent had hired "his experts", engineer Reggie Mesimer

who would opine that the FDOT project as designed would completely deny ingress and egress to the remaining development property, and appraiser Richard Harris who would assess the values of property before and after the project. He also hired his friend and former Client, John Greer, as a development consultant to further bolster his non-monetary theory. Both Mr. Harris' and Mr. Greer's opinions were based upon Mr. Mesimer's opinion that the taking by FDOT would completely restrict access to the proposed residential development. R Exh. 59, 61, 62.

Despite those alternatives as represented to FDOT, facts on the ground were significantly different than Respondent and his experts had suggested. Through negotiations with FDOT before Respondent was retained, Mr. Taylor and Mr. Rushnell, a professional engineer, had prevailed upon FDOT to redesign and relocate the drainage pond in a configuration that ultimately allowed access to the proposed 400-acre residential development. Trial Tr. vol. 2, 274; vol. 5, 777.

None of the experienced developers who were involved in the sale and development of the property expressed any serious concerns about a lack of access. Mr. Rushnell was satisfied with the pond placement, since he was principally responsible for its initial relocation and had contracted to purchase the remaining property for \$8,000,000 with that knowledge. Mr. Taylor and

the Suarez brothers had no concerns because they were selling the property to Mr. Rushnell, and there was no contingency to the sale based upon any alleged lack of access. Likewise, the ultimate developer Mr. Hills, who contracted with Mr. Rushnell for the \$10,000,000 assignment of Rushnell's contract to purchase property, had no issue with access. Indeed, no provisions or contingencies questioning access for development are contained in either the tri-party agreement or any of the numerous amendments between the North Park companies, Rushnell, and Hills regarding the ultimate sale to Hills. R. Exh. 178 – 182.

There was an effort made by Mr. Taylor and Mr. Rushnell to convince FDOT to move the proposed drainage pond a second time. But their motivation for the relocation was to accommodate the ultimate purchaser, Mr. Hills', desire for model home frontage, not to remedy any lack of access. FDOT would not consider moving the pond until permits were obtained from various regulatory agencies, and FDOT believed Mr. Rushnell was responsible for obtaining them. R Exh. 279. Mr. Rushnell's assignment contract specifically provided that Mr. Hills' company would be responsible for permitting. R Exh. 178. As a result, permits were never obtained and FDOT would not agree to move the pond again.

Initially, there was no overriding urgency to resolve the eminent domain action. The ultimate purchaser, Mr. Hills, was not in a position to close the sale, and for several months he was paying the North Park Companies \$90,000/month in extension fees while his financing for the purchase was being secured. Trial Tr. vol. 4, 658-59. However, in Spring 2018 Mr. Hills' financing was approved, which immediately altered the Clients' objectives regarding the litigation. Although the financing was secured, the bank would not fund the closing until the eminent domain case was concluded. TFB Exh. 29 (Paragraphs 48, 49). Once Mr. Hills' financing commitment was in place, the North Park Companies could no longer demand extension payments or otherwise delay performance. As a result, an expedited resolution of the condemnation litigation to facilitate closing became the North Park Companies primary objective. Trial Tr. vol. 4, 661-62; 668-69.

On March 6, 2018, Mr. Taylor forwarded Respondent an email from Mr. Rushnell stating that FDOT was "*stopping the pond changes unless the lawsuit is resolved. This is a major problem.*" R Exh. 232. Respondent testified that this email indicated that to him relocation of the pond was still a significant concern for the Clients and was an important consideration for settling the case with FDOT. Trial Tr. vol. 7, 1105-6. However, the potential relocation of the pond was not being requested by the Members, but by the

purchaser Mr. Hills, in order to accommodate the placement of model homes. It is important to note that ultimately the eminent domain case settled, the closing on the property was completed, and Mr. Hills went forward with the residential development without the pond being relocated for a second time. Trial Tr. vol. 2, 408-9; vol. 3, 532; vol. 4, 786-87, 789, 794-98. TFB Exh. 29 (Paragraphs 42 and 43).

On March 21, 2018, the Members met with Respondent to discuss the pending eminent domain action and the sale of the property. Prior to the meeting, Respondent testified that he drafted a Motion for Partial Summary Judgment that morning and asked his secretary to file the motion as he was leaving to attend the meeting with the Members. Trial Tr. vol. 7, 1126-28. The Motion itself was not submitted for the Record in this case. Other Record documents and testimony suggest that the fact Respondent was seeking to establish by Partial Summary Judgment was the alleged lack of ingress and egress to the property as a basis for non-monetary damages and attendant attorney's fees.

During the March 21, 2018 meeting, the Members, and specifically Jack Suarez, advised Respondent that their objective was to quickly settle the eminent domain action so that the sale of the property could close. Trial Tr. vol. 2, 283, 661-62. As Respondent characterized it, Jack Suarez had no

knowledge or understanding of the complexity of the problems with settling with FDOT. Trial Tr. vol. 7, 1128. At the meeting, the Members and Respondent also determined to schedule an informal settlement conference with FDOT. The meeting was subsequently set for April 4, 2018 at the FDOT's office.

On March 27, 2018, Jack Suarez sent an email to Respondent stating *"Why not just set it for trial? I am aware I know nothing about these issues. But, why not? And we can have the settlement talks with that hanging overhead."* R Exh. 29. Respondent characterized this email as his Client's directive to set the case for trial. Trial Tr. vol. 8, 1278-81. Respondent testified that Jack Suarez's email was consistent with Mr. Taylor's prior directive to do whatever was necessary to try to get FDOT to come to the table for settlement, which Respondent contended was the purpose of filing the March 21, 2018 Motion for Partial Summary Judgment. Trial Tr. vol. 7, 1131; vol. 8, 1278-80. Mr. Suarez testified that this email was not a specific direction but rather a deferral to his attorney to take the necessary action to achieve the needs of his company. Trial Tr. vol. 4, 725-26; R Exh. 29.

On April 3, 2018, Respondent met with his three retained experts, John Greer, Richard Harris, and Reginald Mesimer, as well as Mr. Taylor and Mr. Rushnell, in preparation for the April 4, 2018 meeting with FDOT. Trial Tr.

vol. 7, 1132-34. They discussed the impact of the taking as well as the necessity of moving the pond. Trial Tr. vol. 7, 1132-34. Respondent sent two letters to FDOT counsel, Ms. Sanchez, in anticipation of the meeting on April 4, 2018. Trial Tr. vol. 1, 65-67; TFB Exh. 9, 10; R Exh. 241. The April 3, 2018 letter included John Greer's preliminary report stating his expert opinion as to the midpoint damages amount, which he opined was \$8.3 million based on the property taken and loss of access and marketing window. Trial Tr. vol. 7, 1161. Mr. Rushnell testified that this letter did not accurately reflect the North Park Companies' prior discussions with Respondent or their stance on the valuation of the potential damages. Trial Tr. vol. 5, 816.

Respondent had indicated that he would not represent the Members on real estate issues in the eminent domain case or the sale of the subject property. Prior to the April 4, 2018 meeting at the FDOT, the Members therefore retained another law firm, Petitt Worrell Rocha Sheppard PLLC to advise them on those issues. TFB Exh. 11.

On April 4, 2018, the Members, Respondent, two of his retained experts, and Mr. Rushnell met with representatives from the FDOT. Trial Tr. vol. 1, 69-70. At this meeting, the parties discussed the potential movement of the pond as well as the necessary governmental agency permits needed

to allow a new pond location. Trial Tr. vol. 1, 70-74; vol. 3, 450-52; vol. 5, 781-82.

After the April 4, 2018, meeting at FDOT, it became clear that FDOT would not consider relocating the drainage pond unless and until the necessary permits were obtained, and it emphasized that that was the property owner's responsibility. TFB Exh. 20 Attachment. To obtain some assurance for Mr. Hills that the FDOT would cooperate in moving the pond location if the proper permits were obtained, the Members directed Respondent to draft a proposed Memorandum of Understanding to be transmitted to Ms. Sanchez of FDOT. The idea apparently was to obtain some promise of cooperation that would be sufficient for Mr. Hills and the financing bank to allow the closing of the sale to occur. Trial Tr. vol. 2, 369, 373; vol. 3, 451-52; R Exh. 198. Respondent then prepared, and Mr. Taylor signed, a second representation agreement with Respondent wherein the scope of representation was limited to drafting a memorandum. Trial Tr. vol. 2, 285; TFB Exh. 11. Attorney Michael Rocha from the Petitt Worrell firm reviewed the memorandum as real estate counsel on behalf of the North Park Companies.

Ms. Sanchez explained in her trial testimony that the FDOT did not do memorandums of understanding with non-governmental defendants in

eminent domain actions. Trial Tr. vol. 3, 452; vol. 6, 950, 1019-20; R Exh. 198. The Memorandum of Understanding was rejected, and the closing of the \$10,000,000 sale to Mr. Hills' company became dependent upon a final resolution of the eminent domain case, either by informal settlement, settlement at mediation, or trial.

Beginning in April and continuing into July 2018, respondent, without Client's knowledge or consent, began filing a series of unauthorized pleadings and/or motions in the eminent domain case seeking to advance his own claim for attorney's fees based upon non-monetary damages, rather than acting in accordance with Client's directions or their best interests. TFB Exhs. 26B-26L. These pleadings included multiple motions for summary judgment and other motions seeking recovery of attorney's fees. TFB Exhs. 26B-26L. Not only were these pleadings designed to advance Respondent's personal interests or the interests of third parties, namely Respondent's retained experts, but they were directly adverse to Client's interests and its clearly articulated desire to quickly achieve a negotiated settlement.

April 12, 2018

On April 12, 2018, the Members and Mr. Rushnell met with Respondent to discuss their objectives for the eminent domain case and the

pending sale of the North Park property. TFB Exh. 12. During the meeting Respondent suggested, based upon his representation agreement, that alteration in the objectives of his representation could result in Client's personal liability for Respondent's attorney's fee. When Jack Suarez asked Respondent for an approximation of his attorney's fees to date, Respondent stated that he was unsure but that they were somewhere between \$300,000 and \$1 million. Trial Tr. vol. 4, 670-71. Respondent also stated that if the Members refused to move forward with the litigation, Respondent would implement the termination provision of the engagement agreement to seek his fees from the North Park Companies instead of from the proceeds of the eminent domain proceedings. Trial Tr. vol. 4, 671-72, 748-49. Jack Suarez testified that he was surprised by this information. Until this conversation with Respondent, Jack Suarez had understood that the FDOT would pay the Respondent's attorney's fees and that the Client would not be responsible. Trial Tr, vol. 4, 670-72. Jack Suarez further testified that he became fearful of terminating Respondent because of the fees associated with the representation agreement and Respondent's threats, even though it was clear Respondent was no longer interested in pursuing the Members' objective or best interests. Trial Tr. vol. 4, 671-72, 689-90.

The Members continued to assert that they did not want to advance the litigation and wished to proceed to settlement so the pending sale to the developer could be completed. Trial Tr. vol. 4, 662. Jack Suarez testified that he gave Respondent a very clear directive to close on the property. Trial Tr. 662, 669. This is further evidenced by the April 12th meeting agenda Jack Suarez prepared prior to the meeting, which stated in part:

"II. Where we need to get to:

1. Close the Sale with Jeff Hills by April 25th.

2. Get our 'Just Compensation' for the taking of our Real Estate.

While these are equals in importance, the closing is first among equals and the just compensation is subordinate to achieving the targeted 4/25 closing date." Trial Tr. vol. 4, 665-69; TFB Exh. 12.

Mr. Rushnell testified that he was present at the April 12, 2018 meeting and that Jack Suarez gave direction to Respondent to get the eminent domain action settled so the sale of the property could close. Trial Tr. vol. 5, 782-83, 786. Mr. Rushnell also testified that it was at this meeting he first heard Respondent explain his concept of seeking non-monetary damages. He also believed that Respondent's desire to pursue that concept directly prevented moving forward toward closing of the sale. Trial Tr. vol. 5, 784-86,

790, 793-94. Mr. Rushnell recalled an earlier meeting with the Respondent when the topic was the placement of the drainage pond and its effect on access to the proposed residential development. When Mr. Rushnell, an experienced engineer, began to draw up some potential solutions to the alleged access issue, Respondent "screamed" at him not to consider that and told him that once the FDOT let the contracts for the construction it would provide North Park with greater leverage. It was not until the April 12 meeting at Jack Suarez's office that Mr. Rushnell began to appreciate that the non-monetary damages issue could potentially result in a much larger attorney's fee, and that the Respondent was "self-dealing" in the handling of the eminent domain litigation. Trial Tr. vol. 5, 790-92.

Following the April 12 meeting, the Respondent actions reflected an increasing concern about protecting his fees, particularly those fees that he believed would result from an award of non-monetary benefits. The issue became a central feature of virtually all of Respondent's activity thereafter, regardless of the communicated objectives of the North Park Companies.

April 17 – 19, 2018

On April 17, Attorney Petitt notified the Respondent by email that his firm had been retained by the North Park Companies as "co-counsel in the

eminent domain case” and requested a meeting to discuss various issues regarding it. R. Exh. 268. That meeting took place April 19. At the meeting, Mr. Petitt relayed to Respondent that the

[c]lient wanted to get the case settled ASAP and wanted to get the case put behind them, didn't care about the money, and that the Client wanted [Petitt] to co-counsel and bring the case to a conclusion and that the Client would pay [Petitt] directly, pay [Petitt] at an hourly rate, and that [Respondent] could have whatever fee was generated as a result of the settlement. Trial Tr. vol. 2, 413.

Respondent acknowledged by letter later that day that they had agreed that Mr. Petitt would contact FDOT's Ms. Sanchez to discuss the project. Respondent also confirmed that he would cooperate with Mr. Petitt and the Client. R. Exh. 275.

On the previous day, April 18, 2018, Respondent learned that Mr. Taylor and Robert Suarez had resigned as managing members of the North Park Companies, leaving Jack Suarez as the sole managing member. Trial Tr. vol. 2, 286-87 vol. 4, 676, 701; R. Exh. 274.

On that same day the Respondent filed the two following documents in the court file for the case:

Notice of Attorney's Fee Agreement Requiring FDOT and State of Florida to Pay Full and Just Compensation Including Fees and Costs.

TFB Exh. 26C.

This Notice appears to concern only the personal interests of Respondent and does not appear to advance any objective of the Client. There was no evidence that it was authorized by the Client prior to filing and it sought no orders or action from the Court.

The Second filing was:

Defendant's and Defendant's Attorneys' Motion to Schedule Mediation in April or May of 2018 and Motion for Attorneys' Fees, Expert Witness Fees and Costs. TFB Exh. 26D.

This Motion was a simple request for the Court to set the case for mediation. Although that was all the Motion sought, the Respondent spent most of the Motion discussing his fee contract, invoking his right to fees under the Florida Statutes and the United States and Florida Constitutions, and renewing the claim for fees made in his previously filed Motions for Partial Summary Judgment regarding the existence of non-monetary damages. TFB Exh. 26D.

As Client had directed, Respondent agreed to work with Mr. Pettit, but Respondent's tone toward Mr. Pettit became less than collegial. On April 26,

Respondent wrote Mr. Petitt, expressing concern about the protection of Respondent's fees should Mr. Petitt reach a stipulated settlement with Ms. Sanchez involving non-monetary benefits. He warned Mr. Petitt that he had a contract with his client regarding their cooperation in seeking Respondent's fees and that Mr. Petitt must not take any steps "whereby you might interfere with or breach" the agreement. Finally, he noted that Mr. Petitt had not filed a notice of appearance in the eminent domain case, denigrated Mr. Petitt's experience in condemnation matters in contrast with his own, and stated that he did not agree that Mr. Petitt was co-counsel in the case. R. Exh. 280.

May 3 – 9, 2018

Respondent's growing preoccupation with his fees, as opposed to his Client's objectives, during this period was illustrated by a series of court filings and correspondence that offered insight into the diversion of effort from one to the other.

On May 3, 2018, after reviewing two Motions for Partial Summary Judgment regarding issues surrounding non-monetary damages that had been filed by the Respondent without Client authorization, Mr. Petitt, in a letter co-signed by Client's managing member, Jack Suarez, directed Respondent to withdraw the Motions citing that they were legally deficient,

contained material misstatements of fact, and were adversely affecting the Client's relationship with FDOT. TFB Exh. 13; Trial Tr. Vol 2, 384-385

On May 4, Respondent complied with the Client's request. R. Exh. 284 Attachment. The Notice of Withdrawal filed by Respondent contained a misleading and legally irrelevant narration suggesting that the Motions for Partial Summary Judgment were being withdrawn "*as an accommodation to FDOT*" and at FDOT's request. The Notice further stated that FDOT found the Motions "*burdensome and legally complicated*" and that FDOT had asserted "*that the withdrawal of these Motions would facilitate settlement negotiations*" with Respondent. The Referee found no basis in fact for those statements from any credible testimony. Respondent's Notice of Withdrawal also asserted: a claim for non-monetary damages; the Respondent's right to attorney's fees based upon those damages; his Client's obligation to support his fee claim under his fee agreement; and finally, that any final settlement could only be signed by Respondent, as Attorney of Record. R. Exh. 284 Attachment - Notice of Withdrawal.

Ms. Sanchez, upon receiving Respondent's Notice of Withdrawal immediately sent an email to Respondent denying that FDOT had requested the withdrawal and that neither she nor her client had suggested that

withdrawal of the Motions was a condition of settlement negotiations. In fact, she had already filed a response to the motions. R. Exh. 285.

On May 9, Respondent replied by letter to Ms. Sanchez email and claimed that Mr. Petitt had represented to him that FDOT had demanded the withdrawal of the Summary Judgment Motions and was unwilling to negotiate with the Client until that was done. There is no evidence that Mr. Petitt made any such assertion to Respondent or anyone else. Even if he had, that was not something that Respondent needed to share with opposing counsel. Respondent's letter further asserted that Mr. Petitt was "*acting independently of me and my firm*" and that he "*is not my co-counsel*". His letter further stated that Mr. Petitt blamed Ms. Sanchez and FDOT "*for allegedly causing the withdrawal of the above Motions, and thereby inducing the Defendants [Client] to potentially breach their contract of full cooperation with me and my firm.*" Respondent's letter then asserts that under his fee agreement Clients "*are contractually required to join in and support their attorney's motions to establish certain facts including the factual basis for any claimed non-monetary benefits, in order to collect attorney's fees*" in the case. He warned that anyone who induces interference with his fee contract could be construed as causing "*tortious interference with my Fee Agreement.*" R Exh. 284.

At the same time, Respondent wrote to Mr. Petitt demanding to know why Mr. Petitt told him that the FDOT would not consider settlement unless the Summary Judgment Motions were withdrawn. Petitt's letter of May 3 contained no such statement. TBF Exh. 13. Respondent further suggested that, by requesting the withdrawal of the Motions, Mr. Petitt and the Client were interfering with his fee contract, particularly the fees for non-monetary benefits. R. Exh. 286.

This incident is illustrative of the Respondent's continuing effort to frustrate Client's objectives by, in this instance, offering to FDOT counsel a misleading narrative that could only serve to interfere with Mr. Petitt's efforts on behalf of their common client.

Also, during this time frame, by letter dated May 4, 2018 to Ms. Sanchez, Respondent proposed a settlement of the eminent domain case. The letter and the settlement proposal it contained was not authorized by the Client. The proposal consisted of the following:

1. The Client would surrender any claim to monetary damages, which he estimated to be \$2.84 million.
2. FDOT would move the drainage pond as requested.
3. FDOT would pay Respondent an attorney's fee based upon a non-monetary value enhancement of \$8.3 million.

TFB Exh. 14

The letter advised Ms. Sanchez that only Respondent could negotiate the amount of any non-monetary benefits and attorney's fees. It asserted that Mr. Petitt was not co-counsel on the case and had no authority to sign a stipulated judgment.

In three separate bold paragraphs on pages 1, 3, and 4, Respondent warned Ms. Sanchez against interference with his claim for fees for non-monetary benefits and reminded her of his Client's contractual obligation to cooperate with his demands for them.

There was no evidence that the proposal was transmitted to Jack Suarez, or that he was aware of it before it was sent. No copy was transmitted to Mr. Petitt, and its existence was only revealed when it was produced during discovery in the binding arbitration action that Respondent later brought against his former Clients. Trial Tr. vol. 2, 241-44; TFB Exh. 14.

Finally, also on May 4, Respondent filed a nineteen-page Motion for Attorneys' Fees, Expert Witness Fees and Costs that again reiterated the Respondent's position regarding fees for non-monetary benefits. This motion was also not authorized by the Client. It realleged the same factual allegations contained in the Motions for Partial Summary Judgment that the

Client had previously demanded be withdrawn because of “material misstatements of fact.” TFB Exh. 26E; TFB Exh. 13.

May 18, 2018 – June 29, 2018

On May 18, 2018, attorney Richard Petitt filed his notice of appearance on behalf of the North Park Companies in the eminent domain action. By letter on that same date, Mr. Petitt also advised Respondent of the Clients’ concerns regarding his representation agreement. TFB Exh. 16. Through this letter, the Members evidenced their intent for Respondent to abstain from filing any further pleadings on their behalf without prior written approval, and to communicate with them only through Mr. Petitt. TFB Exh. 16, page 2. The letter suggested that Respondent’s fee agreement with the Client was unenforceable for various reasons, and that the Client was desirous of entering into a revised agreement wherein Mr. Petitt would take a major role, although the Respondent’s fees for the eminent domain case would be protected.

Despite the Client’s requests, that same day Respondent filed the following in the court file for the case:

Notice of Lien Against Petitioner, Florida Department of Transportation and Motion to Adjudicate Lien and Recover Attorney's Fees, Expert Fees and Costs. TFB Exh. 26H

Motion for Summary Partial Judgment Regarding Claims for Attorneys' Fees, Expert Fees and Nonmonetary Benefits and Costs Based Upon Nonmonetary Benefits and Motion for Partial Summary Judgment regarding Loss of Ingress and Egress to North Park Isles Property Caused by FDOT's Plans and Easements Attached to Order of Taking Resulting in Loss of Ingress and Egress to Residential Development and Motion for Attorneys' Fees Expert Fees and Costs. TFB Exh. 26I

Neither the Motion nor the Notice had been discussed with or authorized by the Client or Attorney Petitt. The Motion for Partial Summary Judgment was similar to the Motions the Client had previously required the Respondent to withdraw on May 3. This latest Motion sought an attorney's fee of over \$1,400,000, based again upon non-monetary benefits with which Client did not concur.

Respondent rejected the Clients' offer to rescind his existing representation agreement, suggesting that his clients and Mr. Petitt may

have violated its terms and requesting that they enter binding arbitration to settle their respective rights under it. TFB Exh. 16, 17. Mr. Petitt responded on behalf of the Client and denied interference. TFB Exh. 18. He also suggested that the parties gather in his office to discuss the case prior to an anticipated May 24 hearing before Judge Cheryl K. Thomas, the presiding Judge in the eminent domain litigation. Respondent chose not to do so.

Judge Thomas held the hearing on May 24, 2018. Attending were Respondent, the Client's managing member Jack Suarez, Mr. Petitt, Ms. Sanchez for FDOT, as well as several others who did not participate. Pending were two motions: one sought an order for mediation filed by Respondent on April 18 and previously described above. TFB Exh. 26D. The other, filed by Mr. Petitt, was a Motion for Disbursement of the good-faith deposit FDOT had placed in the registry of the Court after the eminent domain action commenced. Neither Motion was opposed by FDOT and both were seeking to further the Client's objective of moving forward toward resolution. A full transcript of the hearing is included in the record as TFB Exh. 23 Attachment.

Before the pending motions could be addressed, Respondent announced to the Court that "*there's a debate about who represents the property owner.*" There was no "debate." Respondent and Mr. Petitt were co-

counsel of record, duly retained to represent the Client in the pending action. Respondent then told Judge Thomas that she would have to decide who represented the Client, adding that Mr. Petitt was “*carrying on secret negotiations with FDOT.*”

Respondent also asserted that only one lawyer could represent his client, that he was that lawyer at that time and that if the Client wanted to use Mr. Petitt, then they needed to discharge Respondent. When the Court inquired, Mr. Suarez admitted he was confused about what to do because of the egregious terms of Respondent’s attorney’s fee contract and his fear that the North Port Companies may be responsible for “*millions of dollars of legal fees.*” Mr. Suarez later testified at trial that at that time he had been unwilling to discharge Respondent because of threats regarding his fee agreement, specifically Respondent’s claim for non-monetary damage attorney’s fees. TFB Exh. 23 Attachment, Trial Tr. vol. 4, 689-90.

The Court properly refused to become embroiled in a matter that Judge Thomas suggested was an issue for the Florida Bar. Ms. Sanchez placed on the record that there was no “secret settlement” with FDOT, as alleged by Respondent. Mr. Petitt then made a last-ditch effort to obtain an order on the unopposed motion to disburse funds to the Client. Judge Thomas suggested entering the order if both attorneys would sign off on behalf of the Client.

Respondent objected to that suggestion, and to any involvement by Mr. Petitt in the case. Whereupon the Court terminated the hearing and refused to consider any motions until “you-all figure this out.” TFB Exh. 23 Attachment.

As a result of Respondent’s objections at the hearing, neither of the Client’s uncontested objectives were achieved. Respondent’s actions did not advance the Client’s interests or objectives and were directed only toward the Respondent’s personal financial interests.

Thereafter, the Client continued to attempt to arrive at an informal settlement with FDOT. On June 25, 2018, Mr. Petitt made a Client-approved settlement offer on behalf of the North Park Companies to counsel for the FDOT. In part, the settlement proposal provided for Respondent’s fees to be paid by FDOT according to Florida Statutes and as determined by the Court. It also proposed that Mr. Petitt’s fees for representing the Client would be solely the Client’s responsibility and Client would not pursue FDOT for any portion of them. TFB Exh. 19. This settlement offer was rejected, in part as a result of the Respondent’s actions before Judge Thomas during the May 24 hearing. In refusing to consider the settlement offer, Ms. Sanchez cited the Respondent’s allegation that there was a dispute as to who was the proper lawyer for the North Park Companies. TFB Exh. 20.

In order to avoid this Respondent-induced issue of who represented the Client, the Client attempted to coordinate identical settlement offers from both Mr. Petitt and the Respondent.

On June 28, 2018, Mr. Petitt wrote a letter to Respondent in which he stated that the Client was instructing Respondent to submit to the FDOT a specific settlement proposal contained in Exhibit B of the letter. TFB Exh. 21. The terms of the settlement proposal were virtually identical to the previous offer in Mr. Petitt's letter of June 25. TFB Exh. 19. The letter to Respondent stated in part: "*You are not permitted to deviate from the precise language contained in the settlement proposal.*" TFB Exh. 21, page 2. The letter also stated in pertinent part that the Client agreed for Respondent to apply for payment of his fees and costs by the FDOT, pursuant to Florida Statute, but:

[y]our application and demands for your fees and costs, however, must not, in any way, delay or hinder the settlement negotiations, entry into settlement agreement, or entry into a stipulated final judgment. You are not permitted or authorized by the Clients to make claims or demands for fees and costs during the settlement negotiation process, in advance of the entry of a stipulated final judgment. TFB Exh. 21, page 3.

The letter transmitting this proposal was countersigned by Jack Suarez as sole managing member of the North Park Companies. TFB Exh. 21, page 3.

On June 29, 2018, Respondent transmitted by email a letter dated July 2, 2018 to Ms. Sanchez with what he falsely represented to be his client's latest settlement offer. There was no evidence introduced at trial that Respondent discussed or even informed his client or Mr. Pettitt of its contents. Paragraph 5 of the purported settlement offer stated in part:

The above proposed settlement will likely result in a substantial nonmonetary benefit as defined in Section 73.092, Florida Statutes. The FDOT agrees that FDOT is responsible for paying all attorneys' fees, expert fees, and costs in this case and especially relating to the claimed nonmonetary benefit, as determined by the Court... TFB Exh. 22, page 3.

The addition of Paragraph 5 to Client's proposed settlement offer was not authorized by the North Park Companies and directly violated the Clients' specific instruction to Respondent in Mr. Pettitt's June 28, 2018 letter. Trial Tr. vol. 2, 399-400; TFB Exh. 21, 22. The Clients' objective was not to pursue non-monetary damages and they did not agree with Respondent's assessment of those damages. Trial Tr. vol. 2, 400; vol. 4, 671, 675-76; vol. 8, 1292-95. Jack Suarez testified that the Companies' intentions with respect to the eminent domain action were "*to settle this thing fast so we can get to our closing.*" Trial Tr. vol. 4, 662. Mr. Rushnell testified that Respondent was moving forward with seeking non-monetary damages, and that was directly

holding them up from proceeding toward the closing. Trial Tr. vol. 5, 784-86, 790.

Following the Respondent's unauthorized submission of the altered version of the Client's specifically worded settlement offer, Mr. Suarez determined he could no longer allow Respondent to continue to represent the North Park Companies in the eminent domain litigation.

July 3, 2018 – July 18, 2018

On July 3, 2018, the North Park Companies terminated Respondent's representation. R Exh. 303.

On July 10, 2018, Respondent filed an amended motion seeking to withdraw from the case which again repeatedly asserted that, by virtue of the termination provision of the engagement agreement, the North Park Companies may be liable for Respondent's attorney's fees. TFB 26L.

On July 11, 2018, the court heard Respondent's motion and on July 12 entered an order granting Respondent's withdrawal from the representation of the North Park Companies. TFB 26M. The order stipulated that the Respondent would remain on the service list for the case and receive copies of all documents filed therein. It also stipulated that any final judgment tendered to the court "shall contain a provision stating: "The Court retains

jurisdiction to hear any motions for taxation of attorney's fee, expert fees and costs." TFB 26M.

Throughout the eminent domain case, the Respondent not only had appeared as counsel for the North Park Companies, but he was also counsel of record for Mr. Taylor, individually, since Mr. Taylor had been named as an individual Defendant. Mr. Taylor was unaware of both the fact that he was a Defendant in the case, and that Respondent was appearing as his attorney of record. R. Exh. 308 Attachment. Following Respondent's withdrawal from representation of the North Park Companies, Mr. Taylor also sought discharge of the Respondent from representation in his individual capacity. Respondent filed a motion in that regard and a hearing was scheduled for July 18, 2018 before Judge Thomas. The Motion was heard and granted on that date, with Respondent, Mr. Taylor, and Ms. Sanchez in attendance. R Exh. 389.

Immediately following the conclusion of the hearing on July 18, 2018, an incident occurred in the Hillsborough County Courthouse that was to have a significant negative effect on the interests of the North Park Companies' resolution of the eminent domain case, even after Respondent was no longer counsel of record.

Ms. Sanchez, counsel for FDOT, was accosted and threatened by the Respondent in the courthouse hallway immediately following the conclusion of the hearing. This apparently was no surprise to Ms. Sanchez. She testified that following a prior hearing with the Respondent in May she had been so concerned "for her safety," that she decided to bring a witness with her to the two court proceedings on July 11, 2018, and July 18, 2018. Trial Tr. vol. 3, 466. Phillip Hobby, an independent contractor for the FDOT, accompanied Ms. Sanchez to court and was present during conversations with Respondent following the hearings.

Ms. Sanchez testified that following the hearing on July 18, Respondent was very angry and threatened to sue her personally for tortious interference with his agreement between himself and the North Park Companies. He further accused her of being part of a three-party "scheme that was in place" to defraud him of his fees for "his non-monetary benefit." Respondent continued to berate Ms. Sanchez even as she and Mr. Hobby took the elevator downstairs and exited the building. At one point, Respondent also threatened to file a Bar complaint against Ms. Sanchez. Trial Tr. vol. 3, 466-68.

Respondent admitted that he told Ms. Sanchez he would sue her for tortious interference. Trial Tr. vol. 1, 100. Respondent denies that he

threatened to file a bar complaint against her. He testified that Ms. Sanchez had “disparaged”, made an “ex parte attack” on, and “made fun” of, the fees of one of his experts, Mr. Harris, at the July 11 hearing a week earlier. Trial Tr. vol. 1, 101-2, 105-6. A transcript of that hearing reveals that Mr. Harris’ name was never mentioned, and that the only reference made by Ms. Sanchez about any expert was that she had been “astounded” by an appraisal bill she had received from Respondent that amounted to more than she made in a year. R Exh. 388 at Page 15. Respondent testified, at trial, that he could have filed a Bar Complaint against Ms. Sanchez for disparagement of a witness for that remark. Trial Tr. vol. 1, 101-2.

Ms. Sanchez was so upset by Respondent’s accusations that she immediately reported them to her superior at FDOT and sent an email very shortly thereafter to Attorney Petitt, recounting what Respondent said to her. This contemporaneous record of the incident includes Respondent’s threat to sue Ms. Sanchez personally if the settlement of the eminent domain case does not include any provision for non-monetary fees. Trial Tr. vol. 3, 469; TFB Exh. 24.

At Ms. Sanchez’s suggestion, Mr. Hobby drafted a memorandum on the day following the hearing, independently recounting his observations of the incident. Trial Tr. vol. 3, 545, 576; TFB Exh. 25. Mr. Hobby appeared at

trial and corroborated Ms. Sanchez's testimony concerning the incident and Respondent's threats. Trial Tr. vol. 3, 466, 536, 540-41, 573; TFB Exh. 25.

Following Respondent's accusations of fraud and interference with business relationships against Ms. Sanchez, the FDOT, and Mr. Petitt, as well as threats of a Bar complaint against Ms. Sanchez personally, any realistic chance of an informal settlement of the eminent domain case was foreclosed by FDOT. Ms. Sanchez and her Client decided, considering Respondent's accusations, to either go to a formal mediation or trial, "where there's a third party that can see what is going on". Trial Tr. vol. 3, 471.

July to November 2018

On August 3, 2018, one month following his discharge as counsel of record in the eminent domain case, Respondent sued his former Clients in Hillsborough County Circuit Court, Case Number 18-CA-7553, seeking binding arbitration and alleging that he had "significantly increased or enhanced the value of the Defendants real property." During that action and the subsequent arbitration, Respondent sought judgment against his former Clients and alleged the following causes of action and claims against them:

1. Declaratory relief regarding various contracts.
2. Breach of Written Fee Agreement.

3. Breach of Oral Contracts.
4. Reformation of Written Fee Agreement.
5. Unjust Enrichment and Disgorgement.
6. Quantum Meruit/Reasonable Value of Services.
7. Enforcement and Foreclosure of Attorney's Liens.
8. Enforcement and Foreclosure of Equitable Lien/Constructive Trust.
9. Fraud.
10. Negligent Misrepresentation.
11. Defamation.
12. Outrageous Conduct.
13. Fraudulent Transfer/Transaction to Dispose of Assets.
14. Fraudulent Transfer with Intent to Hinder, Delay or Defraud.
15. Fraudulent Transfer/Absence of Equivalent Value and Debtors' Insufficient Remaining Assets.
16. Conspiracy to Commit Fraudulent Transfer.
17. Action to Establish Partnership by Estoppel.
18. Action to Pierce Corporate Shield.
19. Violation of Federal RICO ACT.
20. Violation of Florida's Criminal Activity Statute.

21. Conspiracy to Violate Florida's Civil Remedies for Criminal Practices Act and Federal RICO Act. TFB Exh. 29

Pursuant to that lawsuit, on September 12, 2018, and October 24, 2018, Respondent filed and recorded two *lis pendens* encumbering his former Clients' North Park Property associated with Case Number 18-CA-7553. TFB Exh. 27. The *lis pendens* were invalid as Respondent had no recorded interest in the subject property. Trial Tr. vol. 2, 244-45, 404-5. On October 26, 2018, the Court entered an order dissolving both *lis pendens*. TFB Exh. 28.

When Respondent's attempt to slander the title and disrupt the sale of his former client's property through the *lis pendens* failed, Respondent then filed another separate lawsuit. That action was against the buyer of the property, Mr. Hills, as well as Mr. Rushnell and the bank that was financing the purchase, Hillsborough County Case Number 18-CA-11050, a fraudulent transfer action. Trial Tr. vol. 2, 406-8; TFB Exh. 5.

November 2018 to January 2021

After formal mediation in November 2018, a settlement was reached between the North Park Companies and FDOT. The settlement did not require the relocation of the drainage pond. The parties entered a stipulated

final judgment in January 2019 in which compensation was paid to North Park Companies for the monetary value of the property taken, the expert's fees were paid, and the court retained jurisdiction over the matter of attorneys' fees. Exhibit "B" to TFB Exh. 26Q

After the judgment was entered, Mr. Petitt filed a motion on behalf of the North Park Companies seeking payment of attorney's fees from the FDOT according to the calculation for the monetary benefit outlined by the eminent domain statutes.

Respondent contested the North Park Companies' request for attorney's fees pursuant to the statutes and continued to assert his claim for fees. TFB Exhs. 26Q, 26R. Respondent also attempted to advance a claim that the Members, Mr. Petitt, and the FDOT engaged in a conspiracy to settle the case for a low amount and preclude Respondent from recovering his fees. He further alleged that the Stipulated Final Judgment was a "sham" or fraudulent. TFB Exhs. 26Q, 26R. Respondent actively sought to challenge and undo the mediated settlement agreement reached between the North Park Companies (through the representation of Mr. Petitt) and FDOT.

The Court dismissed the conspiracy claim and specifically ordered that the Respondent's allegations of fraud be stricken from the record. TFB Exh. 26S. Respondent contended that the trial judge entered this order without

taking up the motion, and he characterized the judge's signing of this order as "the way things are done sometimes in Hillsborough County." Trial Tr. vol. 1, 158.

Respondent thereafter continued to pursue his action against his former North Park Clients, filed in August 2018, seeking binding arbitration of the 21 separate claims against them previous listed above.

The arbitration was conducted under the auspices of the American Arbitration Association with retired Circuit and District Court of Appeals Judge Melvia B. Green as Arbitrator. Judge Green heard testimony and received evidence regarding 15 separate causes of action against Respondent's former clients (6 of his 21 claims having been voluntarily abandoned).

At the conclusion of the arbitration, Judge Green denied each of the Respondent's claims. Although she also denied the counterclaims sought by the former clients, she declared North Park Companies to be the prevailing party for the purposes of assessing costs and attorney's fees against the Respondent. The parties had previously stipulated that the Arbitrator should enter a simple award at the Arbitration's conclusion, but Judge Green apparently felt compelled to go beyond what was required and entered a detailed 32-page award that recited the facts as she found them from the

evidence and her conclusions of law regarding the Respondent's claims. TBF Exh. 29. The Referee found those findings to be useful since they served to confirm and corroborate the testimony and evidence received in the trial of this matter.

The Arbitrator, in part, made the following findings in TFB Exh. 29:

- A. Paragraph 50: "Rush also told Suarez that if North Park proceeded to settle with the FDOT at that time, North Park would owe him attorney's fees in the range of \$300,000 to \$1,000,000 under the terms of their [representation] Agreement. Rush also told Suarez that if North Park settled on the FDOT's terms at that time, North Park would jeopardize his claim for anticipated statutory nonmonetary attorney's fees from the FDOT..."
- B. Paragraph 52: "Thereafter, and without the knowledge and consent of North Park, Rush sent a proposed settlement offer [TFB Exh. 14] to the FDOT which essentially proposed, among other things that North Park would waive any statutory monetary fees if FDOT agreed to provide statutory nonmonetary fees to him..."
- C. Paragraph 54: "After his meeting with Rush in the Spring of 2018, Suarez became concerned that Rush was more interested in

procuring a large nonmonetary fee award in the eminent domain case based upon his theory of the case, rather than bringing the case to a swift conclusion by a quick settlement as requested by North Park. Indeed, there is competent substantial record evidence that Rush made demands and directed threats to FDOT's counsel to maximize his fee contrary to the express direction of North Park."

D. Paragraph 57: "Instead of assisting Petitt and North Park with a quick settlement of the eminent domain case as requested, Rush independently continued to litigate the eminent domain case against the FDOT in accordance with his theory that the Order of Taking had deprived the landowners with access the remaining portions of the property. Rush filed several Motions for Summary Judgment against the FDOT to this effect. Rush also proceeded to have his retained experts complete their respective expert reports in support [sic] his theory of the case."

E. Paragraph 63: "In failing to honor North Park's decision for a quick settlement with the FDOT in the Spring of 2018 in favor of pursuing his own litigation strategy, it is found that Rush breached both the [representation] Agreement and his fiduciary

duty to North Park. The [representation] agreement specifically gave North Park the right to set the overall goals of the litigation and make all settlement decisions.”

F. Paragraph 65: “At the time of his termination, it is found that Rush had not achieved any significant benefit for North Park in the eminent domain proceeding.”

G. Paragraph 66: “After his termination, there was not evidence adduced at the final hearing that North Park failed to cooperate with Rush in his pursuit of attorney’s fees; costs; and/or expert witness fees in the eminent domain action. As a result, it cannot be found that North Park breached the [representation] Agreement as has been alleged herein by Rush”

H. Paragraph 70: “North Park closed on the sale of its property at the end of 2018. Even after the closing, Rush continued to legally challenge the \$10 million dollar transaction against North Park and the purchasers as a fraudulent transfer.”

I. Paragraph 75: “On April 12, 2019, FDOT filed a Motion to Strike Rush’s eleven (11) motion; notices; and objections, including a Motion to Strike the Stipulated Final Judgment. Thus, not only did Rush fail to achieve a significant benefit for North Park in the

eminent domain case, but Rush actively sought to challenge and undo the achievement (i.e. mediated settlement) accomplished by Petitt.”

J. Paragraph 81: “Next, it is concluded that the Termination of Representation provision of the [representation] Agreement unlawfully penalizes North Park for terminating Rush to the extent this provision allows Rush to recoup attorney’s fees in excess of those recovered from the FDOT. Florida Court have struck such provisions because they have a chilling effect on the fundamental right of all Clients to select an attorney of their choice. [citations omitted]”

Respondent thereafter sought to set aside the findings made by the Arbitrator, even though he testified at the final hearing that he did not read the Arbitrator’s findings in full. Trial Tr. vol. 1, 163-67; vol. 8, 1299; R Exh. 147. The Arbitration award was not set aside. The parties later entered settlement agreements regarding it and all the other litigation brought by Respondent against his former clients and others. Trial Tr. vol. 1, 165-67; R Exhs. 150, 170-173.

III. RECOMMENDATIONS AS TO GUILT

Based on the foregoing findings of fact, I find by clear and convincing evidence that Respondent inserted himself into the FDOT litigation in an attempt to advance his own interests to Client's detriment and took an active, adverse interest against Client's objectives. Respondent used the termination provision of his representation agreement as a tool to threaten and intimidate not only his Clients, but also counsel for the FDOT, Ms. Sanchez, and Mr. Pettitt. Respondent's actions were prejudicial to the administration of justice.

I find Respondent has violated the following Rules Regulating the Florida Bar: Rule 4-1.2 (Objectives and Scope of Representation); Rule 4-1.4 (Communication); Rule 4-1.5 (Fees and Costs for Legal Services); Rule 4-1.7 (Conflict of Interest; Current Clients); Rule 4-3.1 (Meritorious Claims and Contentions); Rule 4-3.4 (Fairness to Opposing Party and Counsel); and Rule 4-8.4 (Misconduct). Facts and evidence supporting these findings of guilt are made below.

1.

Rule 4-1.2 (Objectives and Scope of Representation): The Bar proved by clear and convincing evidence that Respondent violated Rule 4- 1.2, which states in pertinent part that "a lawyer must abide by

a client's decisions concerning the objectives of representation" and "must abide by a client's decision whether to settle a matter." R. Regulating Fla. Bar 4- 1.2(a).

Respondent refused to acknowledge and comply with the Client's desire to use Mr. Petitt as co-counsel, and for Respondent to cooperate with him in order to accomplish the Client's objective of a timely settlement.

Without Client's knowledge or approval, Respondent made a settlement offer to FDOT that essentially sought to benefit only the Respondent.

Respondent deliberately refused his client's demand that he transmit a specific Client-approved settlement offer to FDOT, and without the client's knowledge altered the offer to include provisions designed solely to benefit Respondent.

At trial the evidence and testimony revealed that Respondent not only failed or refused to pursue the objectives of his client, but in several instances deliberately conducted himself in a way that worked directly against those objectives.

2.

Rule 4-1.4 (Communication): The Bar proved by clear and convincing evidence that respondent violated Rule 4-1.4, which states in pertinent part “a lawyer shall reasonably consult with the client about the means by which the client’s objectives are to be accomplished.” R. Regulating Fla. Bar 4-1.4(a)(2). Rule 4-1.4 also states “[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” R. Regulating Fla. Bar 4-1.4(b).

Respondent violated the Rule, by filing unauthorized motions and pleadings with the court that pursued a theory of non-monetary-benefit attorney’s fees without the client’s knowledge or consent. In addition, he pursued his own interests in the litigation by communicating settlement offers without the client’s knowledge or consent that were contrary to the Client’s stated objectives. Further, he deliberately and significantly altered a client approved settlement offer to FDOT for his own benefit, without consulting with or notifying the Client and against the expressed specific direction of the client.

In a Court proceeding, Respondent argued directly against his Clients’ uncontested objectives of obtaining funds deposited with the Court for the

Client's benefit and setting an early mediation. His many activities concerning his fee claims, the confusion and uncertainty he promoted regarding his Clients' representation, and his warnings and threats against opposing counsel resulted in the Client being required to proceed to a formal mediation, rather than resolving the case by settlement.

3.

Rule 4-1.5 (Fees and Costs for Legal Services): The Bar proved by clear and convincing evidence that respondent violated Rule 4-1.5, which states in pertinent part that an attorney must not enter into an agreement for an illegal, prohibited, or clearly excessive fee or cost. R. Regulating Fla. Bar 4-1.5(a).

Respondent drafted and entered into a representation agreement that was ambiguous, confusing and clearly one-sided. Although it was eventually determined that Respondent had violated his own representation agreement by not pursuing his client's objectives, that determination occurred long after Respondent was discharged.

While still retained, Respondent threatened his client with the prospect of significant fee liability based upon his own interpretation of the representation agreement. That interpretation, which Respondent repeatedly documented to the Client, the FDOT, and the Court, caused the

Client to continue Respondent's engagement, although the Client recognized that Respondent was pursuing his own non-monetary benefits agenda. The resulting diminishment of ability to determine and control the objectives of Respondent's engagement was a direct function of the agreement's ambiguous terms and threats Respondent made regarding them.

The Client was facing the need to get the eminent domain case resolved and the \$10,000,000 sale completed. Client had already hired, at its own expense, Mr. Petitt in an unsuccessful attempt to encourage the Respondent to pursue its objective. The prospect of expensive further litigation with Respondent over his representation agreement could not have looked attractive, particularly since the agreement specifically restricted the Client from seeking its fees against Respondent or interpreting the agreement's ambiguous provisions against the drafter.

4.

Rule 4-1.7 (Conflict of Interest; Current Clients): The Bar proved by clear and convincing evidence that respondent violated Rule 4-1.7. The Rule states in pertinent part "a lawyer must not represent a client if there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another

client, a former client or a third person or by a personal interest of the lawyer.” R. Regulating Fla. Bar 4-1.7(a)(2).

Respondent violated Rule 4-1.7 by filing numerous unauthorized and improper pleadings intended to advance his own attorney’s fees claims, rather than acting in accordance with his clients’ directions to settle the case, or their best interests. Following his discharge from representation of Client, Respondent continued to file unnecessary and improper motions and pleadings seeking to advance his fee claims that had been previously preserved by the court. Without Client’s consent or knowledge, Respondent proposed settlements of the eminent domain litigation to FDOT that sought to benefit himself at the expense of Client’s objective. In another instance, Respondent materially altered his Client’s proposed settlement offer in order to benefit himself, after being specifically and unambiguously directed to communicate that offer without alteration.

5.

Rule 4-3.1 (Meritorious Claims and Contentions): The Bar proved by clear and convincing evidence that respondent violated Rule 4-3.1. The rule states: “[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith

argument for an extension, modification, or reversal of existing law.”

R. Regulating Fla. Bar 4-3.1.

Respondent violated Rule 4-3.1 by filing two *lis pendens* to encumber the subject property when he had no reasonable basis to do so and filing several unauthorized motions for summary judgment in the eminent domain case against Client's direction. The *lis pendens* created a cloud on the title to Client's property that Client was then forced to incur further expense to remove.

6.

Rule 4-3.4 (Fairness to Opposing Party and Counsel): The Bar proved by clear and convincing evidence that respondent violated Rule 4-3.4, which states in pertinent part “a lawyer shall not present, participate in presenting, or threaten to present disciplinary charges under these rules solely to obtain an advantage in a civil matter.” R. Regulating Fla. Bar 4-3.4(h).

Respondent violated Rule 4-3.4 by unjustifiably threatening to file a bar complaint and a lawsuit against another attorney due to her alleged, but nonexistent, interference with Respondent's ability to collect attorney's fees. The threats toward Ms. Sanchez contributed to FDOT's decision to forgo the possibility of an informal settlement of Client's eminent domain case, in favor

of a more formal mediation. That decision caused further delay in resolving the case and required Client to employ further attorney resources.

7.

Rule 4-8.4 (Misconduct): The Bar proved by clear and convincing evidence that respondent violated Rule 4-8.4, which states in pertinent part that “a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice.” R. Regulating Fla. Bar 4-8.4(d).

Respondent engaged in several actions that were prejudicial to the administration of justice, including: attempting to set aside the clients’ mediated settlement, attempting to negate the clients’ final judgment, seeking to set aside the final judgment as a sham, making claims against the clients alleging fraud and federal RICO violations, and delaying the conclusion of the FDOT proceedings. Respondent was also unprofessional in his demeanor and behavior toward Ms. Sanchez. His conduct intentionally impeded, rather than facilitated, settlement for his clients, and otherwise interfered with the administration of justice.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

3.2(b) Aggravation

(2) Dishonest or selfish motive: respondent was concerned with protecting his own self-interests in the underlying eminent domain action and surrounding litigation, even when his interests were against Client's specific direction and best interests.

(4) Multiple offenses: Respondent's actions constituted violations of seven of the Rules Regulating The Florida Bar.

(5) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency: Respondent engaged in improper and unprofessional behavior throughout this disciplinary process. Respondent was argumentative and unprofessional in his taking of the deposition of witness Aloyma Sanchez, as evidenced by the transcript attached to Respondent's Motion to Exclude Testimony of Aloyma Sanchez, Esq., Motion to Compel Aloyma Sanchez, Esq. to Comply with Deposition Subpoena and Motion for Sanctions filed on July 22, 2021. Respondent also avoided providing direct answers to Bar counsel's questions and was argumentative with and disrespectful toward the Referee.

Trial Tr. vol. 8, 1293-94. Lastly, Respondent refused to attend a sworn statement before Bar counsel and the grievance committee's investigating member, a procedure permitted by Rule 3-7.4(h), while this matter was pending before the Thirteenth Judicial Grievance Committee "B". Trial Tr. vol. 1, 167-70; TFB Exh. 30.

(7) Refusal to acknowledge wrongful nature of misconduct: Respondent failed to acknowledge any wrongdoing not only during the underlying eminent domain action but also throughout this disciplinary process. Without acknowledging any role in the divergence of his personal interests and expectations from his client's objectives, Respondent has consistently portrayed himself as a victim of the improper or illegal conduct of others, including his Client, the FDOT, Mr. Petitt, the Court, the Arbitrator, and the Florida Bar. Respondent's testimony throughout the final hearing in this matter demonstrated that he does not believe his actions were improper and he exhibited no remorse for his misconduct.

(9) Substantial experience in the practice of law: Respondent has been licensed to practice law since 1982.

3.3(b) Mitigation

(1) Absence of a prior disciplinary record: Respondent has no prior disciplinary history with the bar.

4.3 Failure to Avoid Conflicts of Interest

(a) Disbarment is appropriate when a lawyer causes serious or potentially serious injury to the client and, without the informed consent of the affected client(s): (1) engages in representation of a client knowing that the lawyer's interests are adverse to the clients with the intent to benefit the lawyer or another.

(b) Suspension is appropriate when a lawyer knows of a conflict of interest, does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

6.2 Abuse of the Legal Process

(a) Disbarment is appropriate when a lawyer causes serious or potentially serious interference with a legal proceeding or knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another and causes serious injury or potentially serious injury to a party.

(b) Suspension is appropriate when a lawyer knowingly violates a court order or rule and causes injury or potential injury to a client or a party or causes interference or potential interference with a legal proceeding.

7.1 Deceptive Conduct or Statement and Unreasonable or Improper Fees

(a) Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another and causes serious or potentially serious injury to a client, the public, or the legal system.

(b) Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

V. CASE LAW

I considered the following case law submitted by The Florida Bar in its January 4, 2022 Memorandum of Law as to Discipline and argued at the January 5, 2022 sanctions hearing prior to recommending discipline:

Florida Bar v. Lord, 433 So. 2d 983, 986 (Fla. 1983) – The Florida Supreme Court has defined the three objectives of attorney discipline as: (1) fairness to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer; (2) fairness to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation; and (3) deterrence to others who might be prone or tempted to become involved in like violations.

Florida Bar v. Rosenberg, 169 So. 3d 1155, 1162 (Fla. 2015) – the Court reaffirmed that in recent years, it has moved towards stronger sanctions for attorney misconduct.

Florida Bar v. Scott, 39 So. 3d 309 (Fla. 2010) – an attorney was suspended for 3 years, in part, for making false statements of material fact or law to a third party in the course of representing a client and failing to decline or terminate representation of a client when the representation would result in violation of the Rules Regulating The Florida Bar. Scott engaged in unwaivable conflicts of interests and misrepresentation and his actions were motivated by monetary concerns. The Court held in *Scott* that “if the egregiousness of the conduct is viewed as falling along a continuum, the closer the conduct falls on the continuum to the dividing line between

suspension and disbarment, the longer the suspension that such conduct would warrant.” Scott had no prior disciplinary history.

Florida Bar v. Committe, 136 So. 3d 1111 (Fla. 2014) – an attorney received a 3-year suspension for bringing a frivolous and meritless tort action, refusing to comply with an order to pay attorney’s fees, and threatening the defendant with criminal prosecution by writing a letter to the U.S. Attorney accusing the defendant of extortion. Committe also gave false testimony during the disciplinary hearing. The matter arose when Committe filed a complaint containing unsupported and frivolous allegations, which resulted in the underlying court sanctioning him with fees and costs. After the entry of a final judgment, the defendant sent Committe letters seeking to collect payment of the awarded fees. In turn, Committe wrote to the U.S. Attorney in which he accused the defendant of extortion and urged criminal prosecution. The Court disapproved the referee’s recommended sanction of a 91-day suspension and considered that each of Committe’s violations standing alone would have warranted a rehabilitative sanction. Committe’s violations taken together were serious and egregious, causing harm to both the defendant and the court system, which warranted a more severe sanction. Committe had a prior disciplinary history consisting of a 90-day suspension for engaging in the same rule violations.

Florida Bar v. Petersen, 248 So. 3d 1069 (Fla. 2018) – the attorney was suspended for 3 years. Petersen represented clients in various pieces of litigation. In one case, Petersen fostered an adversarial relationship and manufactured conflicts with his clients to justify his withdrawal, which involved the return of intellectual property rights and was potentially worth millions of dollars, in order to preserve his right to collect his attorney's fees. Petersen gained a pecuniary or possessory interest in the case that was adverse to the clients' interests without advising them to seek independent legal counsel. The referee found that Petersen neglected cases and failed to effectively communicate with his clients to create conflicts, he lost and misplaced documents and evidence the clients were entitled to, and he made misrepresentations to the clients. In a second case, Petersen made material misrepresentations of fact in a proposed order that he submitted to the court on his motion to withdraw. Further, based on Petersen's lack of action in the case, his legal fees were excessive. In a third case, the federal magistrate found, after a hearing on a motion to strike Petersen's notice of charging lien, that it was Petersen's obstructive behavior adverse to the client's interest that created the conflict, and the magistrate struck Petersen's charging lien. The Court found Petersen's conduct was prejudicial to the administration of

justice. Petersen had a prior public reprimand related to a criminal conviction for stalking and criminal mischief.

Florida Bar v. Ratiner, 238 So. 3d 117 (Fla. 2018) – an attorney was disbarred for engaging in multiple acts of misconduct which disrupted a tribunal. Ratiner stated “lie, lie, lie” in quick succession while opposing counsel examined a witness and repeatedly kicked opposing counsel’s table. Ratiner also was disrespectful toward the court, disobeyed the judge’s orders, engaged in intentionally disruptive behavior, and generally acted like a bully. Ratiner had a history of similar misconduct and refused to acknowledge the wrongful nature of his actions by attempting to shift the blame to others. Respondent did not submit any case law at the January 5, 2022 sanctions hearing in support of his position that a public reprimand was the appropriate discipline for his misconduct.

In addition, I considered the following:

Florida Bar v. Vining, 721 So. 2d 1164 (Fla. 1998) – an attorney was suspended for six months for continuing to represent a client after he had received a termination of representation letter from his client. Vining had a self-serving motive in this unauthorized continued representation, and such representation was to the client’s detriment. Though he was an experienced attorney, Vining refused to recognize that his actions were wrong.

Florida Bar v. Hayden, 583 So. 2d 1016 (Fla. 1991) – an attorney was suspended for six months for, against his client's wishes, filing a contempt action for nonpayment of child support. Respondent primary objective was to leverage the contempt action to collect his fee, as he advised his client that he would not pursue the contempt action if his fees were paid.

Florida Bar v. Hollander, 607 So. 2d 412 (Fla. 1992) – an attorney was suspended for, among other things, including in his fee agreement a termination-of-services clause that allowed an excessive fee and penalized the client for exercising her right to terminate the attorney's services.

Florida Bar v. Richardson, 591 So. 2d 908 (Fla. 1991) – an attorney was suspended for 60 days for filing frivolous lawsuits against his clients. Describing Richardson's behavior as "an obsessive attempt to relitigate an issue that has failed decisively numerous times," the Court questioned Richardson's ability to practice law.

Florida Bar v. Kelly, 813 So. 2d 85 (Fla. 2002) – an attorney was suspended for 91 days for, among other things, suing his client for a loss of a contingency fee he felt was owed to him. The referee found that the attorney had sued his client to enforce an illegal fee and for retaliation in exercising his right to terminate an attorney's representation.

Florida Bar v. Roberto, 59 So. 3d 1101 (Fla. 2011) - A lawyer may not represent a client if there is a substantial risk the representation will be “materially limited” by the lawyer's own personal interests, and his loyalty may be impaired to the extent that he is unable to consider, recommend or carry out an appropriate course of action on behalf of his client because of the lawyer's other interests.

Florida Bar v. Shankman, 41 So. 3d 166 (Fla. 2010) - Lawyer's activity designed to increase his percentage of potential recovery, and the resultant delay contrary to the client's goal of resolving the case constituted engaging in a conflict of interest.

Respondent did not submit any case law at the January 5, 2022 sanctions hearing, or thereafter, in support of his position that a public reprimand was the appropriate discipline for his misconduct.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A three-year suspension from the practice of law.

Payment of The Florida Bar's costs in these proceedings.

Respondent will eliminate all indicia of Respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards office signs or any other indicia of Respondent's status as an attorney, whatsoever.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

Personal History of Respondent:

Age: 63

Date admitted to the Bar: November 1, 1982

Prior Discipline: None.

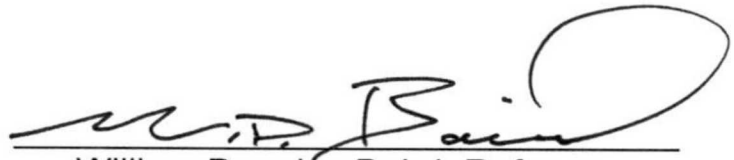
VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

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

Investigative Costs	\$246.50
Court Reporters' Fees	\$16,582.80
Copy Costs	\$760.40
Witness Costs	\$562.50
Bar Counsel Costs	\$359.27
Administrative Fee	\$1,250.00
TOTAL	<u>\$19,761.47</u>

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

Dated this 7th day of February, 2022.


William Douglas Baird, Referee

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