IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

BERNARDO ROMAN, III,

Respondent.

______________________________/

Supreme Court Case
No. SC16-1330

The Florida Bar File Nos.
2014-70,055(11G)
2015-70,460(11G)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

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

On July 21, 2016, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. The final hearing in this matter was held on June 19, 20, 21, and 22, 2017, and a sanctions hearing was held on July 7, 2017. All items properly filed including pleadings, recorded testimony, exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Narrative Summary of Case.

1. This matter arises from Respondent's misconduct in three separate lawsuits that he filed in state and federal court against Michael Tein ("Tein"), Guy Lewis ("Lewis"), and their law firm Lewis Tein, PL, ("Lewis Tein", or "the firm"), as well as his insertion of himself and his client into a pending motion for sanctions in another lawsuit, styled *Bermudez v. Bert,* in which neither he nor his client were a party.[1]

2. This court finds that in each of the four above referenced actions, Respondent committed a fraud on the court by raising, perpetuating and/or

[1] The four lawsuits pertinent to the instant Complaint are: *Bermudez v. Bert,* Circuit Court Case No. 2000-25777 (the "Dresnick case"); the first State court lawsuit filed by Respondent against Lewis and Tein, styled *Miccosukee Tribe v. Lewis and Tein, et. al.*, Circuit Court Case No. 12-12816, presided over by Circuit Court Judge John W. Thornton (The "Thornton case"); the federal lawsuit styled *Miccosukee Tribe v. Lewis and Tein, et al.,* Case No. 12-22439, presided over by U. S. District Court Judge Marcia G. Cooke (the "Cooke case"). Respondent filed a second state court lawsuit against Lewis and Tein after the federal suit was dismissed, which raised identical claims as those dismissed in the federal suit, and which matter was presided over by Circuit Court Judge Jennifer Bailey, case number 13-35956 (The "Bailey case"). Respondent did not move to dismiss that suit despite the finding that there was no factual basis for the claims in the federal lawsuit. Judge Bailey later dismissed the case with prejudice on *res judicata* grounds.

maintaining allegations against Lewis and Tein which he knew to be entirely false and fictitious, despite being in possession of the evidence proving his allegations false. Respondent further engaged in malicious and bad faith conduct of these lawsuits by taking such actions as: failing to comply with discovery requests and orders; withholding evidence; evading service of a deposition subpoena; colluding with an adversary in order to use the legal process to inflict injury on Lewis and Tein, even where same prejudiced his client; and making false accusations to the police in a 911 phone call in order to cause the unfounded arrest of Lewis and Tein's counsel during an ongoing deposition.

The Bermudez Case

3. These matters began with the case of *Bermudez v. Bert*. This case was a wrongful death action involving the tragic deaths of two individuals at the hands of a drunk driver, Ms. Tammy Gwen Billie ("Billie"). Ms. Billie and her father, Jimmie Bert ("Bert"), whose car she was driving, are members of the Miccosukee Tribe of Indians of Florida ("the Tribe"). Lewis and Tein represented Billie and Bert in that action. Lewis and Tein also represented other members of the Tribe, as well as the Tribe itself in various capacities between 2005 and 2010.

4. In the *Bermudez* case, the plaintiffs were represented by Ramon Rodriguez, Esq. Rodriguez obtained a judgment for approximately $3,000,000.00 against Billie and her father. Extensive post trial litigation ensued in the plaintiff's

attempts to collect the judgment. As he was unsuccessful in collecting the judgement from the individual tribal members, Rodriguez attempted to collect the judgment from the Tribe itself.

5. In the course of the post-judgement proceedings, Rodriguez filed a motion for sanctions against Lewis and Tein based on their objection of certain tax documents. The court found that Lewis Tein did not make clear in its response that there were no responsive documents available and sanctioned Lewis Tein $3,500.00 for the attorney's costs in litigating that objection. During the August 30, 2011 hearing on the amount of sanctions to be imposed, Tein made a statement indicating that the defendants (Billie and Bert) were responsible for paying their attorney's fees in the lawsuit. TFB Ex. 7. This statement became the subject of much controversy and the springboard for Respondent's wholesale fraud on the state and federal courts in South Florida.

Respondent Maliciously Inserted Himself and the Tribe Into the Bermudez Case

6. While the above described post-judgement collection action was proceeding, changes were occurring at the Tribe. In December 2009, incident to a decades-old bitter political rivalry, the long-serving chairman of the Tribe (Billy Cypress), was narrowly defeated in an election and a new chairman (Colley Billie), assumed office. Tr. 299-300. This new chairman immediately fired all outside lawyers and accountants. Tr. 300 ("When Colley Billie became chairman he

executed what I can only describe as a purge of the prior administration and all people associated with it."). He then fired all non-Indian senior officers including the CFO and general counsel. Tr. 300-302. Respondent, Bernardo Roman, III, previously the "tribal court law clerk," who was aligned with the new chairman, was elevated to in-house "Tribal Attorney." Tr. 304-306.

7. The internal feud of the Tribe continued past the 2009 election, and the new administration set out to do all in its power to utterly discredit and destroy the reputations of the former chairman and anyone associated with the prior administration, including Lewis and Tein. *See e.g.*, TFB Ex. 20 at 33-34, and TFB Exs. 21, 22, 23, 24, 25. To that end, in February 2011, Respondent, on behalf of the Tribe, began monitoring the *Bermudez* post-judgement collection proceedings. Respondent wrote an email to Rodriguez, stating that the "Tribe ... has directed me to contact you in regards to this matter. As Tribal Attorney, I only represent the Miccosukee Tribe, who is not a party in this case." The email is reproduced below:

Ramon M. Rodriguez

From:	bromanlaw [bromanlaw@bellsouth.net]
Sent:	Wednesday, February 02, 2011 1:42 PM
To:	rmr.lawoffice@att.net
Cc:	BettyLo
Subject:	Bermudez v. Miami-Dade County

Mr. Rodriguez: This is to inform you that the Miccosukee Tribe of Indians of Florida has directed me to contact you in regards to this matter. As Tribal Attorney, I only represent the Miccosukee Tribe, who is not a party in this case. Can you please send me an update regarding this case and any relevant documents. Thank you for your prompt attention to this matter. Bernie Roman, Tribal Attorney, Miccosukee Legal Department.

TFB Ex. 5 (Email from Respondent, dated Feb. 2, 2011); Tr. 323-325.[2]

8. As a result of this vendetta, Respondent maliciously inserted himself and the Tribe into the *Bermudez* proceedings as soon as he observed an opportunity to harm Lewis and Tein. As previously indicated, Tein testified at an August 2011 sanctions hearing that his clients (Billie and Bert) were responsible for paying their own legal fees. Upon learning of this statement, in or around September 2011, Respondent supplied the plaintiff's counsel with copies of 61 checks (and check stubs) drawn on the Tribe's general account, payable to Lewis Tein, totaling $3,111,567.[3] Tr. 254-256; TFB Ex. 9 at Composite Ex. 1.

9. This court finds that it is at this point that Respondent began his campaign to maliciously smear the reputations of Lewis and Tein through the perpetration of a massive fraud on the state and federal courts of South Florida. Respondent falsely represented to Plaintiff's counsel that these 61 checks proved

[2] This email would later be significant because Respondent withheld it from the documents he produced pursuant to a subpoena duces tecum requesting communications between himself and Mr. Rodriguez; and also because this email demonstrated that Respondent made affirmative misrepresentations in his deposition testimony concerning who initiated the contact between himself and Rodriguez and when that contact commenced.

[3] As is apparent from the face of the checks stubs themselves, a third of this amount was payment for legal work performed for other Tribe members in other matters. TFB Ex. 9 at Composite Ex. 1 (checks with corresponding stubs); Tr. 256 ("In fact, a million of that 3.1 was for other clients. And so … Mr. Roman and Mr. Rodriguez for effect … would always tell Judge Dresnick it was $3.1 million, despite the fact that it was obvious from the face of the check stubs that that was not the case.").

that the Tribe was actually paying for Billie and Bert's defense, and that Tein committed perjury when he testified to the contrary. Respondent's false allegations sparked motions by Plaintiff to hold Lewis and Tein in criminal contempt of court for their alleged commission of perjury, resulting in almost two additional years of entirely frivolous litigation in the Bermudez case pursuing same.

10. This court finds that Respondent knew at the time he took this action, and during each and every subsequent action taken by Respondent throughout all of the court proceedings below, that his assertions regarding the checks were false. Contrary to Respondent's deliberate deception, the 61 checks represented the proceeds of loans by the Tribe to Billie and Bert (and other unrelated tribal clients) that were used to fund their defense, and which they were continuously paying back to the Tribe throughout the entirety of the underlying proceedings.

11. During all material times, Billie and Bert each received quarterly per-capita "dividends" or "distributions" from the Tribe.[4] These quarterly distributions varied over time, generally increasing, from $18,800 to $43,000. TFB Ex. 38 (attaching spreadsheets detailing quarterly deductions from distributions for "Attorney Fee" for Billie and Bert). For many years, when Tribe members required the services of outside attorneys, the Tribe would make the payments by

[4] Every member of the Tribe received these distributions.

check to the outside lawyer, and, depending on the amount, would make a corresponding deduction from the Tribe member's current dividend and/or log in an amount against that Tribe member's future dividends. Tr. 252-254 ("Q. So what you're saying they're paying out of their distributions, does that mean that some portion of the distribution is being used to offset what the Tribe is fronting for your bills. A. Yes.").

12. Beginning in 2000 and continuing through at least June 2013, Billie and Bert paid for their legal defense of the wrongful death case (and Billie's related criminal case) by means of deductions from current dividends and loans to be repaid from future dividends. TFB Ex. 18 (Tammy Billie Legal Fees schedule, attached to Respondent's 12/20/2012 "notice of compliance"); *see also* TFB Exs. 29, 33, 38, 39, 40.

13. This arrangement was commonplace at the Tribe. Tr. 584; TFB Ex. 33. As the Tribe's accounting records show, many local law firms received payment for their services in this manner, including: Holland & Knight; Jordan Burt, Arnstein & Lehr; Restanti, McCalllister & Cassetty; and Diaz & Kaiser LLP. TFB Ex. 38 at Ex. H; Tr. 375. Similarly, many local attorneys received payment in this manner, including Scott Srebnick, Diane Ward, Bruce Rogow, Edward J. O'Donnell, and Guy Seligman. The following exhibit plainly demonstrates this:

9/30/2005
1069-001
A/R Legal

FY 2002	Law Offices of Michael Diaz		1,578,498.84
10/02	Bernardo Roman		30,000.00
11/02	NTDR deductions		(86,385.00)
2/03	NTDR deductions		(131,034.00)
3/03	payments		(15,700.00)
4/03	Rodriguez & Machado		12,000.00
5/03	NTDR deductions		(61,500.00)
6/03	payments		(4,000.00)
8/03	NTDR deductions		(77,745.00)
9/03	Judy Osceola - Guy Seligman		5,500.00
9/03	JordanBurt		2,296.00
FY 2003	Law Offices of Michael Diaz		1,208,428.79
10/30/2003	Rodriguez & Machado	532981	7,471.24
11/25/2003	Rodriguez & Machado	533573	457.22
11/03	NTDR deductions		(76,471.24)
1/13/2004	payments		(15,670.00)
2/17/2004	Law Offices of Michael Diaz	534977	100,000.00
2/17/2004	Law Offices of Michael Diaz	534978	100,000.00
2/17/2004	Law Offices of Michael Diaz	534979	103,361.46
2/24/2004	NTDR deductions		(73,400.00)
2/27/2004	Restani, McCallister & Cassetty, P.A.	536220	23,844.66
3/2/2004	payment		(11,000.00)
3/8/2004	payments		(14,250.00)
3/22/2004	Law Offices of Michael Diaz	535690	300,000.00
5/11/2004	Holland & Knight LLP	536612	3,640.00
5/11/2004	Holland & Knight LLP	536613	3,395.00
6/1/2004	NTDR deductions		(118,250.00)
6/9/2004	Restani, McCallister & Cassetty, P.A.	537074	2,250.00
6/10/2004	Road Truck Investigations Inc.	537106	5,000.00
6/10/2004	Exponent	537104	3,500.00
6/10/2004	Scott Srebnick	537107	38,427.07
6/10/2004	Gary Rosenberg	537105	75,000.00

TFB Ex. 38 at Ex. H (Tribe's records for accounts receivable from Tribe members for legal fees, listing names and amounts); Tr. 479. Indeed, this same document reflects that ***Respondent himself*** had been paid $30,000 in legal fees during this audit period by precisely such a loan:

9/30/2005
1069-001
A/R Legal

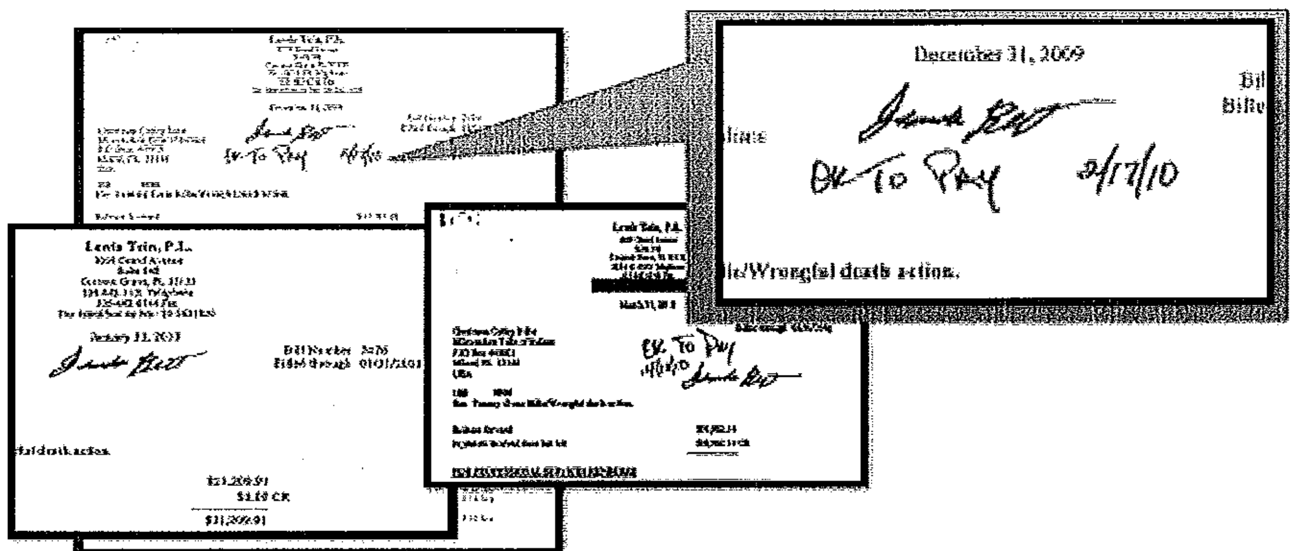
10/02	Bernardo Roman	30,000.00
11/02	NTDR deductions	(86,385.00)
2/03	NTDR deductions	(131,034.00)
3/03	payments	(15,700.00)

Id. (showing a $30,000 payment to Respondent in October 2002). In deposition testimony, the Tribe's former General Counsel, Jeanine Bennett, Esq., testified that

Respondent "regularly" received checks from the Tribe that were "loans to his individual clients." TFB Ex. 30 at 139; Tr. 351 ("[I]t's clear that Mr. Roman well knew when he made this allegation against [Lewis Tein] that it was false, because he himself had previously been paid by means of this same arrangement of the Tribe lending the money to his client and the Tribe cutting the check.").

14. For every Tribe member receiving such loans, including Bert and Billie, the Tribe meticulously accounted for these loans and kept voluminous documentation evidencing them. These documents included:

a. Monthly legal invoices signed "ok to pay" by the client, authorizing the Tribe to pay outside counsel against current or future dividends:



TFB Ex. 38 at Composite Ex. K (Lewis Tein invoices signed "ok to pay" by Bert, demonstrating that he approved disbursement of loan proceeds to pay legal fees).

b. "Purchase orders" reflecting that the Tribe member had authorized payment of a particular legal invoice:

Purchase Order No.

Program Name: General Account

Code: 1069-001

Date of Order: August 3, 2010

To: Lewis Tein, P.L.

Ship To:

Supplies and / or Services	Quantity	Unit Price	Amount
Bill Number: 8053 Re: Tammy Billie 4/10			
			8/4/10
			Total: $ 39,256.18

TFB Ex. 29 at Ex. 3.

c. "NTDR Receipt Forms" signed by the client confirming that the "attorney fee" loan payments were subtracted from the quarterly distribution:

MICCOSUKEE TRIBE OF INDIANS OF FLORIDA
NTDR RECEIPT REPORT

Check Payable To: JIMMIE BERT   Enrollment Number: [redacted]

Date: May 28, 2005

Last Name: BERT
First Name: JIMMIE

Deductions From Distribution

Gross Distribution: $ 32,000.00   Check Number: 207874

Deduction Type	Deduction Amount	
		Amount: 27,000.00
ATTORNEY FEE	$ 5,000.00	

Picked up by: [signature]   Date: ____________

MICC 80762

TFB Ex. 35 at Composite Ex. A (MICC 80762) (Receipt showing a $32,000 dividend distribution in May 2005 to Jimmie Bert, with a $5,000 deduction for "ATTORNEY FEE," and the total of the corresponding distribution check to Bert in the amount of $27,000 – signed by Louise Bert, his wife).

d. General Ledger account spreadsheets reflecting every quarterly dividend and amounts deducted for "attorney fee" payments:

Jimmy Bert 2003-2013

Official Date	Check Number	Description	Deduction Amou
6/1/2013	225538	Gross Amount	
6/1/2013	225538	NTDR LOAN	$11
6/1/2013	225538	Check Amount	
3/2/2013	224776	Gross Amount	
3/2/2013	224776	NTDR LOAN	$22,00
3/2/2013	224776	Check Amount	
12/15/2012	224392	Gross Amount	
12/15/2012	224392	Check Amount	
12/1/2012	223840	Gross Amount	
12/1/2012	223840	NTDR LOAN	$22,000
12/1/2012	223840	Check Amount	
8/25/2012	223459	Gross Amount	
8/25/2012	223459	NTDR LOAN	$22,000.0
8/25/2012	223459	Check Amount	

"NTDR LOAN"
DEDUCTIONS
DURING TRIBE'S
LAWSUITS:
AUG 2012: $22,000
DEC 2012: $22,000
MAR 2013: $22,000
JUN 2013: $11,000

TFB Ex. 38 at Composite Ex. A (MICC 98254) (Tribe accounting records reflecting deductions from Bert's distributions for loan payments for the outstanding legal fees, occurring during the same time period that the Tribe was alleging in state and federal courts these same loans were "fake").

e. And, audited financial statements for the Tribe from 2005-2009 confirming the amount of the loans and attesting to the collectability of the receivables, for example:

MICCOSUKEE TRIBE OF INDIANS OF FLORIDA

BALANCE SHEET

September 30, 2006

ASSETS	General Fund
Loans receivable from tribal members	8,932,123
Loan receivable from chairman	580,778

Note 6 LOANS RECEIVABLE FROM TRIBAL MEMBERS

There are various types of loans available to Tribal members which can change from time to time. The types of loans, amount limits, and circumstances under which the loans provided are approved by the General Council and then administered by the Business Council. Interest is charged at 10% and is discounted prior to the issuance of the loan. These loans are collected through deductions from the quarterly tribal distribution.

LOANS RECEIVABLE FROM TRIBAL MEMBERS

All loans receivable from tribal members have been properly recorded and disclosed in the financial statements. Loans receivable from tribal members as of September 30, 2006 was $8,932,123. We feel that the current balance is fully collectible.

INSTANCES OF FRAUD AND CONFLICTS OF INTEREST

There has been no fraud involving management, business council or employees who have significant roles in the system of internal accounting control.

There has been no fraud involving others that could have a material effect on the financial statements.

TFB Ex. 16 (Excerpts from Tribe's 2006 audited financial statements).

15. Beginning in 2005, Bert was represented by Vivian Rosado, Esq., and Billie was represented by Lewis Tein.[5] Tr. 221 ("[Lewis Tein] recommended to the family that they retain another lawyer [they] knew named Vivian Rosado . . . to represent Jimmie."); TFB Composite Ex. 50 at 10-11 (Bert's Third sworn statement). At that time, Rosado and Lewis Tein separately invoiced Bert and Billie for their independent services. *Id.* Thus, Bert received a monthly invoice from Rosado, and Billie received a monthly invoice from Lewis Tein. *Id.* Accordingly, the Tribe made deductions from both Bert and Billie's current distributions and lent money against their future distributions, for payment of these invoices.

a. For example, for Q4 2005, the Tribe deducted $5000 for legal fees from Bert's gross distribution of $33,500, cutting him a net check of $28,500.

11/27/2005	N/A	Gross Amount		$33,500.00		JIMMIE		BERT	191	JIMMIE BERT
11/27/2005	N/A	ATTORNEY FEE	$5,000.00			JIMMIE		BERT	191	JIMMIE BERT
11/27/2005	N/A	Check Amount			$28,500.00	JIMMIE		BERT	191	JIMMIE BERT

TFB Ex. 38 at Composite Ex. A (MICC 98255).

b. For that same period, the Tribe deducted $30,150 for legal fees from Billie's gross distribution of $33,500, cutting her a net check of $3,350.

11/27/2005	N/A	Gross Amount		$33,500.00		TAMMY	G.	BILLIE	326	TAMMY BILLIE
11/27/2005	N/A	ATTORNEY FEE	$30,150.00			TAMMY	G.	BILLIE	326	TAMMY BILLIE
11/27/2005	N/A	Check Amount			$3,350.00	TAMMY	G.	BILLIE	326	TAMMY BILLIE

[5] Lewis Tein was hired to represent Billie in the pending civil wrongful death case, as well as the related criminal matter. Tr. 219-221.

TFB Ex. 38 at Composite Ex. A (MICC 98288).

16. Thereafter, Rosado joined Lewis Tein, P.L. and the firm began representing Bert also. Tr. 222 ("Ms. Rosado joined our law firm, and there was a conflict waiver, and so at that point forward, both Bert and Billie were represented by our firm."). From that point forward, Lewis Tein sent only one monthly invoice encompassing all of the legal services provided to the whole family, including Bert and Billie as well as Louise Bert. *See* TFB Composite Ex. 50 [Jimmie Bert's Third sworn statement] at 10-11 ("When it first started out with Vivian [Rosado] was his[6] attorney, her bills came out of his deduction, out of his NTDR, and it was like $4,000 each time. ... But [then] they combined the bills so it would be just one payment, and that's how it came to be that all of this was [thereafter] taken from Tammy Billie's NTDR."). And beginning in 2008, Billie assumed responsibility for all of the current and future legal bills for the family, including her mother and father's. *Id.*; TFB Ex. 38 at Composite Ex. A. Both Bert and Billie continued to repay the Tribe for the legal-fee loans, through deductions from their quarterly dividends:

a. For example, in Q1 2009, Bert was no longer charged a $5,000 deduction for current "Attorney's Fee," but instead paid only against his

[6] The Miccosukee translators for all of Mr. Bert's statements interpreted back to English using the third-person singular pronoun.

outstanding balance on his prior legal fees, entitled "NTDR Loan" (here, being charged an installment of $9,060.89):

3/1/2009	217191	Gross Amount		$40,000.00		JIMMIE		BERT		191	JIMMIE BERT
3/1/2009	217191	NTDR LOAN	$9,060.89			JIMMIE		BERT		191	JIMMIE BERT
3/1/2009	217191	Check Amount			$30,939.11	JIMMIE		BERT		191	JIMMIE BERT

TFB Ex. 38 at Composite Ex. A (MICC 98254).

b. Correspondingly, for this same period, Billie's current payment for "Attorney Fee" increased by just over $5,000 (from $30,150 to $36,000), demonstrating her assumption of her father's portion of the loan:

3/1/2009	217251	Gross Amount		$40,000.00		TAMMY	G.	BILLIE		326	TAMMY BILLIE
3/1/2009	217251	ATTORNEY FEE	$36,000.00			TAMMY	G.	BILLIE		326	TAMMY BILLIE
3/1/2009	217251	Check Amount			$4,000.00	TAMMY	G.	BILLIE		326	TAMMY BILLIE

TFB Ex. 38 at Composite Ex. A (MICC 98287).

17. Accordingly, this court finds by clear and convincing evidence that Respondent's assertions regarding the 61 checks that he provided to plaintiff's counsel, Rodriguez, and his averment that there were no loans from the Tribe to pay Billie and Bert's legal fees, were knowingly and deliberately false statements. It is clear that the clients were in fact responsible for paying Lewis Tein's fees, which they accomplished through means of a loan against their quarterly distributions.

Respondent Engaged in Significant Misconduct in Order to Facilitate the False Allegations of Perjury and Fraud Against Lewis and Tein

18. As a direct result of Respondent's actions, plaintiffs' counsel in *Bermudez* filed a series of motions in October 2011 seeking sanctions, and civil and criminal contempt, and accusing Lewis and Tein of committing perjury and obstructing justice for Tein's statement at the August 2011 hearing that their then-clients, Billie and Bert, had been responsible for paying their attorneys' fees. Tr. at 224-225; TFB Exs. 9, 10.

19. On October 27, 2011, Lewis Tein filed a response establishing that these allegations were false. TFB Ex. 11. The memorandum attached a transcript of the hearing itself, as well as the affidavits of their clients Billie and Bert and three former Tribe officials (Chairman, CFO, and General Counsel). *Id.* The sworn affidavits stated clearly and unequivocally that Billie and Bert were responsible for paying their legal fees that were funded through the above-described loans by the Tribe, which the clients paid back through deductions from their quarterly distributions. *Id.* Lewis Tein, on behalf of Bert and Billie, followed their memorandum with service and filing of a Fla. Stat. § 57.105 motion for sanctions directed to Rodriguez's contempt motions.

20. In January 2012, Circuit Court Judge Ronald Dresnick, the presiding judge in *Bermudez*, granted plaintiff's request to schedule an evidentiary hearing on the "perjury" and "obstruction" allegations against Lewis and Tein. (Hereinafter referred to as the "Dresnick case" or the "Bermudez Sanctions Proceedings"). Tr.

257-258, 263. For the next 16 months, the plaintiffs were permitted "full-blown discovery" on this issue, which received tremendous publicity adverse to Lewis and Tein. Tr. 263.

21. Thereafter, Respondent continued his campaign to discredit Lewis and Tein by knowingly facilitating the fraudulent allegations of perjury and fraud against them, and actively obstructing their access to the evidence that would have immediately exonerated them. Instead, Respondent continued withholding Court-ordered discovery and continued this baseless, frivolous, and injurious litigation which had no merit.

22. Respondent, as the Tribe's counsel, was ordered to sit for deposition as a fact witness in the Dresnick case, and was also ordered to produce any and all documentation demonstrating whether or not there were loans made to Billie and Bert by the Tribe. Despite the fact that Respondent was the Tribe's Counsel, and had actual possession of, and/or full access to, all of the above described evidence demonstrating the truth,[7] Respondent stonewalled the discovery process and hid

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[7] See TFB Ex. 23 at *4 (In his Order granting Lewis Tein's motion for summary judgement, Judge Thornton found that "Mr. Roman . . . had access at all times to the facts and evidence which conclusively refuted [the Tribe's] claims alleged against Lewis Tein."). Additionally, the Tribe's officers and employees testified to Respondent's possession of documents in his own office, including the "ok to pay" invoices signed by the clients, and/or his access to the other loan documentation such as the audited financial statements reflecting the loans, loan requisition forms, purchase orders, and receipts signed by the client's acknowledging the deductions from their quarterly distributions. TFB Exs. 30, 34, 35, and 38. Respondent also

behind frivolous claims of sovereign immunity in order to prevent disclosure of those documents. For instance, Respondent took evasive action to prevent Lewis Tein from serving him with a subpoena for deposition. Respondent's subsequent email to his friend and co-Respondent, Jose Herrera, demonstrates that his actions in evading service of the subpoena were intentional. *See* TFB Ex. 5 at p. 16-17 (Respondent writing "poor baby" in reference to opposing counsel's unsuccessful attempts to serve him).

23. Once served, Respondent objected to the subpoena based on the Tribe's sovereign immunity. Ultimately, the Third District Court of Appeal held that Respondent waived the Tribe's sovereign immunity by voluntarily inserting the Tribe into a state court proceeding with the express intent of influencing that proceeding. Indeed, The Third District called Respondent's actions in delivering the checks to plaintiff "mystifying," especially where his actions exposed the Tribe to liability for the judgement.

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had access to the "NTDR Receipt Reports" for both Billie and Bert showing the amount of their distributions from the Tribe, the deduction amounts, and the deduction type ("Attorney Fee"). TFB Ex. 38 at Composite Ex. B; TFB Ex. 23 at *4 (Judge Thornton's Order listed the NTDR Receipt Reports as one of the many pieces of exculpatory evidence accessible to the Respondent). All of the documentation not specifically found in Respondent's own office was readily accessible to him in the Tribe's Finance, Accounting and Administrative Departments located within the same building as Respondent's office. Respondent also had direct access to Ms. Jodi Goldenberg, the employee designated by Respondent as having the most knowledge of the loans, who informed Respondent that the Tribe kept these records. TFB Exs. 29, 39, and 40 ("yes, yes, yes" email, in which Goldenberg confirmed such documentation existed and was available).

24. Following the Third District Court of Appeal's ruling, Respondent sat for deposition in the *Bermudez* case on August 22, 2012. This court finds that Respondent made knowing and deliberate misrepresentations in his sworn testimony at that deposition. For instance, Respondent testified that, pursuant to the duces tecum, he brought copies of all communications between himself and plaintiff's counsel, Rodriguez, to the deposition. TFB Ex. 14 at 16-18. Respondent further testified that communications between himself and Rodriguez were initiated by Rodriguez and commenced following the August 2011 hearing in which Tein gave the supposedly perjurious testimony about his client's being responsible for their own legal fees. TFB Ex. 14 at 18-19. However, Respondent's sworn testimony was demonstrated to be false when Lewis and Tein came into possession of an email sent by Respondent to Rodriguez on February 2, 2011, which was not produced by Respondent at the deposition. It is clear from this email that it was Respondent who initiated the contact between himself and Rodriguez, and that it occurred over six months prior to the August 11, 2011 hearing. TFB Ex. 5 at 18.

25. Moreover, Respondent provided false and misleading testimony at his deposition when he stated, " . . . I checked the records that were at the legal department, and the records show that all the legal fees in this case had been paid by the Miccosukee Tribe to the firm of Lewis Tein, P.L." TFB Ex. 14 at 19-20.

This court finds that Respondent deliberately omitted from his testimony the pertinent information that these checks, paid by the Tribe to Lewis Tein, were in fact the proceeds of loans made by the Tribe to Billie and Bert. Such omission was deliberate and designed to mislead the court and the parties into believing that the Tribe was actually funding the litigation. Such omission is tantamount to an affirmative misrepresentation. *See e.g., The Florida Bar v. Forrester*, 818 So. 2d 477 (Fla. 2002). Respondent reiterated this false and misleading testimony later in the deposition, stating, "I made an inquiry. Based on the records I have looked at and were available to me, that the legal fees in this case had been paid by the Miccosukee Tribe, on Miccosukee Tribe checks, on a Miccosukee Tribe account reflected on the bottom of the check, and based on that information, I can tell you that the statement by Mr. Michael Tein to the Court, in the presence of Mr. Guy Lewis, that their client was paying their legal fees, it is untrue. It is a falsity." TFB Ex .14 at 30. This court finds that Respondent committed perjury in this deposition.

26. As demonstrated above, Respondent knew at all times material to these proceedings that the 61 checks written by the Tribe to pay the Lewis Tein invoices were in fact the proceeds of loans to Billie and Bert (and other clients), which were being paid back to the Tribe through deductions in their quarterly distributions. So, it was in fact the clients who were paying for their own legal

defense through the means of loans. Notwithstanding such knowledge, Respondent admitted at his deposition that, when Rodriguez questioned him about evidence of loans, he reiterated his deceptions and continued to encourage Rodriguez to pursue the false claims of perjury and fraud against Lewis and Tein. TFB Ex. 14 at 21-22 (In reference to the affidavit of Julio Martinez attesting to the existence of the loans, Respondent testified that he told Rodriguez, "that the records in the legal department – that the checks show that these payments were made by the Miccosukee Tribe on behalf of Tammy Gwen Billie and Jimmie Bert."). Accordingly, this court finds that, even when Rodriguez began to question the veracity of the allegations, Respondent deliberately misled Rodriguez and encouraged him to continue pursuing the allegations against Tein and Lewis which Respondent knew to be false.

27. Despite the Third District Court of Appeal's holding that Respondent waived the Tribe's sovereign immunity, Respondent continued to raise objections and refused to produce the requested loan documentation throughout the remainder of 2012, during which time Lewis and Tein were denied access to the evidence that would exonerate them. Finally, on December 10, 2012, Judge Dresnick denied Respondent's motion for a protective order and ordered Respondent to produce the pertinent loan documents within ten days. TFB Ex. 17.

28. On December 20, 2012, Respondent filed his Notice of Compliance, consisting of his own sworn affidavit and a few attachments. TFB Ex. 18. In his affidavit, Respondent flatly denied that the Tribe had ***any documentation*** supporting any such loan to Billie and Bert (Tr. 368-370), swearing that:

a. "There are no books of accounts or general ledgers reflecting loans or advances made by the Miccosukee Tribe to Jimmie Bert and/or Tammy Gwen Billie for payment of their legal fees and related expenses" to Lewis Tein, P.L.; and

b. "There are no writings, other information, memoranda, documents, notes, or other things with respect to accounts receivable for loans in general or loans to Jimmie Bert or Tammy Gwen Billie by the Miccosukee General Council for payment of legal fees by the Miccosukee Tribe for legal representation by Guy Lewis, Esquire, Michael Tein, Esquire, or Lewis Tein, P.L."

TFB Ex. 18 at Ex. B.

29. This court finds by clear and convincing evidence that the affidavit filed by Respondent in the Dresnick case on December 20, 2012 was knowingly and deliberately false and perjurious. Respondent well knew at the time he filed the affidavit that there were many such books of accounts, general ledgers, writings, documents, notes and other things evidencing the loans to Bert and Billie by the Tribe for payment of Lewis Tein's fees.

30. It is evident that Respondent filed the false affidavit in order to mislead the court, and to facilitate the false allegations against Lewis and Tein. Additionally, by filing the false affidavit asserting that no such loan documentation existed, Respondent effectively concealed, withheld, and obstructed the parties' access to the abundant documentation that was the subject of orders compelling production, and which demonstrated the loans were genuine, and which would have exonerated Lewis and Tein. Such actions directly violated the letter and spirit of Judge Dresnick's Order compelling production of any and all loan documents, and thwarted the court's efforts to determine the truth.[8, 9]

31. Thereafter, Respondent again committed perjury in the Dresnick case when he took the stand and testified under oath at the April 15, 2013 sanctions hearing. TFB Ex. 44. Respondent testified that before filing his affidavit in December 2012, he spent months researching the issue of whether there were loans given to Billie and Bert to fund their legal fees, including reviewing the minutes of

[8] Respondent's actions also violated discovery orders compelling production of the loan documentation in the Thornton and Cooke cases, which were filed and litigated contemporaneously with the Dresnick proceedings. Had Respondent timely complied with any one of these orders compelling production, Lewis and Tein would have had possession of the evidence required to clear their names in the Dresnick case.

[9] Respondent's determination to conceal and withhold the pertinent evidence demonstrating the existence of the loans caused him to fire Jodi Goldenberg, the Tribe's senior accountant, on the eve of her deposition, when she refused to support the Tribe's false position that there were no loans.

all Business Council and General Council meetings, speaking with Goldenberg, reviewing the records in the Finance department, and speaking with Billie, Bert and Louise Bert. TFB Ex. 44 at 176-178. Respondent stated that this research resulted in his Affidavit filed in the Dresnick case in December 2012.[10] TFB Ex. 44 at 176. Respondent then reiterated and reaffirmed all of the false statements contained in that affidavit. TFB Ex. 44 at 180-185. Respondent continued to insist to Judge Dresnick throughout his testimony that the funds advanced by the Tribe to Lewis Tein were not the result of a valid or approved loan to Billie and Bert. TFB Ex. 44.

32. This Court finds that Respondent's misconduct throughout the Dresnick case was maliciously conducted for the ulterior purpose of supporting the Tribe's contemporaneous and similarly false and frivolous lawsuits against Lewis and Tein in the state and federal courts. The Tribe was not a party to the *Bermudez* case. Respondent had no legitimate basis for cooperating with an adversary counsel who was actively seeking to execute against the Tribe on a large civil judgment. Both the Miami-Dade Circuit Court and the Third District Court of Appeal recognized that the Respondent's efforts were malicious, and aimed exclusively at damaging Lewis Tein:

[10] This is the same affidavit that this court found to be deliberately false and perjurious herein.

a. The Third District Court of Appeal commented, and this court agrees, that the reasons the Respondent injected himself into the *Bermudez* case were "mystifying to us" – since the Bermudez family was seeking to hold the Tribe itself liable to satisfy the civil judgment. TFB Ex. 13 (*Miccosukee Tribe of Indians of Florida v. Bermudez*, 92 So. 3d 232, 233 (Fla. 3d DCA 2012)); Tr. 314-318.

b. The Miami-Dade Circuit Court expressly explained, and this court agrees, that the reason Respondent injected himself and the Tribe into the *Bermudez* case was "to hurt Lewis and Tein:"

> Because of bad blood *the Tribe did whatever it could to hurt Lewis and Tein.* And part of what they did was they dropped this gift on your doorstep of cancelled checks, which you never would have known about but for the bad blood between Lewis Tein and the Tribe. So they gave you that gift because they wanted to use you to hurt Lewis Tein. Which you did.

TFB Ex. 20 at 34; Tr. 388-390 (emphasis added). Indeed, the Court further recognized that the Respondent's conduct in the *Bermudez* Sanctions Proceeding was "obviously planning" for its other lawsuits against Lewis Tein. TFB Ex. 20 at 34.

33. Despite Respondent's best efforts to thwart the process and obstruct justice, Lewis and Tein were ultimately exonerated in the Dresnick case. On May 10, 2013, after one and a half years of the entirely frivolous and vexatious sanctions litigation spurred by Respondent's misconduct, Judge Dresnick found

that Lewis and Tein "(1) did not commit perjury; (2) did not engage in fraud on the Court or misconduct; and (3) did not fail in their obligation of candor to the tribunal." TFB Ex. 19 at 1-2.

Respondent Perpetrated a Wholesale Fraud on the State and Federal Courts and Engaged in Additional, Similar and Cumulative Misconduct When He Filed and Prosecuted Multiple Contemporaneous Lawsuits Against Lewis and Tein Based on the Same False Allegations of "Fake Loans" and/or "No Approved Loans"

34. Not content to damage Lewis Tein by inserting himself and the Tribe into the *Bermudez* case, this court finds that the Respondent escalated his campaign of unethical conduct in the state and federal courts. Respondent filed three separate and entirely frivolous lawsuits against Lewis and Tein, predicated on the same false allegations of "no loans" or "fake loans" devised in the Dresnick case. These lawsuits were filed during the pendency of the Dresnick sanctions proceedings and were litigated contemporaneously therewith.

35. Accordingly, Lewis and Tein were simultaneously defending against three separate actions, in three different courts, in which Respondent was continuing to engage in the same obstructive tactics as in the Dresnick case, described above. Tr. 277 ("[Respondent] filed three lawsuits against us, remarkably, at the same time. Actually, two. Then one was dismissed and he filed the third. He filed in front of Judge Thornton . . . He then filed in federal court, which was assigned to Judge Marcia G. Cooke. And then when Judge Cooke

dismissed that case for lack of federal jurisdiction, he re-filed the identical action in Miami-Dade Circuit Court.").

36. Respondent filed the Tribe's first lawsuit against Guy Lewis, Michael Tein and Lewis Tein, P.L. on April 2, 2012 in Miami-Dade Circuit Court, over which Judge John W. Thornton presided (the Thornton case). The complaint asserted causes of action for legal malpractice, breach of fiduciary duty, fraud, fraud in the concealment, conspiracy to defraud, civil RICO conspiracy, civil RICO, civil theft and conversion. TFB Ex. 12. In short, Respondent repeated many of the discredited fake loan scheme allegations made in the Bermudez matter. *Id.*

37. Among other extraordinary allegations, Respondent falsely claimed that Lewis Tein "implemented a secret and sophisticated scheme to defraud the MICCOSUKEE TRIBE and individual members of the MICCOSUKEE TRIBE out of millions of dollars by creating fictitious, excessive, unreasonable and/or unsubstantiated legal work and other excessive, unreasonable and unsubstantiated expenses;" and that "the MICCOSUKEE TRIBE was lured into unnecessarily paying millions of dollars in legal fees that were excessive and unreasonable, for work that was fictitious, improperly created, unsubstantiated and which did not achieve any reasonable benefits." TFB Ex. 12.

38. In addition, Respondent gratuitously and falsely claimed that Lewis Tein used legal fees from the Tribe to maintain a "lavish and extravagant lifestyle." TFB Ex. 15 at 128. The undersigned court concludes that this allegation was designed to publicly embarrass Mr. Lewis and Mr. Tein, and to ensure widespread adverse media coverage of such salacious details. Among other things, the complaint falsely asserted that Lewis' personal possessions purchased with money "stolen" from the Tribe included "an elaborate 'Prince's Chair'" (which, in fact, was a gift from a non-Tribe client (Tr. 1129)) and "[f]urniture featured in the 1939 movie *Gone with the Wind*." TFB Ex. 15 at 129.

39. The complaint even gratuitously listed Lewis and Tein's home addresses, their purchase prices and some of their contents – homes where they lived with their wives and young daughters.[11] Tr. 750-751 ("[T]hey were publishing [Lewis' and Tein's addresses] in the complaint. We would have to file a motion to seal. It was immediately granted on an emergency basis. And they put it in the pleadings again."). Lewis Tein filed an emergency motion to have their home addresses redacted, which the Court immediately granted. *Id.* Respondent later intentionally and unethically violated the court's order by re-listing the home addresses in publicly filed pleadings, several times. *Id.*

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[11] Mr. Lewis previously served as the U.S. Attorney for the Southern District of Florida and an Assistant U.S. Attorney before that. Mr. Tein likewise had also served as a federal prosecutor for many years. Accordingly, their home addresses are confidential pursuant to state and federal law.

40. On July 1, 2012, just a few months after filing the lawsuit in the Thornton case, Respondent filed a substantially similar and entirely frivolous complaint in the U.S. District Court for the Southern District of Florida, which was presided over by Judge Marcia G. Cooke (the Cooke case). Tr. 307. The federal lawsuit alleged violations of the federal Racketeering Influenced and Corrupt Organizations Act (RICO), conspiracy to violate RICO, fraud, aiding and abetting fraud, Florida RICO, conspiracy to violate Florida RICO and breach of fiduciary duty. Tr. 308. The federal court dismissed this lawsuit without prejudice for failure to state a claim, ordering the Tribe to plead its allegations with more specificity. Tr. 283.

41. Respondent then filed a Second Amended Complaint on November 9, 2012, in which he repeated the same frivolous and baseless factual allegations and legal claims against Lewis Tein. TFB Ex. 15. The Second Amended Complaint further stated that Lewis Tein had engaged in a "kickback scheme," in which Lewis Tein charged the Tribe exorbitant fees for legal representation, some of which was purportedly for "fictitious, unnecessary, inflated, substandard and exaggerated legal work," and then "kicked back" a portion of the legal fees to the Tribe's former Chairman, Billy Cypress. TFB Ex. 15; Tr. 446. Respondent also claimed that Lewis Tein engaged in a fraudulent "loan scheme," whereby the firm would represent individual Tribe members in legal matters which were funded

ostensibly by loans from the Tribe, but which loans were never intended to be repaid or enforced. TFB Ex. 15 at para. 41(d)-(j).

42. In addition to these false claims, Respondent made other extraordinary frivolous allegations that were extremely damaging to Lewis Tein, P.L. and to Lewis and Tein personally. Tr. 288-289 (The baseless tax evasion allegation "was devastating to our firm . . . Not just professionally, but personally."). In the Second Amended Complaint, Respondent made the following factual allegations against Lewis and Tein, despite the lack of any evidentiary support for same:

a. that the law firm of Lewis Tein, P.L. had been formed in 2005 by Mr. Lewis and Mr. Tein "for the main purpose of advancing and perfecting the plundering of the MICCOSUKEE TRIBE" (*Id.* at para. 30);

b. that Mr. Lewis and Mr. Tein had "knowingly derived income through money laundering, mail fraud, and engaging in monetary transactions in criminally derived property" (*Id.* at para. 103, 122);

c. that Mr. Lewis and Mr. Tein "knowingly failed to report all or some of the income reflected in the 1099 forms [issued by the Tribe for payments of legal fees] in their tax return" (*Id.* at para. 112); and

d. that Mr. Lewis and Mr. Tein "used the money belonging to the MICCOSUKEE TRIBE to create, maintain and expand a lavish and extravagant

lifestyle," and listing examples of their personal property purportedly so purchased (*Id.* at para. 114).

43. Once the federal court case was dismissed for lack of jurisdiction, Respondent filed an identical law suit in State Court, which was ultimately assigned to Judge Bailey (the Bailey case).

44. It cannot be stressed enough, and this court reiterates the findings here, that at all times material to these proceedings, Respondent had absolute knowledge that these scandalous allegations made in the Thornton state court case, the Cooke federal court case, the Bailey state court case, and the Dresnick sanctions case, were not true. Every single court that has heard these matters has made similar findings. TFB Exs. 20, 21, 22, 23, 24, and 25. Each and every one of these lawsuits were entirely frivolous, and filed for malicious purposes pursuant to a bitter rivalry and internal feud at the Tribe.

45. At all times material to these proceedings, Respondent was in actual possession of, and/or had unfettered access to, the multitude of evidence that directly refuted his claims. Respondent was a longtime employee of the Tribe, entirely familiar with the Tribe's standard business practices, *and had been paid himself in the same manner* for his legal representation of individual Tribe members. "[Respondent] well knew when he made this allegation against us that it was false, because he himself had previously been paid by means of this same

arrangement of the Tribe lending the money to his client and the Tribe cutting the check." Tr. 351.

46. Moreover, it is clear that Respondent had control over the actual documentation, and was even able to direct the Tribe's file clerk to shred certain documents. Indeed, as the Tribe's file clerk testified, Respondent kept some of these loan documents in his own office at the Tribe *during* the *Bermudez* Sanctions Proceeding. TFB Ex. 34 at 30-31 (testimony of Tribe's file clerk that Respondent instructed him to copy certain documents for production and to "shred others"), 63 (testimony that invoices evidencing Bert and Billie's approval of loans to them for legal fees were located "[i]n Mr. Roman's office" for "[m]ore than two years"); Tr. 540 ("Mr. Roman, according to Mr. Dennis' sworn statement, sworn testimony, instructed Mr. Dennis to *shred certain documents* during the process of document production.").

47. Moreover, Respondent well knew that, at the same time he was publicly and maliciously making these false allegations in the state and federal courts, claiming that there were no loans, or only fake loans, the Tribe was regularly deducting payments from the accounts of Billie and Bert *for those same loans*. TFB Ex. 38 at Composite Ex. A; Tr. 496 ("[W]hile the Tribe and Mr. Roman were claiming in these four different lawsuits, three lawsuits and one perjury proceeding against us, that the Tammy Billie loans were fake and that they

had no obligation to repay those loans, they are taking money out of her quarterly dividends, every quarterly dividend. . . *it's literally contemporaneous* with their making the allegation that the loan is fake."). The Tribe further reported these loans to their public auditor, who certified that the loans were fully collectible accounts receivable, which are listed as assets (not liabilities) of the Tribe. *See e.g.*, TFB Exs. 16, 29, 33, 39. Thus, at the very same time that the Respondent publicly declared that these loans were fraudulent, the Tribe treated them as genuine.

48. Additionally, this court finds that the Respondent unethically concealed the Tribe's internal records and loan documentation, in order to obstruct justice in the underlying proceedings and to perpetrate a fraud on the court. Similar to Respondent's actions in the Dresnick case, Respondent actively concealed the pertinent loan documentation in the Thornton and Cooke cases, and failed to comply with court orders compelling production of same, while simultaneously misrepresenting the existence, or lack thereof, of such documentation.

49. For instance, in April 2013, just two weeks after the sanctions hearing in the Dresnick case, Respondent filed a brief in federal court representing to Judge Cooke that "a review of the loan records shows that there are neither loan request forms nor purchase orders for Jimmie Bert and Tammy Gwen Billie for payment of

legal fees." TFB Ex. 27; Tr. 488-492. This court finds that like the Respondent's false affidavit filed in the *Bermudez* case four months earlier, this statement to a U. S. District Judge constituted a deliberate misrepresentation and a lack of candor to the tribunal.

50. Additionally, Respondent had federal "initial disclosure" obligations, and was specifically commanded by a federal court order to produce the pertinent loan documentation in the federal case by March 15, 2013. TFB Ex. 26 (court order compelling production over Tribe's objection of "all documents concerning disbursements ... made on behalf of individual Tribe members for any purpose" and "all documents concerning disbursements to, or made on behalf of, individual Tribe members for legal services or representation"); Tr. 1177 ("the magistrate judge in the Judge Cooke proceedings in March of 2013 ordered [Respondent] to produce all loan documents across the whole Tribe, and for Tammy and Jimmie."). Had Respondent complied with this court order compelling production, Lewis and Tein would have had the evidence necessary to defend themselves in the *Bermudez* Sanction Proceedings.

51. Despite these federal court orders and obligations to produce, as well as Judge Dresnick's December 2012 Order compelling production, Respondent unlawfully withheld and concealed the loan documentation until *after* the conclusion of the *Bermudez* Sanctions Proceeding in April 2013. Respondent's

intentional violation of the court orders was clearly intended to prevent the court from knowing the truth -- namely, that the loans were genuine and fully documented, and that Lewis and Tein did not commit perjury in the Dresnick case. Tr. 719 ("[The documents] were withheld until the very end after the Dresnick hearing was over and after summary judgment briefing was completed in the Judge Cooke case.").

52. This finding is further supported by Respondent's egregious and intentional misconduct in firing Jodi Goldenberg, the Tribe's longtime senior accountant, on the eve of her deposition in the Thornton case in January 2013, in order to prevent her from disclosing the truth about the loans prior to the Dresnick hearing.

53. Based on the surrounding facts and circumstances here described, it is the factual finding of this court that Respondent intentionally delayed production of the exculpatory evidence until after the *Bermudez* Sanctions Proceeding was completed in an attempt to advance the interests of the Tribe. Additionally, this court finds that Respondent's intention was to obtain a court order from Judge Dresnick indicating Lewis Tein committed perjury regarding the payment of their fees, and to in turn, use that court order as conclusive evidence of liability in the state and federal court cases filed by Respondent and the Tribe against Lewis Tein.

54. Moreover, throughout the litigation in the underlying proceedings, Lewis Tein was repeatedly subject to adverse publicity because of the nature of Respondent's false allegations. Tr. 746 ("[Lewis Tein was] in the papers every week."). This court finds that the Respondent fanned the flames of this adverse publicity, unethically seeking to inflict maximum reputational damage on Lewis Tein. *Id.*

Every Court Presiding Over The Tribe's Lawsuits Has Found Respondent's Position To Be Entirely Frivolous

55. On December 15, 2013, Judge Thornton entered an Order in the state court case granting Lewis Tein's Motion for Summary Judgment. TFB Ex. 21; Tr. 391. This Order dismissed all of the Tribe's claims against Lewis Tein. TFB Ex. 21. Among other things, the State Court found, and this court agrees, that

> **[t]he thousands of pages of record evidence adduced in this matter, ranging from affidavits to deposition transcripts, to Special Magistrate Report and Recommendations and Orders thereon, all disclose that no false statements or evidence of fictitious or improperly created or fraudulent legal fees or expenses have been perpetrated by Lewis Tein upon the Tribe.**

TFB Ex. 21 at 7; Tr. 396-397.

56. Further, Judge Thornton found that the Respondent "failed to identify one fictitious time entry, invoice or legal matter attributable to Lewis Tein." TFB Ex. 21 at 7; Tr. 397. Judge Thornton held that there was no evidence that "Lewis Tein acted with any bad intent, made intentional misrepresentations to the Tribe, or

otherwise intended to harm the Tribe." TFB Ex. 21 at 11; Tr. 405. In short, Judge Thornton ruled, "[t]here is no evidence in the record of any fraud or overbilling." TFB Ex. 21 at 9; Tr. 403.

57. Judge Thornton's order was subsequently affirmed by the Third District Court of Appeal. TFB Ex. 22; Tr. 406. In finding that Judge Thornton "properly granted summary judgment" for Lewis Tein and against the Tribe, the Court of Appeal found that the Respondent failed to come forward with any evidence, or sworn statement, supporting its claims against Lewis Tein. TFB Ex. 22; Tr. 406-407. The Court of Appeal specifically pointed out that, indeed, "the Tribe's expert [Steven Davis] was unable to identify a single invoice by [Lewis Tein] that he believed was fraudulent, illegal or excessive." TFB Ex. 22 at 11; Tr. 408.

58. After Judge Thornton's summary-judgment order was affirmed by the Court of Appeal, Judge Thornton conducted a thorough two-day evidentiary hearing on Lewis Tein's motion to sanction Respondent for bringing the frivolous state court action. TFB Ex. 46. After that hearing, on December 12, 2015, Judge Thornton entered an Order on Lewis Tein's Entitlement to Attorney's Fees and Costs. TFB Ex. 23. In the State Court Sanctions Order, Judge Thornton excoriated Respondent for filing the lawsuit against Lewis Tein. *Id.*

59. Respondent testified at length during the Thornton evidentiary hearing regarding his reasons and motives for bringing the state court action. TFB Ex. 23 at *4 ("[Respondent] testified about his, "'investigation' into the facts giving rise to this lawsuit, which relied on, rumors and suspicions about the relationship between Lewis Tein and the Tribe's former chairman, Billy Cypress, and about the work Lewis Tein was doing for the Tribe . . . Mr. Roman did not point to any specific facts and further failed to present any . . . corroborating evidence regarding his, quote, investigation.") (quotations omitted). Judge Thornton specifically found that "Mr. Roman's testimony at the hearing was not credible." TFB Ex. 23 at *10; Tr. 422. Judge Thornton's finding is of extraordinary significance to this undersigned court, especially as it relates to Respondent's sworn testimony.

60. In imposing sanctions on Respondent, Judge Thornton expressly found, among other things, that "the Tribe and its counsel commenced and continued to litigate this matter in the face of overwhelming evidence demonstrating the claims against Lewis Tein were unfounded and frivolous." TFB Ex. 23 at *5; Tr. 411. Judge Thornton further found that "Mr. Roman . . . necessarily had access at all times to the facts and evidence, which conclusively refuted their claims alleged against Lewis Tein, but they nevertheless pursued them in lengthy and costly litigation." TFB Ex. 23 at *6-7; Tr. 413. Accordingly, Judge Thornton found that, "[The State Court Action] was completely lacking in merit

and utterly frivolous. . . . Bernardo Roman, III, knew that there was no basis in fact or law to file these allegations against Guy Lewis, Michael Tein and Lewis Tein, P.L. The Tribe and Roman filed this lawsuit in bad faith." TFB Ex. 23 at *14.

61. Similar findings were made in the federal court. Judge Cooke initially dismissed the federal court case on jurisdictional grounds on September 30, 2013. *See Miccosukee Tribe of Indians of Florida v. Cypress*, 975 F.Supp. 2d 1298 (S.D. Fla. 2013). The dismissal of the federal court action was affirmed on appeal by the U.S. Court of Appeals for the Eleventh Circuit. *Miccosukee Tribe of Indians of Florida v. Cypress*, 2015 WL 9310571 (11th Cir. Dec. 23, 2015).

62. Thereafter, over several days in May, June and July 2014, Judge Cooke conducted an evidentiary hearing on whether the Tribe had a good-faith basis to file its lawsuits against Lewis Tein. Tr. 282. On May 12, 2014 during the ongoing evidentiary hearing, Judge Cooke commented that the Respondent was "dancing on the head of legal pins that don't exist and the time has come for it to stop ... this is over." TFB Composite Ex. 48 (5/12/2014) at 54. At another point, Judge Cooke stated, "it's clear to me, Mr. Roman, that you've just probably never read the rule of ethics. And if you had, you must have been absent from school that day ...." TFB Composite Ex. 48 (6/16/2014) at 188. This court agrees.

63. On January 16, 2015, Judge Cooke entered an Omnibus Order Granting Defendants' Motions for Sanctions. TFB Ex. 24. The federal court sanctioned the Tribe and the Respondent (and his law firm Bernardo Roman III, P.A.) in excess of $1 million. TFB Ex. 24 at *18. The federal court also referred Respondent to the Florida Bar for "investigation and appropriate disciplinary action." Tr. 437; TFB Ex. 48.

64. In unsparing language, Judge Cooke found that "there was no evidence, or only patently frivolous evidence, to support the factual contentions set forth [in the Second Amended Complaint], which form the basis of [the Tribe's] claims against Defendants Lewis Tein . . ." TFB Ex. 24 at *5. Specifically, the federal court found that "there is no doubt that the loans to Tammy Gwen Billie, Jimmie and Louise Bert for legal fees in the *Bermudez* matter were valid because over the course of several years and continuing until today, the Berts have been repaying on the loans." *Id.* Further, the federal court found, and this court agrees, that the Respondent knew or should have known this because relevant documents were found in his office and because Goldenberg, an accountant in the finance department for the Tribe for over 21 years, spoke to Respondent about the loans and their validity. Moreover, the Tribe's outside auditor reported the loans to tribal members and to the Tribe's former general counsel. *Id.*

65. The federal court also found that the Respondent "had no evidence of a 'kickback scheme' involving Defendants Lewis Tein and former Chairman Cypress." *Id.* Indeed, the Respondent admitted under oath during the evidentiary hearing that he could not point to a single transaction in which Lewis Tein gave money to the former Chairman or a single dollar from Lewis Tein going to the former Chairman. *Id.* at *6 (quoting Respondent's testimony during the evidentiary hearing, "Q. Over eight hours of testimony, you haven't pointed to a single transaction of Lewis and Tein giving money to the chairman, is that right? A. That is correct."); *see also* TFB Ex. 48 (Hearing 6/17/14) at 218 ("Q: And you [Roman] can't point to a single dollar from Lewis Tein going to the chairman, can you? A: No, I do not.").

66. In the written order imposing sanctions, Judge Cooke sanctioned the Respondent in the amount of $975,750.00 owing to Lewis Tein (plus additional amounts to co-defendant Dexter Lehtinen), which represented certain amounts of the attorney's fees and costs incurred in defending the Federal Court Action. TFB Ex. 24 at *18. The federal court remarked that the Respondent's "behavior is egregious and abhorrent." *Id.* at *14.

67. On November 16, 2013, after Judge Cooke dismissed the federal court action, Respondent filed yet another, essentially identical lawsuit against Lewis Tein, P.L., Guy Lewis and Michael Tein in Miami-Dade Circuit Court (the Bailey

case) – a step which later prompted Judge Cooke, when issuing sanctions against the Tribe, to observe that the Tribe "is not relenting with its legal crusade." *Id.* at *2. Respondent again repeated the same sensational allegations that were the subject of the federal court action. Tr. 429 ("After [Respondent] brought the Thornton action, after he filed the Cooke action, he filed the Cooke action, he filed – when that was dismissed, he filed another state court action alleging exactly the same federal claims in a state court action in front of Judge Bailey.").

68. Remarkably, even after the Tribe and Respondent had been sanctioned over $1 million by the federal court for filing an entirely frivolous lawsuit (TFB Ex. 24), Respondent did not voluntarily dismiss the Bailey case. Tr. 429. Rather, on July 30, 2015, Judge Bailey dismissed the re-filed state court action with prejudice, holding that "[a]t bottom, this case is simply another attempt to make the same claims that two prior judges have determined are factually baseless, or are outside the Court's jurisdiction as tribal governance." *Miccosukee Tribe of Indians of Florida vs. Lewis Tein et al.*, Case No. 13-035956-CA-01, Omnibus Order on Motions to Dismiss at 6 (July 30, 2015).

<u>Respondent's Independent Criminal Acts</u>

69. Separate and apart from the false and unethical lawsuits, and Respondent's acts of perjury and obstruction in support of same, Respondent committed independent criminal acts throughout the underlying proceedings.

These included several instances of witness tampering or intimidation, and making a false 911 call in which Respondent sought to cause the unjustified arrest of Lewis Tein's counsel during an ongoing deposition.

70. ***False 911 emergency police report:*** During the lunch recess of the deposition of Mr. Lewis, Respondent called 911 seeking to have Lewis Tein's lawyer, Paul Calli, Esq., arrested mid-way through the deposition. Tr. 29. On a recorded and transcribed 911 emergency call, Respondent told the 911 emergency dispatcher that Calli "came in to a deposition" and committed "a battery" on his assistant, Sheena Fluriach. Respondent reported that, "the minute [Calli] found out" that Ms. Fluriach was allergic, "he just grabbed a bunch" of pistachio nuts and "put them in front of her face so she will get ill" and "got her lunch and he put a bunch of pistachios in there so when she touched it, she ... just had to go to the hospital." TFB Ex. 2 at 6-7.

71. Respondent knowingly made these false allegations. Tr. 24 ("Q. Did you ever tell Mr. Roman that you felt like he was trying to do something to you with those nuts? A. No. I actually told him I didn't think that he was doing anything to me."). Calli did not "come into a deposition;" he was counsel to the deponent. The pistachio nuts were brought to the deposition by Special Master Ellen L. Leesfield. Tr. 20. As the deposition transcript reflects, Calli did not put anything in front of Ms. Fluriach's face and the lunch order did not even arrive at

the deposition until 28 pages of testimony *after* Ms. Fluriach left. TFB Ex. 1 at 103 (ROMAN: "Judge, I just want the record to reflect that Sheena [Fluriach] has left the deposition."), 131 (SPECIAL MASTER LEESFIELD: "We can take a break, there's lunch here."), and 135 (end of the deposition and break for lunch).

72. Respondent's false statements to the police included allegations that there was a prior problem and a restraining order in place. Accordingly, believing that there was an immediate threat of violence, the police arrived in an emergency manner, with their hands on their weapons. The situation quickly escalated, and Calli was in imminent danger of being placed under arrest and removed from the premises.

73. The deposition was videotaped and transcribed. *See* TFB Ex. 1. It was conducted at all times in the presence of former Circuit Court Judge Ellen L. Leesfield, acting as special master. Tr. 20. All of the eye-witnesses contradicted Respondent, including Judge Leesfield, her law partner, former Circuit Court Judge Victoria L. Platzer, employees of their law office, the stenographer and the videographer. Tr. 85 ("The reason that I didn't get arrested is because those three people, Judge Leesfield, Judge Platzer, and Mr. Tein explained to the Coral Gables police officers that I was a lawyer conducting a deposition, that I had never met this person, that I didn't bring nuts to the depo.").

74. Indeed, when the police interviewed her later that day, Ms. Fluriach herself told the police that "at no time did she feel there was any intentional attempt to cause her an allergic reaction by anyone at the deposition." TFB Ex. 3 at 3 (Coral Gables Police Department Incident Report). By contrast, Ms. Fluriach testified in the instant disciplinary case that she felt the Respondent was putting "pressure" on her to file charges with the Coral Gables Police Department against Calli. Tr. 39 ("As soon as the police report came out, Mr. Roman and some other individuals in the office were trying to pressure me to go to the police department to correct the report."). She further testified that she was being treated like an "outcast," and that she felt she may "lose [her] job," if she did not comply with his request for her to supplement the police report stating instead that she felt "[Mr. Calli] was intentionally trying to cause [her] harm." Tr. 40. According to Ms. Fluriach, Respondent subsequently became angry with her when she refused to press charges against Calli, and Respondent fired her. Tr. 44-46 ("Mr. Roman . . . . [was] upset that I had not filed charges.").

75. ***Witness intimidation and retaliation against Goldenberg***: After designating the Tribe's senior in-house accountant, Goldenberg to testify as the Tribe's corporate representative on the loan issue, Respondent falsely claimed she was "unavailable" shortly before her deposition was to take place. Contrary to Respondent's assertions of unavailability, Goldenberg was fired at Respondent's

direction on the days before her deposition. Tr. 137-139 (testimony indicating Goldenberg was fired 3 days before her deposition). When Lewis Tein later deposed Goldenberg, she testified that she was available for her previously scheduled deposition, but that Respondent fired her on the eve of her deposition because she refused to lie for the Tribe about loans to Lewis Tein's former clients for legal fees.[12] TFB Ex. 29 at 8-9 (Q.: Why do you believe you were fired? A.: Well, I think there are several reasons. One being that *I know the truth in some of these cases that are going on and I think that what I'm going to say is contrary to what the Tribe's attorney wants me to say*; maybe he wanted me to appear to be a disgruntled employee. Also, I wouldn't hire one of his friends.) (Emphasis added).

76. Goldenberg further testified that Lewis Tein told the truth about the loan issue; that Lewis Tein's legal fees to Billie and Bert were paid via loans from the Tribe; that the Tribe's governing Business Council knew about this; that the loans were booked and disclosed in the ordinary course of business; that only the Respondent took the position that they were not "approved;" and that Respondent knowingly failed to produce in discovery the three sets of "*Louise Bert – Ok to pay*" loan documents (described above), clearly demonstrating the loans to Lewis

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[12] In her testimony before this court, Goldenberg indicated that Respondent told her to say there were no approved loans. When she refused to do so, he asked her to pretend ignorance, as if she did not know what a loan was, "Loans? What's a loan?"

Tein's former clients Billie and Bert. Goldenberg specifically testified that the Respondent's December 2012 affidavit denying the existence of these documents (described above) was false. *Id.*

77. This court finds Goldenberg's testimony credible and persuasive.

78. ***Witness retaliation against Jasper Nelson***: The Tribe's former Assistant Chairman (Jasper Nelson) likewise testified at his deposition that Lewis Tein's fees had been paid by loans to Billie and Bert from the Tribe. TFB Ex. 32 at 62 ("Q. Did you authorize the payment of – as a member of the Business Council did you authorize payment of legal fees to Lewis & Tein for representing Tammy Billie and Jimmie Bert? A. Yes."); *id.* at 71 ("Q. And therefore these payments were not loans, correct? A. Is a loan. ... Q. The payments of the legal fees for Tammy Billie and Jimmie Bert you have stated that they were a loan? A. Yes."); 73 ("Q. Now were you present at the General Council meeting when this loan was approved? A. Yes.").

79. After this testimony, Respondent sought to have Mr. Nelson removed from his official position on the Tribe's General Council in an effort to retaliate against him and intimidate others from testifying truthfully. Tr. 549 ("[T]he Tribe . . . tried to retaliate against Mr. Jasper Nelson for giving this truthful testimony. . . [The Tribe] proposed . . . that Mr. Nelson be censured and removed from any

contact with the matters involving the Tribe's lawsuits against . . . us . . . because he gave this testimony.").

III. RECOMMENDATIONS AS TO GUILT.

This Court recommends that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

Rule 4-1.2(d): counseling a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent - Eight Counts - **GUILTY**

Rule 4-3.1: bringing or defending a proceeding, or asserting or controverting an issue therein - Five Counts - **GUILTY**

Rule 4-3.3: knowingly making a false statement of material fact or law to a tribunal - Eight Counts - **GUILTY**

Rule 4-3.4(a): obstructing another party's access to evidence or otherwise unlawfully altering, destroying or concealing documents the lawyer knows are relevant to a pending proceeding -Eight Counts - **GUILTY**

Rule 4-3.4(b): fabricating evidence, counseling or assisting a witness to testify falsely - One Count – **GUILTY**; Two Counts -**NOT GUILTY**

Rule 4-3.4(c): knowingly disobeying an obligation under the rules of a tribunal -Two Counts - **GUILTY**

Rule 4-3.4(d): making frivolous discovery requests or intentionally failing to comply with a legally proper discovery request by opposing counsel, in a pretrial procedure -Two Counts - **GUILTY**

Rule 4-3.4(f): requesting a person to refrain from voluntarily giving relevant information to another party - One Count - **GUILTY**

Rule 4-4.l(a): knowingly making a false statement of material fact or law to a third person - One Count - **GUILTY**

Rule 4-4.l (b): knowingly failing to disclose a material fact to a third person - One Count - **GUILTY**

Rule 4-8.1(a): knowingly making a false statement of material fact or law in connection with a disciplinary matter - One Count - **GUILTY**

Rule 4-8.1(b): failing to disclose a fact to correct a misapprehension in connection with a disciplinary matter - One Count - **GUILTY**

Rule 4-8.4(c): engaging in conduct involving dishonesty, fraud, deceit or misrepresentation - Eight Counts - **GUILTY**

Rule 4-8.4(d): engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly or through callous indifference, disparage or humiliate litigants or other lawyers - Eight Counts – **GUILTY**

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

This court considered the following Standards prior to recommending discipline:

- 5.11 Disbarment is appropriate when:

    b) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or

    e) a lawyer attempts or conspires or solicits another to commit any of the offenses listed in sections (a)-(d); or

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

- 6.11 Disbarment is appropriate when a lawyer:

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

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

- 6.21 Disbarment is appropriate when a lawyer 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 or causes serious or potentially serious interference with a legal proceeding.

• 7.1 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.

V. CASE LAW

This court considered the following case law prior to recommending discipline:

The Florida Bar v. Adams, 198 So. 3d 593 (Fla. 2016) (holding that permanent disbarment was the appropriate sanction for the conduct of an attorney in conspiring to improperly effect the arrest of opposing counsel, even where the respondent has no prior disciplinary history. The Court quoted the referee, "the respondent's willingness to inflict and his indifference to causing such harm is, in the words of the referee, quite stunning." Finally, the Court made clear that, "This Court will not tolerate such outrageous misconduct on the part of attorneys admitted to practice law in Florida.").

The Florida Bar v. Orta, 689 So. 2d 270 (Fla. 1997) ("The pattern of misconduct in multiple offenses involving dishonesty is cumulative misconduct and is treated more severely by the Supreme Court than are isolated acts.").

The Florida Bar v. Senton, 882 So. 2d 997 (Fla. 2004) ("Moreover, Senton lied under oath and submitted false evidence to support his denials, which alone is sufficient to permit disbarment.").

The Florida Bar v. De la Puente, 658 So. 2d 65 (Fla. 1995) (disbarring attorney for ten years for several instances of misconduct, including the making of a false statement to the tribunal during the disciplinary proceedings.)

The Florida Bar v. Smiley, 622 So. 2d 465, 467 (Fla. 1993) (disbarring attorney and reasoning that a lawyer's false testimony "defeats the very purpose of legal inquiry [and] . . . is grounds for disbarment.").

The Florida Bar v. Rightmyer, 616 So. 2d 953, 955 (Fla. 1993) (disbarring attorney for perjury convictions among other violations, and observing that "[w]e can conceive of no ethical violations more damaging to the legal profession and process than lying under oath.").

The Florida Bar v. Agar, 394 So. 2d 405 (1980) (allowing a client to perpetrate a fraud on the court by introducing false testimony warrants disbarment. The Court noted, "It is clear from the record that Agar knew the testimony in question on behalf of his client was false, and that he did nothing to reveal the fraud to the court." Further, the Court stated, "This Court has not changed its attitude since *Dodd v. The Florida Bar*, in which we said, 'No breach of professional ethics or of the law is more harmful to the administration of justice or

more hurtful to the public appraisal of the legal profession than the knowledgeable use by an attorney of false testimony in the judicial process. When it is done, it deserves the harshest penalty.").

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BEAPPLIED

This Court recommends that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. Permanent Disbarment;

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

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

Personal History of Respondent:

Age: 50

Date admitted to the Bar: May 2, 1994

Aggravating Factors:

9.22(b) dishonest or selfish motive;

9.22(c) a pattern of misconduct;

9.22(d) multiple offenses;

9.22(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; – The undersigned finds that Respondent made deliberate misrepresentations to the Bar throughout its investigation, and also to the undersigned throughout the instant disciplinary proceedings, including in his pleadings, in pre-trial motions, and even up through his closing argument.

9.22(g) refusal to acknowledge wrongful nature of conduct; – Respondent has not demonstrated even a scintilla of remorse in this case. He has not apologized, nor accepted responsibility for the vast and irreparable damage his misconduct caused. Indeed, at his deposition of Mr. Tein, Respondent goaded Mr. Tein about his belief that an apology was owed to him and his family. Following the filings of the Bar's complaint, Respondent was quoted to the press and called the instant disciplinary action a "witch hunt." TFB Ex. 53.

9.22(h) vulnerability of victim;

9.22(i) substantial experience in the practice of law; and

9.22(j) indifference to making restitution.

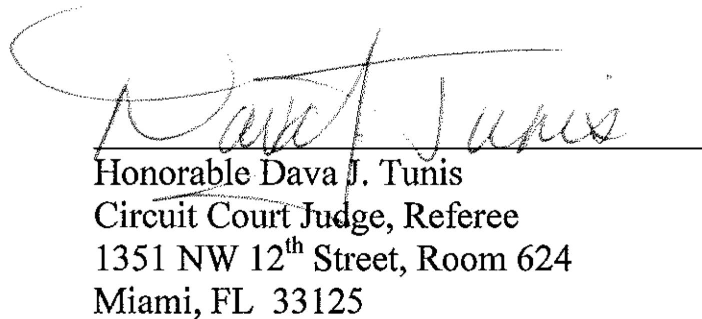
Mitigating Factors:

9.32(a) absence of a prior disciplinary record.

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

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

Dated this 28th day of March, 2018.



Honorable Dava J. Tunis
Circuit Court Judge, Referee
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