IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JOSE MARIA HERRERA,

Respondent.

_____/

Supreme Court Case
No. SC16-1323

The Florida Bar File
No. 2014-70,056 (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 25, 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 26, July 10, 11, 13, and 18, 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[1]

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.[2]

Background Prior to Respondent's Entry of Appearance on Behalf of Jimmie Bert

1. In 2000, Jimmie Bert ("Bert") and his daughter Tammy Billie ("Billie"), members of the Miccosukee Tribe of Indians of Florida ("Tribe") were sued for wrongful death in Miami-Dade Circuit Court in *Bermudez et al. v. Bert et al.,* Case No. 00-25711 ("*Bermudez*"), assigned to Circuit Court Judge Ronald C. Dresnick during all times material to this matter. Guy Lewis, Esq. and Michael Tein, Esq. of Lewis Tein P.L. ("Lewis Tein") represented Bert in the wrongful death post-judgment collection litigation in the *Bermudez* case.

2. During all material times, Bert and Billie each received quarterly per-capita "dividends" or "distributions" from the Tribe. These distributions varied over time, generally increasing, from $18,800 to $43,000. TFB Ex. 56, Attach. I (spreadsheets detailing gross distribution or dividend amounts, as well as the

1 All of the following findings are made by clear and convincing evidence.
2 A chronology summarizing these events can be found at TFB Ex. 2A and 2B.

deductions therefrom for Attorney Fees and non-taxable distribution receipts (NTDR) loans, for Bert and Billie). Tr. 244.

3. Beginning in 2000 and continuing through at least June 2013, Bert and Billie paid for their legal defense of that case (and Billie's related criminal case) by means of deductions from current dividends and loans to be repaid from future dividends.[3] TFB Ex. 56 Attach. I; TFB Ex. 22 (Tammy Billie Legal Fees schedule, attached to Tribal Counsel Bernardo Roman's 12/20/2012 "Notice of Compliance"); TFB Ex. 25 (February 1, 2013 Deposition of Tribal Senior Accountant Jodi Goldenberg); TFB Ex. 30 (March 28, 2013 Deposition of Jodi Goldenberg).

4. This arrangement was commonplace at the Tribe. Tr. 117-122; TFB Ex. 58; TFB Ex. 49, Attach. A at 5-6. For many years, when Tribe members required the services of outside attorneys, the Tribe would make the payments by check to the outside lawyer, and, depending on the amount, would make a corresponding deduction from the Tribe member's current dividend and/or catalogue a receivable against that Tribe member's future dividends. Tr. 445-48.

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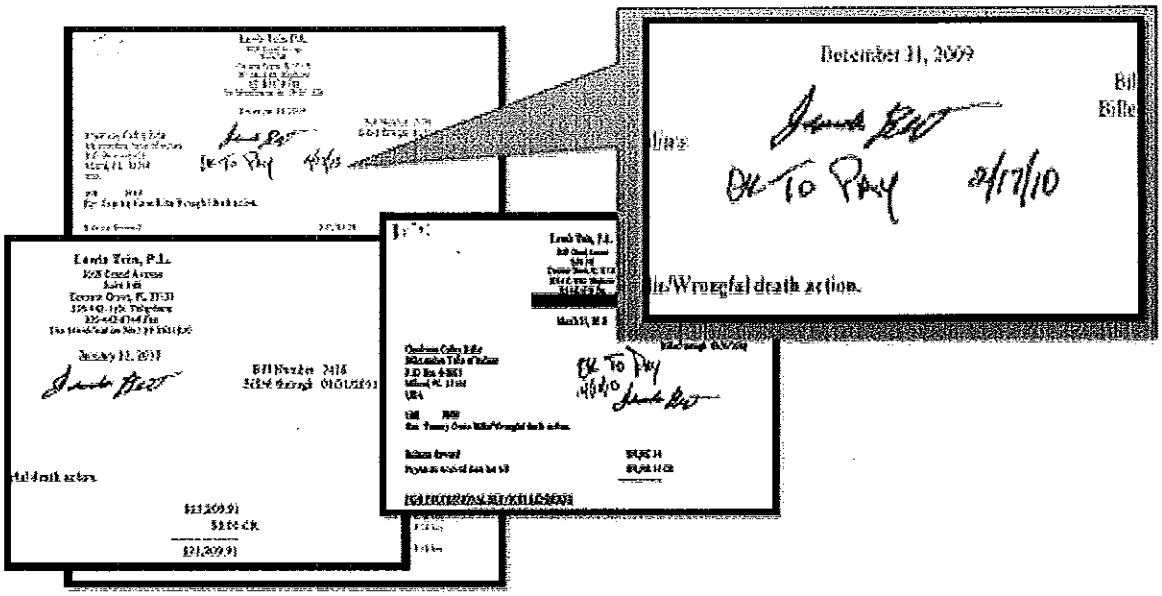
3 Every Court that has examined this matter has found Respondent's and Tribal Counsel Roman's position contrary to the facts, entirely frivolous and unsupported by even a scintilla of credible evidence. *See, e.g.*,, TFB Ex's 41, 50, 51, 52, and U. S. District Court Judge Marcia G. Cooke's Order in the federal case. This court could rely upon these findings alone as clear and convincing proof that Bert and Billie did in fact receive loans to fund the *Bermudez* litigation. *See The Florida Bar v. Rosenberg*, 169 So. 3d 1155, 1159 (Fla. 2015).

In the latter case, the Tribe would withhold a portion of the Tribe member's quarterly dividend payment until the debt was satisfied. Tr. 450-54; TFB Ex. 25; TFB Ex. 30.

5. For every Tribe member receiving such loans, including Bert and Billie, the Tribe meticulously accounted for these loans and kept voluminous documentation evidencing them. Jodi Goldenberg ("Goldenberg") recorded the total amounts paid to Lewis Tein for legal fees in the post-judgment collection *Bermudez* litigation, as well as the amounts paid back to the Tribe through deductions from Bert and Billie's distributions. Beginning in 2008 these costs and expenses, for both Bert and Billie, as well as for Louise Bert (Jimmie Bert's spouse), were recorded in one account under Tammy Billie's name. TFB Ex. 25 at 54-55; TFB Ex. 30 at 130, 132, 144, 159, 160-61; TFB Ex. 22 (Attach. 1 to Tribal Attorney Roman's false Affidavit filed in the *Bermudez* case); TFB Ex. 37, Attach. 1.

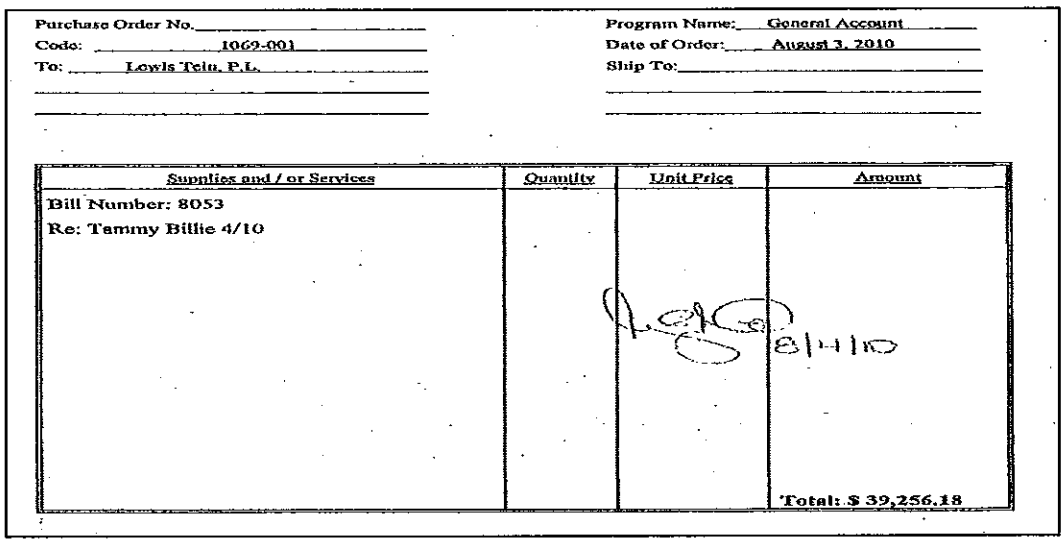
6. Additional documentation concerning the loans, and repayment of same included:

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



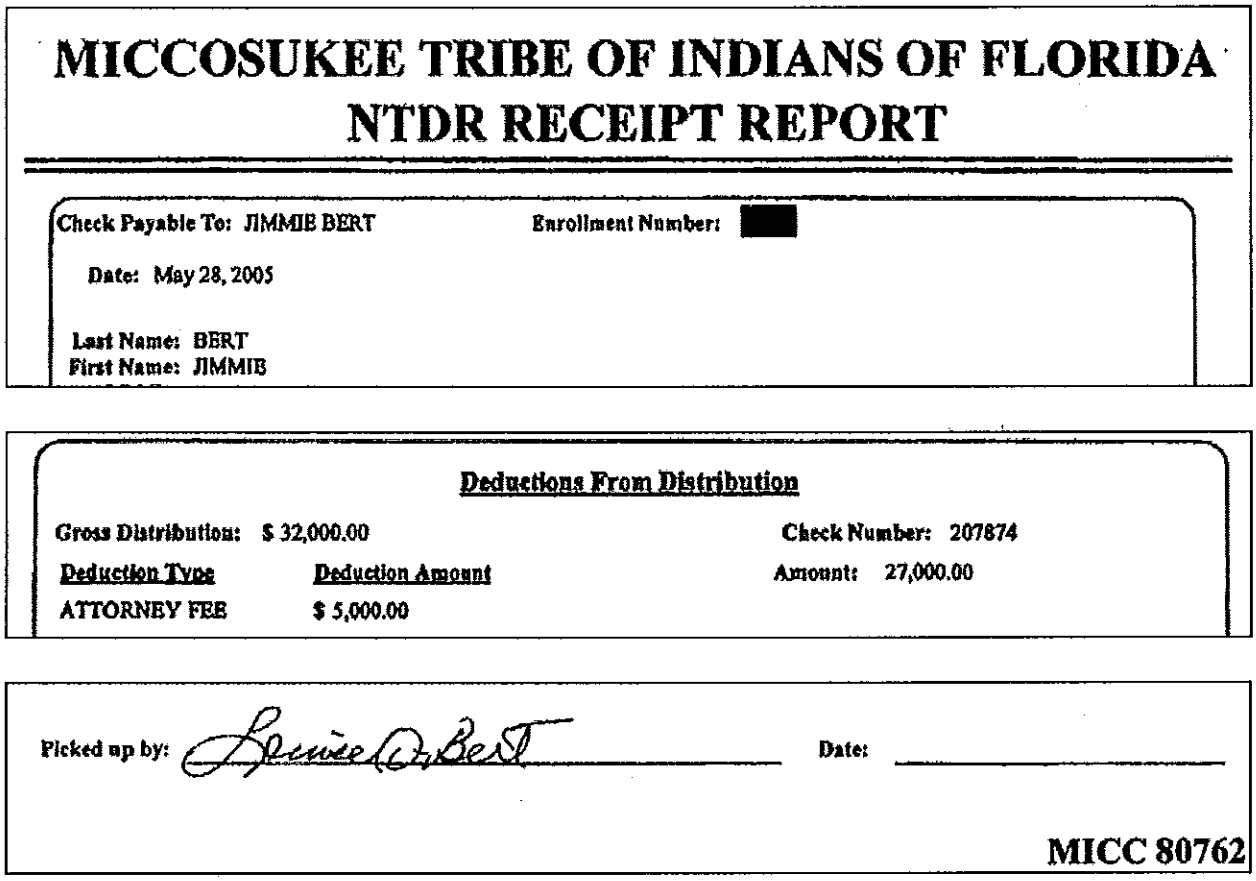
TFB Ex. 37 (Lewis Tein invoices signed "ok to pay" by Bert, demonstrating that he reviewed the invoices, and approved disbursement of loans to pay the legal fees contained therein);

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



TFB Ex. 37; TFB Ex. 56, Attach. I.

c. "NTDR Receipt Forms" signed by the client confirming that the quarterly distributions had been reduced for "attorney fee" loan payments.



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
ATTORNEY FEE	$ 5,000.00

Amount: 27,000.00

Picked up by: Louise D. Bert Date: _____

MICC 80762

TFB Ex. 37 (Receipt showing a $32,000 dividend distribution in May 2005 to Bert, with a $5,000 deduction for "ATTORNEY FEE" – signed by Louise Bert, his wife.); *See also* TFB Ex. 56, Attach. I;

d. General Ledger account spreadsheets reflecting every quarterly dividend and amounts deducted for "attorney fee" payments. TFB Ex. 56, Attach. I (Example of Tribe accounting records reflecting deductions from distributions for

loan payments for both Bert and Billie, many of which occurred during the Tribe's lawsuits alleging these same loans were "fake");

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

MICCOSUKEE TRIBE OF INDIANS OF FLORIDA

BALANCE SHEET

September 30, 2006

	General Fund
ASSETS	
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. 37 (Excerpts from Tribe's 2006 audited financial statements); TFB Ex. 58.

7. Beginning in 2005, Bert was represented by Vivian Rosado, Esq. and Billie was represented by Lewis Tein. Rosado and Lewis Tein separately billed legal fees and expenditures to Bert and Billie for their independent services. (Thus, Bert received a monthly invoice from Rosado, and Billie received a monthly invoice from Lewis Tein.) *See* TFB Ex. 27 (Jimmie Bert's Third sworn statement), at 10-11; *see also* TFB Ex. 37, Attach. 1. Accordingly, the Tribe made deductions from both Bert and Billie's current distributions and lent money against their future distributions, for payment of these legal fees.

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 56, attach I.

b. For that same period, the Tribe deducted $31,500 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

Id.

8. In mid-2007, Rosado joined Lewis Tein, P.L. and the firm began representing Bert also. From that point forward, Bert and Billie received only one invoice, for services rendered to both of them, from Lewis Tein. *See* TFB Ex. 27 (Jimmie Bert's Third sworn statement) at 10-11 ("When it first started out with Vivian [Rosado] as his[4] 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."). Moreover, beginning in 2008, Billie took responsibility for paying back both her own, and her father and mother's, legal expenses incurred in the litigation from that point forward. *Id.*; TFB Ex. 56, Attach. I (Bert and Billie spreadsheets). Accordingly, both Bert and Billie continued to repay the Tribe for the legal-fee loans, through deductions from one or both of their quarterly dividends:

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

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

TFB Ex. 56, Attach. I.

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):

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. 56, Attach. I.

9. One needs only a rudimentary understanding of bookkeeping, coupled with a few questions and explanations to conclude these financial payments were clearly loans from the Tribe to Bert and Billie in payment of their legal bills. Therefore, the paper trail and checks and balances are unmistakably clear to the undersigned court. They were likewise unmistakably clear to the three previous trial courts and all appellate courts that have addressed these matters.

Power Shift within the Tribal Leadership

10. In December 2009, incident to a decades-old political rivalry, the long-serving chairman of the Tribe was defeated in an election and a new chairman assumed office. Tr. 71-73. This new chairman immediately fired all outside lawyers and accountants. He then fired all non-Indian senior officers, including the CFO and general counsel. Bernardo Roman III, Esq., previously the "tribal court law clerk," was elevated to in-house "Tribal Attorney." Tr. 71, 126.

11. In October 2011, Ramon Rodriguez, Esq., plaintiffs' counsel in the *Bermudez* wrongful death case, filed a series of motions seeking sanctions, civil and criminal contempt, accusing Lewis Tein of committing perjury and obstructing justice during post-judgment collection litigation. This was predicated on Lewis Tein's statement at an August 2011 hearing that their then-clients, Bert and Billie, had been responsible for paying their attorneys' fees. TFB Exs. 6, 7. A week later (October 27, 2011) Lewis Tein filed a response asserting that these allegations were false. TFB Ex. 8. The memorandum attached a transcript of the hearing itself, as well as the affidavits of their clients, Bert and Billie, stating, among other things, "since retaining Lewis Tein, P.L. to represent me, I have been responsible for the legal fees incurred in connection with this matter and I have been paying Lewis Tein, P.L. for these legal fees." TFB Ex. 8, attaching Jan. 11 & 18, 2011 affidavits of Bert and Billie. Billie explained further that, "I personally do not maintain a checking account. My income is from the Tribe, either from distributions or from various jobs I hold on the reservation. Accordingly, payments that my family and I have made to Lewis Tein have been by checks written by the Miccosukee Tribe. As I have told Mr. Lewis and Mr. Tein throughout the case, those payments are all either (a) charged against our distributions on a current basis, or (b) loans from the Tribe to us against future distributions." *Id.* (attaching Oct. 26, 2011 Billie affidavit).

12. In January 2012, the presiding judge in *Bermudez* declined Lewis Tein's request to deny Rodriguez's motion based on the hearing transcript and attached affidavits. Instead the court scheduled an evidentiary hearing on the perjury and obstruction allegations, allowing full discovery for the next sixteen months (hereinafter, the "Dresnick perjury proceedings").

13. In April and July 2012, the Tribe filed parallel lawsuits against Lewis Tein, other former Tribe outside counsel and accountants, and former Tribe officials (including the defeated former chairman) in state and federal court, accusing them of embezzlement, racketeering, kickbacks, fraud, money-laundering, and malpractice. Both suits were filed by Tribal Attorney Roman (not by Respondent). The lawsuits received widespread publicity. The state-court lawsuit (Fla. Cir. Case No. 12-12816-CA40) was presided over by Circuit Court Judge John W. Thornton (the "Thornton Case") and the federal-court lawsuit (S.D. Fla. Case No. 12-cv-22439-MGC) was presided over by U.S. District Judge Marcia G. Cooke (the "Cooke Case").

14. Importantly, the gravamen of the Tribe's lawsuits against Lewis Tein was the same position the Tribe was advancing in the Dresnick perjury proceedings, *i.e.*, that there were no genuine loans provided to Bert and Billie to pay their legal fees in the *Bermudez* action. In the parallel lawsuits filed by the Tribe against Lewis Tein, these allegations expanded to indicate Lewis Tein

participated in a "fake loan scheme" in which they received legal fees (designed as loans to their Tribe-member clients) for fake legal work and, in exchange, kicked back money to the Tribe's former chairman.

Respondent's Entry of Appearance on Behalf of Jimmie Bert

15. In July 2012, Lewis Tein moved to withdraw from the *Bermudez* case. They cited the lack of responsive communications from their clients, Bert and Billie.

16. Shortly thereafter, Roman contacted Respondent, asking whether Respondent would be interested in representing Bert. On July 19, 2012, Respondent met with him about the *Bermudez* case. Bert was infirm, had little or no formal education, did not read, write or speak English, and required the assistance of a Miccosukee-language interpreter. Respondent knew this. *See, e.g.*, Tr. 1130 ("[T]he day after Thanksgiving, at some point we took a break, and the nurse said something about him needing food or something like that."); 1131 ("I was told he was ... hypoglycemic or he was .... I'm being told by one of the interpreters ... look, he is having problems, he needs to eat.").

17. In September 2012, Respondent entered an appearance on behalf of Bert in the *Bermudez* case. Shortly thereafter, upon Respondent's request, Bert's upcoming deposition was reset from October 24 to November 13.

18. On October 31, 2012, Roman emailed Respondent that Bert was purportedly "expecting a short motion withdrawing his pending Motion for Sanctions under 57.105 against Ramon Rodriguez. Please don't forget to send that also so it will be ready for his translator to review when he gets here this afternoon."

Re: Jimmie Bert

bromanlaw@bellsouth.net< bromanlaw@bellsouth.net> Wed, Oct 31, 2012 at 12:23 PM
To: Veronica Rodriguez <VRodriguez@herreralawfirm.com>
Cc: JM Herrera <pepelaw@gmail.com>

Veronica: It is perfect. Please remember that Jimmie Bert is also expecting a short motion withdrawing his pending Motion for Sanctions under 57.105 against Ramon Rodriguez. Please don't forget to send that also so it will be ready for his translator to review when he gets here this afternoon. If you need to reach me call me on my cell phone. Thanks, Bernie.

TFB Ex. 9. The undersigned court finds this email to be evidence of collusion between Respondent and Roman, to manipulate Bert and effect his withdrawal of Lewis Tein's § 57.105 motion. This allowed *Bermudez* plaintiff's attorney Rodriguez, to pursue the perjury and obstruction charges against Lewis Tein. This was in the Tribe's interests as it would advance the Tribe's parallel lawsuits against Lewis Tein.

a. It was not disputed that Bert was unsophisticated in legal matters. It is highly unlikely that he understood the import or consequences of a §

57.105 motion in this circumstance to the point that he volunteered his "expectation" that it be withdrawn by his new lawyer.

b. Bert's attorney was Respondent, not Roman. Thus, there was no legitimate, legal or ethical reason for Roman to have communicated this matter with Bert. Noticeably there was never an objection or any legal response to the fact that Tribal Counsel Roman spoke to Respondent's client. Moreover, and perhaps most importantly is that withdrawal of the § 57.105 motion was in direct violation of the ethical obligation the Respondent had to Bert. It was a legal act, by an experienced and savvy attorney which was in contravention of the financial and personal interest of his client.

c. The record establishes that Bert did not speak English, which would further complicate such technical discussions.

d. Finally, Bert testified that he did not even know about the § 57.105 motion until three weeks later. TFB Ex. 13 at 6; 12-17 (Second sworn statement taken on 11/20/2012) ("MR. HERRERA: Now there is a motion for sanctions that was filed by Lewis & Tein pursuant to a statute called § 57.105. Have you, before today, ever been told of that? THE WITNESS: He just found out today. This is the first time he's been notified.").

19. The fact that Respondent was truly advocating for the best interests of the Tribe rather than for his own client is also demonstrated and conclusively

supported by his work behind the scenes on the Tribe's parallel lawsuit against Lewis Tein in state court before Judge Thornton (Thornton case), at a time when he represented Bert exclusively, and NOT the Tribe.

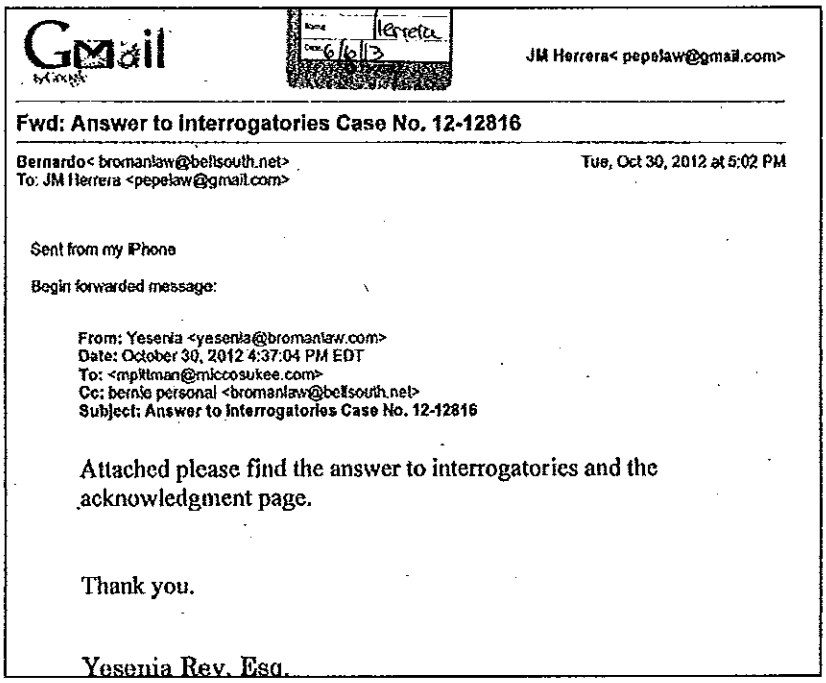
Direct Proof of Respondent's Drafting of Tribes' Reponses to The First Set of Interrogatories

20. On October 31, 2012, Tribal Counsel Roman emailed a draft of the Tribe's proposed responses to the first set of interrogatories in the Thornton case, requesting Respondent review the draft. At this time it is undisputed that Respondent only represented Bert in the *Bermudez* post-judgment collection proceedings. Respondent had not entered any record appearance for the Tribe in any matter at this time. Indeed, Respondent conceded that he did not represent the Tribe at this time. *See* TFB Ex. 59, 55 (6/6/2013 Deposition of Herrera) ("Q. On October 30, 2012, were you representing the Miccosukee Tribe? A. No, I was representing Mr. Bert."). He also conceded that these interrogatory answers were not "regarding" and did not "involve" Bert. *Id.* at 54 ("In a vacuum, you're right. … In a vacuum, no."). *Id.*

a. Respondent's testimony before this court is directly contradicted by the associated emails and attachments, which are exhibits to Respondent's June 6, 2013 deposition, TFB Ex. 59. These emails show that, on October 30, 2012 at 5:02 p.m., Roman (from his iPhone) emailed Respondent (at a

Gmail address) a PDF of the interrogatories and a Word version of "answers to interrogatories" that had been sent to him by his associate, Yesenia Rey. The Word attachment was titled "Doc1.docx." That draft contained objections without substantive answers to eight of nine interrogatories.

b. In direct contrast to his testimony on this point before this court, Respondent previously testified unequivocally that this email "transmits the Tribe's draft Answers to Interrogatories." *See* TFB Ex. 59, at 52-53 (6/6/2013 Deposition of Herrera) ("Yes. Well it looks that way. ... That's what it looks like. I don't know who drafted them. ... They seem to be some sort of proposed or some sort of outline or draft of some sort. ... Yeah. It looks like they're some sort of draft or proposed comments or – in response to whatever is being asked.").



Gmail

JM Herrera< pepelaw@gmail.com>

Fwd: Answer to Interrogatories Case No. 12-12816

Bernardo< bromanlaw@bellsouth.net> Tue, Oct 30, 2012 at 5:02 PM
To: JM Herrera <pepelaw@gmail.com>

Sent from my iPhone

Begin forwarded message:

From: Yesenia <yesenia@bromanlaw.com>
Date: October 30, 2012 4:37:04 PM EDT
To: <mpittman@miccosukee.com>
Cc: bernie personal <bromanlaw@bellsouth.net>
Subject: Answer to Interrogatories Case No. 12-12816

Attached please find the answer to interrogatories and the acknowledgment page.

Thank you.

Yesenia Rey, Esq.

2 attachments

Defendant's Notice of Serving Interrogatories to Plaintiff 10-1-12.pdf
178K

Doc1.docx
19K

c. The next day, Roman (not from an iPhone) emailed Respondent (at his business email) draft answers "for your review."

From: bromanlaw@bellsouth.net [mailto:bromanlaw@bellsouth.net]
Sent: Wednesday, October 31, 2012 3:35 PM
To: JM Herrera
Cc: Veronica Rodriguez
Subject: Draft of Tribe's Answers to First Set of Interrogatories

Pepe: Attached for your review please find the draft of the Tribe's Answers to First Set of Interrogatories. The time to file these answers has been **extended until next Monday, November 5, 2012.** Thanks, Bernie.

TFB Ex. 59. Later that same day, Respondent's assistant emailed Roman a document titled "Answers to Interrogatories Bernie.docx," which substantially altered eight of the nine responses. The only response not altered was to a question requesting the name and address of the Miccosukee Tribe.

From: Veronica Rodriguez
Sent: Wednesday, October 31, 2012 4:42 PM
To: 'bromanlaw@bellsouth.net'
Subject: RE: Draft of Tribe's Answers to First Set of Interrogatories
Attachments: Answers to Interrogatories Bernie.docx

Bernie:

Please see the attached.

Veronica Rodriguez
Legal Assistant
Jose M. Herrera, P.A.
2350 Coral Way
Suite 201
Miami, Florida 33145
Telephone: (305) 445-1100
Fax: (305) 221-8805

d. Perhaps the most salient change by the Respondent is in regards to interrogatory number two. This response purported to explain the Tribe's basis for accusing Lewis Tein of a "kickback scheme." As shown below it was completely rewritten by Respondent. The original response from Roman read as follows:

> 2. *Explain in detail the purported "kickback scheme" involving Guy Lewis, Michael Tein and/or Lewis Tein, PL and Billy Cypress as alleged in this case.*
>
> **RESPONSE:**
>
> I do not have personal knowledge in order to answer this question. Any information I have is based on the pleadings that have been filed in this case and the documents reviewed in preparation and prosecution of this case in conjunction with the Tribal Attorney. I object t revealing the content of such communications under the attorney-client privilege and the work-product privilege. However, discovery is pending in this case which will reveal the answer to this interrogatory.

TFB Ex. 59. Respondent's rewrite is as follows:

2. *Explain in detail the purported "kickback scheme" involving Guy Lewis, Michael Tein and/or Lewis Tein, PL and Billy Cypress as alleged in this case.*

RESPONSE:

According to accounting reports of ongoing forensic audits of limited records of the Defendants, from 2005 to 2009, there is an apparent pattern where these Defendants billed the Miccosukee Tribe in excess of ten (10) million dollars for work that was arbitrarily created and authorized by former Chairman Billy Cypress, without the knowledge or approval of the governing body of the Miccosukee Tribe or the Miccosukee people. The Defendants, without the knowledge or consent of the governing body of the Miccosukee Tribe or the Miccosukee people, billed at a rate that was three or four times higher than the rate of attorneys with more experience, prestige, and expertise, for work that was of substantially less value and less professional demand, and whose only purpose was to generate millions of dollars in legal fees. This pattern shows that the billing cycles, of these clearly excessive, and mostly unsubstantiated legal fees, coincide with the Defendants' personal representation of former Chairman Billy Cypress, in personal matters not directly related to the Miccosukee Tribe. This pattern also shows that the Defenants' billing cycles coincide with substantial cash transactions carried out by former chairman Billy Cypress, including an attempt to justify unauthorized credit card charges through the creation of bogus loans and the purchase of luxury homes and vehicles by the former chairman Billy Cypress during the relevant periods. The forensic accounting conducted in this case is of a continuing nature in preparation for litigation and, therefore, protected by the accountant-client privilege and attorney work-product privilege.

TFB Ex. 59.

e. Despite the obvious significance of Respondent's email containing the interrogatory responses, Respondent repeatedly insisted at the Final Hearing in this disciplinary case that he did not draft these interrogatory answers; he testified they were simply typed up by his assistant from handwritten pages, as a favor to Roman:

> Q. ... [D]id you in fact draft that answer from its originality [sic]?
> A. No.
> Q. And did you -- please explain to the court what your law firm's role was -- and we can get to the deposition cites if we need it, but what was your firm's role in terms of that answer to the interrogatory?
> A. I agreed to do a colleague a favor. My paralegal typed it up. There is a handwritten draft and it's clear. I said that over and over.
> * * *
> THE COURT: What are you saying about the email-filing? ... [Y]ou said you didn't draft it?
> THE WITNESS: I didn't draft the answer. My office typed it up from notes.
> THE COURT: Whose notes?
> THE WITNESS: Mr. Roman's. ...
> * * *
> Q. Mr. Herrera, you said that your office typed it up?
> A. Correct.
> * * *
> THE COURT: I don't understand the answer. You've been a lawyer for 31 years and a paralegal looks at something and -- what does that even mean?
> THE WITNESS: No Your Honor, Mr. Roman for whatever reason had asked if my office could help him out by typing this up. There was a handwritten draft. I asked my paralegal go ahead and type that up and send it back to him.
> THE COURT: So let me be clear. You are telling me that Mr. Roman gives you handwritten notes?

THE WITNESS: Yes.
THE COURT: Did he fax them, e-mail them, send it?
THE WITNESS: No, he handed them to me.
THE COURT: Hands you handwritten notes?
THE WITNESS: Handed me handwritten notes and I can't tell you whether it was his handwriting or it was something that somebody else had written out. It was the response generally of whatever the answer was. And I said: Yes. You know what? I don't have a problem. I'll get Veronica to type them up and give them back to you.
THE COURT: Okay. So he's in-house counsel for what amounts to a billion-dollar industry yearly and he's asking you to use your secretary to type up the answers to a case that you are not involved in?
THE WITNESS: Your Honor he asked me for a favor and I didn't think about it. I said: Sure, I don't have a problem.
THE COURT: What about the email?
THE WITNESS: Yes.
THE COURT: Okay just keep going.

Tr. 958-64 (emphasis added).

f. This clear evidence of Roman requesting by email that Respondent review the proposed responses to the first set of interrogatories, and Respondent responding by email with revised answers, strains credulity. The contention that the Tribe, a multi-million or billion-dollar annual enterprise, would have its general counsel resort to the offices of a single lawyer who did not represent it, to type up handwritten notes, defies common sense and logic. This is the first a series of instances in this case, in which the Respondent has requested this court disregard the plain meaning of a document, and instead accept his self-

serving, and frankly incredulous, explanation for why the documents do not mean what they say.

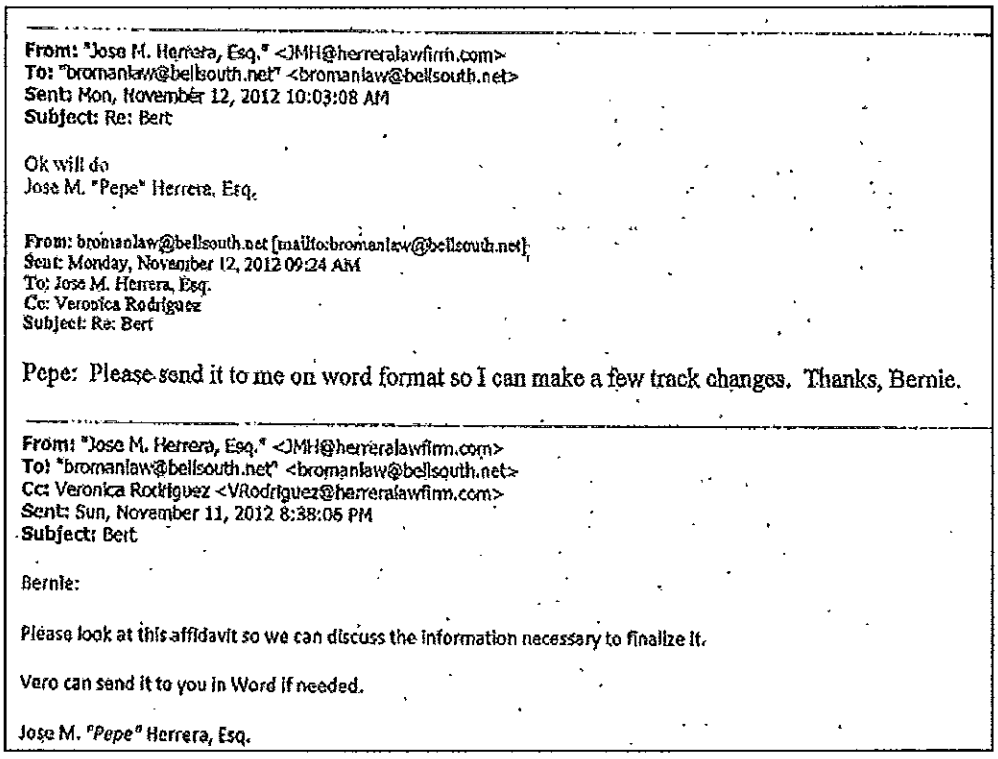
g. Additionally, Respondent's clear testimony before this court was that he personally received **handwritten** notes from Roman. *Id.* In fact the evidence shows emailed attachments. In addition in his June 6, 2013 deposition, Respondent never testified he was handed handwritten notes from Roman. *See* TFB Ex. 59. Moreover, he denies in his testimony before this court writing, editing or having any substantive work involvement in the creation of the responses to the first set of interrogatories. Respondent's contention is: he received handwritten notes from Roman; he gave those notes to his assistant to type for the Tribe and Roman; and he had no further involvement with these interrogatories. Thus he denies what is utterly clear in the paper trail above from email exchanges, which is that he in fact received an email draft of responses to interrogatories, completely altered that draft for the Tribe and had it emailed back to the Tribe. He did legal work for the Tribe while representing Bert and flatly denied it. This legal work as quoted above, was all furthering the baseless allegations of "fake loans" and a kickback scheme against Lewis Tein. Finally, the emails show Respondent was able to accomplish his rewrites for the Tribe in under one hour and seven minutes on October 31, 2012.

h. This undersigned court finds that Respondent's testimony on this point defies logic and belies any sense of ethical and legal obligation to his then client, Bert. This conclusion is based on the facts, documents in evidence, the court's observations of the Respondent's tone, inflection, demeanor, and the court's common sense. The paper trail could not more directly show that Respondent worked behind the scenes for the Tribe when he was not its attorney. In short, this court finds the Respondent made all of these misrepresentations under oath, to this court, in the disciplinary hearing.

Respondent Takes First and Second Sworn Statements of Jimmie Bert

21. Proof that Respondent was advocating for the best interests of the Tribe, and not those of his client was also demonstrated by Respondent's manipulation of his client's testimony. He engaged in selective disclosure of only those portions of Bert's testimony which supported the Tribe's position in the Dresnick perjury case, as well as in the parallel state and federal court lawsuits.

22. On November 11, 2012, Respondent emailed Roman with the subject line, "*Re: Bert,*" asking Roman to "look at this affidavit so we can discuss the information necessary to finalize it." TFB Ex. 10. Roman then responded, asking Respondent to "send it to me on [sic] word format so I can make a few track changes." *Id.* Respondent replied, "Ok will do":



From: "Jose M. Herrera, Esq." <JMH@herreralawfirm.com>
To: "bromanlaw@bellsouth.net" <bromanlaw@bellsouth.net>
Sent: Mon, November 12, 2012 10:03:08 AM
Subject: Re: Bert

Ok will do
Jose M. "Pepe" Herrera, Esq.

From: bromanlaw@bellsouth.net [mailto:bromanlaw@bellsouth.net]
Sent: Monday, November 12, 2012 09:24 AM
To: Jose M. Herrera, Esq.
Cc: Veronica Rodriguez
Subject: Re: Bert

Pepe: Please send it to me on word format so I can make a few track changes. Thanks, Bernie.

From: "Jose M. Herrera, Esq." <JMH@herreralawfirm.com>
To: "bromanlaw@bellsouth.net" <bromanlaw@bellsouth.net>
Cc: Veronica Rodriguez <VRodriguez@herreralawfirm.com>
Sent: Sun, November 11, 2012 8:38:06 PM
Subject: Bert

Bernie:

Please look at this affidavit so we can discuss the information necessary to finalize it.

Vero can send it to you in Word if needed.

Jose M. "Pepe" Herrera, Esq.

TFB Ex. 10.

This email chain in and of itself justifies a finding of unethical behavior and a violation of Rules Regulating the Florida Bar.

23. Despite the plain language of the email and its subject, Respondent's attorney argued in closing argument before this court that this email did not actually mean what it says, but rather this email was asking Tribal Counsel to review the affidavit of the Tribe's custodian of records. Tr. 1268.

24. This court finds Respondent's assertion not credible. Respondent has again requested this court to disregard the plain language in a document, and instead accept his self-serving and incredulous explanation for why the document does not mean what it plainly states.

a. In addition to Respondent's explanation contradicting the plain language in the email, it is significant that Respondent offered no evidence to support his claim. Respondent elected not to testify about this issue or be subjected to cross-examination, but rather to leave it to his counsel to argue in closing. It is noteworthy that Respondent has never produced the purported affidavit that was attached to this email. The email alone, without attachments, was produced in discovery in the cases below.

b. Respondent's self-serving explanation is also not credible in light of the dates of the emails. These emails were sent on the eve of Bert's deposition, scheduled November 13, 2012, and are direct evidence that Respondent and Roman were colluding to draft a sworn statement by Bert that would support the Tribe's position in its lawsuits and in *Bermudez*, stating that Bert did not receive any loans to pay Lewis Tein's legal fees. The logic behind this was that Lewis Tein were lying to Judge Dresnick, and were also part of an embezzlement and kickback scheme. When Bert's deposition was postponed to the following week at Respondent's request, Respondent again attempted to obtain a sworn statement from his client, but this time not by affidavit, rather by transcribed questions and answers.

25. On November 13, 2012, Respondent's motion for protective order was granted, based on Respondent's stated family medical issue, postponing Bert's deposition to November 20.

26. On November 16, 2012, Respondent emailed Roman that "[Rodriguez] has managed to totally piss me off with his nonsense" and **"I am not going to withdraw the § 57.105"** and **"am going to draft a memorandum explaining why this entire proceeding is improper ... and has caused unnecessary fees."** TFB Ex.11 (emphasis added).

From: Jose M. Herrera, Esq.
Sent: Friday, November 16, 2012 5:06 PM
To: bromanlaw@bellsouth.net

Tracking:

Recipient	Delivery	Read
bromanlaw@bellsouth.net		
Griselle Aguilera-Perez, Esq.	Delivered: 11/16/2012 5:06 PM	
Veronica Rodriguez	Delivered: 11/16/2012 5:06 PM	Read: 11/16/2012 5:11 PM

Bernie:

Ramon has managed to totally piss me off with his nonsense. I am not going to withdraw the 57.105, in fact I am going to draft a memorandum explaining why this entire proceeding is improper, is not within the purview of 1.540, and has caused unnecessary fees.

TFB Ex. 11. Additionally, the following exchange occurred as Respondent was testifying in the disciplinary proceedings:

> THE COURT: So what are you saying? Do you understand that the logic is going 'round and 'round?
> THE WITNESS: I was upset.
> THE COURT: And the more we talk, the more I understand what the life would have been like seven years of this litigation, and we are only here for... five days.
> THE WITNESS: Yes, I was upset. I was upset and I was --

> THE COURT: So you were upset and then you decided then, to, in fact, keep a frivolous motion? What are you talking about?

Tr. 1150:7-21. This court finds that this evidence clearly demonstrates Respondent's true belief and understanding that his position in the Dresnick case was frivolous.

27. On November 19, 2012, at 5:45 p.m., Respondent announced that Bert was "unavailable" for his deposition, which was scheduled for the next day. Tr. 177.

28. On November 20, 2012, despite his client's supposed "unavailability," Respondent took two sworn and transcribed statements of his client. The statements were taken 30 minutes apart; the first at 4:45 p.m. and the second at 5:15 p.m. TFB Ex. 12; TFB Ex. 13.

a. In the First sworn statement, Bert was equivocal about the issue of how his fees were paid, answering that "the billing went to the Tribe."

b. When Respondent re-asked the questions in the Second sworn statement, Bert claimed not to have seen any invoices from Lewis Tein or received any loans for legal fees, even though Bert personally signed Lewis Tein's invoices "ok to pay." TFB Ex. 37.

29. On November 21, 2012, Rodriguez reset Bert's deposition to November 23 (the day after Thanksgiving). On the same day, Respondent sent two

emails including copies of Bert's Second sworn statement to Bert's adversary, Rodriguez, and to Roman, whose interest are in direct conflict with Bert.

From: Jose M. Herrera, Esq.
Sent: Wednesday, November 21, 2012 10:05 PM
To: bromanlaw@bellsouth.net
Cc: Ramon M. Rodriguez; Veronica Rodriguez; Jose M. Herrera, Esq.
Subject: FW: Second Sworn Statement of Jimmy Bert
Attachments: 0821S2.txt

Tracking:

Recipient	Delivery	Read
bromanlaw@bellsouth.net		
Ramon M. Rodriguez		
Veronica Rodriguez	Delivered: 11/21/2012 10:06 PM	Read: 11/22/2012 1:19 AM
Jose M. Herrera, Esq.	Delivered: 11/21/2012 10:06 PM	

Gentlemen:

I am providing a copy of the transcript addressing the issue pertaining Mr. Bert's affidavit dated January 18, 2011. As you will see, Mr. Bert did not have an interpreter/translator; the contents of the affidavit was not translated/interpreted to him, and Mr. Bert reaffirms the testimony contained in his deposition of May 2010. Mr. Bert has authorized and instructed me to withdraw the affidavit, and inform the Court of that the relevant facts. Mr. Bert has also authorized and instructed me withdraw the motion for sanctions under 57.105.

I will be making an appropriate filing with the Court shortly.

Although the fact that Mr. Bert does not read English and the affidavit was not interpreted/translated to him negates any perjurious intend, please consider this email, and the accompanying transcript as Mr. Bert's recantation of his affidavit.

If you have any questions, please do not hesitant to contact me.

Jose M. *"Pepe"* Herrera, Esq.
Jose M. Herrera, P.A.
2350 Coral Way
Suite 201
Miami, Florida 33145
Tel.: (305) 445-1100 / Fax: (305) 221-8805

TFB Ex. 15.

Sent: Wednesday, November 21, 2012 10:10 PM
To: bromanlaw@bellsouth.net
Cc: Veronica Rodriguez; Jose M. Herrera, Esq.
Subject: FW: First Swom Statement of Jimmy Bert
Attachments: 0821S.TXT

Tracking:

Recipient	Delivery	Read
bromanlaw@bellsouth.net		
Veronica Rodriguez	Delivered: 11/21/2012 10:11 PM	Read: 11/22/2012 1:19 AM
Jose M. Herrera, Esq.	Delivered: 11/21/2012 10:11 PM	Read: 11/21/2012 10:10 PM

Mr. Roman:

Here is the second statement of Mr. Bert, please consider this statement privileged and confidential, within the terms and scope of the joint interest agreement between Mr. Bert and the Tribe.

Jose M. *"Pepe"* Herrera, Esq.
Jose M. Herrera, P.A.
2350 Coral Way
Suite 201
Miami, Florida 33145
Tel.: (305) 445-1100 / Fax: (305) 221-8805

TFB Ex. 16.

30. It is crucial to recall the context to properly evaluate and understand the egregiousness of Respondent's conduct. Rodriguez was the plaintiff's attorney in the wrongful death representing the Bermudez family. Bert was the defendant from whom Rodriguez was seeking 3.1 million dollars in a post-judgment action. Respondent was Bert's lawyer. As a result of Respondent's conduct, Rodriguez was in possession of materials which could be used to impeach Bert at his deposition or any further proceedings, in the event that he testified consistent with Lewis Tein's position, which he did. As explained during the disciplinary proceedings:

> THE WITNESS:...It shows that Mr. Herrera knew that someone, either Ramon Rodriguez, his adversary, or Bernardo Roman, had the statement. Had the statement that Mr. Herrera had taken of his client.

> Not a deposition, but a statement that Mr. Herrera had taken of his own client. It's another e-mail showing that.
> BY MS. FALCONE:
> Q. And, in fact, when the deposition of Mr. Bert resumes in December of 2012, does Mr. Rodriguez use that secret statement to impeach Mr. Bert when he testifies truthfully that there are, in fact, loans?
> A. Absolutely.

Tr. 414-15; *see* TFB Ex. 21 at 176-181. There is no logical or believable explanation for Respondent's actions in emailing the Second sworn statement, other than he was acting on behalf of the Tribe. He was also acting to the detriment of his client's legal interests.

31. On November 23, 2012, a mere three days after Respondent successfully elicited the testimony favorable to the Tribe in the Second sworn statement, *Bermudez* plaintiffs' counsel Rodriguez took the deposition of Bert. TFB Ex. 17. Bert testified consistently with the answers in the Second sworn statement, that he had not received any loans from the Tribe to pay for Lewis Tein's legal fees. Prior to Lewis Tein's opportunity for cross-examination, Respondent recessed the deposition, claiming that his client, Bert, was "not feeling well." Tr. 412; TFB Ex. 17.

32. On November 27, 2012, a *Miami Herald* article reported that Bert gave a "sworn statement" contradicting Lewis Tein on the loan issue. The article quoted from transcripts of Bert's Second sworn statement that Respondent took on November 20 and the partially completed November 23 deposition. Tr. 412-13;

TFB Ex. 19 (email from Herrera to Roman and Rodriguez asking who disclosed the Second sworn statement "to the media").

33. On November 29, Respondent filed a "Notice of Recantation" of Bert's 2011 affidavit (in which he stated that he was responsible for and had been paying Lewis Tein's legal bills) and a "Notice of Withdrawal" of the § 57.105 motion that Lewis Tein had filed on Bert's behalf (which alleged that the perjury allegations were frivolous). TFB Ex. 20. Respondent made several inaccurate representations in that "Notice" including:

a. Bert did not have a translator present for his 2011 affidavit;

b. Bert was not responsible for Lewis Tein's fees; and

c. Lewis Tein did not keep Bert informed about the status of the *Bermudez* wrongful-death case.

34. On December 3, 2012, Lewis Tein reconvened Bert's deposition. On cross-examination by Lewis Tein's lawyer, Paul Calli, Esq. Bert testified truthfully that the Tribe had approved loans to him to pay Lewis Tein's legal fees. TFB Ex. 21 at 151-174. On redirect, Rodriguez attempted to use Bert's Second sworn statement to impeach him. However, when confronted with the Second sworn statement, Bert clarified that his answers explained that he had not requested loans specifically for Lewis Tein because his prior requests for loans from the Tribe were not limited only to Lewis Tein but included all legal representation. Tr. 181.

35. Despite this clear clarification by his client, Respondent did not take any action to withdraw his Notice of Recantation, previously filed in the Dresnick case. This is true despite the fact that the "Recantation" was predicated on the portions of the affidavit that Bert had just clarified in his deposition. Respondent's maintenance of the Recantation in light of Bert's deposition testimony was patently frivolous.

36. On December 20, 2012, Roman filed an affidavit in the *Bermudez* case, falsely asserting that the Tribe did not possess any records supporting Lewis Tein's position that the Tribe had lent money to Bert and Billie to pay Lewis Tein's legal fees. TFB Ex. 22.

37. First, Respondent testified before this court that he believed he was required to send these statements to his adversary under Fla. Stat. § 837.07 ("Recantation as a Defense").[5] Tr. 1004-05. Respondent's motion mentions the word recantation but never cites this statute or supporting law. A plain reading of the statute shows it is not applicable in this situation. Thus Respondent's reliance

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[5] **Fla. Stat. 837.07 Recantation as a defense.**
Recantation shall be a defense to any prosecution for perjury or false statement only if the person making the false statement admits such statement to be false in the same continuous proceeding or matter, and:
(1) The false statement has not substantially affected the proceeding; or
(2) Such admission is made before it has become manifest that such false statement has been or will be exposed.

on it is unfounded. TFB Ex. 20. It is beyond the pale of believably that an attorney of Respondent's experience and knowledge did not know this.

38. Second, in a clear attempt to counter the evidence that the Second sworn statement was a "do over" after a failed first attempt, Respondent testified in the disciplinary proceeding that the First and Second sworn statements were **not** supposed to be two separate statements. Respondent contended that it was to be one continuous statement with a recess in between, necessitated by his need to "make a phone call" or "take a phone call." Tr. 995, 1109. As quoted below, Respondent contradicts himself in trying to provide an explanation. His testimony in court is inopposite to his initial response to The Bar. Based upon the direct contradiction, this court finds Respondent had an improper motive in explaining the number of sworn statements he took of Bert and that he knowingly misrepresented that information:

a. Respondent explained to this court that it "was not my intention [that] the two volumes came out. ... ***It was not supposed to be two volumes***. I realized it when I got it." Tr. 996 (emphasis added).

b. Respondent specifically testified to this court that ***it was the stenographer's decision*** to bifurcate the transcripts: "I told the court reporter I want to resume and she just – this is how she did it." *Id.* In response to the court's direct questions, Respondent was unequivocal on this point:

> THE COURT: ***So you are saying that the court reporter is the person that created the two sworn statements***?
> THE WITNESS: ***When she divided it in two volumes, yes. That was never my intent.*** My intent was that this would be one. That's why I always referred to it as one. See, in this one, she puts it was concluded. Let me see what she puts in this one.
> THE COURT: Okay. Thank you.

Tr. 997 (emphasis added).

c. However, in Respondent's September 16, 2013 response to the original bar complaint, he took precisely the opposite position. In that letter, Respondent claimed the decision was his own, and was done for strategic purposes:

> ***I obtained a bifurcated statement*** from Jimmie Bert in November 2012 .... [B]ecause of the accusations and aspersions routinely being cast by Messrs. Tein and Lewis and their counsel, ***I decided to have the court reporter bifurcate the statement*** and generate two (2) separate volumes. One volume encompassed questions which I considered privileged, and the second was limited to the specific issues of payment of fee and loans or other arrangement between Mr. Bert and the Tribe to pay those fees.

TFB Ex. 53 at 9. (emphasis added).

d. Respondent also took the opposite position before Judge Thornton in a May 2, 2013 objection to a special master's recommendation that it be produced. *See* Resp't Ex. E at para. 9 (claiming that the "second sworn statement of Jimmie Bert ... is not the same sworn statement ... although it was taken on the same day").

39. Thus, the evidence before this court is that the Respondent gives contradictory explanations before three different tribunals: Judge Thornton, The Florida Bar and this court.

The Non-existent Joint Defense and Common Interest Agreement

40. Although Respondent argued to this court that a joint defense agreement was in place between the Tribe and Bert, the following clearly contradicts his representations. Respondent solicited an agreement on October 31, 2012.

From: Veronica Rodriguez <VRodriguez@herreralawfirm.com>
To: "bromanlaw@bellsouth.net" <bromanlaw@bellsouth.net>
Sent: Wed, October 31, 2012 11:58:18 AM
Subject: Jimmie Bert

Good Morning Bernie:

Please review the attached Waiver of Conflict and Joint Defense and Common Interest Agreement.

Please do not hesitate to contact our office should you have any questions. Thank you.

Veronica Rodriguez

Legal Assistant

Jose M. Herrera, P.A.

TFB Ex. 9. On January 14, 2013, Roman emailed Respondent that the Tribe rejected the joint defense and common interest agreement.

From: bromanlaw@bellsouth.net (bromanlaw@bellsouth.net)
To: pepelaw@gmail.com; jmh@herreralawfirm.com; VRodriguez@herreralawfirm.com;
Date: Mon, January 14, 2013 4:06:48 PM
Cc:
Subject: Bermudez v. Bert

Pepe: I have been informed that the Tribe has rejected the Joint Defense and Common Interest Agreement and the Waiver of Conflict proposed by Jimmy Bert in this case. Please call me if you have any questions. Bernie.

TFB Ex. 23. Accordingly, this court finds that, at all material times including when Respondent later entered contemporaneous appearances in separate matters for Bert and the Tribe, there was no joint defense agreement or waiver of conflict in place between Bert and the Tribe.

a. This is another instance where Respondent requested this court, and or the trier of fact below, to disregard the plain meaning of the language contained in a document, and instead accept his self-serving explanation without any additional proof. Roman's email is unequivocal, and clearly indicates the Tribe rejected the joint defense agreement and refused to waive conflict of interest. Notwithstanding same, in the underlying matter, Respondent asserted this joint defense agreement, which had been specifically rejected by the Tribe, as a basis for a "privilege" objection to production of various documents. In so doing, Respondent asserted that Roman's email was simply a mistake; he claimed the Tribe only refused to waive conflict, but did not really reject the joint defense agreement. The court finds this explanation inconsistent with the facts.

Respondent's assertions of privilege based on an agreement specifically rejected by the Tribe were not merely frivolous but were affirmatively false.

b. In what can aptly be described as a T.V. courtroom drama, the following actually unfolded in the sanction hearing, after this court previously found Respondent guilty of multiple rule violations. As Respondent's attorney was making a legal argument at the podium, the following occurred:

> MR. RUSSOMANNO, III:... In addition -- what is this?
> THE COURT: You okay?
> MR. RUSSOMANNO: May we have a moment, Your Honor?
> THE COURT: Of course. Let the record reflect Mr. Russomanno is speaking to his client. Would you like to sit down at counsel's table and discuss --
> MR. RUSSOMANNO, III: No. I mean, I understand, now that I'm seeing this. Okay, I only have two copies, and obviously the Bar needs to get one and Your Honor needs to get one. So I will hand these to both. **Your Honor, this is the first time I've seen this document. It's a joint defense and common interest agreement, which was referenced by Your Honor and me previously. I was unaware it was in the courtroom until I was just handed it, Your Honor.** So I want Your Honor to be aware of that. As Your Honor can probably see –
> THE COURT: What? What is happening in this courtroom? Did I just see this unfold?
> MR. RUSSOMANNO, III: Apparently.
> THE COURT: Did I just see unfold in front of me, you making a legal argument in open court that this is -- that you did not have a copy of this. And then you made a comment to the court, well, if there is a copy, then that is something that Mr. Herrera should possibly present, which sort of led me to believe that you wanted to be very careful with your terminology, because, of course, you were -- I accept your word that you are not aware of it. And then somebody walks up from the gallery -- and I apologize, but a woman I don't know really.
> MR. RUSSOMANNO, III: Her name is --
> THE COURT: A woman who is in the gallery, which I'm not about to

> speak to someone who is standing in the courtroom right now. And then Mr. Herrera speaks to you, and all of a sudden, you walk up with a document that has never been presented before.
> MR. RUSSOMANNO, III: That's correct.
> THE COURT: What are we doing in this courtroom?
> ***
> THE COURT:...I do not believe you misled the court. I do not believe you lied to the court. I do not believe you were hiding something. I have no reason to believe that.
> MR. RUSSOMANNO, III: Thank you.
> MR. RUSSOMANNO: And, Your Honor, let me add to it, if I may.
> THE COURT: Yes, sir.
> MR. RUSSOMANNO: **The same things that Mr. Russomanno, III said apply to me; never saw the agreement, never knew it was in the courtroom.** And I think after 40 years of practice in this community, people know the type of person I am. Never saw it.
> THE COURT: Thank you, sir. I certainly accept your representation, Mr. Russomanno, Sr.

Tr. Excerpt 3-9, January 18, 2018 (emphasis added).

The document presented was undated, not completely filled out and was not notarized. Because it contained only signatures, there was no way to determine whether those signatures were valid or when the document was actually signed. In fact, there is no evidence that the signatures are the real signatures of the individuals named therein. While the attorney on behalf of The Florida Bar was addressing the court, the Respondent then stood up, walked to the podium, and attempted to present his own argument to the court:

> THE COURT: Let's take it -- okay, I'm not going to engage in this unless you want to tell me you are not represented by counsel. Because the issue of the common interest agreement and the existence

of it came about as a result of the filing of Mr. Russomanno and the court having reviewed it and then addressed it here today.
MR. HERRERA: Your Honor, with all due respect --
THE COURT: Mr. Russomanno, what is it that you would like to do?
MR. RUSSOMANNO, III: I would like to take a break, Your Honor, if that's okay. And counsel agrees with me, for the Bar.
THE COURT: All right. Because I would like to also state -- and think of this, Mr. Herrera. In fact, if you are going to be testifying before this court, you are going to be open to a direct and then cross-examination.
***
THE COURT: Well, I don't know what's -- look, this is -- I'm not going to preside over a kangaroo court, in the sense of "kangaroo court," meaning **things that are happening that are not in accordance with normal courtroom procedure and professionalism and rules of evidence and trial procedure and all the rules that govern this court proceeding and all court proceedings.**
MR. RUSSOMANNO, III: I agree, and that's why I asked to take a break, Judge.
THE COURT: Okay, no problem.
***
MR. RUSSOMANNO, III: Your Honor, Mr. Herrera is not going to be testifying or speaking or making any argument on his behalf...
***
THE COURT:...**The issue is the discussion of something -- having a substantive document, voila, pulled out in open court for the first time showing your lawyers after the entire case was litigated, that you wanted him to address**...

Tr. Excerpt 21-26, January 18, 2018 (emphasis added).

These events are indicative that the Respondent continued to perpetuate the idea that a valid joint defense agreement existed between the Tribe and the Respondent's client, Bert, through the sanction hearing. This court finds a valid agreement never existed, just as the other court found.

Importance of Goldenberg's Testimony

41. On Friday, February 1, 2013, the Tribe's former senior accountant, Jodi Goldenberg, ("Goldenberg") was deposed by Lewis Tein. TFB Ex. 25. Goldenberg testified that the Tribe had designated her as the person with the most knowledge of the accounting for loan agreements between the Tribe and its members. In testifying regarding finances between the Tribe and Bert/Billie, specifically, she stated that according to procedures, loans were taken by Bert and Billie against future distributions for payment of legal fees. Legal fee invoices were received, Bert/Billie approved them writing "okay to pay" with a signature and date, the loans were documented, checks were made payable to the law firms and over time future distributions were reduced so that the Tribe was reimbursed for the loans. This procedure was used for all Tribal members regarding all loans. The following exchange between Paul Calli, attorney for Lewis Tein, ("Calli") and Goldenberg regarding procedures in place September 09, 2003 – November 12, 2012 in reference to an exhibit:

> Q. Can you tell me what it is?
> A. Its's a schedule of what is owed on the balance of what's owed for Tammy's legal fees.
> Q. And—
> A. It's the details of who has been paid, how much and how much has been paid back.
> ***
> Q. In—every year do you see the word deductions?
> A. Yes.
> Q. What does that mean?

A. that's what was paid back?
Q. Paid back by whom to whom?
A. By Tammy and/or Jimmie to the Tribe.
Q. Are those deductions false and fraudulent?
A. No.
Q. Are they a paper transaction and nothing more?
A. No.
Q. Are these books cooked?
A. No.
Q. Is this a scheme to create false loans to make it look like they're loans, but they're not?
A. No.

TFB Ex. 25 at 42: 5-10, 19-25; 43: 1-8

42. Additionally, Goldenberg testified that, in preparation for her deposition, Roman tried to convince her to testify falsely that the Tribe had not lent money to Bert and Billie for payment of Lewis Tein's legal fees. When Goldenberg refused to commit perjury, she was fired. Goldenberg further testified that Lewis Tein had been telling the truth and that the Tribe had suppressed corroborating loan records. TFB Ex. 37; TFB Ex. 56, Attach. I.

43. Furthermore, Goldenberg produced copies of some of these documents, which flatly refuted the allegations that Respondent and the Tribe were pursuing against Lewis Tein. The court finds that a mere conversation with Goldenberg would have appraised Respondent that no "fake loans" or kickback scheme existed. Given the Respondent's experience and knowledge of the law and accounting, the court finds he knowingly and intentionally avoided learning that there were no "fake loans."

44. Three days later, Respondent retaliated with an improper filing against Calli. On Monday February 4, 2013, in the Tribe's state-court lawsuit against Lewis Tein, Respondent asked Judge Thornton to take judicial notice of allegations that had been made eight years earlier against Calli, by his ex-wife, in their marriage-dissolution proceedings. TFB Ex. 26. Respondent cited to and quoted from the file in that matter.

a. Specifically, Respondent advised the court that "[c]ounsel in that [unrelated marriage-dissolution] case report[ed] a pattern of aberrant behavior [by Lewis Tein's counsel] which includes abusive and malicious personal attacks on counsel and parties ... offensive communications, as well as assailing the trial court frivolously." Respondent wrote that Calli's "aberrant behavior and course of personal attacks in the [marriage dissolution case] is consistent with the pattern of unprofessional conduct he is engaging in [sic] this case." Respondent claimed that judicial notice is "relevant to determine" the "motives" of Calli "in the present matter – that being to fabricate issues ...." TFB Ex. 26.

b. Respondent repeatedly took the position throughout the disciplinary hearing that this filing was "not improper" although it "should not have been filed." Respondent claimed that he had been provoked by Calli, who had supposedly "call[ed] one of my associates or one of my colleagues a b[----] or us[ed] the C word." Tr. 1134 (adding, "[i]t was a matter of civility.").

Respondent produced no corroboration (by affidavit, email, testimony, or otherwise) that any such name-calling had ever taken place.

c. Respondent attempted to minimize his own conduct, by pointing out that he did not actually attach the marriage-dissolution file to the motion, but merely referred to its contents, and that Judge Thornton denied the motion. Tr. 926. This affords no relief to Calli, and further demonstrates Respondent's improper actions. Respondent fails to understand and acknowledge his utterly inappropriate conduct, particularly given the nature of the allegations and the manner in which the Respondent expanded upon them in a packed courtroom. Tr. 922. This court finds Respondent's conduct only served to disparage, humiliate, and cause personal distress to Calli. Respondent's actions are outside the bounds of professional and ethical conduct and demonstrate a clear lack of professional judgement.

Respondent Takes Third and Fourth Sworn Statements of Jimmie Bert

45. On March 1, 2013, Respondent inexplicably took a Third sworn statement from his client Bert, (and then, a first sworn statement from his daughter, former Lewis Tein client, Billie, whom he did not represent). TFB Ex. 27, 28. Respondent took the statements at the Miccosukee Tribe and captioned them, "Miccosukee Tribal Court," despite the fact that none of these proceedings, or anything relating to these proceedings, were pending in the "Tribal Court."

46. In this Third sworn statement, Bert gave clear responses to open questions, unlike the contradictory answers to Respondent's leading questions in the First and Second statements that Respondent took in November 2012. Bert's responses in his Third sworn statement squarely contradicted the representations that Respondent made in the "Notice of Recantation" he filed shortly after Bert's November 2012 sworn statements. Further, they fully supported Lewis Tein's position, as well as the § 57.105 motion that Lewis Tein filed in the wrongful death post-judgment collection proceeding. Respondent conceded that, in responding to questions in his Third sworn statement, Bert did not appear incoherent, or disoriented "in the least." Tr. 1007:5-15. Bert's answers in his Third sworn statement included:

a. "His wife, Louise Bert, was the interpreter" for the 2011 affidavit. TFB Ex. 27 at 4. This is consistent with Lewis Tein's contemporaneous billing invoices. The invoices specifically annotate that Louise Bert accompanied Jimmie Bert to Lewis Tein's office to review and sign the affidavit. TFB Ex. 3b.

b. The Tribe had approved loans to him and his daughter to pay their legal fees, without any limitation on the amount or name of the attorney. TFB Ex. 27 at 6, 9. This is corroborated by the depositions of each and every Tribal officer and employee who gave depositions in this matter. *See generally* TFB Ex. 25, 30, 36, 58.

c. The loan agreement required that amounts would be deducted from their "NTDR" (Tribal dividends) and they were in fact deducted on an ongoing basis. TFB Ex. 27 at 8, 9. The amounts deducted ranged from $10,000 per dividend to $30,000 at present. *Id.* at 10.

d. When Bert was represented by Vivian Rosado, he paid for her fees himself, by means of a deduction of approximately $4,000 per dividend. *Id.* After Rosado joined Lewis Tein, the bills were combined into one, and payments were then deducted only from his daughter Tammy Billie's dividend. *Id.* at 10-11. This is consistent with the actual invoices and spreadsheets recording the loans. TFB Ex. 37 Attach. 1; TFB Ex. 56, Attach. I

47. After receiving the transcript of this Third sworn statement, Respondent did not make any attempt to withdraw his client's "Notice of Recantation," correct the record, or otherwise alert the court that Bert's testimony no longer supported the "perjury" allegations being prosecuted against Lewis Tein in the *Bermudez* case.

48. Instead, on March 5, 2013, Respondent emailed Bert's Third sworn statement (along with Billie's) to Roman. TFB Ex. 29 b. As addressed previously herein, there was no "joint defense" or "common interest" agreement in place between the Tribe and Bert; indeed, the Tribe had expressly rejected such agreement. TFB Ex. 23.

49. On March 28, 2013, Respondent deposed Goldenberg in the *Bermudez* perjury proceedings, purportedly on behalf of Bert. TFB Ex. 30. During that deposition, in an effort to impeach Goldenberg's testimony, Respondent marked and inquired about several internal Tribe emails between Roman and Goldenberg. Since the Tribe had not previously disclosed these emails in the Dresnick, Thornton, or Cooke cases, the Respondent obtained them from Roman. Accordingly, Roman had provided Respondent (either directly or indirectly) with those emails. TFB Ex. 30 (exhibits attached thereto). Respondent's conduct in deposing Goldenberg and attempting to impeach her did not, in any way, advance the interests of his client, Bert. It solely advanced the interests of the Tribe. Even a cursory review demonstrates that the questions were designed to support the Tribe's position regarding the allegations of perjury in the Dresnick case and the Tribe's own allegations in the Thornton and Cooke cases. Respondent's conduct did not advance the *Bermudez* post-judgment proceedings in favor of his client Bert.

50. On Friday April 12, 2013, on the eve of the evidentiary hearing on the perjury allegations in *Bermudez*, Respondent filed a "Time-Line of Jimmie Bert," in support of the perjury allegations. TFB Ex. 33. In that "Time-Line," Respondent cited and quoted selectively from Bert's Second sworn statement and portions of his 2012 deposition. Notably he neither mentioned the existence of the

Third sworn statement, nor that Bert made directly contradictory answers therein. Thus in his "Time-Line" presentation in the Dresnick hearing, Respondent knowingly misled the court and parties by intentionally omitting his client's testimony from his Third sworn statement. TFB Ex. 33. Moreover, although Respondent made token reference in the "Time-Line" to Bert's truthful testimony at the continuation of his deposition on December 3, 2012, TFB Ex. 21, he mischaracterized those truthful answers as being the result of Counsel for Lewis Tein's efforts to confuse the witness and impede the deposition.

51. Respondent knew that Bert's undisclosed Third sworn statement directly contradicted numerous points which he presented in his "Time-Line" before the court. Nevertheless, Respondent made the following misleading and/or inaccurate statements to the court:

a. Lewis Tein had engaged in "a level of games-man-ship [sic] unworthy of the profession and the judicial process" including "less than candid material representations to this Court" and "deception." TFB Ex. 33 at 2, 3.

b. "[T]he proposition advanced by Lewis Tein is disingenuous and devoid of merit." *Id.* at 3.

c. "Jimmie Bert testified that he did not pay the legal fees in this case; the legal fees were paid by the Tribe; he had never seen the legal bills and did not receive a loan to pay those bills." *Id.*

d. Bert signed his 2011 affidavit contradicting those statements "without the benefit of an interpreter." *Id.* at 6.

e. The Tribe's evidence has "impugned the veracity" of Tein's statements at the August 2011 discovery hearing. *Id.* at 10.

52. In the instant disciplinary proceedings, Respondent maintained his demonstrably false position taken in the Dresnick proceedings, that Bert did not receive a loan to pay the legal fees of Lewis Tein. *See e.g.*, TFB Exs. 53, 54; Tr. 980:6-10. Despite this position, Respondent testified to this court that he made no effort to ascertain how Bert was paying Respondent's own legal fees even though the payment of legal fees was the key issue in the pending Dresnick proceeding. Respondent testified he was paid over $200,000 by the Tribe for his representation of Bert. The following testimony occurred during the disciplinary hearings:

> Q. Did you ever inquire of your client, of anybody at the Tribe, given all of the issues surrounding this very matter, who was actually responsible for paying your bills?
> A. When I first interviewed Mr. Bert and I spoke to Mr. Bert, he said he was going to ask the Tribe for assistance and he was going to ask the Tribe to pay the bill. That's all I knew and that's who paid me. Ultimately, that's who paid me. I waited – it took a while for me to get payment, and I ultimately got payment.
> Tr. 1113.

He also admitted to this court that he was in fact paid the same way that Lewis Tein were paid. *See* Tr. 980:25 – 981:4.

53. On Saturday April 13, 2013, Respondent took a Fourth sworn statement of his client Bert (TFB Ex. 34) and the next day, he took a Second sworn statement of Billie (TFB Ex. 35). The transcripts were again captioned "Miccosukee Tribal Court" which had no jurisdiction over any case related to this matter. That misleading caption served to shield the statements from disclosure in the Thornton case. Respondent took both statements at the "Miccosukee Casino" in the presence of Roman. *Id.* This court finds the timing of these statements to be significant. Similar to Respondent's taking of the two sworn statements from his client on the eve of the November 23, 2013 deposition, Respondent herein took Bert's Fourth sworn statement on the eve of the evidentiary hearing on the perjury allegations. His motivation was to ensure Bert and Billie testify consistent with the Tribe's position of no loans, or "fake loans," and/or to create that evidence. However, Respondent's efforts failed under questioning by the court.

54. On April 15, 16, and 17, 2013, Judge Dresnick conducted an evidentiary hearing on whether Lewis Tein had committed perjury and obstructed justice in stating during the August 2011 discovery hearing that their clients (Bert and Billie) were responsible for their legal fees and had been paying their fees. TFB Ex. 39. Ultimately, upon questioning by Judge Dresnick, Bert unequivocally admitted that he and his daughter Billie had received loans from the Tribe for Lewis Tein's legal fees and had been paying them back. Tr. 1034.

55. On April 23, 2013, Lewis Tein deposed Respondent pursuant to a subpoena *duces tecum* issued on January 11, 2013. TFB Ex. 24 (subpoena); TFB Ex. 40 (deposition). The subpoena called for production of communications with any Tribe employee or attorney relating to Bert, which encompassed Respondent's March 5, 2013 email to Roman, transmitting Bert's Third sworn statement (taken March 1, 2013).

a. Under oath, Respondent denied the existence of the Third sworn statement. *See* TFB Ex. 40 at 87, 88, 144.

b. In a memorandum that he filed before Judge Thornton just three weeks earlier, Respondent also falsely stated, twice, that as of April 1, 2013, he had taken only two statements from Bert, when in truth he had taken three. *See* TFB Ex. 32 at 2 & 3 n.3 ("JMH [sic] took two statements of his client, Jimmie Bert. ... There are two sworn statements of Mr. Bert.").

c. After denying it three times while under oath, Respondent finally admitted the existence of the Third (March 1, 2013) sworn statement. *See* TFB Ex. 40 at 155.

d. Upon finally admitting the existence of it, Respondent then falsely testified that the Third sworn statement was unrelated to preparation for the *Bermudez* hearings. *See id.* at 157-58. Respondent also falsely testified that he

had not transmitted the statement to Roman, despite the fact he had emailed it to him on March 5, 2013. *See id.* at 156.

e. Based upon the forgoing, this court finds that Respondent intentionally concealed the existence of the Third sworn statement from Lewis Tein and the courts for as long as possible, and certainly through the pendency of the perjury hearing in the Dresnick case. Respondent had numerous opportunities to correct his statements and the record. His failure to do so was knowing and intentional.

56. This court finds as a fact that Respondent took four sworn statements of his own client in order to manufacture false testimony that advanced the interests of the Tribe in its lawsuits against Lewis Tein and in the *Bermudez* perjury proceeding. The following reasons support this finding:

a. Taking a sworn statement from one's client is an extraordinary measure, fraught with peril. Taking four sworn statements, particularly in light of all of the other evidence of collusion, cannot be reconciled with serving the client's best interests. To the contrary, it exposed Bert to liability for perjury and created avenues for impeachment at future hearings.

b. The statements were taken after Roman and Respondent had earlier failed in obtaining a written sworn statement from Bert. TFB Ex. 10.

c. Respondent immediately sent the Second sworn statement supporting the Tribe's position to Bert's legal adversary, Rodriguez and to Roman on the eve of his own client's deposition. TFB Ex. 15. He did not send that statement to Calli or Lewis Tein. Given the facts and circumstances of this case, Respondent's conduct was egregious. At minimum Respondent acted incompetently; his actions were unfathomable of a lawyer with over 30 years of litigation experience in both criminal and civil law. At maximum it was a violation of multiple ethical rules, as Respondent's conduct was undeniably contrary to Bert's interests in the *Bermudez* post-judgment collection litigation.

d. Even more brazen, is his continued explanations throughout all bar proceedings. Respondent's testimony about his justification for taking these statements was not credible.

57. Respondent testified that he took the statements consistent with his belief that lawyers routinely take sworn statements from their own clients in three types of cases: insurance-defense cases, police disciplinary matters and criminal cases (polygraphs). Tr. 1040-41. This court finds this is an attempted after-the-fact justification which fails.

58. The following exchange occurred at the Final Hearing:

> THE COURT: What we are talking about right now is why would you take --
> THE WITNESS: It's part of my --
> THE COURT: -- a sworn statement of your own client.

THE WITNESS: It's part of my preparation, Your Honor.
THE COURT: A sworn statement --
THE WITNESS: I elected to --
THE COURT: -- that you know it can be utilized to impeach him?
THE WITNESS: I elected to do that. I considered it work product.
THE COURT: Have you ever done this in any other case? Are you kidding?
THE WITNESS: Yes.
THE COURT: Are you telling me that in 31 years of practice, you routinely would sit down with somebody if they didn't speak either English or Spanish and take a sworn statement under oath that could impeach your own client?
THE WITNESS: Your Honor, I never gave it that consideration.
THE COURT: That's very hard to believe because if you are a 31-year lawyer and you do criminal work -- forget criminal. Criminal, civil, what have you. You don't just offer up sworn statements of your client. They are not in your client's best interest.
THE WITNESS: Your Honor, I didn't, and I considered this attorney/client work product. And I agree with you. I agree.
THE COURT: If you agree with me, why would you do this?

Tr. 1011:21 – 1113:6.

This court finds the Respondent's testimony to be similarly incredulous particularly given his years of experience as a criminal defense attorney.

59. On May 9, 2013, Judge Dresnick issued a brief order stating: "The Court finds that Michael Tein, Guy Lewis and Lewis Tein, PL (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. 41.

60. Two weeks later, with the *Bermudez* perjury proceedings adjourned, on May 24, 2013, Respondent formally entered an appearance on behalf of the Tribe in its state-court litigation pending before Judge Thornton. Respondent

characterized this appearance as a "limited appearance" for "accounting issues" only. TFB Ex. 42; Tr. 1115: 2-6.

a. Regarding Respondent's "limited appearance" this court finds this limitation was pretextual. Based upon the forgoing, the undersigned finds that Respondent intentionally delayed entry of his record appearance for the Tribe until after Judge Dresnick issued his written Order, in order to avoid detection that he was actually furthering the interests of the Tribe during his "representation" of Bert in the *Bermudez* perjury proceedings.

b. Regarding Respondent's appearance for "accounting issues", the court finds that the Respondent was an experienced litigator with not merely a nominal knowledge of accounting, but perhaps an expertise. This further substantiates the court's findings that his conduct was knowing and intentional.

61. In the Thornton case, Respondent claimed that Bert's Third sworn statement was privileged "work product," despite the fact that he had transmitted the Third sworn statement to Roman. Additionally, Respondent previously voluntarily filed the Second sworn statement with the court in his "Notice of Recantation," and was accordingly ordered to produce the First sworn statement. This court finds that Respondent's assertion of privilege as to the Third sworn statement was entirely frivolous because it was based on a false premise.

a. In support of his frivolous work-product objection, Respondent falsely represented to Judge Thornton that Bert had a "Common Interest Agreement" with the Tribe. Respondent asserted this despite the existence of the January 14, 2013 email, in which the Tribe specifically rejected any such agreement. TFB Ex. 23; *See also* Resp't Ex. E: para. 4 (5/2/13) ("Mr. Bert and the Tribe have a Joint/Common Interest Agreement which has been agreed to by the parties and their attorneys."). Notably, no such valid agreement was introduced into evidence before this court.

b. Respondent continued to resist production of the Third sworn statement on the basis of this frivolous work-product objection, unsuccessfully appealing the issue to the Third District Court of Appeal, which required its production, by ruling dated October 11, 2013. TFB Ex. 47.

62. This court finds that Respondent intentionally thwarted discovery of this Third sworn statement, by repeatedly providing evasive and false testimony about its existence at his April 2013 deposition, by falsely testifying at that deposition that he did not believe he had given it to Roman, and by litigating frivolous work-product objections, because he knew that its disclosure would expose his fraud upon the court and upon Lewis Tein.

a. This finding is also supported by the position Respondent took in his written responses to the Bar in this matter. In Respondent's reply letter to

the Bar, he represented that "Mr. Bert ... testified truthfully before Judge Dresnick. ***There is nothing to indicate that [he] failed to testify truthfully***, or that there was any effort to have [him] testify other than truthfully. My efforts to obtain as accurate and as truthful information and testimony as possible in reference to Mr. Bert's payment of legal fees to Tein and Lewis is clear." TFB Ex. 54, at 4 (1/7/2014).

63. This statement was intentionally misleading. There was indeed "something to indicate that he failed to testify truthfully," namely, Bert's Third sworn statement. At the time he replied to the Bar, Respondent well knew that he had taken the Third sworn statement from Bert and that, in that statement, Bert had repeatedly and squarely contradicted Bert's testimony before Judge Dresnick. Respondent never mentioned this Third sworn statement to the Florida Bar in any of his written responses and did not voluntarily produce it to the Bar's investigator. Tr. 1094-1108. Respondent claimed to this court that he did not produce it to the Bar because the Bar "never asked for it." Tr. 1108 ("THE COURT: Let me ask you straight out. When did you give the Florida Bar the third statement? That's the question. Answer that. THE WITNESS: They didn't ask me for them.").

Resolution of the Thornton and Cooke Cases

64. On December 16, 2013, Judge Thornton entered an order granting Lewis Tein's motion for summary judgment against the Tribe, *Miccosukee Tribe v.*

Guy Lewis, et al., 21 Fla. L. Weekly Supp. 323(a) (Dec. 15, 2013) (Thornton, J.), (TFB Ex. 50) finding that the Tribe (Respondent's client) produced "no evidence" to support any of their allegations against Lewis Tein. Among other things, Judge Thornton also found 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.**

Id. at 324-25. Judge Thornton's order was subsequently affirmed by the Third District Court of Appeal. *Miccosukee Tribe of Indians of Florida v. Lewis*, 165 So. 3d 9 (Fla. 3d DCA 2015); TFB Ex. 51. In finding that Judge Thornton "properly granted summary judgment" for Lewis Tein and against the Tribe, the Third District Court of Appeal found that the Tribe failed to come forward with any evidence, or sworn statement, supporting its claims against Lewis Tein. The Third District 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.**" *Id.* at 11 (emphasis added).

65. Respondent was co-counsel for the Tribe in this case at this time. Irrespective of the gravity of the decision by Judge Thornton sanctioning the Tribe and its counsel, which was affirmed by the Third District Court of Appeal,

Respondent testified that he did not remember whether he had read the court's order. Tr. 1114 ("I don't remember."), 1116 ("Whatever Judge Thornton found, he found. I already told you Ms. Falcone."). Given the totality of circumstances, this court finds Respondent's testimony on this point to be utterably inconceivable.

66. In June and July 2014, Judge Cooke held nine days of evidentiary hearings on Lewis Tein's motion for sanctions against the Tribe and its counsel under Fed. R. Civ. P. 11. Judge Cooke ultimately granted the motion, awarding fees, finding that the Tribe's federal lawsuit against Lewis Tein was based on "no evidence," and concluding that its filing and prosecution was "egregious and abhorrent." *See Miccosukee Tribe of Indians v. Cypress*, 2015 WL 235433 (S.D. Fla. Jan. 16, 2015).

67. Of extreme relevance is that Judge Cooke expressly rejected the position that Respondent continues to urge. Judge Cooke found that:

> **there is no doubt that the loan 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. at *4.

68. While Respondent did not enter an appearance in the federal case, he attended days of these federal hearings and billed the Tribe for his time. Respondent stated to this court that he attended in order to further the interests of

his client, Bert, despite the fact that Bert was not a party to the federal litigation. Respondent's testimony offered no clarity but further obfuscated matters. Tr. 1132-57. By any plausible stretch, nothing in those hearings remotely concerned whether Bert was liable for the *Bermudez* wrongful death post-judgment or the attendant collection efforts.

69. On December 12, 2015, Judge Thornton entered an order granting Lewis Tein's motion for sanctions against the Tribe and its counsel under Fla. Stat. § 57.105. TFB Ex. 52. Judge Thornton found 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." *Id.* at 5. Again when questioned during the disciplinary hearing regarding this, Respondent stated he did not recall reading the court's order for sanctions. Tr. 1114, 1116.

Conclusions

70. In conclusion, after over six years of litigation in three distinct, state and federal trial courts, and through all appellate review, the positions still espoused by Respondent were found to be wholly frivolous and without any legal merit. Lewis Tein were vindicated and each court found that all allegations against them were completely baseless and false. Furthermore, they were successful in their motions for sanctions against the Tribe. Still, the damage had been done; the

actions taken by the Respondent in conjunction with those of Roman devastated Mr. Lewis and Mr. Tein, both professionally and personally.

a. At the outset of this underlying litigation, Lewis Tein was a three partner firm with approximately fourteen associates. The firm boasted an impressive list of clients ranging from corporations to CEOs to judges. Over the course of several months, after the initial perjury allegations, every associate attorney left their firm. Clients such as Tyco, Yamaha, St. Joe (a large land developer), RCCL, Air France, McDonald's, State Farm, and other blue-chip firms decided to end the attorney-client relationship; dozens of clients were lost. Tr. 880: 4-6; Tr. 115-121, January 18, 2018.

b. Personally, Mr. Lewis and Mr. Tein were equally as devastated. Their children were made fun of at school and holidays with their extended families were impacted. There existed great concerns for their elderly parents who were reading not only local, but national publications about the allegations. They feared losing their families all together. Tr. 121-122, January 18, 2018.

71. In spite of the record evidence throughout the pendency of the disciplinary proceedings, including the sanction hearing, Respondent continued to espouse positions in contravention of all previous court rulings. The evidence available shows he did so in a knowing and intentional manner with utter disregard for the consequences of his conduct to all of the parties: Mr. Lewis, Mr. Tein, Mr.

Calli, and Mr. Bert and his family. Thus, this applies not only to Respondent's conduct but shows his inability or unwillingness to recognize the consequences of his actions. This case presents for the undersigned court an enormously difficult decision. It is extremely unfortunate and distressing to see this conduct come from an attorney who is self-made, hardworking and possesses impressive litigation skills. In this case, Respondent used those attributes in contravention of the ethical and professional standards required of members of the Florida Bar.

72. This case does not present an isolated incident of misconduct. Thus, of extraordinary importance are Respondent's repeated actions, over a period of years, up to and including the disciplinary and sanction hearings. Moreover, the evidence in this disciplinary case shockingly shows that Respondent did not merely fail to act in the best interest of his client, Mr. Bert, but affirmatively litigated in a manner in contravention to his client's best interest in the *Bermudez* post-judgment collection proceedings. On a personal note, this court has struggled greatly with the ultimate recommendations as to sanctions, but believes the facts of this case, cumulative acts of misconduct, and the applicable law support the findings herein.

III. RECOMMENDATIONS AS TO GUILT.

This court finds by clear and convincing evidence that Respondent has violated the following Rules Regulating the Florida Bar:

1. I find that Respondent is guilty of four counts of violating Rule 4-3.1 (meritorious claims and contentions).

a. Respondent assisted plaintiff's counsel Rodriguez and Roman behind the scenes in presenting the frivolous and false allegations of "perjury and fraud on the court" in the Dresnick proceedings, as well as the "fake loan" scheme pursued by the Tribe in the Thornton case. Respondent's actions of taking the four sworn statements, disclosing only those statements favorable to the Tribe and harmful to Lewis Tein are all indicative of this violation.

b. Respondent raised a frivolous "privilege" objection to production of the Third sworn statement. He raised his privilege objection despite knowing that the factual and legal basis for same was false. Respondent first denied sharing the Third sworn statement with Roman, despite having emailed the statement to Roman only six weeks prior. Thereafter, Respondent asserted the purported joint defense agreement as a shield to disclosing the statement, despite receiving an email from Roman specifically rejecting it by the Tribe. Moreover, Respondent after six years of litigation continued to rely on this argument until the very last hearing held by this court, when the alleged document was produced to the surprise of even both Respondent's attorneys. Such conduct is indicative of Respondent's inability to be rehabilitated.

c. Respondent's filing of the Notice of Recantation was similarly frivolous, as Respondent had access to all of the documentation proving the recantation false. His failure to withdraw the Recantation after Bert's subsequent testimony in the December 3, 2012 deposition and the Third sworn statement, further establishes this violation.

d. Respondent's filing of the "Time-Line of Jimmie Bert," wherein Respondent asserts the perjury and fraud on the court allegations directly, and where Respondent highlights the contradictory statements of Bert, while failing to disclose the Third sworn statement is a violation of this rule.

2. I find that Respondent is guilty of four counts of violating Rule 4-3.3 (Candor to the Tribunal).

a. Respondent made two direct and deliberate misrepresentations in his April 1, 2013 pleading entitled "Response to Lewis Tein's Latest Statement," filed in the Thornton case. Twice in that pleading, Respondent asserts that there are two statements of Bert, once at page 2 and the other at page 3, fn. 3. However, at the time he filed this pleading he had taken three statements of his client, Bert.

b. Similarly, in Respondent's own sworn deposition testimony on April 23, 2013, he made deliberate misrepresentations. First, Respondent misrepresented three times while under oath, the number of statements he took

from his client. By the time of this deposition, Respondent had actually taken four statements from his client. Respondent falsely asserted that there were only three statements. It is not until he is asked the question the fourth time towards the end of the deposition, that Respondent admits there is a fourth statement. Based on the prior misrepresentation on this issue in the Thornton pleading, this court finds that the three misrepresentations as to the actual number of statements of his client were deliberate, notwithstanding his later admission. Similarly, once Respondent finally admitted the truth concerning the existence Bert's Third sworn statement, he thereafter misrepresented that it was privileged work product. Respondent argued that he had not shared it with anyone; however, as e-mails show herein he sent the statement to Roman.

c. Respondent's actions coupled with his filings concerning the loans in the Dresnick and Thornton cases, both to the Bar in the instant disciplinary proceedings and to this court at the Final Hearing, were misleading and tantamount to an affirmative misrepresentation. In asserting "fake loans" Respondent states that the fact that there are no specific deductions entitled "attorney's fees" from Bert's quarterly distributions after Vivan Rosado joined Lewis Tein means that Bert did not receive a loan for his legal fees billed by Lewis Tein. This assertion omits pertinent information and thereby misled the underlying courts, as well as the Bar and this court.

Specifically, Respondent omits the pertinent information that Bert's legal fees billed by Lewis Tein were actually added to the loan balance recorded by the Tribe, and that Billie had agreed to take responsibility for Bert's share of those fees from March 2008 forward. The exhibits in evidence show that during that time, Billie's deductions from her quarterly distribution increased proportionate to Bert's share of the current legal fees. These omitted facts reveal the truth that Bert's legal fees were added to the loan and were being repaid by the family. Thus, clearly there were no "fake loans" or schemes.

Respondent knew these pertinent facts which he omitted. He had the invoices, all the Tribe leaders and employees' depositions, and the two depositions given by Goldenberg. He also possessed the audited financial statements, Bert's statements from the December deposition, and Bert's Third sworn statement. Respondent admitted to the Bar investigator that he had the loan documents contained in Ex. 56 Attach. I. He testified before this court in great detail about selective portions of Tribal accounting documents, demonstrating his knowledge and awareness of same. Despite having all of this evidence, Respondent still maintained his "fake loans" position, to the Bar and to this court, and omitted the above described pertinent facts that would have revealed the truth about the loans.

Moreover, Respondent testified upon questioning by this court that he was similarly paid by the Tribe for his fees billed in the *Bermudez* case. However,

Respondent obfuscated and attempted to further mislead this court with his patently incredible testimony that "all he knows" is the Tribe cut the check for his fees, and that means the Tribe paid his fees. He made these statements despite his awareness of all the evidence in this case and the virtually identical factual findings and rulings by every trial and appellate court addressing these matters. He continued his misconduct by indicating he has no idea whether there was an arrangement for the funds to be paid back through a deduction in distributions.

d. Respondent failed to correct the record in the Dresnick and Thornton cases, even after all of the evidence was introduced in the Thornton and Cooke cases, including all the documentation proving legitimate, not "fake loans". He did not withdraw Bert's recantation after Bert specifically retracted and clarified the basis for same and clarified the true facts. Respondent also violated this Rule by making numerous misrepresentations to this court during the Final Hearing in the instant disciplinary proceedings.

Respondent misrepresented to this court that it was the court reporter who elected to bifurcate the First sworn statement and Second sworn statement of Bert, and that he never intended for this to be two separate sworn statements. However, Respondent provided entirely contradictory evidence in his first response to the Florida Bar wherein he indicated it was his decision to separate the two statements and he did that for strategic reasons.

Respondent misrepresented to this court that he did not draft answers to interrogatories for the Tribe. Respondent asserted the entirely incredible position that he merely loaned out his assistant to type up Roman's hand written notes. This was directly contradicted by the emails exchanged between the two regarding the interrogatory answers. Clearly, Respondent substantively rewrote eight of the nine responses. In making this finding, this court relies in part on *The Florida Bar v. Cohen*, 908 So. 2d 405, 411 (2005), in which the Florida Supreme Court held that a court may apply common sense and logic to determine facts and to reject a respondent's clearly incredulous testimony. The undersigned does so in this case.

Respondent misrepresented to this court that he neither participated in raising the allegations of "no loans," "fake loans," nor perjury and fraud on the court against Lewis Tein. Respondent asserted that he did not do anything except take a couple of depositions. He maintained that he was representing Bert's interests and not the Tribe's. The findings of fact clearly demonstrate Respondent's active participation in supporting and advancing those allegations.

Moreover, Respondent did not actually take any actions to defend Bert against collection of the judgment. In evidence before this court there is not a single pleading, motion, or argument made by Respondent on the pertinent issue of collection of the judgement. In each of the depositions in which he participated, Respondent asked questions designed to impeach testimony favorable to Lewis

Tein, and not to advance his client's defense in the *Bermudez* post-judgment collection proceedings.

Indeed, the position taken by Respondent on behalf of his client was actually detrimental to his client's interests and only served to advance the interests of the Tribe. That position resulted in actual harm and prejudice to his client when the IRS imputed to Bert as income the loan payments for the millions of dollars of legal fees incurred in the case, all while the family was simultaneously having deductions taken from their distributions to pay back the Tribe for what were in fact loans.

Finally, upon questioning by this court, Respondent admitted he billed *the Tribe* for attending the Cooke hearings in the federal case, while at the same time trying to convince the court that he was there to represent Bert, and not to work "below the radar" for the Tribe in the Cooke case. Respondent misrepresented to this court that he took the sworn statements of Bert because Bert did not speak English or Spanish. Given the totality of the facts, this belies common sense.

3. I find that Respondent is guilty of one count of violating Rule 4-3.4 (Fairness to Opposing Parties and Counsel).

a. Respondent is guilty of violating Rule 4-3.4 for his continued concealment of the Third sworn statement at all times prior to and throughout the Dresnick perjury hearing.

4. I find that Respondent is guilty of three counts of violating Rule 4-8.1 (Maintaining the Integrity of the Profession; Bar Admission and Disciplinary matters)

a. In the instant disciplinary case, Respondent misrepresented to the Bar that no loans existed in each of the three replies he submitted during the Bar's investigation.

b. Respondent retaliated with an improper filing against Calli. On Monday February 4, 2013, in the Tribe's state-court lawsuit against Lewis Tein, Respondent asked Judge Thornton to take judicial notice of allegations that had been made eight years earlier against Calli, in his marriage-dissolution proceedings. TFB Ex. 26. Respondent cited to and quoted from the file in that matter.

c. Each of the misrepresentations Respondent made to this court during the Final Hearing in this cause also constitute a violation of this Rule (see above).

5. I find that Respondent is guilty of four counts of violating Rule 4-8.4(c) (Conduct involving Dishonesty, fraud, deceit, or misrepresentations).

a. All of the misrepresentations Respondent made to the Bar during the instant disciplinary action constitute violations of this Rule (see above).

b. All of the misrepresentations the Respondent made to this court at the Final Hearing constitute a violation of this Rule (see above).

c. Respondent's misrepresentations in his deposition and pleadings, and deceptive conduct in concealing the Third sworn statement, also constitute a violation of this Rule.

d. Respondent's suborning the perjurious testimony of his client is also a violation of this Rule. On the eve of his client's deposition, and again on the eve of his client's testimony in the perjury hearing, Respondent took sworn statements of his client to record and memorialize the false testimony that there were no loans taken to pay Bert's legal fees. Every time Respondent took a sworn statement of his client in advance of sworn testimony in a deposition or hearing, the client testified consistently with the "no loan" or "fake loan" theories advanced by the Tribe against Lewis Tein. Additionally, the fact that Respondent provided the sworn statements to his adversary so that the adversary could impeach Bert if he testified truthfully that the fees were paid by loans from the Tribe, clearly demonstrates his subornation of his client's perjury.

While Respondent contends that a lawyer is not required to vouch for the testimony of his client, same is not the situation here, where Respondent

absolutely knew the truth, deliberately concealed it from the court through the omission of pertinent facts, and thereby participated in the perpetration of a fraud on the court.

6. Finally, this court finds that Respondent is guilty of two counts of violating Rule 4-8.4(d) (Conduct prejudicial to the administration of justice).

a. Respondent clearly violated this Rule when he filed the irrelevant and prejudicial pleading requesting Judge Thornton to take judicial notice of Calli's divorce file in the Thornton case (see above).

b. Respondent also violated this Rule by assisting in "developing evidence" to support the perjury and fraud on the court allegations in the Dresnick case and the "no loans" or "fake loans" allegations in the Thornton case. Taking four sworn statements of his own client, concealing the exculpatory third statement, and misrepresenting these actions to the court constitute conduct prejudicial to the administration of justice (see above).

IV. CASE LAW

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

In a concurring opinion in *The Florida Bar v. Springer*, 873 So. 2d 317 (Fla. 2004), Chief Justice Lewis wrote "[w]e should not subscribe to the view that disbarment may not occur if this Court has not previously rendered an opinion of

disbarment on identical facts. Facts supporting disbarment may be so egregious that this Court has not had the occasion to render such an opinion." *Id.* at 324.

In *The Florida Bar v. Forrester*, 818 So. 2d 477 (Fla. 2002), the Florida Supreme Court held that an attorney's technically accurate statements which omit pertinent information such as to mislead the Court are the functional equivalent of a direct misrepresentation. In *Forrester,* the Court held that a lawyer's technically truthful statement that she was "not seeing" a document during a deposition, was in fact a misrepresentation because she had removed the document in question from the table and placed it in her briefcase. The Supreme Court has previously held that such conduct is no less deceptive than outright misrepresentations. A misleading answer to a question, even if technically true, is an intentional misrepresentation and will subject an attorney to discipline. *The Florida Bar v. Berthiaume*, 78 So. 3d 503, 509 (Fla. 2011) (citing *Forrester*, 818 So. 2d at 481).

The Florida Bar re Webster, 647 So. 2d 816, 817 (Fla. 1994) (holding that failure to disclose known information that is pertinent to the inquiry before the attorney, even if no actual false statement is made, is a misrepresentation by omission).

The Florida Bar v. Agar, 394 So. 2d 405 (Fla. 1980). Here, The Supreme Court of Florida held that soliciting false testimony from a witness constitutes a fraud on the Court, for which disbarment is the appropriate sanction. In that case,

Agar represented the husband in an uncontested divorce. *Id.* For reasons stated in the opinion, the husband's wife was not permitted to testify as to the husband's residency. *Id.* Nonetheless, Agar called the wife to the stand under a false name, at which point she concealed the fact she was married to the husband, and testified that she knew him because she did his bookkeeping. *Id.* The Court found that Agar had either actively or passively allowed for a witness to falsely testify, he had good reason to believe that the testimony would be false, and he did nothing to notify the judge of said false testimony. *Id.* In imposing the sanction of disbarment, the Court makes clear the rule that strict discipline, i.e. disbarment, is appropriate "against deliberate, knowing elicitation or concealment of false testimony." *Id.* at 406.

The Court in *Agar* discussed *Dodd v. The Florida Bar*, 118 So. 2d 17 (Fla. 1960), which is relevant to the actions of the Respondent in the instant proceeding. The attorney in *Dodd* advised his clients to give false testimony in two separate cases. *Id.* at 18. The Court determined that "[w]hen an attorney adds or allows false testimony...he makes it impossible for the scales [of justice] to balance" and disbarment is appropriate. *Id.* at19.

The Florida Bar v. Orta, 689 So. 2d 270 (Fla. 1997). In this case, Orta was disbarred following a finding of guilt in three separate counts of multiple offenses involving dishonesty. *Id.* at 273. Acts of cumulative misconduct can be dealt with more harshly than insolated acts. *Id.*

In *The Florida Bar v. St. Louis*, 967 So. 2d 108 (Fla. 2007), an attorney was disbarred for harming his client by colluding with opposing counsel and withholding evidence concerning said collusion. The Court noted that "[a]n office of the Court who knowingly seeks to corrupt the legal process can expect to be excluded from that process." *Id.* at 122-123.

Though *The Florida Bar v. De la Puente*, 658 So. 2d 65 (Fla. 1995), deals with an attorney's misuse of client trust funds; it is instructive as to the Court's view of cumulative misconduct. The Court upheld the referee's recommendation of a ten-year disbarment stating "[m]oreover, '[t]he Court deals more harshly with cumulative misconduct than it does with isolated misconduct.'" *Id.* at 71 (citing *Florida Bar v. Bern*, 425 So.2d 526, 528 (Fla.1982)).

The Florida Bar v. Kane, 202 So. 3d 11 (Fla. 2016). Here, three separate attorneys were sanctioned for violating rules regarding conflicts of interest, aggregate settlements, explanation of matters to clients, and dishonesty in their conduct relating to a settlement with an insurer. *Id.* The referee found seven aggravating factors and two mitigating factors: no prior disciplinary record and evidence of good character and reputation. *Id.* at 18. The referee recommended suspension of three years for one attorney, disbarment for another, and a two-year suspension for the third. *Id.* The Court determined that all three attorneys should be disbarred. *Id.* at 25-26. The Court found evidence of harm to the client because the

attorneys "knowingly and intentionally agreed to a settlement that created conflicts of interest and they failed to inform clients of those conflicts." *Id.* at 26.

The Florida Bar v. Hmielewski, 702 So. 2d 218 (Fla. 1997). Here, the Court imposed a three year suspension on an attorney for deliberately misrepresenting the location of documents. *Id.* at 220. The attorney knew that his client had taken documents from the opposing party. *Id.* at 219. He then asked the opposing party to produce the documents, even though he knew his client had them. *Id.* Later, when opposing counsel asked him to produce all documents his client had, Hmielewski falsely stated that all documents had been turned over. *Id.* All of this came to light during a deposition of his client. *Id.* at 220. In deciding to suspend Hmielewski, the Referee noted that "the character and reputation testimony presented on Hmielewski's behalf was the primary mitigating factor that saved Hmielewski from disbarment." *Id.* The Supreme Court of Florida *rejected* the Referee's recommendation of a one-year suspension and suspended him for three years. *Id.* at 220-221. The Court noted "[i]f it were not for...the extremely strong character evidence, and Hmielewski's relatively unblemished record (one admonishment for minor misconduct in twenty-one years of practice) this Court would have no hesitation in imposing disbarment." *Id.* at 221.

The Florida Bar v. Dove, 985 So. 2d 1001 (Fla. 2008). In *Dove*, the Court suspended an attorney for three years for making material misrepresentations to the

Court and withholding pertinent information which caused a significant adverse effect on the legal proceedings in an adoption case. *Id.* The Court found that the ethical violations gave rise to a presumption of disbarment, but was overcome by the mitigation evidence demonstrating Dove's commitment to providing legal services to those in need. *Id.* at 1010.

The Florida Bar v. Tauler, 775 So. 2d 944 (Fla. 2000). In this case, the Court approve of a referee's recommendation of a three-year suspension, noting the positive character and reputation in the community. *Id.* at 948. The Court also noted other mitigating factors such as personal problems, restitution, and remorse. *Id.* It was also stated by the Court that "without the unique mitigation circumstances presented in [his] case...we would not hesitate to disbar Tauler. *Id.* This case is factually dissimilar and involves misappropriation of client funds. *Id.* at 945.

The Florida Bar v. Nunes, 734 So. 2d 393 (Fla. 1999). The Court upheld a referee's finding that a three-year suspension was warranted in a case where an attorney filled frivolous lawsuits and made false representations to a tribunal, among other things. *Id.*

The Florida Bar v. Senton, 882 So.2d 997 (Fla. 2004) Here, Senton was disbarred for pressuring a client to engage in two sexual encounters. *Id.* at 999. He denied the allegations, submitting false evidence and lying under oath to support

his position. *Id.* at 1003. The Court found that those actions alone were sufficient to permit disbarment. *Id.*

V. STANDARDS FOR IMPOSING LAWYER SANCTIONS

This court considered the following Standards prior to recommending discipline:

Standard 4.61: Disbarment is appropriate when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another regardless of injury or potential injury to client.

Standard 4.62: Suspension is appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

Standard 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 a significant or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

Standard 6.12: Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action.

Standard 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.

Standard 7.2: 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.

VI. AGGRAVATING AND MITIGATING FACTORS

This court considered the following factors prior to recommending discipline:

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; and

9.22(i) substantial experience in the practice of law

Mitigating Factors:

9.32(a) absence of a prior disciplinary record;

9.32(g) character or reputation[6]

VII. 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. Disbarment from the practice of law for a period of ten years;

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

VIII. 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: 62

Date admitted to the Bar: 1986

Aggravating Factors:

9.22(b) dishonest or selfish motive;

9.22(c) a pattern of misconduct;

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6 Most of the character evidence presented in this case was contrary to the facts of the case regarding the Respondent's conduct herein. The evidence further conflicted with the events that the undersigned herself witnessed unfold in the courtroom, in regards to the joint defense and common interest agreement.

9.22(d) multiple offenses;

9.22(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; and

9.22(i) substantial experience in the practice of law

Mitigating Factors:

9.32(a) absence of a prior disciplinary record;

9.32(g) character or reputation

IX. 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
1351 NW 12th Street, Room 624
Miami, FL 33125

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