IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

GARY LOUIS PICKETT,

Respondent.

_____/

Supreme Court Case
No. SC16-1213

The Florida Bar File
Nos. 2014-50,879(15A), 2014-51,098 (15A), 2015-50,553(15A)

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 6, 2016, The Florida Bar filed its Complaint against Respondent. The final hearing in this matter was conducted on the following dates: During 2017: June 5, 6, 9, 16; July 7, 10; August 18, 21, 25; September 1, 29; October 3, 5; November 13, 20, 21, 22; December 11, 15, 18, 19. During 2018: January 5, 18, and 19. All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

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.

Introduction

This matter arose from bar complaints filed against Respondent by Franz Dorsainvil; William and Caridad McColman (hereafter "McColman"); and Nancy Scaccetti. Each sought out the legal services of Respondent, through a business arrangement he had with a nonlawyer, for representation in the defense of foreclosure proceedings involving the mortgages on their homes. It is uncontroverted that Respondent never personally communicated with them and missed important matters during the representation.

The nonlawyer who entered into this business arrangement with Respondent was Gary Kelman (hereafter "Kelman") in 2010. The main purpose of the business arrangement was to obtain clients for legal representation in mortgage foreclosure defense litigation.

In each of the complainant's residential mortgage foreclosure matters, it is irrefutable that Respondent was the attorney of record in the litigations. Respondent was personally served with pleadings in the Scaccetti and Dorsainvil

cases and he ignored them. [TFB Exhs. 73 & 74]. A hearing on a Motion for Summary Judgment in the McColman case was scheduled through Respondent's office, yet he was unaware of the hearing. [TFB Exh. 47]. In the Dorsainvil and Scacetti litigations, as well as with many other clients that had been retained through the business arrangement, Respondent signed Stipulations for Substitution of Counsel with Stephen Grundstein, an attorney who took over the cases from Respondent in 2013. [TFB Exhs. 45; 51; and 79]. Further, as with other clients obtained through the business arrangement, McColman and Dorsainvil each signed retainer agreements hiring Respondent and paid fees for legal services that were deposited into Respondent's bank account. [TFB Exhs. 17; 33; 48; 49; 50].

Despite being the attorney of record in their cases, Respondent denied that Dorsainvil, Scaccetti and McColman were his clients and that he owed any duty to them. The evidence demonstrated numerous other instances where respondent similarly denied representing clients obtained through this business arrangement despite that fees were deposited into his bank account and pleadings were filed under his name making him attorney of record in the respective cases.

As set forth throughout this Report of Referee, Respondent's misconduct towards the three individual complainants was part and parcel to the improper business arrangement he had with Kelman, which included respondent's overall lack of supervision; his sharing of legal fees and forming a partnership with a

nonlawyer; his assisting in the unlicensed practice of law; his failure to adequately communicate with clients; his lack of diligence and failure to provide competent representation; and his dishonesty. The evidence presented by the parties concerning this business arrangement demonstrated that respondent's misconduct related not only to just the three individual complainants, it went to the business arrangement itself, which also affected other clients. Respondent was on notice of all the charges, including those related to the business arrangement, and he was given ample opportunity to be heard in defense thereof. In fact, most of his defense relied on claims of fraud being perpetrated on him within that business arrangement.

The Bar's witnesses were the complainants William McColman, Franz Dorsainvil and Nancy Scaccetti; Rangile Santiago, an attorney employed by respondent in the business arrangement; the bar's auditor, Carl Totaro, who reviewed records subpoenaed from Respondent's bank account; and Attorney Scott Wortman, of Korte & Wortman, P.A. (hereafter "K&W"), a law firm that sued Respondent, Kelman and others concerning the business arrangement formed between Respondent and Kelman. The Bar also offered Respondent's testimony taken during his sworn statement before the grievance committee on December 10, 2014 [TFB Exh. 7]; and the testimony from his depositions conducted on September 27, 2016 [TFB Exhs. 8 and 9]; October 19, 2016 [TFB Exh. 10]; and

April 25, 2017 [TFB Exh. 11]. In addition to the full transcripts of the testimony moved into evidence, the Bar read 21 individually tabbed portions from those transcripts into the record. The Bar also introduced into evidence the full transcript of the deposition of Eduardo Garcia taken pursuant to the K&W lawsuit [TFB Exh. 12] and portions from that transcript were also read into the record. [Excerpt at Tab 7].

The Respondent's witnesses included Respondent; Stephen Grundstein, the successor attorney who signed the numerous stipulations for substitution of counsel with Respondent; Gary Kelman; and five clients retained through the business arrangement with Kelman: Deusiel Pubien; Lesco Morvan; Wendy Parker; Charles Richard and Mark Lamb. Three character witnesses also testified.

The Formation of Respondent's Business Arrangement with Kelman

The business arrangement was operated from Suite 124 and other suites at the Crexent Business Center, located at 2101 Vista Parkway, West Palm Beach, Florida (hereafter "Vista"). The Vista location was in addition to Respondent's existing office located at 105 Narcissus Avenue (initially in Suite 305, and subsequently in Suite 402), West Palm Beach, Florida. [hereafter "Narcissus"]. Respondent continued to operate his law practice from Narcissus during the duration of his business arrangement with Kelman at Vista. [TFB Exh 8, pp. 21-24 (Excerpt at tab 1)].

The credible evidence showed Respondent formed the business arrangement with Kelman pursuant to a meeting they had in January 2010. Although Respondent failed to provide an accurate date for this meeting, the January 2010 time frame is corroborated by other evidence, including Kelman's testimony; the allegations contained in the civil complaint filed by Kelman's previous employer, K&W [TFB Exh. 26]; the deposition of Eduardo Garcia, taken as a codefendant in K&W's lawsuit; Respondent's opening of a bank account specifically for the Vista location on January 19, 2010; and leases for Vista office suites that were dated to commence on February 1, 2010. [TFB Exh. A63 and Respondent Exh. 37].

Respondent's testimony as to when the arrangement started was inaccurate, inconsistent and evasive. His sworn answers to the Bar's interrogatories were clearly false when he stated that he was introduced to Kelman and FHS in September or October 2010 and retained their services in the beginning of 2011. [TFB Exh. 61 (Responses to Interrogatories # 5 & 6)]. Respondent indicated at his deposition that he knew those discovery responses were inaccurate, and his counsel stated that respondent might amend the answers, but he never did. [TFB Exh 8, pp. 55-56 (Excerpt at tab 2)]. Respondent had also inaccurately represented to the grievance committee in a letter dated July 14, 2015 [TFB Exh. 62], that he was:

> …aware that at some point in time Mr. Kelman was no longer associated with the Korte and Wortman law firm and that he became dissociate with that firm for failing to take direction from his employers. An educated guess is that this occurred on or about

March 30, 2010 when Mr. Kelman set up his own company, Foreclosure Housing Solutions, LLC.

Prior to starting the business arrangement with Respondent, Kelman worked for K&W, which was located near Vista. At K&W, Kelman performed support work related to the firm's mortgage foreclosure defense clients. Others worked with Kelman, including his son, Michael, and Eduardo Garcia. On or about January 31, 2010, Kelman and the others resigned from K&W and moved to Vista Parkway a few days later in early February.

Kelman testified that the first meeting with Respondent occurred in January 2010, prior to his resigning from K&W, and that Respondent asked Kelman to work for him. Kelman's plan was to move to Suite 124 at Vista and have Respondent act as the attorney. Kelman resigned from K&W on or about January 31, 2010 and he moved into Vista within a few days thereafter. [Excerpt of Final Hearing Testimony of Gary Kelman (Second Excerpt), taken July 7, 2017, pp. 3-6].

On January 19, 2010, Respondent opened a bank account at Wachovia Bank, which later merged into Wells Fargo Bank (hereafter referred to as "9381-account."). Respondent was the sole owner and signatory to the 9381-account. [TFB Exh. 31]. Respondent testified that the 9381-account was opened exclusively for use at Vista and the foreclosure defense clients located there. He continued to maintain another long-time bank operating account for his other

clients that he did not want to use in connection with the arrangement at Vista. [TFB Exh. 8, pp. 100-101 (Excerpt at tab 9)].

Respondent signed a lease for Suite 109 at Vista for the term February 1, 2010 to February 28, 2011. [TFB Exh. A63]. Kelman's company, Foreclosure Housing Solutions, L.L.C. (hereafter "FHS"), entered into a lease for Suite 124 at Vista also for the term February 1, 2010 to February 28, 2011 [Respondent Exh. 37]. Respondent testified he also leased other suites at Vista at various times from where he and his staff worked, and Suite 200, a more private space where he could meet clients. [TFB Exh 9, p. 123 (Excerpt at Tab 10)].

Respondent testified that he initially went to look at the office suites at Vista at the suggestion of a client, Tyrone Copper. During his first visit to Vista, he was introduced to Kelman by Copper and they had a meeting in a conference room there. [TFB Exh 8, pp. 44; 56-57 (Excerpt at tab 2)]. Respondent testified that during the meeting, he was told Kelman had done work for other lawyers similar to what he was offering to do for respondent relating to mortgage foreclosure defense clients. This work would include making respondent's business more efficient by automating his practice, setting up and automating his forms, setting up computer systems and doing client intake on foreclosure defense cases for respondent when he was not in the office. Respondent admitted that he was told that he was "old

school" and that Kelman could help him by automating him and making him a lot more efficient. [TFB Exh 8, pp. 47-48; 59 (Excerpt at tab 2)].

Respondent's sworn answers to the Bar's First Set of Interrogatories #s 5 and 6 state in pertinent part [TFB Exh. 61]:

> 5. Please explain your business relationship with Gary Kelman.
>
> …I was introduced to Mr. Kelman and his company, Foreclosure Housing Solutions and I retained their services in the beginning of 2011, as independent contractors, solely to do intake for new clients being referred to Mr. Pickett's office at Vista Park Commons. The authorized intake procedures were to gather the appropriate documentation from a client, prepare an intake form and secure an executed retainer agreement all according to guidelines established by Mr. Pickett….
>
> 6. Please explain your business relationship with Foreclosure Housing Solutions, LLC.
>
> … I retained their services in the beginning of 2011, as independent contractors, solely to do intake for new clients being referred to Mr. Pickett's office at Vista Park Commons. The authorized intake procedures were to gather the appropriate documentation from a client, prepare an intake form and secure an executed retainer agreement all according to guidelines established by Mr. Pickett…

Respondent admitted that there was no written documentation relating to the terms of employment, occupation, engagement, work, services provided by and compensation paid to Gary Kelman, FHS and/or anyone acting on Kelman's or FHS' behalf. [TFB Exh 9, p. 98 (Excerpt at tab 4); TFB Exh 52, Response to

Requests For Production 1 and 2]. As such, there was nothing in writing concerning any guidelines established by Respondent concerning what Kelman and FHS were authorized to do or not authorized to do.

Respondent testified that only Kelman was authorized to do intake [TFB Exh. 10, p. 62 (Excerpt at Tab 13]. This testimony was uncorroborated and not credible. Many checks issued from Respondent's 9381-account were payable to Michael Kelman, Gary Kelman, FHS and Cash, and those checks totaled approximately $1,457,975.70. Kelman testified that the checks received from Respondent were deposited into FHS' bank account to fund the payroll and expenses of the business arrangement. [Excerpt of Final Hearing Testimony of Gary Kelman (Third Excerpt), taken July 7, 2017, p. 8; Excerpt of Final Hearing, Testimony of Gary Kelman, taken July 10, 2017, p. 13]. Contrary to his answers to the interrogatories, Respondent testified that he did not hire FHS to do any work, despite that he issued checks payable to FHS totaling approximately $202,790.10. [TFB Exh. 10, p. 45 (Excerpt at Tab 11; and TFB Exh. 4].

Respondent also denied he hired Michael Kelman to do intake services. [TFB Exh. 10, p. 62 (Excerpt at Tab 13]. Yet, Respondent issued checks to him with the word "payroll" written thereon. [TFB Exh. 3, See for example, Checks numbered 1042; 1049; 1072; 1079; and 1090].

Respondent also denied he paid Kelman's employees despite that he issued checks payable to Cash, which he knew were being used to pay Kelman's employees because some of them did not have bank accounts. [TFB Exh. 10, p. 83 (Excerpt at Tab 12].

Further, Respondent repeatedly referred to Kelman as "they" or some similar plural term in his testimony when testifying as to the compensation arrangement. [TFB Exh. 9, pp. 79-88 (Excerpt at Tab 8)]. When specifically asked whether Kelman and/or his staff did any other intake except for foreclosure defense clients, Respondent testified [TFB Exh 8, p. 49, Lines 9-11 (Excerpt at Tab 2)]:

> I did not authorize them to do any other intake for me. Now as far as I know, they did not do any other kind of clients for me. [underlining added for emphasis]

Kelman and others working in the business had business cards referring to themselves as a "Foreclosure Consultant." [TFB Exh. 56 and 76 (attachment to bar complaint); Respondent Exh. 49]. This was an inappropriate title for the nonlawyers working in a foreclosure litigation environment.

Respondent also testified he hired Kelman as an independent contractor to do intake for him because he was getting a lot of clients and couldn't meet with the clients directly. [TFB Exh 7, p. 11, Lines 14-23 (Excerpt at tab 4)]. According to Respondent, Kelman was only authorized to meet with the client initially, fill out an intake form, make copies of pleadings and important papers obtained from the

client, fill out the retainer agreement for the client to sign, and obtain a check for the initial fee. Then he would present it to respondent as one package. [TFB Exh 8, p. 70 (Excerpt at tab 3)]. Respondent claimed that only he, and not Kelman, was authorized to approve the retainer agreement, and that neither the client nor the initial fee was accepted until he spoke to the client and reviewed that client's case docket. [TFB Exh. 8, pp. 68-73 (Excerpt at tab 3)]. This testimony was also uncorroborated and not credible.

The retainer agreements introduced into evidence that were signed by Kelman provide in pertinent part [TFB Exhs. 17, 40]:

> This agreement is not accepted until signed by The Law Firm of Gary Pickett or his representative.

Clearly, Kelman met with the client as respondent's representative, and was therefore authorized under the terms of the agreement to sign the retainer agreement for Respondent. Further, Respondent failed to produce any retainer agreements prepared for clients at the Vista location that he had signed himself, nor any evidence that he rejected any of those people signed by Kelman and returned their checks. To the contrary, although Respondent testified many checks that were deposited into his 9381-account were fees paid by Vista clients that he claimed were never his clients, he never refunded the fees to these clients. Instead, from those deposited client fees, he issued checks from his 9381-account payable to Gary Kelman and Michael Kelman while he waited to receive numerous

stipulations for substitution of counsel for his execution, so that the various trial courts would relieve him as attorney of record.

Respondent produced no list of clients and no records that documented the date or amount of fees received from an individual client or for the individual client fee checks that were being deposited into respondent's 9381-account by Kelman and others. Respondent also admitted he was not keeping a close eye on the 9381-account or reconciling it every month. [TFB Exh. 9, pp. 142-143; TFB Exh. 7, p. 64 (Excerpts at Tab 19).

These clients met with Kelman for intake, provided him information, signed a retainer agreement, tendered legal fees that were deposited into respondent's bank account and Respondent became attorney of record in their court cases. An attorney/client relationship was clearly established notwithstanding Respondent's claim that these people were not his clients until he approved them.

Suite 124

Suite 124 at Vista was the central location for the business arrangement. It contained a reception area with a waiting room for clients, and three offices. [TFB Exh. 15]. Respondent's testimony throughout the disciplinary proceeding appeared to be designed to try and minimize his contact and connection with Suite 124, but this testimony was uncorroborated and not credible, and there was clear and convincing evidence to the contrary.

The receptionist in Suite 124, Miriam Lamur, was employed and supervised by Respondent. [TFB Exh. 68, answer to interrogatories # 2, 3, and 4]. Respondent issued paychecks to Lamur from his 9381-account for at least the period from April 2, 2010 through December 9, 2011. [TFB Exh. 69]. Also, for a period of time during the arrangement, signage appeared in Suite 124, which stated: "The Law Office of Gary Pickett"; "Attorneys at Law"; "561-939-4900"; and contained an image of the scales of justice. [TFB Exh. 16B]. Kelman testified the signage was located behind Ms. Lamur's desk in the reception area. [Second Excerpt of Kelman Testimony on July 7, 2017, pp. 6-7]. Respondent had also testified before the grievance committee on December 10, 2014, that he had seen his name on signage in Suite 124 and had it taken down. [GC Sworn Statement (TFB Exh. 7), pp. 34-35]. During the final hearing, however, he changed his testimony and testified that the sign he saw in Suite 124 said "Law Offices" but did not contain his name. He then later changed his testimony again to say that a promotional clock with his name on it had been placed in Suite 124. After initially admitting that he saw his name on signage in Suite 124, his later testimony was evasive, contradictory and not credible, given that a photo of the actual signage was in evidence.

The evidence also showed that Respondent issued checks from the 9381-account to pay the rent for Suite 124 each month from April 2010 to October 2010,

via checks numbered 1041; 1080; 1100; 1148; 1170; 1205; and 1261. Each of those checks contained Suite 124 written on the memo line on the face of the check. [TFB Exh. 67]. This was corroborated by the business records subpoenaed from Crexent Business Center, which documented those same check numbers to the corresponding payment applied to the rent for Suite 124. [TFB Exh. 53, p. Crex 003]. Respondent first tried to claim that he was unaware that these checks were being used to pay the rent for Suite 124. [TFB Exh. 9, pp. 164, 170-171 (Excerpt at Tab 10)]. He then testified at the final hearing that his signature had been forged on those checks. This testimony was not credible. He had previously admitted under oath at his deposition that it was his signature on those checks. [TFB Exh 9, pp. 109-110; 163 (Excerpt at Tab 10)].

Furthermore, Respondent's checks and bank statements from the 9381-account listed his address at Suite 124 of the Vista location, despite that the suite was purportedly leased by Kelman and FHS. Respondent continued to use that address on the 9381-account documents until approximately June 2011. And, even when the address on the bank records was changed at that time to Suite 200 at Vista, Respondent began using the telephone number, 561-939-4900, on his checks. This was the same phone number on the signage in Suite 124 [TFB Exh 16B] and the same phone number contained in the signature block on numerous pleadings that Respondent claimed were signed and filed without his knowledge or

authority. [See for example, Respondent Exh. 61]. Respondent testified that it was Kelman's phone number, and not a phone number he used. When confronted on cross examination about it appearing on his checks, he contradicted the earlier testimony by claiming he had placed the phone number on the checks because he intended to purchase it for his own use, but did not because it was too expensive. Yet, he continued to use that phone number on his checks from June 2011 through December 2012.

Commencement of the Business Arrangement

Respondent testified: that he did not expect to get a lot of clients from the arrangement with Kelman, but just "a couple of referrals here and there" [TFB Exh 8, p. 49 (Excerpt at Tab 6)]; and that he started getting a lot of clients, which made him feel uncomfortable because he couldn't tell where they were coming from, and that he didn't know they were coming from another law firm. [TFB Exh 8, p. 50 (Excerpt at Tab 6)]. As set forth hereinafter, this testimony was not credible.

Shortly after Kelman's resignation from K&W, a lawsuit was filed by K&W on or about March 2, 2010, naming Respondent, Kelman, Michael Kelman, and Eduardo Garcia among other former K&W staff now working in Respondent's business arrangement as co-defendants. [TFB Exh 26].

The civil complaint alleged, among other things: that on or before January 30, 2010, the former K&W staff began working with and for Respondent while

still in the employ of K&W; that the former staff improperly obtained K&W's client contact information prior to their resignation on January 31, 2010, and began contacting K&W clients to convince them to transfer their files to Respondent's representation; and that former K&W staff had been placing "multiple harassing" telephone calls to K&W clients and leaving messages to come to Respondent's office to sign paperwork regarding their foreclosure cases. [TFB Exh 26, See Par. 12-19, 22].

Respondent testified that he first discovered the clients from K&W were being solicited by Kelman and the other co-defendants when he received a telephone call from Scott Wortman just prior to being served with the lawsuit. He also testified that he approached the Kelmans after receiving the telephone call, and they initially told him the clients were not K&W clients, but then they told him that one of the K&W lawyers was going to be disbarred, that the K&W clients needed a lawyer, and they showed him letters discharging K&W. [TFB Exh 8, p. 50-54 (Excerpt at Tab 6)].

Respondent testified [TFB Exh 8, p. 54 Line 2-7 (Excerpt at tab 6)]:

> I think some of them were Korte and Wortman, and some of them may have been other people. I - - I really don't recall, but…And, you know some of the people never had a lawyer. It was like a - - a - - a - - a hodgepodge of cases. And so I was very upset.

The implication of his testimony is that respondent did not conduct any oversight over Kelman and the others with respect to the client intake, and he did not personally review the files. This testimony directly contradicts respondent's testimony that after a client intake was completed by Kelman, Respondent always had to approve the client by calling the client and reviewing the case docket before he accepted representation of the client. [TFB Exh 8, p. 68; 70-72 (Excerpt at Tab 3)].

Respondent's actions taken in response to the K&W lawsuit also contradict his testimony. He initially represented both himself and the other co-defendants in the lawsuit. [TFB Exh 10 (Excerpt at Tab 7) p. 95]. And when he subsequently withdrew as their lawyer, he paid another law firm to continue representing the co-defendants. [TFB Exh. 10 (Excerpt at Tab 7, located after the Garcia transcript) pp. 93-94].

During Respondent's representation of the co-defendants, the deposition of one of the co-defendants, Eduardo Garcia, was taken on April 15, 2010, and Respondent appeared as Mr. Garcia's lawyer. [TFB Exh 12]. At the deposition, Garcia testified in Respondent's presence:

> -Garcia was provided client lists while working at K&W to service their clients and he developed friendly relationships with these clients doing customer service. [TFB Exh 12, pp. 16-17 (Excerpt at Tab 7)];

-Garcia made a list of clients with whom he worked while at K&W. [TFB Exh. 12, p. 27 (Excerpt at Tab 7)];

-Garcia's last day of work at K&W was the last Friday in January when he terminated the relationship. [TFB Exh 12, p. 18 (Excerpt at Tab 7)];

-Garcia went into the KW office location over the following weekend where he and Kelman moved things out such as desks, chairs, computers, papers, boxes and folders. [TFB Exh 12, pp. 23-24, 28, 30-32 (Excerpt at Tab 7)];

-Garcia moved into Respondent's office around the following Monday in February. [TFB Exh. 12, pp. 29-30 (Excerpt at Tab 7)];

-After leaving K&W, Garcia called clients he had worked with while at K&W from a list he made. [TFB Exh 12, pp. 33-36 (Excerpt at Tab 7)];

-Garcia had seen K&W clients in Respondent's office. [TFB Exh. 12, p. 36 (Excerpt at Tab 7)];

-Garcia estimated that more than a hundred K&W clients were currently working with Respondent's office. [TFB Exh. 12, pp. 41-42 (Excerpt at Tab 7)];

-Kelman was Garcia's supervisor and had instructed Garcia to tell people he was no longer working at K&W. [TFB Exh 12, p. 42 (Excerpt at Tab 7)];

-Garcia had seen documents from K&W at Respondent's office. [TFB Exh 12, p. 43 (Excerpt at Tab 7)];

-When Garcia contacted a client, the client would meet with him at Respondent's "firm" and he would tell the client that Respondent is an attorney who does foreclosures. [TFB Exh 12, p. 45 (Excerpt at Tab 7)];

-There were a lot of clients from K&W going over to Respondent. [TFB Exh 12, p. 60 (Excerpt at Tab 7)];

-Client files were frequently placed on Garcia's desk where the client had already been signed up with Respondent, but no letter terminating K&W was in the file. [TFB Exh 12, p. 57 (Excerpt at Tab 7)];

-Garcia would contact K&W clients who had retained Respondent without formally terminating K&W to have them sign a notice of termination. [TFB Exh 12, pp. 66-67 (Excerpt at Tab 7)].

During the deposition, Respondent interposed objections to various questions posed to Garcia:

-Respondent objected on the basis of confidentiality when Garcia was asked if the names on a list of people he was to contact were current or former K&W clients. [TFB Exh 12, pp. 32-33 (Excerpt at Tab 7)];

-When Garcia was asked about what was discussed in a telephone call he had made to an existing client of K&W, Rosa Leon, Respondent objected on the basis of attorney-client privilege because he did not know at that point if Leon was his client or K&W's client. [TFB Exh 12, pp. 54-55 (Excerpt at Tab 7)];

-During Garcia's testimony concerning client files that were already signed up with Respondent without a signed termination letter sent to K&W, Respondent objected based on both attorney-client privilege and on confidentiality of procedures at his office. He further instructed Garcia not to answer the question. [TFB Exh 12, pp. 57-59 (Excerpt at Tab 7)];

-During Garcia's testimony about preparing the notice of termination to K&W after Respondent's office had been signed to a retainer, Respondent again objected on the basis of attorney-client privilege. [TFB Exh 12, pp. 68-69 (Excerpt at Tab 7)]. When Respondent was asked to clarify his objection during Garcia's testimony relating to his office procedure and not a specific client, Respondent instructed Garcia

not to answer the question and stated as follows [TFB Exh 12, pp 68, Line 25 to p. 69, Line 4 (Excerpt at Tab 7)]:

> If, if your question is you're asking about my relations with or my employee's relationships with those clients, how they bring them in, what they have them sign, I think that's privileged…

Accordingly, I find that Respondent was not credible when he testified that he did not expect to get a lot of clients from the arrangement with Kelman, just "a couple of referrals here and there" but that he started getting a lot of clients, which made him feel uncomfortable because he couldn't tell where they were coming from, and didn't know they were coming from another law firm. [TFB Exh 8, pp. 49-50 (Excerpt at Tab 6)]. His testimony is belied by the proximate time frame between respondent's set-up of the business arrangement and the filing of the K&W lawsuit. Further, the fact that he leased the office space at Vista separate from his other Narcissus office location and opened a bank account exclusively for the Vista clients does not comport with his testimony that he was only expecting a few referrals. Over $2 million dollars in client fees were eventually deposited into his bank account from clients at Vista. Further, his representation of all the co-defendants in the K&W lawsuit and payment for their legal defense after he withdrew from the representation is consistent with a business arrangement involving more than just a few referrals. The positions he took at Garcia's

deposition by asserting attorney/client privilege over the contested K&W clients that were the subject of the lawsuit and asserting confidentiality over the work-place conduct of the co-defendants, whom he identified on the record as his employees, clearly demonstrate that Respondent ratified and affirmed the conduct of the co-defendants on his behalf. Further, despite Respondent being clearly informed at that deposition of what was taking place in the business arrangement, the record is totally devoid of evidence that he took any remedial action. Instead, Respondent continued the business arrangement with Kelman unabated with the intake of the numerous clients that followed.

Respondent admitted he never provided training to Kelman and never personally observed Kelman conducting client intake. [TFB Exh 8, pp. 63-64 (Excerpt at Tab 2)]. Further, despite Respondent's testimony that he ceased communicating with Kelman sometime prior to February 18, 2011, the date the K&W lawsuit terminated, the business arrangement continued. The evidence of Respondents failure to properly supervise Kelman and the other non-lawyers working with Kelman is clear and convincing.

Further, Respondent permitted an environment where Kelman engaged in the unlicensed practice of law. Respondent permitted Kelman to determine during the initial intake whether the client wanted to resolve the foreclosure case or contest it in determining the legal fees that Kelman inserted on the retainer

agreement. [TFB Exh. 8, pp. 61-62 (Excerpt at Tab 2)]. Respondent admitted that the decision of whether to resolve or contest the case required a legal analysis of the client's case, and that he was not present during the initial intake and therefore only Kelman was available to answer any questions the client might have concerning the decision while the intake was conducted. Further, Respondent's own witnesses, Dieusel Pubien, Lesco Morvan, Charles Richard, and Wendy Parker believed they were dealing with a lawyer when they met Kelman for the intake at Vista. They never met Respondent at Vista. They were dealing with Kelman, whom they believed to be a lawyer, and in at least some instances, they thought he was Respondent because he introduced himself to them as "Gary." In addition, McColman testified he contacted Kelman about a Summary Judgment hearing scheduled in his case and Kelman advised him not to attend.

Respondent's admitted failure to supervise Kelman is to be contrasted with Grundstein's testimony that he had to assert control over the operation, and keep a close eye on Kelman because he was difficult to manage, was strong willed and thought he knew more than a lawyer. There were occasions where Grundstein had to run in and stop Kelman from saying something to the client that was "on the line" of giving legal advice. [Excerpt of Final Hearing Testimony of Steven Grundstein, Volume 1 of 1, taken June 9, 2017, pp. 14-15].

The Ongoing Business Arrangement

Respondent claimed that a fraud had been perpetrated on him by the people employed in the business, in that clients were signed up without his knowledge, and pleadings were signed and filed under his name and bar number without his knowledge or consent. Yet, during the course of this business arrangement, over $2.2 million in client fees generated from the business were deposited into Respondent's bank account. Further, Respondent never disclosed the claimed fraudulent conduct to the trial courts. Instead, he intentionally concealed it from the trial courts by signing numerous Stipulations for Substitution of Counsel with an attorney, Stephen Grundstein, who formed an arrangement with Kelman in 2013 to take over the cases that Respondent had essentially neglected and abandoned. [TFB Exhs. 45; 51; and 79]. By signing the stipulations, Respondent represented and affirmed to the courts that he was the attorney of record during the applicable period of time in each of the cases.

As more fully set forth herein, I find that Respondent's testimony denying that he represented the complainants or that pleadings were filed with the various courts without his authorization hard to believe. If Respondent truly was not aware of the clients and the pleadings, then it was caused by his total failure to properly supervise the business arrangement and pay attention to what was occurring at Vista. I found much of his testimony to be uncorroborated, self-serving, and it

appeared designed to conceal his own culpability for the misconduct. Instead, he sought to blame others working in the business arrangement who should have been under his proper control and supervision. By way of example, Respondent provided signed checks to Kelman with the name of the payee blank. [TFB Exh. 10, p.44 (Excerpt at Tab 11); TFB Exh 10, p. 82-83, (Excerpt at Tab 12); TFB Exh. 10, pp. 60-61; 64 (Excerpt at Tab 13)]. He took no responsibility for permitting Kelman to decide who would be the payees on checks that he issued. Instead, he blamed Kelman for not inserting the proper payee. With respect to the checks he issued to "cash", Respondent testified [TFB Exh. 10, p. 85, Lines 19-22 (Excerpt at Tab 12)]:

> That's what I think should have - - what he should have done, but he wanted it - - I guess he wrote the word cash. Someone wrote the word cash in there. I'm assuming it's him….[underlining added for emphasis]

His lack of credibility in this disciplinary case places his claims of fraud in doubt. He never reported the claimed fraud to the trial court, and he waited until August 3, 2017, after the final hearing in the instant disciplinary proceeding was underway, before he made a police report, the full details of which are not known as they are not in the record of this case. His testimony concerning the details of what he reported to the police was vague, and aside from a card he received from a police officer containing contact information [TFB Exh. 85], he never provided the

police report document itself or further documentation of the full details of what he reported to the police. It is also noted that he was asked by the grievance committee on December 10, 2014, if he made a report to the police [TFB Exh. 7, pp. 59-60 (Excerpt at Tab 21)] and he was again asked at his deposition on October 19, 2016, if he had reported it to the police [TFB Exh. 10, p117 (Excerpt at Tab 21)]. On both occasions, Respondent testified that he had not yet done so.

Rangile Santiago, an attorney hired in March 2010 to work under Respondent in the business arrangement, testified that she believed she had his authority to sign pleadings for him. Respondent was her supervisor and had no written agreement with her concerning her employment. [TFB Exh 10, pp. 13-14, 31 (Excerpt at Tab 5)]. Respondent admitted that he authorized support staff to assist her in preparing pleadings [TFB Exh. 10, pp. 11-12 (Excerpt at Tab 5)], but could not say if she did or did not prepare pleadings on his behalf. [TFB Exh. 10, p. 10 (Excerpt at Tab 5)]. He also testified that he never became aware that she had signed pleadings until July or August of 2011. [TFB Exh. 10, pp. 16-18 (Excerpt at Tab 5)]. Yet, when he claims to have discovered it in 2011, he still did not instruct her not to sign pleadings for him. [TFB Exh. 10, p. 33 (Excerpt at Tab 5)]. Not only does this testimony refute his claim that the pleadings were signed without his authorization, but his admission that he did not discover it until well over a year after Santiago began working for him clearly demonstrates his

complete lack of oversight and supervision with respect to the conduct of Santiago or his law practice pursuant to the business arrangement.

Stefanie Eichhorn also began working as an attorney in the business arrangement after she became a member of the bar. Eichhorn had a personal relationship with Michael Kelman. Both Santiago and Eichhorn received a salary. Santiago was initially paid directly by Respondent until December of 2011. Thereafter, her salary payments continued through checks issued by FHS. Eichhorn's salary checks were issued by FHS. [TFB Exh. 6; Respondent Exhs. 46; 56]. Kelman testified that the funds received from Respondent were deposited into the FHS bank account to pay the attorney salaries along with other business expenses. [Excerpt of Final Hearing Testimony of Gary Kelman (Third Excerpt), taken July 7, 2017, p. 8].

Respondent claimed that Eichhorn also signed pleadings for him without his knowledge or authorization. Eichhorn, like Santiago, was never the attorney of record in any of the cases. Respondent and Kelman were the principals of this business arrangement, and as the principal lawyer in the business, Respondent was obligated to know that the use of his bar license was a necessary component to providing the legal services being offered, and he was obligated to supervise the use of his license. Respondent was the attorney of record on all of the cases and the client fees were deposited into his bank account. Further, he admitted that he

knew his name was on the files. He testified in pertinent part [TFB Exh 10, p. 70, Line 25 to p. 71, Line 3 (Excerpt at Tab 13)]:

> …I knew that they were going to stipulate off of those cases so I didn't feel that it was – I could have kept the money because my name was still on the file…

The evidence is clear and convincing that Respondent failed to properly supervise the attorneys Santiago and Eichhorn.

Compensation Arrangements

As previously stated, Respondent admitted there were no written records relating to the terms of Kelman's employment, occupation, engagement, work, services provided by and compensation paid to Kelman, FHS or anyone acting on their behalf. Respondent further admitted that the only written documentation that exist are the checks from the 9381-account subpoenaed by the Bar. [TFB Exh. 52, Response to Requests 1 and 2]. The checks and bank records subpoenaed by the Bar are for the time frame beginning April 1, 2010, after the business arrangement had already begun, and ending January 31, 2013, when the 9381-account was closed. These checks only show the amount and date for each of the respective checks and on some of the checks, the memo line indicates "payroll." The checks do not show the nature or amount of the work or services provided by Kelman or how the compensation was determined. The bank statements do not identify the individual clients related to a specific deposit. The deposits were made at various

times by aggregating multiple client checks. There is no information on the bank statements to connect a deposit to a specific client and Respondent has no other records, except a few copies of deposit slips and client checks in records Respondent recovered later from Vista, which were entered into evidence. [Respondent Exhibit 105].

The subpoenaed bank account statements indicate that from April 1, 2010 through January 31, 2013, approximately $2,218,734.25 in client fees was deposited into the 9381-account.

The subpoenaed checks show that during the same time frame, at least 180 checks totaling approximately $1,148,633.06 were issued to Kelman or Michael Kelman (the net amount after deducting Check # 1868 payable to Respondent that had been included in error). [TFB Exh 3]; at least 33 checks totaling approximately $202,790.10 were issued to FHS [TFB Exh. 4]; and at least 26 checks totaling approximately $106,552.54 were issued to Cash [TFB Exh 2]. Thus, there was a total of 239 checks issued to Kelman, FHS or Cash between April 1, 2010 and January 31, 2013, totaling approximately $1,457,975.70. The total of these checks paid for the year 2010 beginning April 1, was $405,782.30. In 2011, the total was $531,036.76, and in 2012, the total was $521,156.64. Respondent issued no IRS Form 1099s in connection with the compensation paid to Gary Kelman, Michael Kelman, FHS or cash.

Given these substantial dollar amounts that he paid to Kelman, Respondent's explanation of the compensation arrangement with Kelman was vague, and not credible. Supposedly, Kelman was being compensated for talking to the clients, doing the intake and copying paperwork the client received. [TFB Exh 9, p. 88-89, (Excerpt at Tab 8)]. According to Respondent there was no true meeting of the minds with Kelman concerning a specific dollar amount for the compensation. [TFB Exh 9, p. 79, Line 3 (Excerpt at Tab 8)]. It was not based on the number of intakes completed. [TFB Exh 9, p. 79, Lines 17-19 (Excerpt at Tab 8)]. No invoice or bill was provided by Kelman for the work. [TFB Exh 9, p. 81, Lines 11-12) (Excerpt at Tab 8)]. It was based on "a volume of work" and Respondent was charged a total amount for that volume. [TFB Exh 9, p. 79, Lines 5-7 (Excerpt at Tab 8)]. Respondent did not know the actual amount of time that had been worked to arrive at that amount [TFB Exh 9, pp. 85, Lines 10-13) (Excerpt at Tab 8)]; Respondent did not know what Kelman was charging per hour or per task. Kelman would give Respondent a total amount for how much he wanted to charge him, but Respondent did not know how Kelman determined the total amount. [TFB Exh 9, p. 84-87) (Excerpt at Tab 8)]. According to Respondent, it was a process of negotiation. Kelman would provide a total amount and Respondent tried to estimate the approximate amount of time it took them to do the work based on his review of events from the week to see if the total amount requested was

commensurate. At other times, he paid what Kelman wanted so as to avoid an argument because he didn't have time to review the work. [TFB Exh 9, p. 82-83, (Excerpt at Tab 8)].

Kelman's testimony was more credible given the amount of the payments. He testified the compensation arrangement was for Respondent to pay a percentage of 50% to 60% of the revenue that was generated from the clients in order to pay for rent, the attorneys, the payroll and all the other office expenses except for the copy machine. This included a percentage of both the initial fee and the monthly payments that were called for under the retainer agreements. [Excerpt of Final Hearing Testimony of Gary Kelman (Third Excerpt), taken July 7, 2017, pp.8, 11]. Kelman acknowledged that over the course of the business arrangement with Respondent, he received approximately $1.5 million, that what was left after expenses was his profit, and that he had a stake in the business operation with Respondent. [Excerpt of Final Hearing Testimony of Gary Kelman, taken July 10, 2017, p. 5]. Respondent was providing the financial resources for paying all the employees in Suite 124. [Excerpt of Final Hearing Testimony of Gary Kelman (Third Excerpt), taken July 7, 2017, p. 8]. Money that Kelman received from Respondent was deposited into the FHS bank account and used towards payroll and operating expenses of the business. [Excerpt of Final Hearing Testimony of

Gary Kelman (Third Excerpt), taken July 7, 2017, pp. 7-8; Excerpt of Final Hearing Testimony of Gary Kelman, taken July 10, 2017, p. 12-13].

Kelman also testified [Excerpt of Final Hearing Testimony of Gary Kelman, taken July 10, 2017, p. 12, Lines 11-15]:

> Q. So would you term it that you were splitting fees with the lawyer and you were profiting from the split of fees? Would you term it that way?
>
> A. I got a paycheck from it, yes.

I find the evidence clear and convincing that Respondent had a partnership with Kelman. This is based on Respondent's conduct in the K&W lawsuit; his use of Suite 124 that was leased by FHS, which included his employment of the receptionist, the appearance of the signage, the use of the related phone number and address on his 9381-account and pleadings; Kelman's testimony that he received a percentage of the revenue from the client fees that funded payroll and expenses, with the remainder going to Kelman as profit; his permitting Kelman to fill in the payee on signed checks that Respondent provided to him; the excessive amount of money he paid to the Kelmans and FHS for simply doing client intake as it was described by Respondent; and his issuing the checks paid to cash that were used to pay Kelman's employees.

Respondent admitted that the checks issued to <u>cash</u> were for payment to Kelman for intake. [TFB Exh 10, pp. 85-86, (Excerpt at Tab 12)]. Respondent also

admitted the checks issued to FHS were for payment to Kelman for intake. [TFB Exh. 10, p. 46 (Excerpt at Tab 11].

With respect to the checks payable to the Kelmans, Respondent testified that some of those payments were for intake and some he claimed were transfers of fees back to Kelman (the so-called "refunds"). Respondent testified that the "refunds" occurred after a point in time when respondent wrongly believed (as discussed hereinafter) that he was no longer involved in the business arrangement. Respondent testified he did not think he should keep the fees because he believed either the files were somehow not his responsibility or that the people were not his clients. Nevertheless, Respondent continued to keep his bank account addressed at Vista Suite 200 open, Kelman continued to deposit the client fees into the account, and most significantly, Respondent knew his name was still on the files related to the client fees he was transferring to Kelman. Respondent testified as follows [at TFB Exh. 10, pp 70 Line 19 to p. 71 Line 18 (Excerpt at Tab 13)]:

> As my spreadsheet will show, they deposited checks in my account and some of them were made to Pickett Law Group, some of them were made to Law Group and I believe some of them were made to Foreclosure Housing Solutions. Some of the checks were for cases that they were going to stipulate with me legitimately. In other words, I knew that they were going to stipulate off of those cases so I didn't feel that it was -- I could have kept the money because my name was still on the file, but I did not feel that it was appropriate for me to do that so I -- I paid them the money for those clients who said, as I was waiting for -- I kept waiting for them to sign stipulations on some of those clients. Stefanie was going to sign stipulations and so

> forth, so hopefully my spreadsheet will tell us which ones of those they are. But some of those were payments that I received that were cases where they were going to stipulate on, sign notices of appearance on themselves because those clients said they wanted Stefanie and Gary Kellman[sic] to work on their files. So I kept waiting to get stipulations. Meanwhile, I had to keep giving them the money for those cases.· So that's -- I kept paying them for some of those cases until I got a stipulation or they signed a notice of appearance on that file. [underlining added for emphasis].

Respondent initially claimed that payments he made to Kelman at least through September 1, 2011, were for the most part, payments for intake services and not the so called "refunds." [TFB Exh. 11, p. 107 (Excerpt at Tab 15]. His later testimony moved this date back to March 2011, when he claimed Kelman was no longer doing intake. He further claimed most of the checks he issued to the Kelmans from March 9, 2011 through December 20, 2012, totaling approximately $969,794.86, were the so-called "refunds" of client fees back to the Kelmans. [Respondent Exh. 102]. Yet, at his deposition, he said that he started to move out in September 2011 and was completely out of Vista by December 2011. [9/27/16 deposition, volume 2 at TFB Exh. 9, pp. 128-129]

Respondent's characterization of some of those payments as "refunds" to Kelman was not based on an accounting he did of the client fees. He produced no list of the Vista clients and no records of the date and amount of fees he received from the clients that were tied to the "refunds". Respondent admitted that he could not tell just by looking at a check he issued to Kelman whether it was for

payment to the Kelmans for intake services, for transferring fees from clients that he claims were never his to begin with, or for transferring fees from clients that he was waiting for the substitutions of counsel. [TFB Exh. 10, p. 60 (Excerpt at Tab 13)]. Yet, despite having no records other than the checks he issued to the Kelmans, Respondent claimed he could prepare a spreadsheet that would explain the purpose of the checks he issued from his account. The spreadsheet provided by the Respondent was introduced into evidence. [TFB Exh. 13]. It contained lists of various deposits of some client fees that Respondent claimed he transferred to Kelman, along with pleadings and copies of some client checks deposited into his account, but despite being ordered to produce the documentation to substantiate all the represented payments on the lists, no such documentation was produced. [TFB Exh. 11, pp. 31-32, 38-39; 164-165 (Excerpts at Tab 14)]. He admitted he could not verify the deposits into his account that corresponded to the "refunds" he issued. [TFB Exh. 11, p. 111 (Excerpt at Tab 15, final section)]. Accordingly, I gave no credence to Respondent's spreadsheet as establishing any accounting for the client fees that were deposited into his 9381-account.

During closing argument, the Bar offered a Monthly Disbursements illustrative aid to the Court. It consisted of a month by month breakdown of the deposits made into Respondent's 9381-account as reflected on the bank statements in evidence [TFB Exh. 70]; and the checks in evidence that he issued from the

account to FHS, Kelmans and Cash each month per the dates reflected on the various checks. [TFB. Exhs. 2, 3 and 4]. For example, during the month of April 2010, the bank statement shows total deposits to Respondent's account of $72,345.00 and checks disbursed to FHS, Kelmans or Cash totaling $51,500. For the month of May 2010, total deposits were $73,496 and total checks to Kelman and FHS were $33,800. In September 2011, when Respondent initially testified that he ended the arrangement with Kelman and began to physically move from Vista, deposits totaled $72,550.00 and checks to the Kelmans totaled $42,412.80. In March of 2011, the earlier date for when he claimed the "refunds began, the deposits totaled $83,720 and the checks to the Kelmans totaled $38,837. The percentage of the deposited fees that Respondent paid Kelman did not greatly increase until the month of December 2011, when the deposits into Respondent's account totaled $79,175 and the checks to Kelman totaled $67,914.20. The bank records show that up to that point through the end of November 2011, client fee deposits into Respondent's account totaled $1,520,117.42 and payments to Kelman, FHS and Cash totaled approximately 57.16% of that total: $868,904.86. Beginning December 2011 through December 2012, a much greater percentage of the fees that were deposited into Respondent's bank account were transferred to the Kelmans. The total client fee deposits into Respondent's account for that time period was $698,616.83 and the total amount of the checks issued by Respondent

to Kelman totaled approximately 84.32% of the deposits: $589,070.84. This corroborates Kelman's testimony that he was getting 50 to 60 % of the fee revenue, until the time Respondent testified he had completed his move out of Vista in December of 2011. It was at this point that Respondent began to transfer the great majority of the client fees deposited by Kelman back to him until he closed the account. Nevertheless, Respondent was the attorney of record on the files at Vista for which he transferred the legal fees (the so-called "refunds") to Kelman.

Respondent's characterization of these payments as "refunds" instead of compensation for performing intake does not help Respondent. Actually, labeling these transfers of fees to Kelman as "refunds" is a misnomer. In fact, no clients were refunded their fee payments. Kelman made bulk deposits of individual checks received from the clients for payment of legal fees into Respondent's 9381-account, which Respondent converted back to Kelman via numerous en masse transfers from his 9381-account by issuing checks in various amounts during the entire year of 2012 and part of 2011. Respondent claimed he gave these "refund" checks to Eichorn without a payee filled in and it was Eichhorn who inserted Kelman's name as the payee. This was uncorroborated, but even if true, it would not relieve Respondent of his responsibility for ensuring that client fees he received were not being paid to a nonlawyer from checks he issued. According to his own testimony, Respondent permitted transfers of substantial amounts of fees

from his bank account to a non-lawyer, which involved numerous checks he issued over a substantial period of time. I find the evidence is clear and convincing that Respondent was sharing legal fees with a non-lawyer.

Claims of Forgery

At the final hearing, Respondent claimed that close to $250,000 of the checks issued to Gary Kelman, Michael Kelman, and FHS, contained forgeries of his signature. According to Respondent, this involved checks issued from April 9, 2010 to January 14, 2011. [Respondent Exh. 101]. This testimony was not credible. During the final hearing the Bar presented video excerpts from Respondent's video deposition taken on October 19, 2016. [TFB Exh. 10]. Those video excerpts clearly demonstrated that Respondent was given ample opportunity to examine the checks and, in fact, he did examine the checks issued from his 9381-account to Cash, FHS, and the Kelmans.

With respect to the checks issued to FHS, Respondent testified in pertinent part:

[TFB Exh. 10, p. 45, Line 25 to Page 46 Line 8 (Excerpt at Tab 11)]:

> Q. Okay. So I'm just trying to find out why did you, the law firm of Gary Pickett, you're the only person that could sign those checks --
>
> A. Right.
>
> Q. -- why did you pay Foreclosure Housing Solutions over $202,000. That's all I'm trying to find out.

A. I -- I didn't. I'm paying Gary Kellman. He wrote in the payee in terms -- that's his corporation.

With respect to the checks issued to Cash, Respondent testified:

[TFB Exh. 10, p. 82, Line 23 to Page 83 Line 3 (Excerpt at Tab 12)]:

Q. Is this another situation where you signed the check, put in the amount, and leave the payee blank?

A. Yeah, but I -- I believe they would have filled that in on some of these in -- in front of me.

Q. Is that a yes?

A. Yes.

With respect to the checks issued to the Kelmans, Respondent testified:

[TFB Exh. 10, p. 63, Line 4 to Page 64 Lines 4; (Excerpt at Tab 13)]:

Q. Let me ask you questions about specific checks since you brought it up. You were looking at my checks, they were tabbed with the words on them. The particular check, one -- one is -- the first one is 1042 which is made payable Michael Kellman and says for payroll. Why was that check issued to Michael Kellman with the word payroll if he was only -- you were reimbursing him for computers and work station he set up?

A. When I issued the check to him -- I don't know who wrote the word payroll on there. That was -- that was added after the fact, so don't know.

Q. Here's another check, check number 1049, April 9, $6000, Michael Kellman, also says for payroll. Do you know why it says payroll?

A. That was written after the fact, so no, I don't.

Q. Here's another check April 30, 2010, Michael Kellman, $7500 payroll, the same amount. Why does it say payroll?

A. I don't know. I can speculate on that but I don't know.

Q. And these checks that I've identified so far that say payroll, with respect to the writing, the check is signed by you?

A. Yes.

[TFB Exh. 10, p. 64, Line 18 to Page 65 Line 15 (Excerpt at Tab 13)]:

Q. 1072?
A. Right. That -- they wrote in Michael Kellman there. Someone wrote in Michael Kellman there.
Q. Was it your practice to turn over checks with no payee but amount and signature and let them fill in the payee? Was that the course of practice you had with them?

A. No, that wasn't something that occurred all the time. I mean, if I was in a hurry, then I would --I would do that on occasion, but no, it's not -- it's not a general rule.

Q. Here's another one. I think we discussed 1079, but you can tell me if that's your writing with respect to the Michael Kellman and the amount?
A. That looks like my writing.
Q. Why is payroll written there?
A. That I don't know. I didn't add that word to it.

Q. Here's 1090, again May 21, 2010, Michael Kellman, 8,800 payroll. What is your signature there? What is your writing there?

A. That's my signature…

With respect to the specific check numbers discussed, Respondent admitted Check #s 1042; 1049; 1072; 1079; and 1090 contained his signatures. Yet, check numbers 1049; 1072; 1079 and 1090 are contained in Respondent's Exhibit 101 as claimed forgeries.

Furthermore, respondent testified in pertinent part at his deposition on April 25, 2017, with respect to the checks he wrote in 2010, 2011, and 2012, as follows:

[TFB Exh. 11, p. 102, Lines 3 to 6 (Excerpt at Tab 15)]:

Q. So today you're saying that the checks you wrote in 2010 were for what?

A. I'm saying that they mostly were for intake services.

[TFB Exh. 11, p. 104, Lines 19 to 23 (Excerpt at Tab 15)]:

Q. Okay. So between September 2011 and December 2011, were all of those checks for refunds or was a portion of them for intake services?

A. They were not for intake services. And that's -- I would have to classify them as refunds…

[TFB Exh. 11, p. 107, Lines 6 to 19 (Excerpt at Tab 15)]:

Q. Okay. Now before, let's say up to

> September 1, 2011, those checks that you wrote in the year 2011 through the end of August, were those mainly for intake that you wrote to Kellman and Foreclosure Housing Services?
>
> A. Yes. Those were mainly for intake, but a few of them, like I said, could have been for other, you know, incidentals. For instance, I may have given them a check let's say for $3,000 to say, Can you buy some supplies for me? Can you, you know, can you, I mean, things of that nature. But for the most part, like I said before, until 2011, most of those up until the time I left, would have been for intake services provided by Gary Kellman.

Clearly, Respondent did not question his signature on any of those checks.

Furthermore, Respondent also specifically stated at his deposition on September 27, 2016 (vol. 2), "…They didn't forge my name on the checks." [TFB Exh. 9, p. 154, Line 22].

Thus, Respondent testified about these checks several times during his depositions and did not claim the checks were forged. The video excerpts demonstrate Respondent had ample opportunity to review the checks. Respondent made this claim at the final hearing without any corroboration. His prior testimony had consistently been that on many occasions he gave signed checks to the Kelmans with the amount filled in and the payee line left blank for them to fill in the name of the payee. I do not find Respondent's testimony credible that his signature on the checks were forged.

Respondent Abandons the Vista Clients

It was Respondent's testimony that he quit the business arrangement at some point in 2011, but his testimony was contradictory as to the precise date when this supposedly occurred. If so, it was done by Respondent unilaterally and did not absolve him of his responsibility for the clients as the attorney of record in their cases.

Respondent admits there was no written documentation outlining or regarding the termination of Respondent's relationship with Kelman or FHS and/or anyone acting on behalf of Kelman or FHS. [TFB Exh 52, Response to Requests 3 and 4]. In fact, Respondent produced only one termination letter that he wrote, which was to his employee, Janelle Bishop, on July 15, 2011, terminating her "for cause." [Respondent Exhibit 40].

There was no clear date as to when Respondent claims he ended the business arrangement. Respondent testified that he became angry with Kelman and ceased communicating with him sometime prior to the termination of the K&W lawsuit on February 18, 2011. [TFB Exh. 66]. Respondent had initially claimed that client referrals from Kelman ceased prior to September 1, 2011. [Respondent's Answer to Paragraph 7 of the Complaint], but then later testified that Kelman stopped doing intake for him in March 2011. Respondent had also claimed that he began to

physically move out of Vista in September 2011 and was completely out of there in December 2011. [9/27/16 deposition, volume 2 at TFB Exh. 9, pp. 128-129]..

Respondent also testified that Kelman continued to deposit client fees into his account after he left Vista until he closed the account. Respondent continued to maintain his 9381-account containing the Suite 124 Vista address until June 2011, and the Suite 200 Vista address from June 2011until December 31, 2012. It was not until January 2013, the last month the account was opened that he changed the address on the 9381-account to his Narcissus location. [TFB Exh 70, p. 104].

Kelman testified that despite Respondent physically moving out of Vista, all of the clients that Respondent represented at Vista remained at Suite 124 and were his clients until they were transferred to Grundstein. [Excerpt of Final Hearing Testimony of Gary Kelman, Volume 1 of 1, taken July 7, 2017, pp. 4-5]. Kelman further testified that Respondent was always at Narcissus and operated the Vista practice remotely. [Excerpt of Final Hearing Testimony of Gary Kelman, taken July 10, 2017, p. 15]. Kelman continued to make deposits of client fees into Respondent's 9381-account while the account was open after Respondent physically moved from the building. [Excerpt of Final Hearing Testimony of Gary Kelman, Volume 1 of 1, taken July 7, 2017, p. 6]. Kelman was asked when he stopped making the deposits to Respondent, and he testified [Excerpt of Final

Hearing Testimony of Gary Kelman, Volume 1 of 1, taken July 7, 2017, pp. 6, Lines 21-24]:

> When the -- supposedly when the substitutions of counsel and the transformation was taking place. It was a little -- it was a lot of clients. It was pretty confusing.

Santiago testified that she continued working for respondent and receiving assignments from him until she quit on or around March 1, 2013, when Grundstein took over. Grundstein began working with Kelman at Vista on or around March 1 2013. [Excerpt of Final Hearing Testimony of Steven Grundstein, Volume 1 of 1, taken June 9, 2017, p. 13, Lines 18-21, referencing the date on Respondent Exh. 28 at Line 2]. The various stipulations for substitution of counsel were not executed by Grundstein and Respondent until after Grundstein took over at Vista in 2013. Grundstein testified that he met with Pickett at the court house where a lot of the stipulations were signed. [Excerpt of Final Hearing Testimony of Steven Grundstein, Volume 1 of 1, taken June 9, 2017, p. 30-31]; He also testified that in the course of the transformation preceding the stipulations, he had discussions with Respondent as to how the Vista cases were to be divided, which cases Respondent was leaving, and which cases he wanted to keep. [Excerpt of Final Hearing Testimony of Steven Grundstein, Volume 1 of 1, taken June 9, 2017, p. 18]. Grundstein further testified [Excerpt of Final Hearing Testimony of Steven Grundstein, Volume 1 of 1, taken June 9, 2017, p27, Line 22 to p. 28, Line 9]:

Q When you first started there, you testified that there was some cases and that you had to meet with Gary Pickett and figure out whose case was whose; correct?

A. Yeah, we -- well, we went through – went through a lot of discussion in regard to the cases he wanted to take from the Visa[sic] Parkway office, but my understanding from my initial contact was he wanted to maintain one office and that would have been his office in West Palm Beach downtown. And I -- he didn't want to go back and forth. And so except for specific cases that he wanted where he had a serious relationship with the clients, he was going to walk away from the Visa[sic] Parkway office. [underlining added for emphasis].

Grundstein also testified that during the course of handling the substitutions of counsel, Respondent was difficult to deal with and was not familiar with files that were replete with his name, and was not even aware of files for which he was still the attorney. [Excerpt of Grundstein testimony from June 9, 2017, pp. 21-22].

Respondent admitted that he knew his name was on these numerous client cases and that he was waiting to receive the stipulations for substitution of counsel for him to sign to remove himself as the attorney in the case. [TFB Exh. 10, pp. 70-71 (Excerpt at tab 13)]. Thus, not only did Respondent continue to receive the client fees, but he had actual knowledge that his name and bar license were being used in the very manner that he claims to have been a victim of fraud.

Incredibly, after admitting he was waiting to receive the Stipulations for Substitution of Counsel, Respondent changed his testimony and claimed that his signature on many of the stipulations was not authentic. This testimony contradicted his prior testimony and is without credibility. The Orders granting

many of the stipulations in evidence reflect that Respondent was served at his Narcissus office. [TFB Exh. 79].

Despite Respondent's claim that he terminated the business arrangement sometime in 2011, he remained the attorney of record on all of the cases for which he was waiting for the stipulations to remove himself from the case. He could not properly terminate his relationship with an individual client until the trial court permitted it. He abdicated his responsibility for those client matters while the client fees continued to be deposited into his bank account that remained open until January 2013. He unilaterally abandoned the cases for which he remained attorney of record when he knew his name was on those cases. Respondent does not absolve himself of responsibility for these clients simply by transferring the client fees that he continued to receive back to the Kelmans. He was not relieved of responsibility for any of those cases until permitted to withdraw by the respective trial court. This was the only way he could properly transfer responsibility for those files to another attorney.

That respondent was unaware of the clients for whom he was the attorney of record was corroborated by his own witnesses, Dieusel Pubien, Lesco Morvan, Charles Richard, Mark Lamb and Wendy Parker. These witnesses were clients that retained Respondent at Vista, claimed to have paid fees, but had never met with respondent at that location. They each dealt with Kelman, whom they believed to

be a lawyer. Yet, Respondent signed Stipulations for Substitution of Counsel in Pubien's matter [TFB Exh. 79, pp 065-066] and in the Richard matter [TFB Exh. 81].

In the Morvan matter, Respondent had no client file or any memory of having represented him pursuant to a retainer agreement Morvan had signed with Kelman. [TFB Exh. 40]. He had no credible explanation when he was confronted at his deposition with a Motion to Withdraw that he prepared and filed from the Narcissus office. [TFB Exhs. 39]. Respondent only knew of the Morvans because they later signed retainer agreements with Respondent in 2016. [TFB Exh. 42]. Respondent testified that he never represented Morvan prior to February 2016. [TFB Exh. 11, p.129 (Excerpt at Tab 17)]. Respondent confirmed in his testimony that he was unaware if the Morvans signed any retainer agreements with Kelman. [TFB Exh. 11, pp.129-130 (Excerpt at Tab 17)]. When he gave this testimony, Respondent did not remember that on December 22, 2015, he had filed a motion to withdraw as the Morvans' attorney and attached a page from the October 8, 2010 retainer agreement signed by Kelman as Exhibit "A" to the motion. The motion stated in part, "Defendants have terminated the services of the undersigned by their failure to honor their contract, which is attached as Exhibit A." [TFB Exh. 39]. The motion to withdraw was issued from the Narcissus location and Respondent admitted it had been prepared in his office and contained his signature. He had no

independent recollection of the case and no credible explanation as to how he came to file a Motion to Withdraw or how he came to possess a page from the Morvan retainer agreement. [TFB Exh. 11, see pp.134-140 (Excerpt at Tab 17)]. Respondent also had no client file for the Morvans when he filed the motion to withdraw. [TFB Exh. 11, p.138 (Excerpt at Tab 17)]. Thus, respondent had represented Morvan in a matter retained through Kelman at Vista but had no record or recollection of the representation. Respondent's later testimony at the final hearing about his recollection of his previous relationship with Morvan was not credible as it was given after he had already testified he had no recollection of the case and no client file.

I find the evidence clear and convincing that Respondent abandoned those client matters left at Vista when he knew his "name was still on the file" i.e. he was the attorney of record. Respondent could not unilaterally terminate the business arrangement as it pertained to any of those client matters until he was relieved of responsibility in each of those cases by the respective trial courts.

I also find that Respondent acted dishonestly to those clients whose matters remained at Vista, by intentionally accepting their fee payments, then transferring the fees to Kelman because he had no intention of providing legal representation to them.

The Three Bar Complainants

1. William and Caridad McColman

The McColmans were one of the former foreclosure defense clients of K&W that switched over to Respondent's representation after learning from Kelman that he had begun working with Respondent. The McColmans met with Kelman on April 12, 2010, and signed a Foreclosure Defense Agreement retaining Respondent's law office on that date. [TFB Exh. 17]. The agreement required an initial payment of $350.00 and monthly payments of $350.00 thereafter. On the date of that first meeting, McColman tendered check #1191, payable to Pickett Law Group for $350.00, which was deposited into Respondent's 9381-account. McColman's bank records reflect that the check, when deposited, contained Respondent's stamped deposit endorsement to the 9381-account on the back of the check when it was posted to McColman's account on April 13, 2010. [TFB Exh. 33, p.3].

Kelman, who was authorized to perform the intake, filled in the information on the retainer agreement, accepted the initial payment from McColman, and signed the agreement as a representative of Respondent's Law Firm.

During that visit to Vista, McColman obtained business cards from Kelman, Michael Kelman and Jacques Duverger. He attached the cards from Michael

Kelman and Duverger which contained the title, “Foreclosure Consultants” to his bar complaint. [TFB Exh 76].

Notices of Termination for the McColmans’ representation were sent to K&W. [TFB Exh. 32]. They were dated April 15, 2010, three days after the McColmans signed the retainer. This corroborates Garcia’s deposition testimony taken in the K&W lawsuit that termination letters to K&W were prepared after the K&W clients had already signed with Respondent.

Respondent’s Notice of Appearance in the McColman litigation was filed on May 17, 2010. It was signed by Rangile Santiago for Gary L. Pickett, Esquire, and the pleading contained Respondent’s bar number. [TFB Exhibit 18]. At this point in time, McColman had already made his second payment to Respondent by check #1200, dated May 11, 2010. [TFB Exh. 33, p. 4].

McColman made monthly payments to Respondent for each month beginning April 2010 through February 2012. During this time frame, McColman tendered 22 checks to respondent totaling $7,900.00. All of the checks were made payable to the Pickett Law Group or Law Office of Gary Pickett. Similar to the initial check, McColman’s bank records reflect that each of the checks, when deposited, contained Respondent’s stamped deposit endorsement to the 9381-account on the back of the check when it was posted to McColman’s bank account. [TFB Exhibit 33]. The Bar’s Auditor, Carl Totaro also confirmed in his Review

Report that the payments by McColman were deposited into the 9381-account. [TFB Exh. 1]. Respondent refused to concede this despite that he admittedly kept no records pertaining to his receipt of fees from each individual client. The evidence is clear and convincing that McColman's checks were deposited into his 9381-account.

Further, a Motion to Compel Defendant's Production of Documents and Answers to Interrogatories was filed in McColman's case on July 11, 2011. [TFB Exh 20]. The motion contains what appears to be Respondent's signature. Although Respondent admitted that the motion was filed, he denied signing the pleading. [TFB Exhs. 63 and 64, Respondent's Answer to Paragraph 18 of the Bar's Complaint]. In this respect, Respondent's Answer to Paragraph 18 of the Complaint states:

> Further, the Respondent would add that the pleading appears to be manufactured to make it appear that the Respondent executed said pleading but in reality the formatting of both pages are different and it is believed that Kelman and/or person's working with him took a copy of a signature page from another document signed by the Respondent, whited out and changed the date on the document and affixed this page to the pleading without the Respondent's knowledge or consent. [underlining added for emphasis.]

In his Answer, Respondent clearly admitted that the signature that he alleges was copied from another document was his legitimate signature. At the final hearing, however, Respondent testified that the signature was not his. Respondent

produced no corroborating evidence to support either of these conflicting claims and again, I do not find his testimony credible. There are other pleadings with the Vista address in the record that appear to contain Respondent's signature, which he claimed were forgeries. [See for example: TFB Exhs. 35; 36; 78]. Respondent took in over $2.2 million in client fees from Vista, and he testified that only he was authorized to sign the pleadings and the retainer agreements at Vista. One would expect there to be many pleadings and retainer agreements prepared at Vista containing his valid signature, yet the record in this disciplinary case is totally devoid of any pleadings or retainer agreements that were prepared at Vista that Respondent admits contain his genuine signature.

On December 6, 2011, the bank filed a Motion for Summary Final Judgment of Foreclosure against the McColmans. [Respondent's Admission to Paragraph 21 of the Bar's Complaint at TFB Exhs. 63 and 64]. Prior to scheduling the hearing on the motion, Respondent's Narcissus office was contacted to coordinate the hearing date on or about February 3, 2012. Respondent's employee, Christina, received a phone call from Celeiny, an employee of the bank's attorney, Kahane & Associates. At 12:07 p.m. on February 3, 2012, Christina e-mailed Kimberly Antonucci at Kimberly.pickettlaw@yahoo.com, to inform her of the phone call she received to set the hearing. [TFB Exh. 47]. Shortly thereafter, at 12:18 pm, Ms. Antonucci received an e-mail from Celeiny proposing the hearing

date for February 29, 2012, to which Ms. Antonucci sent a reply e-mail at 2:09 p.m. confirming the February 29 date. [Respondent Exh. 69].

Respondent testified he had no independent recollection of having any conversation with his employee after she received the phone call from Kahane & Associates and prior to sending the e-mail to Antonucci. [TFB Exh. 11, p. 157, Lines 17-20 (Excerpt at Tab 18)]. He also testified that his Narcissus staff was authorized to contact Vista without his involvement concerning Vista files that were "their" clients. [TFB Exh. 11, p. 163, Line 16, to p. 164, Line 4 (Excerpt at Tab 18)]. Thus, he clearly did not subscribe to the notion that the clients he left at Vista were his clients, despite that he was the attorney of record.

At 2:13 p.m., Ms. Antonucci sent an e-mail back to Christina. It should be noted that Christina's e-mail address, Christina@garypickett.com, was an e-mail that respondent used for e-service. Antonucci's e-mail stated [TFB Exh 47]:

MCCOLMAN Feb 29 @ 2:30pm VISTA FILE.. Thanks!

In addition, the Notice of Hearing on the summary judgment was served on Respondent at Suite 200 of the Vista location on February 6, 2012. [Respondent Exh. 70]. Yet, Respondent denied receiving service of the notice. [Respondent's Answer to Paragraph 26 of the Bar's Complaint, TFB Exhs. 63 and 64]. As stated previously, Respondent testified he had leased Suite 200 because it was a more private space where he could meet with clients. [TFB Exh 9, p. 123 (Excerpt at

Tab 10)]. According to his 9381-banking records, Respondent still maintained his office address at Suite 200 in February 2012. [TFB Exh. 70, p. 74]. Respondent testified he was no longer present there, and the mail addressed to him and delivered at Vista could not be forwarded to him, he had to go there physically to retrieve it. If he is no longer present at that address, it is his obligation to retrieve the mail addressed to him that is delivered there.

McColman received an invoice dated February 1, 2012 for that month's fee and he paid it. The Invoice was sent from The Law Office of Gary Pickett, 2101 Vista Parkway, Suite 124, West Palm Beach, FL. [Respondent Exhibit 2]. The telephone number on the invoice is 561-939-4900, the same phone number that Respondent used on the checks issued from his 9381-account. [TFB Exh 3, p. 66, et. seq.] McColman made the payment for that month by check # 1473, dated February 7, 2012, which was deposited into Respondent's bank account. Thus, Respondent was being paid by McColman for legal representation during the time the summary judgment hearing was scheduled and when the hearing actually occurred.

McColman testified that he contacted Kelman about the hearing, and Kelman told him an attorney would cover it and that he should not attend. Despite that Respondent received compensation for the representation, was served with the hearing notice and also made aware of the hearing by Ms. Antonucci's e-mail to

Christina at an e-mail address that Respondent used for e-service of pleadings, he failed to attend the hearing or ensure an attorney would be present to represent the McColmans. As no one appeared for the McColmans at the hearing, judgment was entered against them. McColman learned of it when he received the judgment in the mail from the court. He terminated Respondent's representation and hired a new lawyer who was unsuccessful on appeal and the McColmans eventually lost their home. Respondent filed a Motion to Withdraw on or about April 5, 2012, that was signed by Rangile Santiago on his behalf. [TFB Exh. 19].

It is clear that the McColmans were his clients whose file was left at Vista because, as Grundstein testified, Respondent was going to walk away from the representation since he did not have a serious relationship with them. [Excerpt of Final Hearing Testimony of Steven Grundstein, Volume 1 of 1, taken June 9, 2017, pp. 27-28]. Respondent was aware of the existence of these Vista files that had his name attached to them, but he did not know the identities of these clients.

As attorney of record in the McColman case, the responsibility for his failure to be aware that McColman was his client rests squarely with Respondent, and his failure to be aware of the McColman summary judgment hearing is not excused. Respondent failed to take adequate measures to ensure he was both handling the case competently and diligently and failed to properly supervise the people who

did any other work related to the McColman case. Clearly the fee he received was excessive because Respondent provided no services in return.

McColman made requests for a refund of the legal fees that he paid Respondent. [TFB Exh. 34; Respondent Exh.5]. On January 16, 2014, Respondent responded to him in a 2 sentence letter, stating that he reviewed, among other things, the clerk's file, and that it did not appear that there was ever an attorney-client relationship. This was a dishonest response because I do not believe he could have really reviewed the clerk's file without seeing the pleadings filed under his name and that he was clearly the attorney of record. Further, Respondent received $7,900.00 into his bank account and he admittedly provided no services in return to McColman. I find that Respondent had an attorney-client relationship with McColman, and his refusal to acknowledge that he received the funds and his refusal to refund the fees back to McColman was intentionally dishonest and in bad faith.

2. Frantz H. Dorsainvil

Dorsainvil hired Respondent to represent him on three foreclosure matters. The allegations in Count III of the Bar's Complaint pertain to the case number ending in 26633, which involved Dorsainvil's homestead property. [TFB Exh. 48]. Respondent did little or no work in the other two matters, which were handled by Grundstein. [Respondent Exhs. 77 to 83; 89-93].

Dorsainvil testified that he personally met with Respondent at Vista on January 3, 2012, when he signed the retainers for his cases and he identified Respondent in the courtroom during the final hearing. Respondent denied he met with Dorsainvil when the retainers were signed or at any other time prior to the disciplinary case. Nevertheless, Dorsainvil made payments of the legal fees with at least six checks payable to either Pickett Law Group or Law Office of Gary Pickett during the time Respondent was the attorney of record in the 26633 case. The payments totaled $3,600.00; representing Check numbers 1452; 1472; 1492; 1511; 1535; and 1573. [TFB Exh 50]. At least two of the checks from Dorsainvil contained Respondent's deposit stamp on the back. Further, Respondent recovered records at Vista that demonstrated a bulk deposit of client fees was made into the 9381-account that included Dorsainvil's check #1452. It was one of 24 checks totaling $7,525,00 deposited into the -9381 account on June 18, 2012. [Respondent's Exh. 105 at p 000672]. Respondent's bank statement also reflected the deposit of $7,525.00 on June 18, 2012. [TFB Exh 70, p. 87]. Despite Respondent's denial that Dorsainvil was ever his client, Respondent admitted that he executed a Stipulation for Substitution of Counsel for Grundstein to take his place as attorney of record in the 26633 case. [Admission contained in Respondent's Answer to Paragraph 96 of the Bar's Complaint, TFB Exhs. 63 and 64]. Thus, Respondent ratified the retainer agreement and the fact of his

representation. I find that Respondent was retained as Dorsainvil's attorney and there existed an attorney/client relationship.

With respect to the 26633 case, Respondent's Notice of Appearance, signed for him by Rangile Santiago, was filed on March 27, 2012. [TFB Exh. 24]. An Answer and Affirmative Defenses was also signed by Santiago for Respondent and filed on July 3, 2012. [TFB Exh. 25 (2nd pleading of composite exhibit)]. On January 22, 2013, Respondent was personally served with the plaintiff's Reply to the Answer and Affirmative Defenses at two of his e-mail addresses: gary@garypickett.com, the e-mail address used for e-service, and gpickett@bellsouth.net, a personal e-mail address that he used at his office. [TFB Exh 74, p. 012]. On Friday, February 8, 2013, Respondent was served with the plaintiff's Sworn Responses to Defendant's First Set of Interrogatories at the same E-mail addresses [TFB Exh 74, p. 011]. That e-mail was then forwarded with the attached pleadings on Saturday, February 9, 2013, from Respondent's bellsouth.net e-mail to Picket925@garypickett.com, the e-mail address for Respondent's hearing coordinator. [TFB Exh 74, p. 009]. On Thursday, February 14, 2013, the e-mail with the attached pleadings was then forwarded to Christina@garypickett.com, with instructions to "please process as regular incoming mail." [TFB Exh 74, p. 07].

Despite receiving these pleadings, respondent maintains he took no action on

the case because Dorsainvil was never his client. [Admission contained in Respondent's Answer to Paragraphs 95 of the Bar's Complaint, TFB Exhs. 63 and 64]. More accurately, it appears this was one of the cases he abandoned at Vista. Despite receiving service of these pleadings, he ignored the case. At least one of the pleadings he received was a reply to the answer and affirmative defenses signed by Rangile Santiago. Thus, respondent knew or, with the exercise of reasonable diligence, would have known that he was the attorney of record and that Ms. Santiago was signing pleadings for him. The record is devoid of any effort he made to review the pleadings that were served on him. Yet, he received the fees and signed the Stipulation for Substitution of Counsel with Grundstein, and an order was entered relieving Respondent of responsibility as Dorsainvil's attorney on March 11, 2013. [TFB Exh. 51]. His actions were intentionally dishonest. The $3,600.00 in legal fees Dorsainvil paid him was excessive because Respondent provided no services in return.

3. Nancy Scaccetti

Nancy Scaccetti came to Respondent's representation through a personal relationship she had with Eddie Garcia who worked with Kelman in the business arrangement he had with Respondent. Scaccetti did not sign a retainer or pay any legal fees. She obtained her information from the case from Garcia and did not meet Respondent, and she was unaware Respondent was the attorney of record in

her case. In response to Ms. Scaccetti's bar complaint, Respondent stated that he did not know Scaccetti, had never met her, and neither he nor anyone in his office had ever communicated with her. [Respondent Exh. 23]. Despite this, Respondent was attorney of record in her case and he admitted that he executed a Stipulation for Substitution of Counsel in her case, which was filed with the trial court on August 26, 2013. [Respondent's Answer to Paragraph 65 of the Bar's Complaint, TFB Exhs. 63 and 64]. Despite that he received no fee, an attorney-client relationship existed between Respondent and Scacetti. The Florida Bar v. King, 664 So.2d 925 (Fla. 1995).

The evidence shows that Respondent entered his appearance in the Scaccetti foreclosure litigation on October 18, 2012, by a notice of appearance signed by Santiago acting for Respondent. [TFB Exh. 21]. An Answer to the foreclosure complaint was also signed by Santiago and filed with the court. [TFB Exh. 22]. On January 29, 2013, Interrogatories and Request for Production were served on the Plaintiff, signed by Santiago acting for Respondent. [TFB Exh 23].

Respondent received several pleadings in the case that were served directly to his e-mail address used to receive service, Gary@garypickett.com. The plaintiff's responses to the discovery requests signed by Santiago were e-served directly to this e-mail address. The response to the Request for Production was attached to an e-mail served on Respondent on February 27, 2013. [TFB Exh. 73,

p. 005]. The attached responses were then forwarded by Respondent on February 28, 2013 to Respondent's employee at christina@garypickett.com. [TFB Exh. 73, p.004]. The answers to interrogatories were attached to an e-mail served on Respondent on March 5, 2013 [TFB Exh. 73, p.003]. The attached interrogatory answers were then forwarded by Respondent on March 5, 2013, to Respondent's employee at christina@garypickett.com. [TFB Exh. 73, p. 002].

Respondent was e-served with other pleadings in the Scaccetti case that were e-mailed to Gary@garypickett.com. On February 15, 2013, he was served with Plaintiff's Motion for Enlargement of Time that was attached to the e-mail. [TFB Exh. 73, p007]. The e-mail with the attachment was then forwarded to Christina@garypickett.com on February 18, 2013. [TFB Exh. 73, p. 006]. Further, the evidence shows that on April 11, 2013, an e-mail from plaintiff's attorney, Kass Shuler, was received by Respondent requesting him to cooperate in scheduling a hearing date on the plaintiff's Motion for Summary Judgment. The subject line of the e-mail stated, "Hearing Coordination-Palm Beach-Wells Fargo v Nancy Scaccetti-50 2012 CA 017454-KASS File # 1135016." [TFB Exh. 73, p. 011]. Subsequently, on April 18, 2013, Respondent was e-served the Notice of Hearing on the Motion For Summary Judgment at his e-mail address. [TFB Exh. 73, p. 010]. The hearing was scheduled for May 16, 2013 at 2:30 pm. The hearing notice reflects that Respondent was served with the notice at 105 S. Narcissus

Ave., Suite 402, West Palm Beach, FL 33401, by e-mail to Gary@garypickett.com, as "Attorney for Defendant Nancy M. Scaccetti." [TFB Exh. 46]. Prior to the scheduled hearing, Respondent received service of a Notice of Filing on May 10, 2013, which he forwarded to Christina@garypickett.com. [TFB Exh. 73, pp. 008-009]. The evidence is clear and convincing that he received service of these pleadings.

Respondent stated in his Answer to the complaint that "Gary@garypickett.com "is an e-mail account for his office wherein he accepts e-mail service of pleadings and that said account is and was managed by a legal assistant, not the respondent who uses a different e-mail account for his correspondence." [Respondent's Answer to Paragraphs 57; 59 of the Bar's Complaint, TFB Exhs. 63 and 64]. His claim that the e-mail address that he designated to receive service of pleadings was managed by an assistant and not himself does not excuse him, but in fact further demonstrates his failure to supervise or accept responsibility for what was going on under the auspices of his bar license.

Respondent did not attend the hearing. He claimed that he was out of town on the date of the hearing, but this does not excuse his conduct. [Respondent Exh. 97]. It is further evidence of his dereliction and his ignoring the case. He was not out of town when he received the Notice of Hearing on April 18, 2013. There is no

evidence in the record to suggest that he took steps to reschedule the hearing. On the contrary, he missed the hearing by his own failure as the attorney of record to ensure the case was handled diligently and competently.

The Final Judgment for Plaintiff was entered on May 16, 2013. The Judgment reflects that a conformed copy was served by the trial court to Gary L. Pickett, 105 S. Narcissus Ave. Ste 402, West Palm Beach, FL 33401, Gary@garypickett.com. [TFB Exh. 46, (composite exhibit located behind the Notice of Hearing)]. Scaccetti ultimately lost her home.

On August 26, 2013, a Stipulation for Substitution of Counsel, executed by the Respondent, was filed with the trial court. [TFB Exh. 45]. On August 23, 2013, the trial court relieved Respondent of responsibility as Ms. Scaccetti's counsel in the case. [TFB Exh. 45]. Prior to that date, and from the date of his Notice of Appearance in the case, respondent was the attorney of record for Ms. Scaccetti and responsible for providing representation for her in the litigation.

This was yet another case respondent apparently abandoned at Vista until Grundstein substituted for him. As with the other cases he left behind, he is responsible for everything that happened in the case while he was the attorney of record.

The evidence is clear and convincing that he failed to adequately communicate with Scaccetti or handle her matter, diligently, or competently. His

execution of the stipulation for substitution of counsel and subsequent refusal to acknowledge that Scaccetti was his client was intentionally dishonest conduct.

Respondent's Mitigation Evidence

Respondent offered three witnesses as mitigation evidence to testify as to his character and reputation: Retired Judge Ronald Alvarez; Attorney John Brewer; and Michelle Canady the Circuit Director for the Guardian Ad Litem Program For the Fifteenth Circuit. All three witnesses know Respondent through matters related to juvenile dependency cases. The witnesses gave positive testimony about their interactions with him in those cases, but Judge Alvarez and Ms. Canady have not personally worked with him recently. None of the witnesses have had any interaction with him in foreclosure defense cases. The witnesses gave positive testimony about Respondent. I do not, however, place great weight on their testimony as mitigation for his actions in the instant matter, nor to the fact that he has no prior disciplinary history, having observed his evasive testimony, lack of credibility and his misconduct in this case.

II. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

As to Counts I; II; and III: **Rules 4-1.1** [A lawyer shall provide competent representation to a client...]; **4-1.3** [A lawyer shall act with reasonable diligence

and promptness in representing a client.]; **4-1.4(a)** [Informing Client of Status of Representation…]; **4-1.4(b)** [Duty to Explain Matters to Client…]; **4-8.4(c)** [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation…]; and **4-8.4(d)** [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice…].

Additionally, as to Counts I and II: Rules 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; **3-4.3** [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts…]; **4-5.1(a)** [Duties Concerning Adherence to Rules of Professional Conduct…]; **4-5.1(b)** Supervisory Lawyer's Duties…; **4-5.3(a)** [Use of Titles by Nonlawyer Assistants…]; **4-5.3(b)** [Supervisory Responsibility**…]; 4-5.3(c)** [Ultimate Responsibility of Lawyer…]; **4-5.4** [(a) Sharing Fees with Nonlawyers...]; **4-5.4(c)** [Partnership with Nonlawyer…]; **4-5.5(a)** [Assisting another in Unlicensed Practice of Law]; **4-8.4(a)** [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]

Additionally, as to Counts I and III: **4-1.5(a)** [Illegal, Prohibited, or Clearly Excessive Fees and Costs.].

III. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.41 Disbarment is appropriate when:

a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

3.61 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 the client.

5.11 Disbarment is appropriate when:

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

6.11 Disbarment is appropriate when a lawyer:

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

b) improperly withholds material information, and causes serious or

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

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.

IV. CASE LAW

I considered the following case law prior to recommending discipline: The Florida Bar v. Glueck, 985 So. 2d 1052 (Fla. 2008). The Glueck case concerned eight clients who were affected by his misconduct pursuant to a business arrangement he had with a non-lawyer that was essentially a partnership. As to each client, Glueck failed to communicate, failed to provide meaningful assistance or abandoned the client. The non-lawyer in the business worked for Millenia Consulting Services and Glueck established an office inside the Millenia Suite located in Aventura for the purpose of doing immigration and labor law. Glueck's primary office was in Hollywood and he only used the Aventura office address for the labor and immigration work completed at the Aventura location. All mail concerning those cases was sent to the Aventura location and the only telephone number the Aventura clients had was for the Aventura location. The client would come to the Millenia office to execute a retainer agreement with

Millenia or Glueck, and the fees were paid to both into accounts to which Millenia had access. Money to fund the operation came from the client fees, and as the volume of work at the Aventura office increased, Glueck lost track of how the money was being collected. In practice Millenia and Glueck's office blended together. Glueck terminated the relationship after discovering a letter had been written on his letterhead without his authorization and the files were transferred to a new lawyer. In addition, Glueck made misrepresentations to the Bar in the disciplinary case, which attempted to veil his relationship with Millenia. In addition to finding a partnership existed, the referee considered that Glueck assisted a nonlawyer in violating her UPL injunction and failed to adequately supervise the nonlawyer.

The Glueck court also considered The Florida Bar v. Elster, 770 So. 2d 1184 (Fla. 2000) [three year suspension] and The Florida Bar v. Abrams, 919 So. 2d 425 (Fla. 2006) [one year suspension] and determined that those cases were not as egregious as the Glueck matter. In Elster, there were four complaints against the attorney. In one case, he was retained to represent clients in an immigration matter, failed to file a notice of appearance, appear at a hearing and failed to accomplish any meaningful work for the client. In the second case, he provided a misleading business card to another client who he failed to competently represent, and ultimately abandoned the client; In another case, he represented a client

seeking a waiver of deportation that Elster knew or should have known the client was not eligible to receive, and he incompetently represented and abandoned the fourth complainant seeking permanent residency and failed to return that client's INA application fee.

In Abrams, the lawyer was employed to do piecemeal legal work by a paralegal who provided legal services involving immigration work. The paralegal incorrectly advised a married couple to apply for employment visas instead of political asylum and the lawyer failed to adequately communicate with the clients, supervise the paralegal, and use his independent legal judgment in the representation.

As egregious as the misconduct was in Elster and Abrams, the Respondent's misconduct in the instant case is more egregious. Although the Respondent had three complaints made to the Bar as opposed to eight in Glueck, the instant case is at least as egregious as Glueck, if not more so. This case is certainly comparable to Glueck in that Respondent formed a partnership with Kelman, a non-lawyer, operated a separate office location specifically for the business arrangement, provided funding from the legal fees generated at that location to fund the business arrangement, and used Suite 124 leased by FHS for client reception and intake. Fees were collected and deposited by Kelman into a bank account specifically created for the Vista clients and Respondent permitted Kelman to insert the payee

on many of the checks that had been signed by Respondent. Kelman received a percentage of these legal fees. Respondent provided no supervision to Kelman who engaged in activities constituting the unlicensed practice of law; and he provided no supervision or oversight to the two lawyers who were signing pleadings on his behalf. This total lack of supervision and oversight was so extensive that Respondent, although aware he was the attorney on the files, maintained no list of these clients or any records of fees that each client paid. The files that Respondent didn't want remained at Vista while he waited to receive various stipulations for substitution of counsel. This involved many clients whom he did not know and had no list of names, yet these clients continued to pay Respondent legal fees that Respondent then transferred to Kelman. These files were in litigation, and despite knowing his name was on these files, he ignored them, which resulted in serious harm or at least potentially serious harm to the complainants and potentially serious harm to the clients in the other files he abandoned at Vista. Respondent also shared his legal fees with a nonlawyer, which was not a violation found in Glueck. Respondent was retained to try and save these people's homes, and regardless of whether or not he would have been successful in that effort, Respondent failed to even make the effort.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

A. Disbarment for 5 years;

B. Respondent shall pay restitution to William and Caridad McColman in the amount of $7,900.00, and Franz Dorsainvil in the amount of $3,600.00 within sixty (60) days of the entry of the order of the Supreme Court of Florida. Respondent must submit proof of payment of restitution to the Bar's headquarters office in Tallahassee within the time frame for payment of the court's order or recommendation by grievance committee. Respondent shall provide verifiable proof of payment and receipt which shall consist of a copy (front and back) of the negotiated check or a copy of the check and certified return receipt. In the event the client cannot be located after a diligent search, respondent shall execute an affidavit of diligent search and provide same to The Florida Bar and shall pay the full amount of the restitution to the Clients' Security Fund of The Florida Bar.

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

VI. 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: 58

Date admitted to the Bar: July 24, 1984

Aggravating Factors:

I find the following aggravating factors to be applicable pursuant to Standard 9.22 of the Standards For Imposing Lawyer Sanctions and Black Letter Rules.

(b) dishonest or selfish motive;

(c) a pattern of misconduct;

(d) multiple offenses;

(f) submission of false evidence;

(i) Substantial experience in the practice of law;

(j) indifference to making restitution.

Mitigating Factors:

As discussed above, I considered the character evidence presented and that Respondent has no prior discipline, but given the egregious nature of Respondent's misconduct and the numerous rule violations, I do not find these factors should mitigate the recommended sanction.

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

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

Administrative Costs	$1,250.00
Investigative Costs	$2,240.61

Bar Counsel Costs	$1,098.09
Auditor Costs	$2,332.00
Court Reporters' Fees	$16,133.40
Copy Costs	$143.00
TOTAL	**$23,197.10**

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

Dated this 20th day of March, 2018.

/S/ KATHLEEN MCHUGH_____
Honorable Kathleen Mary McHugh, Referee
Broward County Courthouse
201 SE 6th St.
Fort Lauderdale, FL 33301-3303

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