

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. _____
[TFB File Nos. 2009-30,394(07B);
2009-31,340(07B)]

v.

CHARLES A. ESPOSITO,

Respondent.

_____ /

COMPLAINT

The Florida Bar, complainant, files this complaint against Charles A. Esposito, respondent, Attorney No. 968803, pursuant to the Rules Regulating The Florida Bar and alleges:

1. The respondent, Charles A. Esposito, was and still is, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating The Florida Bar.
2. Respondent practiced law in St. Johns County, Florida, at all times material.
3. On January 22, 2010, the Seventh Judicial Circuit Grievance Committee "B" found probable cause in The Florida Bar File No. 2009-30,394(07B) and on December 10, 2010 found probable cause in The Florida Bar

File No. 2009-31,340(07B) to file this complaint pursuant to R. Regulating Fla. Bar 3-7.4, and this complaint has been approved by the Chair of that committee.

COUNT I
[The Florida Bar File No. 2009-30,394(07B)]

The Florida Bar realleges paragraphs 1 through 3 as if set forth fully herein and further alleges:

4. Joseph R. Rusin hired respondent in or around December 2007 to represent him in post-dissolution of marriage matters.

5. At the time Mr. Rusin consulted with respondent, contempt of court charges were pending against him for failing to pay his former wife's attorney's fees, the parenting coordinator's fees and various motions Mr. Rusin filed *pro se* also were pending.

6. Mr. Rusin advised respondent that he wanted representation on the pending contempt of court charges, a downward modification of his child support obligations, reinstatement of shared parental responsibility and/or a change of custody, and resolution of the fees Mr. Rusin owed the parenting coordinator and his former wife's attorney. During the representation, Mr. Rusin raised additional issues that he expected respondent to handle.

7. Respondent failed to clearly delineate in writing or otherwise the precise issues he was willing to handle for Mr. Rusin and failed to clearly and

timely advise Mr. Rusin whether he was willing to handle the additional matters that Mr. Rusin later wanted addressed.

8. Respondent agreed to accept a \$5,000.00 retainer for the post-dissolution matter, which Mr. Rusin paid. The respondent agreed to file an appeal regarding child custody, at which time Mr. Rusin would pay an additional \$5,000.00. Mr. Rusin was particularly concerned about appealing the court's determination awarding sole custody to his former wife. Respondent never filed an appeal for Mr. Rusin. Therefore, Mr. Rusin never paid him the additional \$5,000.00.

9. Respondent appeared late for the hearing on January 16, 2008 on the former wife's motion for contempt and enforcement, the initial subject of the representation. As a result, the hearing could not be completed that day and was continued to February 19, 2008. Respondent had no reasonable excuse for his tardiness.

10. Because respondent had to attend a second hearing, Mr. Rusin incurred additional attorney's fees that might have been unnecessary had respondent arrived timely for the January 16, 2008 hearing.

11. On May 8, 2008, Mr. Rusin sent an electronic mail message to respondent requesting that witness subpoenas be served timely for the hearing scheduled for May 30, 2008. Mr. Rusin was concerned about the timely service of

the subpoenas because subpoenas had not been timely served for the April 2008 hearing that respondent had cancelled due to a death in his family.

12. Respondent did not advise Mr. Rusin that he needed to pay additional costs to cover the service of the witness subpoenas until May 21, 2008 when respondent sent an electronic mail message to Mr. Rusin telling him no subpoenas had been prepared for the May 30, 2008 hearing.

13. By check dated May 20, 2008, Mr. Rusin paid respondent \$500.00 for "court costs/Atty Fee."

14. Respondent did not serve any witness subpoenas for the May 30, 2008 hearing despite receiving \$500.00 for court costs/attorneys fees.

15. On May 14, 2008, respondent served a motion to withdraw from Mr. Rusin's case presumably due to Mr. Rusin's "failure to meet his financial and contractual obligations" and due to Mr. Rusin's filing *pro se* documents in the case.

16. Although Mr. Rusin filed *pro se* documents in the case while respondent was representing him, he ceased doing so after being advised by respondent that such filings were improper.

17. Respondent did not provide Mr. Rusin with a copy of the motion for permission to withdraw and did not advise Mr. Rusin of its filing until May 21, 2008, nine days before the scheduled May 30, 2008 hearing.

18. On May 21, 2008, respondent advised Mr. Rusin that he needed to pay additional money toward his outstanding fee balance as soon as possible or respondent would proceed to have his motion to withdraw heard on May 27, 2008.

19. Mr. Rusin paid respondent an additional \$500.00 on or about May 27, 2008, and respondent withdrew his pending motion.

20. Shortly thereafter, during a meeting with attorney Tania Schmidt-Alpers on an unrelated matter, respondent took a telephone call from Mr. Rusin regarding settlement negotiations. Respondent failed to ensure Ms. Schmidt-Alpers was unable to hear his confidential communication with Mr. Rusin.

21. On May 28, 2008, respondent conveyed to Mr. Rusin by electronic mail message a settlement offer to resolve all of the outstanding issues. Pursuant to the offer, Mr. Rusin was required to pay his former wife \$25,000.00. On that same day, Mr. Rusin advised respondent that he did not have the ability to pay this amount.

22. Respondent advised the former wife's attorney that Mr. Rusin had agreed to a settlement of the issues that were to be heard at the May 30, 2008 hearing.

23. Respondent failed to appear at the hearing on May 30, 2008. Respondent did not advise Mr. Rusin, opposing counsel or the court that he would

not appear at the hearing. Mr. Rusin appeared at the hearing expecting that respondent would call his witnesses.

24. Mr. Rusin advised the court and the former wife's attorney that he was unaware of respondent's acceptance of a settlement offer. As a result, the court allowed Mr. Rusin to telephonically confer with respondent for approximately 30 minutes.

25. After conferring with respondent by telephone, Mr. Rusin advised the court he was agreeable to a settlement wherein he would pay his former wife \$12,000.00 on or before August 1, 2008. This resolved all outstanding issues between Mr. Rusin and his former wife except the division of his pension. At the time of the May 30, 2008 hearing, Mr. Rusin had paid respondent \$6,000.00 for the representation.

26. After resolution of some of the issues before the court at the May 30, 2008 hearing, Mr. Rusin sent communication to respondent on a regular basis concerning additional matters he wanted resolved.

27. During the time respondent represented Mr. Rusin, he failed to maintain adequate communication with Mr. Rusin. For example, Mr. Rusin sent respondent two electronic mail communications on May 8, 2008, and one on May 15, 2008, seeking respondent's input and wanting to schedule a meeting prior

to the hearing scheduled for May 30, 2008. Respondent did not respond to these communications.

28. On May 28, 2008, Mr. Rusin sent respondent an electronic mail message requesting that respondent file a motion to have his former wife and her attorney held in contempt of court. Respondent did not respond nor did he advise Mr. Rusin why he would not take such action.

29. On June 8, 2008, Mr. Rusin sent respondent an electronic mail message asking respondent whether he could obtain a hearing on the pension valuation matter or whether the pension valuation was statutorily determined or whether the court had discretion in the matter. After not hearing from respondent, Mr. Rusin sent him a second electronic mail message on June 10, 2008, again inquiring as to what was next regarding the pension valuation matter. Respondent did not respond to Mr. Rusin's questions nor did respondent take any action on Mr. Rusin's behalf to resolve the matter.

30. Mr. Rusin sent respondent electronic mail messages on June 21, 2008, July 1, 2008, July 2, 2008, and two on July 6, 2008, seeking respondent's advice. Respondent did not respond to these communications nor did he clarify with Mr. Rusin that the subject of these communications constituted new representation that required a new fee contract and payment of an additional fee.

31. Thereafter, Mr. Rusin advised respondent he was experiencing ongoing issues concerning communication with his two minor children and visitation.

32. Respondent failed to clearly advise Mr. Rusin that respondent considered his legal services completed and the representation to be at an end at the conclusion of the May 30, 2008 proceeding.

33. Respondent entered into a second contract for representation on July 24, 2008 and Mr. Rusin paid him \$1,000.00 toward a \$3,000.00 fee to handle the issues of custody and child support modification. Mr. Rusin informed respondent that he was desirous of actively pursuing a change of venue to St. Johns County because his former wife recently had relocated to that county. He expected respondent to take action on his behalf to meet these objectives.

34. Mr. Rusin advised respondent that time was of the essence in resolving these matters because he anticipated being transferred out of state in connection with his employment within the next year.

35. Mr. Rusin sent respondent two electronic mail messages on July 28, 2008 and July 30, 2008 asking respondent various questions. Respondent replied on August 6, 2008 advising Mr. Rusin to schedule a short teleconference to discuss the matters.

36. Although Mr. Rusin scheduled the teleconference as instructed by respondent, respondent was not available for the teleconference nor did respondent call Mr. Rusin or schedule another teleconference. Mr. Rusin's questions went unanswered.

37. Respondent's last communication with Mr. Rusin was an electronic mail message of August 12, 2008, where he advised Mr. Rusin that he was working on the case and would contact him later that same day.

38. Between August 13, 2008 and September 21, 2008, Mr. Rusin sent three electronic mail messages, one letter and made repeated telephone calls to respondent requesting status updates, complaining about the lack of communication, and asking for an itemized billing without any response. After not hearing from respondent, on September 22, 2008, Mr. Rusin terminated respondent's services, demanded an itemized bill, and filed his grievance with The Florida Bar in this matter.

40. In January 2008, respondent received a settlement offer from the former wife's attorney. Respondent failed to convey the settlement offer to Mr. Rusin.

41. Mr. Rusin questioned respondent on May 21, 2008 and again on May 28, 2008 after learning that opposing counsel had conveyed a settlement offer to respondent on or about January 22, 2008. Respondent misrepresented to Mr.

Rusin that opposing counsel did not convey the settlement offer until May 27, 2008.

42. After being paid a total of \$6,000.00, respondent failed to seek a downward modification of Mr. Rusin's child support obligations and to seek shared parental responsibility and/or change of custody or to otherwise explain his reasons for not taking such actions. He settled the attorneys' fee and parenting coordinator's fee issues but did not resolve the valuation of pension issue. Respondent filed only two documents in Mr. Rusin's case, a notice of appearance on December 28, 2007, and a list of exhibits and witnesses on April 28, 2008.

43. Respondent failed to file an appeal of the final judgment of dissolution of marriage with respect to awarding the former wife sole custody and failed to timely and clearly advise Mr. Rusin that, after resolution of many of the outstanding matters in May 2008, there no longer was a basis for an appeal or that the time period for filing such an appeal had run.

44. Between July 24, 2008 and October 24, 2008, respondent communicated with Mr. Rusin only four times and none of respondent's communications were responsive to Mr. Rusin's numerous status inquiries.

45. Respondent did not file any documents seeking to pursue Mr. Rusin's objectives concerning seeking a change of custody or shared parental responsibility, a downward reduction in child support, or a change of venue.

46. Respondent failed to provide Mr. Rusin with a timely accounting of his fees despite Mr. Rusin's repeated requests for such an accounting and for a full refund of the fee he had paid. Respondent did not refund any of the unearned fee.

47. Respondent advised The Florida Bar in his October 22, 2009 response to Mr. Rusin's grievance that he ceased working on Mr. Rusin's case after August 12, 2008 because Mr. Rusin had terminated his services. In fact, Mr. Rusin did not terminate respondent's services until in or around September 2008.

48. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar:

a. 4 1.3 A lawyer shall act with reasonable diligence and promptness in representing a client

b. 4-1.4(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

c. 4-1.4(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

d. 4-1.6(a) A lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d), unless the client gives informed consent.

e. 4-1.16(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.

f. 4-8.1(a) An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not knowingly make a false statement of material fact.

g. 4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover

investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule.

h. 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, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

COUNT II
[The Florida Bar File No. 2009-31,340(07B)]

The Florida Bar realleges paragraphs 1 through 3 as if set forth fully herein and further alleges:

49. Tom and Maureen Dore hired respondent on or about October 31, 2007 to represent them in defending an action to foreclose a subcontractor's lien and to seek redress against the general contractor who failed to pay the subcontractor who filed the lien.

50. In or around 2006, the Dores, who resided in St. Lucie County, Florida, contracted with Tide Way Homes, Inc. (hereinafter referred to as "Tide

Way Homes”) to build a new home in Putnam County, Florida. In or around November 2006, Tide Way Homes contracted with Masco Contractor Services Central, Inc. to build cabinetry for the home. After Tide Way Homes failed to pay for the services rendered, Builder Services Group, Inc. (f/k/a Masco Contractor Services Central, Inc.) (hereinafter referred to as the “subcontractor”) filed a construction lien on or about February 16, 2007, in the amount of \$3,130.00 and on or about April 9, 2007, filed action in Putnam County to foreclose its lien against the Dores.

51. Initially the Dores were represented by Michael Chiumento, whose law firm also represented Tide Way Homes. Ultimately, the Dores decided to hire respondent.

52. On or about October 31, 2007, the Dores paid respondent a nonrefundable fee of \$7,500.00 to bring a claim against Tide Way Homes and to defend them in the litigation by the subcontractors.

53. Respondent did not discuss with the Dores the wisdom of paying legal fees that were more than double what was owed on the subcontractor’s lien or the fact that they did not have a legally valid defense to the subcontractor’s lien and that they should weigh the benefit versus the cost of suing the general contractor.

54. Rather than attempting to negotiate with the subcontractor for a quick settlement of the relatively small lien, respondent chose to litigate the lien case,

knowing his clients could not prevail, and to add the general contractor as a third party defendant.

55. Throughout the representation, respondent failed to maintain adequate communication with the Dores.

56. Respondent attended a hearing on November 13, 2007, on behalf of the Dores. At that time, he advised the court he had not yet received from prior counsel the exhibits to the Complaint. The court directed respondent to review the court file and obtain the copies of the exhibits from it.

57. Respondent failed to obtain the exhibits from the court file and, on or about December 3, 2007, filed the Dores' answer and affirmative defenses in which respondent alleged, as an affirmative defense, that the Dores had not received the exhibits attached to the Complaint.

58. On December 7, 2007, opposing counsel wrote respondent, enclosing the exhibits to the Complaint and advising that he expected respondent now would serve an amended answer without the frivolous assertion that he did not have the exhibits.

59. Respondent did not amend his answer and affirmative defenses to exclude the assertion that he did not have the exhibits.

60. After respondent did not amend his answer and affirmative defenses, opposing counsel filed a motion for extension of time to respond to the affirmative

defenses on or about December 26, 2007, in which he noted that nearly one month after being advised by the court that he could obtain copies of the exhibits from the court file, respondent filed his answer with a frivolous affirmative defense that he did not have the exhibits to the Complaint. Opposing counsel further stated that he had provided respondent with the exhibits by letter dated December 7, 2007, and had asked respondent to amend his answer without this frivolous affirmative defense. Opposing counsel requested that the court sanction respondent pursuant to Fla. Stat. §57.105.

61. On or about January 2, 2008, opposing counsel served a motion to strike two of The Dores' affirmative defenses pursuant to Fla. R. Civ. P. 1.140(b) for failure to plead legally cognizable affirmative defenses.

62. On January 8, 2008, respondent advised his paralegal, but not the Dores, that he was not concerned with the outcome of the subcontractor's lien foreclosure case and that he believed the subcontractor would prevail. Respondent advised that the main focus needed to be on Tide Way Homes because it had been paid by the bank from the proceeds of the construction loan for work completed and then failed to pay the subcontractor as required. Respondent believed that once he filed the suit against Tide Way Homes, its law firm would settle the claim because the Dores had a bona fide threat against the law firm for an ethics breach with respect to the conflict of interest.

63. On or about February 11, 2008, the court entered an order granting opposing counsel's motion to strike the Dore's affirmative defenses.

64. On or about February 28, 2008, respondent moved to file and serve a Complaint on a third party defendant, Tide Way Homes, which the court granted. Respondent alleged in his Complaint against Tide Way Homes that the general contractor breached its contract with the Dore's by failing to convey clear title to the property, breached the provisions of the warranty deed by failing to pay the subcontractor resulting in the imposition of a claim of lien, and engaged in fraud by stating in an affidavit that it had paid or made arrangements to pay the subcontractor.

65. At the time he filed the third party Complaint against Tide Way Homes, respondent made no inquiries of counsel representing Tide Way Homes nor did he conduct any discovery thereafter to verify that the funds originally intended to pay the subcontractor still were being held in escrow by or for Tide Way Homes or that Tide Way Homes had the ability to pay a judgment should his clients be successful with the third party complaint.

66. On March 27, 2008, Mrs. Dore sent respondent an electronic mail message requesting a status update and inquiring as to "how much the settlement was for" with respect to the subcontractor's claim and how much money respondent was seeking in the third party suit against Tide Way Homes. Mrs. Dore

also inquired as to whether Mr. Chiumento, the attorney acting as escrow agent for Tide Way Homes, had released any of the escrowed funds he allegedly had on deposit.

67. Respondent advised Mrs. Dore, for the first time, by electronic mail message dated March 31, 2008, that the Dores soon would have a summary judgment entered against them in the case brought by the subcontractor. Respondent further advised her that Tide Way Homes might suffer a default in the near future if it failed to file its answer to the third party Complaint. Respondent advised Mrs. Dore that he delayed conclusion of the subcontractor's claim as long as he could but was hopeful that his plan to obtain reimbursement from Tide Way Homes would be successful in the near future.

68. Mrs. Dore responded by electronic mail message dated March 31, 2008 expressing dismay at respondent's statement that they could not prevail against the subcontractor's claim and asked respondent whether or not they ever "stood a chance" to have prevailed. Mrs. Dore asked respondent whether a summary judgment would be worse than if the Dores had not followed respondent's advice in delaying the conclusion of the suit against them and had paid the lien instead. She inquired as to whether it now would cost them more money if a summary judgment was entered against them.

69. Respondent e-mailed Mrs. Dore on April 1, 2008 and advised her that settling the suit by the subcontractor would not have been of any benefit because the case needed to remain pending in order for respondent to file the third party claim against Tide Way Homes. Respondent advised Mrs. Dore that, if Tide Way Homes defaulted, he would be able to file for entry of a summary judgment against it.

70. Respondent did not advise the Dores concerning what additional fees and costs they might incur if Tide Way Homes did not default, or, if he successfully obtained a judgment against it, what the fees and costs associated with collecting on the judgment might total or even of the likelihood of collecting on a judgment against Tide Way Homes.

71. On or about April 1, 2008, the court entered a final summary judgment of foreclosure of the construction lien against the Dores in favor of the subcontractor in the amount of \$3,859.29 plus attorney's fees and costs to be determined and with interest to run from the date of the summary judgment. The court reserved jurisdiction to set a sale date for the property.

72. On or about April 3, 2008, a clerk's default was entered against Tide Way Homes.

73. On or about April 4, 2008, counsel for Tide Way Homes filed his notice of appearance and a motion to dismiss respondent's third party Complaint

based on the arbitration clause contained in the Dores' contract with Tide Way Homes.

74. Respondent did not attempt to negotiate a settlement of the claim against Tide Way Homes.

75. Respondent's first attempt to communicate with the Dores since their initial consultation was not until April 4, 2008 when he attempted to call them. Between April 4, 2008 and April 23, 2008, respondent attempted to call the Dores three times. Respondent was not successful in contacting the Dores.

76. On May 12, 2008, respondent wrote the Dores concerning the entry of the summary final judgment against them in favor of the subcontractor. For the first time, respondent advised the Dores they needed to pay the subcontractor's summary judgment amount in order to avoid foreclosure of the lien. Respondent further advised that, because he had been unable to contact them by telephone, he assumed they no longer wanted him to represent them in their third party claim against Tide Way Homes. This was the first letter respondent wrote to the Dores since undertaking their case.

77. Upon receipt of respondent's letter of May 12, 2008, the Dores called respondent and left a message inquiring as to the amount they needed to pay in order to fully satisfy the judgment because they were uncertain as to what the

attorney's fees, costs and interest totaled. Respondent failed to respond to their message. As a result, the Dores did not pay the judgment at that time.

78. On or about May 12, 2008, respondent served his motion for leave to withdraw alleging the Dores had failed to meet their contractual obligations with respondent because of their failure to respond to numerous requests to contact respondent since on or about April 4, 2008. In fact, respondent's "numerous attempts" to contact the Dores consisted of three telephone calls and letter dated May 12, 2008.

79. On or about May 14, 2008, the court entered an order granting respondent's motion for leave to withdraw.

80. On or about May 14, 2008, respondent served a motion to vacate the order granting his motion for leave to withdraw, which the court granted on May 23, 2008.

81. Respondent did not immediately advise the Dores that the court had, at his request, vacated his motion for permission to withdraw from their case and that he still was representing them.

82. On or about June 17, 2008, the Dores wrote respondent requesting a full refund of the \$7,500.00 fee by June 24, 2008. When respondent did not respond or refund the fee, they wrote respondent a second time on June 30, 2008, again requesting a full refund by July 4, 2008. When respondent again failed to

respond or refund the fee, the Dores wrote respondent a third time on July 11, 2008 expressing their belief that respondent no longer was representing them. They advised respondent that, as a result, they believed they were due a refund of the fee they had paid and did not understand respondent's refusal to communicate with them.

83. In or around August 2008, respondent spoke to Mrs. Dore concerning a settlement offer to resolve the outstanding judgment in favor of the subcontractor. Mrs. Dore advised respondent that she and her husband were willing to pay \$3,039.00, the original amount of the lien, and to pay attorney's fees in the amount of \$3,000.00.

84. On or about September 5, 2008, respondent served a notice of hearing setting Tide Way Home's motion to dismiss the Dores' third party Complaint against it for hearing on September 10, 2008.

85. The Dores did not receive the notice of hearing in the mail from respondent until after the time for the hearing on September 10, 2008. Respondent did not include any communication regarding whether or not he intended to represent them at the hearing.

86. Respondent attended the September 10, 2008 hearing on behalf of the Dores and argued that the arbitration clause was not enforceable because it required the Dores use an arbitrator that had no registered agent in Florida, that

was not recognized by a reputable arbitration group, and that had been shown in other civil cases to be disreputable. The court granted opposing counsel time to research whether the arbitration clause was ineffective due to respondent's points and to file a memorandum of law supporting why the motion to dismiss the third party Complaint should not be denied.

87. Respondent did not advise the Dore as to the outcome of the September 10, 2009 hearing.

88. Opposing counsel did not file a memorandum in support of the motion to dismiss the third party Complaint. Respondent did not pursue the matter further.

89. On or about September 22, 2008, after not hearing from respondent regarding the settlement offer or the outcome of the September 10, 2008 hearing, Mrs. Dore sent respondent an electronic mail message reiterating their desire to make the settlement offer to the subcontractor that she had discussed with respondent in August 2008 and asked respondent advise them as to whether the subcontractor would accept the offer.

90. After not hearing from respondent, Mrs. Dore telephoned his office and left a message in or around late October 2008. When respondent failed to respond to her telephone call, she sent him an electronic mail message on October 24, 2008, again inquiring as to whether respondent had presented their settlement offer to the subcontractor and, if so, what was the outcome.

91. Respondent failed to respond to the Dores' repeated inquiries and failed to convey the settlement offer to the subcontractor.

92. After hearing nothing further from respondent, the Dores wrote respondent on or about December 3, 2008 terminating his services effective December 9, 2008. The Dores again requested a full refund of the fee paid and all of their files.

93. On or about January 14, 2009, respondent served his motion for leave to withdraw which the court granted on January 21, 2009.

94. On or about January 14, 2009, opposing counsel for the subcontractor served on respondent, as counsel for the Dores, his motion for entry of final judgment of foreclosure liquidating attorney's fees and costs and to schedule a judicial sale. Opposing counsel set his motion for hearing on February 18, 2009.

95. On February 20, 2009, the court entered the final judgment of foreclosure in the amount of \$11,502.50 and set the sale for April 20, 2009.

96. In or around April 2009, the Dores settled the subcontractor's claim themselves prior to the sale date for an approximate total of \$16,000.00. Between respondent's fee of \$7,500.00 and the amount paid to settle the final judgment foreclosing the subcontractor's lien, the Dores paid approximately \$23,500.00 to resolve a \$3,130.00 lien.

97. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar:

a. 4-1.1 A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

b. 4-1.3 A lawyer shall act with reasonable diligence and promptness in representing a client.

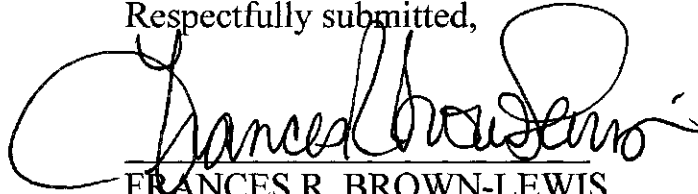
c. 4-1.4(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

d. 4-1.4(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

e. 4-1.16(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.

Respectfully submitted,



FRANCES R. BROWN-LEWIS

Bar Counsel

The Florida Bar

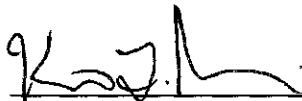
1000 Legion Place

Suite 1625

Orlando, Florida 32801-1050

(407) 425-5424

Attorney No. 503452



KENNETH LAWRENCE MARVIN

Staff Counsel

The Florida Bar

651 East Jefferson Street

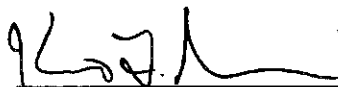
Tallahassee, Florida 32399-2300

(850) 561-5600

Attorney No. 200999

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served the original of the foregoing Complaint to the Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing, by certified mail No. 7160 3901 9843 2748 8615, return receipt requested, on counsel for respondent, D. Gray Thomas, at 215 Washington Street, Jacksonville, Florida, 32202; and a copy of the foregoing by first-class mail to Bar Counsel, The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050, on this 29th day of April, 2011.



KENNETH LAWRENCE MARVIN
Staff Counsel

NOTICE OF TRIAL COUNSEL

PLEASE TAKE NOTICE that the trial counsel in this matter is Frances R. Brown-Lewis, Bar Counsel, whose address and telephone number are 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050, (407) 425-5424. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES OF DISCIPLINE, EFFECTIVE MAY 20, 2004, PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.