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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MARIA ELENA PEREZ,

Respondent.

_____/

Supreme Court Case
No. SC-

The Florida Bar File
Nos. 2013-70,658 (11K), 2013-70,671 (11K) and 2013-70,691 (11K)

COMPLAINT OF THE FLORIDA BAR

THE FLORIDA BAR, Complainant, files this Complaint against MARIA ELENA PEREZ, Respondent, pursuant to Chapter 3 of the Rules Regulating The Florida Bar and alleges the following:

1. Respondent is, and was at all times material herein, a member of The Florida Bar and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. Prior to the filing of this Complaint, there has been a finding of probable cause by a Grievance Committee, as required by Rule 3-7.4(1) of the Rules Regulating The Florida Bar. The Chair of the Grievance Committee has approved the instant Complaint.

As to The Florida Bar File Nos.
2013-70,658(11K) and
2013-70,691(11K)

3. Nevin Shapiro ("Shapiro"), a Miami businessman and supporter of the University of Miami football program who was later convicted of running an illegal ponzi scheme, gave money and/or benefits to student athletes and coaches in violation of the National Collegiate Athletic Association ("NCAA") Rules, which regulate college sports.

4. While in prison serving his twenty (20) year sentence for the ponzi scheme, Shapiro contacted the NCAA to inform them of the NCAA Rule violations in order to seek some form of retribution against the University of Miami football program and others whom he believed had hurt him by abandoning him when he was imprisoned.

5. At the time Shapiro contacted the NCAA, he was represented by Respondent in criminal court. Respondent had been retained by Shapiro in May 2010 to represent him in his criminal case, as well as in an action that had been filed against him by the Securities and Exchange Commission ("SEC") in Federal District Court for the Southern District of Florida.

6. Sean Allen ("Allen") was a student at the University of Miami from 2001-2005. During that time, he also worked as an assistant equipment manager

for the University's football program. Sometime in 2002, Allen met Shapiro through his involvement with the football program.

7. Allen maintained a basic connection with Shapiro following his college graduation, and from 2008-09, when Shapiro's criminal enterprise was ongoing, Allen accepted employment as Shapiro's personal assistant. During that time, Allen was aware and did witness NCAA violations between Shapiro and football players at the University of Miami.

8. Allen and Shapiro's relationship soured just before Shapiro was arrested, and Allen eventually stopped working for Shapiro. In August 2010, Allen was notified in advance that writers at Yahoo! Sports would be breaking a major news story outlining Shapiro's gifts to University of Miami players in violation of NCAA Rules.

9. Allen was asked by his superiors at the University of Miami, where he still worked on a part-time basis, to sit in for an interview with an investigator for the NCAA. Allen subsequently admitted that he had not been truthful or forthcoming during the interview, as he felt scared.

10. Sometime thereafter, in December 2011, a process server attempted to serve Allen for a deposition relative to Shapiro's personal and corporate bankruptcy action. Allen's friend and mentor, attorney Devang Desai ("Desai"), agreed to help Allen and accepted service on his behalf.

11. Prior to the deposition, Desai had several communications with Respondent, the attorney who had noticed the deposition. In those conversations, confirmed in writing, Desai specifically asked who was to attend the deposition, and asked for clarification on the subject matter of the deposition. Respondent explained that she would be the only participant, and that the deposition would be in reference to financial matters of Shapiro.

12. Despite Respondent's representations, when Allen and Desai appeared for the deposition, an NCAA investigator, Ameen Najjar ("Najjar"), was present in the room. Allen immediately recognized Najjar as an investigator with the NCAA. When Desai inquired about Najjar's presence, Respondent indicated that he was just leaving.

13. During his deposition, Allen was truthful and forthcoming, and he provided Respondent with full access to his personal financial information. The later part of the deposition was dedicated to identifying people, including University of Miami players, in pictures with Shapiro at night clubs, parties, etc. Allen also provided testimony about cash gifts given by Shapiro to various players.

14. Allen did not discover that Respondent was working with the NCAA until January 2013, when the NCAA first announced it was hiring a law firm to perform an external audit of its investigation of the University of Miami due to the NCAA's involvement with Respondent in connection with said investigation.

15. Respondent had initially been placed in contact with NCAA investigators, Rich Johanningmeier ("Johanningmeier") and Najjar sometime between March 2011 and May 2011, a period of time when Shapiro was in regular contact with the NCAA and provided hundreds of documents purportedly related to the allegations that he had provided improper benefits to University of Miami athletes and coaches.

16. Respondent had access to Shapiro and his family, and Shapiro directed her to assist by forwarding documents from the bankruptcy proceeding to the NCAA. It was also during this period of time that Respondent first offered her legal services to the NCAA. Specifically, Respondent offered to summarize the NCAA-specific allegations from certain FBI 302 Reports, which had been prepared by the FBI during various interviews taken of Shapiro, at a cost of $575 per hour. Respondent further offered to provide a formal retainer agreement for this service. The NCAA declined the offer and no retainer or formal agreement on this issue was entered into at the time.

17. In September 2011, the NCAA investigation was ongoing and NCAA investigators continued to speak with Shapiro. It was in that context that Respondent and Shapiro first discussed with Najjar the possibility that Respondent could use certain procedures of the bankruptcy process to conduct sworn depositions of certain witnesses, including Allen and Michael Huyghue

("Huyghue"), the owner of a sports talent agency in which Shapiro had previously acquired a minor interest. The NCAA had never asked to interview Huyghue, and technically, none of the witnesses discussed had any formal responsibility to respond to the NCAA's requests for information.

18. During this time, the payments by Shapiro's family for Respondent's representation had tapered off. Consequently, Respondent and Shapiro sought numerous ways to finance the depositions Shapiro wanted to take.

19. Shapiro and Najjar had various conversations on how to corroborate Shapiro's allegations. Thus, with the support of her client, Respondent proposed to her client and the NCAA that she would take the "Rule 2004" depositions of witnesses in the bankruptcy proceeding, if the NCAA would pay for it.

20. On September 28, 2011, Najjar e-mailed his direct supervisors, Julie Roe Lach ("Lach") and Tom Hosty ("Hosty"), an introduction of Respondent's proposition, explaining that she intended to depose certain individuals and that the NCAA would be able to submit questions and attend. Najjar subsequently requested that Respondent reduce her proposal to writing.

21. In response to Najjar's request, Respondent offered two (2) written proposals. The first proposal was to pay Respondent for her work in obtaining documents from her client and providing same to the NCAA. Respondent's offer included gathering voluminous financial records and providing summaries of the

FBI 302 Reports, at a cost of $250 per hour for twenty and a half (20.5) hours of work, plus costs. The total cost for the first proposal was in the amount of $5,510.74. Notably, some of the work proposed in this proposal had already been performed and some of the documents had already been produced.

22. In her second proposal, Respondent outlined the costs and fees associated with setting nine (9) depositions in the bankruptcy action on behalf of the NCAA. Respondent outlined her hourly fees for approximately twenty-five (25) hours of attorney time at a rate of $250 per hour, as well as approximately thirty (30) hours of paralegal time at a rate of $80 per hour. The total cost for the second proposal was in the amount of $14,420.00. *(A copy of Respondent's two (2) written proposals to the NCAA is attached hereto and incorporated herein as Composite Exhibit "A").*

23. On October 10, 2011, Najjar made a formal presentation of Respondent's proposal to Lach and Hosty. Najjar specifically proposed to his supervisors at the NCAA that Respondent would bill for her "fees and costs" for taking nine (9) depositions on behalf of the NCAA. Lach then forwarded the proposal to Jim Isch ("Isch"), the NCAA's Chief Operating Officer, to request funding. Isch felt the University of Miami investigation was important enough to set aside a budget of about $15,000 for a potential expenditure of funds.

24. On October 11, 2011, based on the NCAA "Cooperation Principle", which requires the NCAA and the University of Miami to share information during the course of the investigation, Najjar corresponded with the University regarding the possibility of depositions in Shapiro's bankruptcy, but did not disclose the NCAA's relationship to Respondent. In response, the University of Miami raised numerous concerns regarding the propriety of the proposed situation as it related to the NCAA investigation.

25. Rather than brining these concerns to his supervisors, Najjar chose to personally ask Respondent about her "legal authority" to take the depositions. In response, Respondent wrote a letter to Najjar and Johanningmeier, where she explained her authority by quoting the Florida Rules of Civil Procedure and providing blank "Rule 2004" Forms and Subpoenas. In her letter, dated October 12, 2011, Respondent further advised that the "FBI 302 summaries were ready" and could be provided to the NCAA after approval of her "legal fee and costs proposal" forwarded the previous week.

26. On October 13, 2011, after confirming availability of a budget for both of Respondent's proposals, Lach contacted Naima Stevenson, Esq. ("Stevenson"), a member of the NCAA's in-house legal staff, for final approval. Stevenson's reply was immediate and noted several issues with the proposal, including what was clearly outlined as an ethical problem in hiring Respondent.

Stevenson unequivocally concluded that it would be impermissible to retain Respondent.

27. On October 20, 2011, Respondent, who was not privy to the correspondence from the NCAA Legal Department to Najjar, corrected her earlier and faulty explanation to Najjar that she would need to apply for "Pro Hac Vice" appearance in Bankruptcy Court. Respondent further confirmed that she was already registered for the October 28, 2011 ECF/ECM training session, which she was required to take in order to obtain access to file pleadings using the Bankruptcy Court's online ECF system. While acknowledging that she did not yet know whether she would be hired by the NCAA, Respondent was concerned that she would miss a December 2011 deadline to notice the "Rule 2004" depositions unless she started to obtain her credentials to be able to utilize the ECF system.

28. On October 25, 2011, at an internal meeting between Najjar and Stevenson, Stevenson reiterated that the NCAA could not hire outside counsel and that the actions proposed by Respondent would be problematic for the NCAA. Nevertheless, Stevenson did indicate that, if Respondent intended to go forward with the depositions anyway, as she consistently represented, the NCAA would pay for the costs of the transcripts and would attend if the depositions were open to the public, as Respondent had also continuously represented.

29. On October 25, 2011, Najjar sent a telling text message to Respondent, which stated: "I ran into a problem with our legal dept concerning 'retaining' you but there is a way around it. I will call you tomorrow morning". Without inquiring further as to what the problem might be, Respondent simply replied: "Ok". *(A copy of Najjar's October 25, 2011 text message and Respondent's reply is attached hereto and incorporated herein as Exhibit "B").*

30. According to the Report prepared by the firm hired to conduct the NCAA's external audit, "the Cadwalader Report", Najjar told the investigators that he explained to Respondent the NCAA would only pay for costs and expenses of the depositions, but would not pay Respondent for her billable hours. Respondent initially followed this dictate, only billing for "costs" and not "attorney's fees".

31. On October 27, 2011, Najjar requested that Respondent provide her tax ID information for the NCAA to provide payment to the Law Offices of Maria Elena Perez. Thereafter, on November 22, 2011, in response to Respondent's request for confirmation that everything was approved, Najjar responded by text message that "[p]ayment was approved and a check should be on the way".

32. On November 29, 2011, Najjar requested that Respondent provide her bank account information for direct wire transfers from the NCAA. A day later, on November 30, 2011, a wire transfer in the amount of $5,510.74, the exact amount of the first proposal, was paid to Respondent.

33. Apart from her communications with Najjar, Respondent failed to ever confirm the arrangement or scope of her services directly with the NCAA's legal department, or to requested any type of final written authorization from the NCAA.

34. On December 7, 2011, Respondent e-mailed Najjar, indicating that she would be sending documents to the NCAA and confirming the names of the individuals whose depositions she would be taking on behalf of the NCAA, including Shapiro's former bodyguard, Mario Sanchez ("Sanchez"), David Leshner ("Leshner"), another booster, Allen, and Huyghue. Najjar responded that payment had been sent but did not confirm the depositions.

35. Despite not having received final authorization to move forward with the depositions, on or about December 8, 2011, Respondent filed "Rule 2004" Notices of Deposition Ducus Tecum and Subpoenas in the bankruptcy action for Sanchez, Huyghue, Allen, and two other individuals, Craig Currie and Eric Sheppard, who had already sat for a "Rule 2004" deposition.

36. That same day, Respondent again communicated with Najjar via e-mail. While confirming receipt of the documents Respondent had sent, Najjar again failed to provide any confirmation for the list of deponents. Respondent reminded him of the December 12, 2011 deadline in order to serve the witnesses, and further suggested that it would cost $410 to file an adversary proceeding,

which would not be subject to the same deadline. At some point, the NCAA did decline to take the depositions of four (4) University of Miami coaches, as suggested by Respondent.

37. On December 9, 2011, Respondent requested a process server to serve the subpoenas upon Huyghue, Allen and Sanchez. The subpoenas on Allen and Sanchez were not served that day, but the next day, Respondent proceeded to bill the NCAA for the costs of serving the subpoenas ($88.40 and $111.00 for "duplicate service").

38. On December 12, 2011, Desai contacted Respondent to advise that he would accept service on Allen's behalf. In response to Desai's specific inquiry as to who would be present at the deposition, Respondent maintained that she would be the only attendee. Desai, concerned about the University of Miami/NCAA matter as it related to his client, subsequently wrote to Respondent confirming her representations that the deposition "would be conducted by [her] and that no other attorneys or individuals [would] be present". In his correspondence, Desai further confirmed Respondent's representations that the purpose of the deposition would be solely to question Allen about his employment by Shapiro and his company, Capitol Investments USA, Inc. *(A copy of Desai's December 14, 2011 letter to Respondent is attached hereto and incorporated herein as Exhibit "C").*

39. Despite her representations to Desai that she would be the only attendee at Allen's deposition, on December 13, 2011, Respondent wrote Najjar to ask him if he could attend the deposition on December 19, 2011. In her e-mail, Respondent further indicated that she would suggest to Shapiro the filing of an "adversary preliminary complaint" against Sanchez, claiming he was "evading" service by not telling her where he lived. Finally, Respondent asked Najjar whether he had any questions for Allen, but assured him that "Shapiro ha[d] all the questions covered". Najjar confirmed the next day that he, and likely a representative from the University of Miami, would attend the deposition. *(A copy of Respondent's December 13, 2011 e-mail to Najjar is attached hereto and incorporated herein as Exhibit "D").*

40. On December 14, 2011, Respondent sent an e-mail to Najjar where, among other things, she requested confirmation that the NCAA would approve the costs associated with filing an adversary proceeding under Chapter Seven against Sanchez, as well as the costs associated with the filing of an "adversary preliminary complaint" against Huyghue. In her e-mail, Respondent further explained that, "everyone else [they were] concerned with [could] be brought in for deposition in the Luther Campbell matter", referring to an unrelated defamation action that had been filed by Luther Campbell, a former rap star and current news columnist for the Miami New Times, against Shapiro. *Luther Campbell v. Nevin*

Shapiro, Miami-Dade Circuit Court Case No. 11-30137 CA 21. Finally, Respondent inquired whether the NCAA would pay the costs for her to visit Shapiro in jail, including air and hotel.

41. That same day, Najjar replied asking whether it would be possible for a representative for the University to appear at the depositions telephonically, as this might be less intimidating to the witnesses. In his e-mail, Najjar further confirmed that he authorized the costs for filing "preliminary adversary proceedings" against Sanchez, Huyghue, and Leshner, as well as the costs for Respondent to visit Shapiro.

42. On December 18, 2011, the day before Allen's deposition, Najjar provided Respondent with thirty-four (34) questions that the NCAA sought to ask Allen. Respondent replied asking for clarification on a question and inquiring whether Najjar would be present. Up until this point, Respondent had not met Najjar in person.

43. Allen's deposition on December 19, 2011 lasted approximately two and a half (2.5) hours. Despite the fact that Najjar was present at the time Allen and Desai arrived for the deposition, Respondent failed to ever disclose her relationship with the NCAA.

44. Following the deposition, on December 20, 2011, Respondent provided the NCAA with an "invoice and costs to date", attaching receipts for the

service of process, copies of documents, office supplies, and other expenditures. In addition to the receipts, which totaled $2,550.68, Respondent added thirty-six (36) hours of paralegal time at a rate of $80 per hour ($2,880.00). Respondent further advised the NCAA that there would be no charge for the video of the deposition and that the NCAA should "not worry how [she] pulled that [] off".

45. On December 28, 2011, Huyghue appeared with counsel, Mayanne Downs ("Downs"), for his "Rule 2004" Examination in Orlando, Florida. Respondent had previously engaged in various discussions with Downs regarding the deposition, and the parties had agreed that the deposition would take place in Orlando. Counsel for the University of Miami and the Bankruptcy Trustee appeared by telephone, and the court reporter and videographer drove up from Miami, as requested by Respondent. Downs subsequently expressed concern that the deposition did not seem like a typical "Rule 2004" Examination and further noted that the deposition had no relation to the bankruptcy. Instead, most of the questions dealt with simply identifying photographs of University of Miami athletes with Shapiro.

46. On January 3, 2012, Respondent submitted an invoice in the amount of $1,879.50 for the costs associated with Huyghue's deposition, including hotel, meals, and a private driver. Respondent also e-mailed Najjar regarding setting

depositions of Sanchez and Leshner. In her e-mail, Respondent also inquired for the first time about her unpaid invoices to the NCAA.

47. The same day, the court reporter provided Respondent an invoice in the amount of $1,085.25 and provided her with an original and copy of the transcript of Allen's deposition. Respondent forwarded the invoice to the NCAA.

48. On January 4, 2012, an attorney for the University of Miami asked Desai if he had obtained a copy of his client's deposition transcript. Desai expressed concerned that he had not received a copy because his client had not waived the right to read the deposition and he had not received any notification from the court reporter's office that the transcript was ready. According to the court reporter, he had been instructed by Respondent not to release the transcript to the University, or to any parties without her prior authorization.

49. On January 31, 2012, Respondent contacted Najjar regarding sending additional financial records. In her e-mail, Respondent further stated:

> Unfortunately, in lieu of the length of time it has taken your institution to reimburse the undersigned counsel for the costs already incurred with the aforementioned depositions, I will no longer pay for additional costs beyond what I have already paid, and beyond the attached Federal Express invoice … had I known it was going to take this long to be reimbursed by the NCAA, I would have never agreed to assist your institution to the extent that I have … I cannot be financially responsible for the NCAA investigation.

(A copy of Respondent's January 31, 2012 e-mail to Najjar is attached hereto and incorporated herein as Exhibit "E").

50. On February 1, 2012, the NCAA provided Respondent with checks relative to the depositions of Allen and Huyghue. In addition, the NCAA provided Respondent with payment for the court reporter invoice, in the amount of $1,082.25, written to Respondent's operating account. Nevertheless, Respondent failed to use these funds to pay the court reporter, and she acknowledged in the course of The Bar's investigation that the NCAA had paid for the court reporter's invoice, but that she had converted the funds to her own use.

51. On or about February 21, 2012, the Miami Herald released a story containing quotes from Allen's deposition. As of this date, Allen still had not received a copy of the deposition. The University of Miami and the NCAA blamed each other for the leak to the press.

52. Although Respondent initially blamed the University for leaking the transcript, according to the Cadwalader Report, the University did not receive the transcript until after the stories ran in the media, as the court reporter had been specifically instructed by Respondent not to provide it without her approval. Additionally, it was the University that provided Desai with a copy of the transcript.

53. The only person known to have been in possession of the transcript at the time it was provided to the media was Respondent, who had obtained the transcript from the court reporter on January 3, 2012. The court reporter

subsequently confirmed that Respondent had specifically authorized him to release the deposition transcript to the Miami Herald, thus providing full disclosure of Allen's finances, bank account numbers, and other sensitive, personal information.

54. On March 20, 2012, Respondent filed a procedurally incorrect Subpoena Ducus Tecum to Sanchez in the Luther Campbell matter. The Subpoena was not served on opposing counsel, and there was no Notice of Deposition filed on same.

55. Thereafter, on March 24, 2012, Respondent sent direct correspondence to Leshner, despite knowing that he was represented by counsel. Respondent had previously been notified by Leshner's counsel that the subpoenas she had served on him were improper, specifically, that a Florida subpoena to a California resident was invalid. Nevertheless, while acknowledging that he was represented by counsel, in her March 24, 2012 letter Respondent proceeded to provide Leshner with incorrect legal advice, falsely suggesting that he needed to file something in court, which could have potentially compromised his legal rights. *(A copy of Respondent's letter to Leshner is attached hereto and incorporated herein as Exhibit "F").*

56. On April 18, 2012, Campbell's attorney, Michael J. Carney ("Carney"), filed a Motion for Protective Order in the Luther Campbell matter. In his Motion, Carney alleged that Respondent had never provided his office with

Notices of Deposition for Sanchez and Shapiro. Carney further confirmed that, in violation of the Florida Rules of Civil Procedure, Respondent rarely, if ever, served documents she filed in the Luther Campbell matter to his office. According to Carney, Respondent had historically not mailed him documents pursuant to the Certificate of Service, and it was not until his staff checked the docket in the case that the Notices of Deposition were even discovered. *(A copy of Carney's April 18, 2012 Motion for Protective Order filed in the Luther Campbell matter is attached hereto and incorporated herein as Exhibit "G").*

57. Sometime in April-May 2012, the University of Miami investigation at the NCAA was taken over by Stephanie Hannah ("Hannah"), after Najjar and Johanningmeier separated from the NCAA.

58. On June 1, 2012, Respondent filed a Notice of Deposition for Sanchez in the Luther Campbell matter to be taken on July 9, 2012 at 2:30 p.m. A return of service was filed on June 8, 2012. According to Carney, his office was again not served with a copy of the Notice and would have objected to same.

59. On July 9, 2012, the day when he was originally supposed to be deposed, Sanchez met with Respondent at her office for approximately two (2) hours without a court reporter present. Sanchez explained to The Bar that Respondent had previously threatened a lawsuit against him for "everything Mr. Shapiro paid him as an employee" unless he appeared to discuss the NCAA matter.

Sanchez was then told by Respondent that she would meet with him without a court reporter present. Sanchez, who was not represented by counsel, agreed to meet with Respondent.

60. In July 2012, Respondent began communicating with Hannah regarding payment for the services she had provided to the NCAA. Hannah requested that Respondent provide invoices, as well as confirmation that the costs and fees were authorized by the NCAA. Internally, the NCAA was trying to determine whether Respondent had been formally retained, although it was generally known that the NCAA was paying for copies of transcripts and other documents.

61. In response to these communications with Hannah, Respondent provided the following invoices between July and August 2012: (1) $1,153.87 for costs, including a $443.00 fee designated as "Bankruptcy Court Administrative Fee"; (2) $46.00 and $50.00 for service of subpoenas on Sanchez on March 22, 2012 and June 5, 2012; (3) $95, $95, and $50 for service of subpoenas on Leshner on February 24, 2012 and March 24, 2012; (4) $3,675.00 for legal work on July 8-9, 2012 regarding Sanchez' deposition; (5) $1,400.00 for legal work on May 8, 2012 and May 22, 2012 regarding Sanchez' deposition; (6) $175.00 for legal work on April 24, 2012 regarding Sanchez' deposition; (7) $1,750.00 for legal work on March 1, 2012, March 15-16, 2012 and March 24-25, 2012 regarding Leshner's

deposition; and (8) $1,575.00 for legal work on February 22, 2012, February 26, 2012 and February 28, 2012 regarding Leshner's deposition.

62. Respondent billed the NCAA for legal work performed in connection with the Sanchez and Leshner "Rule 2004" depositions, despite the fact that neither deposition was ever actually conducted or authorized by the Bankruptcy Court beyond the December 12, 2011 deadline. Respondent ultimately submitted a total of thirteen (13) billing entries for the Leshner and Sanchez "Rule 2004" depositions, totaling $8,575.00. Moreover, Respondent represented to the NCAA that these actions were being taken as part of the bankruptcy action and she billed the NCAA as though they were, when in fact, the notices and subpoenas for Sanchez, which were signed and issued by Respondent, were actually filed in the Luther Campbell matter, and the notices and subpoenas for Leshner were never filed with any court.

63. On August 20, 2012, Respondent filed a "Subpoena Ducus Tecum For Records" to Buchwald Jewelers in the Luther Campbell matter. The subpoena requested documents relating to purchases made by Shapiro to be produced by October 12, 2012. Respondent failed to file a "Notice of Production to Non-Party" along with the subpoena. In addition, Carney's office was again never notified of the subpoena. Notably, the same documents that were produced by the jeweler in

response to the subpoena had already been produced by Respondent as part of her first proposal to the NCAA.

64. On August 29, 2012, Respondent sent Hannah a lengthy e-mail. Among the numerous misrepresentations made in her e-mail, Respondent suggested that it had been the NCAA that approached her and suggested using the bankruptcy procedures to depose certain witnesses the NCAA was interested in questioning. Respondent's communication reiterated that Shapiro was already interested in conducting the depositions for "due diligence purposes", as well as to obtain additional evidence of the NCAA infractions. With respect to the payment for her services, Respondent advised Hannah that it had been decided "that the NCAA would pay [her] legal fees and expenses in connection with any [] litigation that was of interest to both the NCAA and Mr. Shapiro". *(A copy of Respondent's August 29, 2012 e-mail to Hannah is attached hereto and incorporated herein as Exhibit "H").*

65. Respondent further represented that she and the NCAA had reached an agreement that Allen, Huyghue, Sanchez, and Leshner would be deposed. Despite the fact that the correspondence to Hannah was contradicted by Respondent's prior actions and communications with the NCAA, Respondent assured Hannah that the NCAA fully expected that she would charge for all costs and fees incurred. However, Respondent did not direct Hannah to the previously

sent and unsigned second proposal, or explain why she had only billed for some costs and billed at all for her attorney's fees for over eight (8) months.

66. Between August and September 2012, the NCAA paid Respondent in full all invoices for the Leshner and Sanchez "Rule 2004" depositions, in the amounts of $2,275.00, $175.00, $1,400.00, $1,225.00, $3,675.00 and $1,750.00. The NCAA believed, based on Respondent's actions and representations, that it may have been legally responsible to pay her bills.

67. Internally at the time, the NCAA was in the process of determining if it had violated its own principles, and it did not want to engage in a protracted or public dispute over billing. However, Hannah did seek out in-house legal counsel for help in determining whether Respondent's bills were appropriate. The NCAA did recognize that time entries in Respondent's bills appeared to be inflated and that she was charging at a rate of $350 per hour, as opposed to the $250 per hour outlined in Respondent's second proposal, which could have served as the basis for the billing.

68. A review of the invoices provided by Respondent further reveals that Respondent billed the NCAA for paralegal time for the same services for which she had also billed at the attorney rate. In addition, Respondent billed for services that were rendered prior to the time she even received any form of acceptance from the NCAA that it would repay her for costs or engage her services, and she failed

to submit invoices on a number of charges within a reasonable time from the date when the service was actually provided. The total amount billed by Respondent to the NCAA was over $65,000.00. *(A copy of Respondent's invoices to the NCAA is attached hereto and incorporated herein as Composite Exhibit "I").*

69. On September 5, 2012, Respondent explained to Hannah by e-mail that Najjar had provided "verbal consent" to her billing for bankruptcy training, including CLE hours and ECF training, for which Respondent billed a total of $14,175.00. (40.5 hours at a rate of $350 per hour). Respondent further suggested that, had the training not been approved, she would have been unable to conduct the "Rule 2004" depositions of Allen and Huyghue. In fact, the CLE training was not a requirement for Respondent to appear in bankruptcy court, and Respondent was already enrolled in both the CLE training sessions prior to any authorization from the NCAA to perform work on its behalf.

70. Respondent billed the NCAA for the bankruptcy training, despite the fact that there was never any agreement with the NCAA that they would pay for her CLE hours or for the ECF training. Moreover, Respondent billed the NCAA for two (2) times the number of hours it actually took to complete the CLE and ECF training. For example, in April 2012, Respondent billed eighteen (18) hours at a rate of $350 per hour for bankruptcy training on October 27-28, 2011. According to Respondent's Bar records, however, on October 27, 2011,

Respondent confirmed through The Bar's website that she had completed seven (7) actual CLER hours. Thus, she billed the NCAA for eighteen (18) hours of legal services for the seven (7) hours of CLER credits she had completed prior to even entering into any agreement with the NCAA.

71. After internally auditing Respondent's bills, and in order to avoid a public billing dispute, the NCAA made a final payment to Respondent in the amount of $18,325.00. However, the NCAA refused to pay for billing entries it found to be wholly unreasonable, and more specifically, would not pay for training and other matters which it did not believe Respondent could properly bill for. Respondent did not agree that this final payment satisfied her bill.

72. On January 24, 2013, the NCAA held a press conference to announce that it had determined its investigation team had improperly utilized Respondent's services. Several people at the NCAA lost their jobs as a result. In additions, both the University of Miami and the NCAA incurred tens of thousands, if not hundreds of thousands of dollars, on the ramifications of intersecting the NCAA investigation with the legal actions taken by Respondent, without taking into account the NCAA's internal investigation or the long-term ramifications to the overall credibility of the NCAA.

73. Following the NCAA press conference, Respondent made several interviews with the press regarding her involvement with the case. In her

interviews, Respondent failed to take any responsibility for her involvement with the case, instead accusing the NCAA of engaging in misconduct and violating its own Rules. Respondent also wholly denied that the NCAA was her client. In addition, in many of these interviews with news organizations, including interviews that are still posted on YouTube, Respondent provided privileged information without authorization and made various sensational and disparaging statements about the NCAA.

74. In the course of The Bar's investigation, Respondent further acknowledged that, in the course of setting Allen's and Huyghue's depositions, she had contacted the producer of HBO Sports, a television new show, and solicited the services of a videographer for the depositions of Allen and Huyghue. Thus, Respondent allowed a member of the press, HBO Sports, to appear at the depositions by invisible proxy, without having to appear on the record itself, and without any notification to the court, the deponents, counsel, or the NCAA. In the course of The Bar's investigation, Respondent explained that she did not believe this was an incorrect course of conduct.

75. By reason of the foregoing facts, Respondent has violated Rules 4-1.2 (Objectives and Scope of Representation), 4-1.5 (Fees and Costs for Legal Services), 4-1.6 (Confidentiality of Information), 4-1.13 (Organization as Client), 4-2.1 (Adviser), 4-3.1 (Meritorious Claims and Contentions), 4-3.4 (Fairness to

Opposing Party and Counsel), 4-4.1 (Truthfulness in Statements to Others), 4-4.2 (Communication with Person Represented by Counsel), 4-4.3 (Dealing with Unrepresented Persons), 4-4.4 (Respect for Rights of Third Persons), 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 acts of another.), 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.), 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), and 5-1.1(b) (Application of Trust Funds or Property to Specific Purpose), of the Rules Regulating The Florida Bar.

As to The Florida Bar Case No. 2013-70,671(11K)

76. Saul Acuna-Acosta a/k/a Samuel Medina Flores ("Acuna-Acosta") was arrested in January 2008 and charged by the Federal Government with possession and intent to sell drugs. Acuna-Acosta was initially deemed indigent and provided with publicly-assisted counsel. However, believing a private attorney to be more valuable, Acuna-Acosta's family subsequently retained Respondent to represent him.

77. Respondent quoted her client a fee of $25,000.00 for the representation. Following trial, but prior to the appeal, Respondent was paid a total of $17,000.00. Respondent was still due a balance of $8,000.00 for her work

at the trial level, but she continued to work on the case, including filing a Notice of Appeal regarding her client's sentencing, because she believed Acuna-Acosta's common-law wife would continue to pay for her services.

78. Despite having filed a Notice of Appeal, Respondent failed to file the necessary filing fee, and consequently, the appeal was dismissed for non-payment. Respondent subsequently notified her client and a deal was worked out regarding payment for Respondent's services.

79. Respondent was successful in reopening the appeal. However, her Initial Brief was rejected as "late filed", ultimately closing the opportunity to appeal. Three courts subsequently determined that the Initial Brief had not been timely filed due to mistakes made by Respondent.

80. According to Judge Middlebrooks' findings of fact, despite having timely filed a Notice of Appeal on October 15, 2008, Respondent "elected" not to pay the filing fee since she was still owed money for her work at the trial level. As a result, the appeal was dismissed on December 9, 2008.

81. Once Respondent succeeded in reopening the appeal on January 14, 2009, the Eleventh Circuit issued a briefing notice, which provided that the Initial Brief would be due on April 11, 2009 (since this was a Saturday, the Brief would have been due no later than April 13, 2009).

82. Respondent attempted to file a Motion for Additional Time to file the Initial Brief, but same was rejected as untimely. Therefore, since the Brief had not been received on April 13, 2009, the court issued a dismissal notice on April 15, 2009, providing Respondent fourteen (14) days to correct the previous deficiencies.

83. Although Respondent did file her Brief on May 7, 2009, it was deemed untimely and deficient. Specifically, even after the Brief was filed, Respondent would have needed to correct the following deficiencies in order for the Brief to be accepted: (1) corrected certificate of service reflecting service on the Appellant; (2) summary of the argument; (3) motion for record excerpts; and (4) motion for leave to file brief out of time.

84. All additional efforts by Respondent to effectuate timely filing and/or to correct the deficiencies failed. Consequently, the appeal was ultimately dismissed.

85. On July 25, 2009, Acuna-Acosta filed a *pro se* Motion to the District Court alleging ineffective assistance of counsel by Respondent based on her failure to perfect his appeal. The Motion properly requested his sentence be vacated pursuant to 28 U.S.C. § 2255, based on Respondent's mistake.

86. Thereafter, on August 11, 2009, Magistrate White issued an Order to Show Cause as to why Acuna-Acosta's Motion should not be granted. On hearing,

Magistrate White recommended that the Motion be granted, the sentence reimposed, and that the movant be permitted to file a direct appeal with court-appointed counsel.

87. Specifically, Magistrate White, and later confirmed by Judge Middlebrooks, determined that Respondent had been the sole cause for the failure to perfect the appeal, and thus, the court should grant the Motion to Vacate under the standard of "ineffective assistance of counsel" and based on Respondent's mistakes.

88. On January 12, 2010, Judge Middlebrooks issued an order directing Magistrate Johnson to conduct a hearing to determine if Acuna-Acosta was indigent for purposes of obtaining court-appointed counsel for re-sentencing and appeal. The order further directed Magistrate Johnson to make specific findings regarding Respondent's representation, including a determination as to why the appeal was not timely filed.

89. An evidentiary hearing was conducted on January 21, 2010 before Magistrate Johnson. Following the hearing, Magistrate Johnson issued a Report and Recommendation. In her Report, Magistrate Johnson specifically determined that Respondent's failure to perfect the appeal was based on "bad faith as a matter of law and fact". She further determined that Respondent's failure to file the appeal fell below the required standards of conduct and professionalism. In

addition, Magistrate Johnson noted that Respondent's testimony at the January 21, 2010 hearing was not credible, concluding that Respondent's statements at the hearing were made with a "wanton and reckless disregard for the truth". *(A copy of Judge Johnson's Report and Recommendation is attached hereto and incorporated herein as Exhibit "J").*

90. Magistrate Johnson was taken aback by what she thought to be "excuses after the fact" by Respondent. She saw a pattern of disregard for the client, the court, and the truth. Further, throughout the hearing, Magistrate Johnson found that Respondent could not account for certain failures in following procedures, and when she did provide an excuse, Magistrate Johnson found the excuse to be implausible. She believed that, due to Respondent's failure on numerous occasions to perfect the appeal, as well as her misrepresentations to the court regarding the reasons for her failure to perfect the appeal, Respondent should be sanctioned.

91. Procedurally, the trial court was required to independently enter judgment on Magistrate Johnson's decision. Accordingly, Judge Middlebrooks was required to enter an independent order. Between the time of Magistrate Johnson's Report and Recommendation and the entry of Judge Middlebrooks' final order, Respondent was permitted to provide additional evidence, which was considered by Judge Middlebrooks in rendering his final decision.

92. Based on Magistrate Johnson's Report and Recommendation, as well as the additional evidence submitted by Respondent, Judge Middlebrooks entered a final order on February 17, 2010. Although Judge Middlebrooks did not specifically determine that Respondent's stories were outright false, as Magistrate Johnson had concluded, he did find that Respondent's lack of basic legal knowledge and procedures "prove[d] to be the cause of her perceived 'wanton and reckless disregard for the truth'". *(A copy of Judge Middlebrooks' February 17, 2010 Order is attached hereto and incorporated herein as Exhibit "K").*

93. Notwithstanding the credibility issue, Judge Middlebrooks did find, as did Magistrate Johnson, that Respondent had violated Rules 4-1.1 (Competence) and 4-1.3 (Diligence), of the Rules Regulating The Florida Bar. Further, although he did not necessarily adopt Magistrate Johnson's finding that Respondent had committed a fraud on the court, Judge Middlebrooks did give Respondent a stern and straightforward warning about being more truthful:

> Most troubling is that Ms. Perez fails to accept responsibility for her actions and is quick to blame others for her shortcomings. In this case, Ms. Perez blames Federal Express, the Eleventh Circuit Clerk, and even Magistrate Johnson for the predicament in which she now finds herself. She does not recognize that she is in this position because she failed to familiarize herself with the rules of appellate procedure. This matter could have been avoided had she simply read the rules.
>
> In this case and in another recent case before this Court, Ms. Perez repeatedly made statements of fact that were inaccurate and that she could not support. At times it appears that she is simply imprecise in

her words, but often she makes statements of fact recklessly and without any effort to determine their accuracy or truth. Ms. Perez has often stated that she "filed" a document when in fact she actually mailed it on a certain date. She states that she attempted to confer with opposing counsel only to later admit that she told her secretary to do so and at a time that was after normal business hours. She asked for a continuance representing that she could not work or travel only to appear in hearings in other cases before other judges. In this case, Respondent may have believed that she filed all the appropriate documents, but it is apparent she did not do so.

I have warned her in the past and continue to warn her, that she needs to be more careful in both, her practice and her statements. A lawyer's success is measured, in great part, by her reputation. Respondent must take care to avoid earning a reputation as a lawyer whose word cannot be trusted.

94. By reason of the foregoing facts, Respondent has violated Rules 4-1.1 (Competence), 4-1.3 (Diligence) and 4-3.3 (Candor Toward the Tribunal), of the Rules Regulating The Florida Bar.

WHEREFORE, The Florida Bar respectfully requests that Maria Elena Perez, Respondent, be appropriately sanctioned in accordance with Chapter 3, Rules Regulating The Florida Bar.

Daniela Rosette

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CERTIFICATE OF SERVICE

I certify that this document has been e-filed with the Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, using the E-Filing Portal; and that a copy has been furnished by United States Mail via Certified Mail No. 7013 0600 0002 2578 1781, Return Receipt Requested to Maria Elena Perez, Respondent, whose record Bar address is 145 Madeira Avenue, Suite 310, Coral Gables, Florida 33134 and via electronic mail to mari2much@aol.com; with a copy via electronic mail to Daniela Rosette, Bar Counsel, drosette@flabar.org, on this 14th day of April, 2014.

Adria E. Quintela
ADRIA E. QUINTELA
Staff Counsel

NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY EMAIL ADDRESS

PLEASE TAKE NOTICE that the trial counsel in this matter is Daniela Rosette, Bar Counsel, whose address, telephone number and primary and secondary email addresses are The Florida Bar, Miami Branch Office, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131-2404, (305) 377-4445 and drosette@flabar.org and mrubiera@flabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Adria E. Quintela, Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323, aquintel@flabar.org.

MANDATORY ANSWER NOTICE

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