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**DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH*****Filed September 5, 2014*****In re Philip E. Ruben**  
Attorney-Respondent

Commission No. 2012PR00120

**Synopsis of Hearing Board Report and Recommendation**  
(September 2014)

The Administrator filed a two-count Complaint alleging Respondent altered a conflicts acknowledgement and two checks. He was charged with falsifying evidence and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

The Hearing Panel found the Administrator proved all charges by clear and convincing evidence. After considering the factors in aggravation and mitigation and the relevant case law, the Hearing Panel recommended Respondent be suspended for six months.

**BEFORE THE HEARING BOARD  
OF THE  
ILLINOIS ATTORNEY REGISTRATION  
AND  
DISCIPLINARY COMMISSION**

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| <p>In the Matter of:</p> <p style="text-align:center"><b>PHILIP E. RUBEN,</b></p> <p style="text-align:center">Attorney-Respondent,</p> <p style="text-align:center">No. 6186192.</p> | <p>Commission No. 2012PR00120</p> |
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**REPORT AND RECOMMENDATION OF THE HEARING BOARD****INTRODUCTION**

The hearing in this matter was held on April 29, 2014, at the Chicago offices of the Attorney Registration and Disciplinary Commission ("ARDC"), before a Panel of the Hearing Board consisting of Brigid A. Duffield, Chair, Peter A. Steinmeyer, and David A. Dattilo. Scott Renfroe appeared on behalf of the Administrator. Respondent appeared and was represented by George B. Collins and Kathryn R. Hayes.

**PLEADINGS**

The Administrator filed a two-count Complaint on August 31, 2012, alleging Respondent altered a conflict disclosure and copies of two checks.<sup>1</sup> Respondent's Answer to Complaint admitted some factual allegations, denied others, and denied all charges of misconduct.

## ALLEGED MISCONDUCT

The Administrator alleged Respondent 1) falsified evidence; and 2) engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rules 3.4(a)(2) and 8.4(a)(4) of the 1990 Illinois Rules of Professional Conduct.<sup>2</sup>

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## EVIDENCE

The Administrator called Respondent as an adverse witness and presented the testimony of Joel G. Chefitz. Administrator's Exhibits 1 through 9 were received in evidence. (Tr. 24). Respondent testified on his own behalf and presented the testimony of Jason Adess, Peter Newton, Lee Singer, Bradley Shaps, Mitchell S. Feiger, and Pete Harvey.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

In attorney disciplinary proceedings, the Administrator has the burden of proving the charges of misconduct by clear and convincing evidence. Illinois Supreme Court Rule 753(c) (6); *See also, In re Ingersoll*, 186 Ill. 2d 163, 710 N.E.2d 390 (1999). Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence, but less than proof beyond a reasonable doubt. *See, e.g., People v. Williams*, 143 Ill. 2d 477, 577 N.E.2d 762 (1991). It is the responsibility of the Hearing Panel to determine the credibility of the witnesses, weigh conflicting testimony, draw reasonable inferences and make factual findings based upon all the evidence. *In re Timpone*, 157 Ill. 2d 178, 623 N.E.2d 300 (1993).

### **I. In Counts I and II, Respondent is charged with falsifying evidence and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.**

#### **A. Evidence Considered**

Respondent was licensed to practice law in Illinois in 1983 and is also a Certified Public Accountant. Respondent began his law practice at Kwiatt & Silverman, later becoming a partner in the same firm renamed as Kwiatt & Ruben. At that time his practice consisted of corporate law, securities law, estate planning, and income tax issues. In 2002, Kwiatt & Ruben merged with Levenfeld Pearlstein LLC ("Levenfeld") and Respondent became a partner in that firm.

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After merging with Levenfeld, Respondent continued concentrating in corporate law, securities law, estate planning, and tax work. (Tr. 112-116).

In 2004, Respondent represented a client in an action to recover \$250,000 from David Laidley. After some collection efforts, Bill Dugan, on behalf of Mr. Laidley, tendered a check in payment for the funds. However, the check bounced. (Tr. 25-26, 120-121). Respondent had first met Mr. Dugan in the mid-1980s. Later, Respondent's firm helped incorporate an entity for Mr. Dugan's interests in various entities and transactions and Respondent acted as the entity's corporate agent. (Tr. 40).

Also in 2004, Respondent met Craig Glattly. Mr. Glattly had a background as a municipal bond financier and investment banker. He was also the sole director and shareholder of Salem Capital, a Delaware commercial financing company. (Tr. 26-28, 32, 121-122). Mr. Laidley, Mr. Glattly, and Mr. Dugan were interested in a property called Arden Lane, a twenty acre site near Round Lake, Illinois. Mr. Glattly and Mr. Dugan were planning to develop the site with retail and office space. (Tr. 27-28, 122-123).

In August or September 2004, Respondent agreed to represent Arden Lane, LLC, an entity created to purchase the property known as Arden Lane. Arden Lane LLC was owned by Salem Capital, Mr. Dugan, and Respondent. (Tr. 35, 38-39). Salem Capital originally owned 40% of the shares and contributed 90% of the capital. Mr. Dugan owned 40% of the shares and contributed 5% of the capital. Respondent owned 20% of the shares and made a capital contribution totaling \$125,000, which represented about 3%. Respondent also kept the books and drew checks for Arden Lane LLC. (Tr. 29-30, 35-36, 123).

In December 2005, Arden Lane LLC bought the Arden Lane property for \$5.2 million. In connection with this acquisition, Arden Lane LLC took out a \$2.6 million loan from First

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Eagle Bank. (Tr. 37). Respondent, Mr. Dugan, and Salem all signed the guarantee for the loan. (Tr. 126-127). In 2006, Arden Lane LLC took out a \$7.4 million construction loan from Leaders Bank. (Tr. 38). Respondent, Mr. Dugan, and Salem all signed a guarantee for that loan as well. (Tr. 127). Respondent took a \$100,000 distribution from the proceeds of Leaders Bank loan. (Tr. 38). According to Respondent, it was standard practice in the real estate world for a bank to allow equity holders to take such a distribution. (Tr. 130-131).

Arden Management Inc. was a corporate shell intended to operate any improvements on the real property owned by Arden Lane LLC. It was owned by Mr. Glattly, Mr. Dugan, and Respondent. Respondent was its president, one of its directors, drew checks, and kept its books. (Tr. 37- 39).

Mr. Glattly and Mr. Dugan were also involved in the acquisition of a company called Integrated Parking Solutions. Burt Bowen was involved in the financing for this transaction. Mr. Bowen was an accountant who performed work for Lauralee Bell, the trustee of the Lauralee K. Bell 1993 Trust ("Bell Trust").

In December 2005, a separate entity, IPS ACQ, LLC was formed to acquire Integrated Parking Solutions and was owned by Salem Capital. Respondent's firm agreed to prepare a warrant in connection with the Integrated Parking Solutions transaction. (Tr. 30-31). In March 2006, Respondent represented IPS ACQ, LLC in connection with a merger with another entity and assisted in forming a new entity called Integrated Parking Systems Inc. (Tr. 32-33).

A few months later, Respondent became a director in Integrated Parking Systems Inc. As director, Respondent was granted an option to purchase 100,000 shares of stock at \$1.10 per share, but never executed that option. According to Respondent, the options ultimately proved

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worthless. Respondent also served as corporate secretary and general counsel of Integrated Parking Systems Inc. (Tr. 33-34, 136-137).

On November 6, 2006, Mr. Glattly died after stepping into traffic on I-94. (Respondent's Answer to Complaint). After Mr. Glattly's death, Respondent learned that the money Mr. Dugan contributed to Arden Lane LLC had actually come from Salem and had originated from the Bell Trust through Mr. Bowen. (Tr. 36, 45, 54, 129). Respondent also learned that \$2.6 million of the funds used to acquire Integrated Parking Systems came from the Bell Trust through Mr. Bowen. (Tr. 34).

On November 15, 2006, Respondent met with Mr. Dugan and Mr. Bowen. During that meeting, Mr. Bowen requested Respondent and Levenfeld represent the Bell Trust in recovering funds from Salem. Mr. Bowen also advised Respondent that he had provided at least \$25 million from the Bell Trust to Salem. (Resp. Ans.; Tr. 46). On November 27, 2006, Respondent agreed, on behalf of Levenfeld, to represent the Bell Trust in recovering funds from Salem. (Respondent's Answer to Complaint).

Between November 27, 2006, and December 6, 2006, Respondent received copies of spreadsheets from Robert Brown, an accountant who performed work for Salem. (Resp. Ans.; Adm. Ex. 6). At this time, Respondent was attempting to determine what investments the Bell Trust had made to Salem or companies through Salem. (Tr. 48; Adm. Ex. 6). Respondent also received a document created by Mr. Brown directed to Mr. Glattly's heirs that showed the extent of the Bell Trust's investments in various transactions through Salem. At this time, Respondent conceded he knew the Bell Trust had invested money in Integrated Parking Systems, Arden Lane, and an additional construction project in Las Vegas totaling approximately \$30 million. By

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December 2006, Respondent was aware that the Bell Trust, through Mr. Bowen, had financed Salem Capital for most of their investments. (Tr. 129).

Respondent also knew that issues had been raised concerning Mr. Dugan's involvement in the various entities that had been funded through Salem with the Bell Trust's money. (Tr. 50-53; Adm. Ex. 7). At around this same time, Respondent learned that the \$325,000 that Mr. Dugan used to invest in Arden Lane actually came from the Bell Trust. As a result, Ms. Bell and/or the Bell Trust had a possible claim against Mr. Dugan. (Tr. 54-55).

### **Conflicts Acknowledgement**

In December 2006, Respondent directed Matthew R. Zakaras, a Levenfeld associate, to create LBT Investments, LLC. This entity would hold the Bell Trust's claims relating to Salem. At this same time, Respondent was working on a "master agreement" to try to settle the various claims LBT Investments, LLC had against Salem, including those involving the Las Vegas litigation, Integrated Parking, and Arden Lane. (Tr. 149).

Respondent also directed Mr. Zakaras to create a Conflicts Acknowledgement on behalf of LBT Investments, LLC. The Conflicts Acknowledgement was necessary in order to move forward with the master agreement. Respondent directed Mr. Zakaras to draft the Conflicts Acknowledgement to state that Levenfeld was representing LBT in connection with the preparation of documents relating to a settlement of LBT's claims against Salem, and that Levenfeld was "solely acting as legal counsel to LBT and the [Bell] Trust," and that "Salem waives any conflicts and consents to such representation." He further directed Mr. Zakaras to include that Levenfeld "(a) has represented the interests of Salem and its affiliates in the past, (b) does not represent the interests of Salem in the preparation and negotiation of the Master

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Agreement or any related ancillary documents?and (c) has no fiduciary duties to Salem, LBT or the [Bell] Trust." (Adm. Ex. 1).

Mr. Zakaras drafted the Conflicts Acknowledgement pursuant to Respondent's direction and delivered the draft to Respondent on December 21, 2006. The draft also included spaces for the signatures of Respondent, as manager of LBT Investments, LLC, Grant Glattly, the son of Craig Glattly and the president of Salem at that time, and a representative of the Bell Trust. (Resp. Ans.; Adm. Ex. 1).

Shortly after receiving the draft, Respondent signed the Conflicts Acknowledgement as manager of LBT Investments, LLC, and then provided a copy to Grant Glattly, who also signed the document. (Resp. Ans.; Tr. 59-60; Adm. Ex. 1). Mr. Bowen did not sign at this time. However, Respondent testified that both Mr. Bowen and Ms. Bell's attorney in California, Mr. Titcher, knew about the Conflicts Acknowledgement and had no objection to it. (Tr. 142-143).

In June 2007, Ms. Bell hired the law firm of McDermott, Will & Emery ("McDermott") to represent her in matters relating to Respondent, Mr. Dugan, and Salem. (Respondent's Answer to Complaint). As of June 19, 2007, Respondent held a 20% interest in Arden Lane, LLC. That fact, along with a summary of the investments made by the Bell Trust through Salem, was included in a draft memo prepared under Respondent's name to Mr. Titcher. However, that draft was never actually sent. The memo that was actually sent on June 22, 2007, made no reference to Respondent's interest or Mr. Dugan's interest in Arden Lane. (Tr. 74-76; Adm. Exs. 8, 9).

On July 18, 2007, Respondent and Mr. Zakaras met with McDermott attorneys, Joel Chefitz and Jeff Bushofsky, and discussed matters relating to the Bell Trust's claims against Mr. Dugan and Salem. (Respondent's Answer to Complaint). At that time, Respondent knew

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McDermott was acting as additional counsel on behalf of Ms. Bell and the Bell Trust. Respondent also knew Mr. Chefitz and Mr. Bushofsky had begun reviewing Levenfeld's files relating to the various transactions involving Salem Capital and were asking Respondent for additional information beyond that contained in those files. Specifically, they were seeking information about Mr. Dugan and Salem. (Tr. 62-63).

On July 19, 2007, Respondent contacted Mr. Bowen and asked him to sign and return the Conflicts Acknowledgement on behalf of the Bell Trust. Mr. Bowen agreed. At Respondent's direction, his assistant then sent the document along with a fax cover sheet dated July 19, 2007, to Mr. Bowen via facsimile transmission. (Adm. Ex. 1). Mr. Bowen signed the Conflicts Acknowledgement and sent it back to Respondent via facsimile transmission on July 19, 2007, along with a fax cover sheet bearing the same date. (Resp. Ans.; Tr. 60-61).

Respondent admitted that after he received the signed Conflicts Acknowledgement back from Mr. Bowen on July 19, 2007, he threw away the facsimile cover sheet that had come with the signed document. In addition, he admitted that when a copy of the Conflicts Acknowledgement was provided to McDermott he removed the line on the facsimile containing the July 19, 2007 date. (Tr. 63-64, 144). Respondent acknowledged he should not have done this, but denied he took these actions to conceal the fact that Mr. Bowen had not signed the Conflicts Acknowledgement until approximately seven months after it was dated. (Tr. 64, 144). Respondent did not receive any financial gain from the execution of the Conflicts Acknowledgement, but agreed it made him "look better." (Tr. 146).

Respondent admitted the Conflicts Acknowledgement did not refer to Respondent's personal interests in Salem related entities like Arden Lane and Integrated Parking. (Tr. 64-65). He also had not advised Ms. Bell about these interests. Respondent testified he told Ms. Bell's

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attorney, Mr. Titcher. (Tr. 65). According to Respondent, the master agreement was never executed. (Tr. 145-146).

By July 2007, Respondent, who was still acting as Ms. Bell's attorney, was concerned that Ms. Bell had been defrauded by Salem Capital in connection with her investments. He also believed Salem had used her money to fund its interests in Arden Lane and Integrated Parking. He also knew Mr. Dugan had participated in those transactions. (Tr. 65-66). When asked if it was his responsibility to try to recover Ms. Bell's funds, Respondent stated, "I guess so." (Tr. 66). In the summer of 2007, Arden Lane was still a vacant lot and did not have the assets to repay Ms. Bell. (Tr. 66-67).

### Checks

Kwiatt & Ruben ceased operation after its merger with Levenfeld in 2002. However, between 2002 and 2008, Respondent continued to maintain an account titled Kwiatt & Ruben, Ltd. Client Fund Account ("Account"). Respondent used the Account to hold funds belonging to former clients of Kwiatt & Ruben as well as his personal funds. Between November 2, 2004, and June 5, 2005, Respondent maintained at least \$100,000 in personal funds in the Account. (Resp. Ans.; Tr. 115).

On November 2, 2004, Respondent provided check number 520, drawn on the Account, in the amount of \$50,000, as part of his capital contribution to Arden Lane, LLC. (Tr. 68-69; Adm. Ex. 2). On June 5, 2005, Respondent tendered check number 600 from the Account, in the amount of \$50,000, as an additional capital contribution to Arden Lane, LLC. Each check bore a legend that stated, in part, "Kwiatt & Ruben, Ltd. Client Fund Account." (Resp. Ans.; Tr. 71-72; Adm. Ex. 4). By July 2005, Respondent's bank statements for the Account reflected both checks

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had been paid and included copies of both cancelled checks. (Respondent's Answer to Complaint).

On July 18, 2007, Respondent and Mr. Zakaras met with McDermott attorneys, Joel Chefitz and Jeff Bushofsky, and discussed matters relating to the Bell Trust's claims against Mr. Dugan and Salem. (Respondent's Answer to Complaint). Between July 18, 2007, and September 2008, Respondent altered the copies of check numbers 520 and 600 by deleting the words "Client Fund Account." In September 2008, Respondent provided the altered copies of the checks to his attorney, Gary Elden, but did not tell Mr. Elden that he had altered the checks. Mr. Elden then produced the altered copies of the checks to Mr. Chefitz. (Respondent's Answer to Complaint).

Respondent testified the reason he provided the checks was to "support [his] investment." When asked if the checks would eventually be turned over to Ms. Bell's attorneys he answered, "I assumed [they] would, but I didn't know." Respondent admitted he took these actions during the time he knew the McDermott attorneys were investigating matters relating to Ms. Bell and Salem. When asked why he deleted the reference to his client fund account he answered, "I don't recall exactly." (Tr. 69-73; Adm. Exs. 2, 5).

Respondent testified that at the time he altered the checks, over \$100,000 in the client fund account belonged to him. In addition, the gross amount in the account was approximately \$1 million. (Tr. 147). He did not intend to defraud Ms. Bell and does not believe he actually defrauded her. (Tr. 151).

### **Joel G. Chefitz**

Mr. Chefitz first became acquainted with Respondent when they were acting as co-counsel for the Bell Trust. According to Mr. Chefitz, the purpose of the July 18, 2007 meeting

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was to get him "up to speed" so he requested all documents Respondent had relating to investments made with Ms. Bell's stolen money. Mr. Chefitz continued to ask for the documents until Respondent's firm withdrew from representing Ms. Bell and the Trust in October 2007. Mr. Chefitz testified he did not receive the documents until an arbitration panel granted his motion to compel in 2010 or 2011. (Tr. 83-85).

When Mr. Chefitz first saw the Conflicts Acknowledgement, it did not have the July 19, 2007 fax date. Mr. Chefitz believed this was significant because Respondent had previously stated in a memo that Mr. Bowen had signed off on a conflicts acknowledgement, on behalf of Ms. Bell, in December 2006. (Tr. 90-91).

According to Mr. Chefitz, Respondent admitted previously under oath that he removed the words "Client Fund Account" from the checks so that "we wouldn't know that [they] came from a commingled client trust account." (Tr. 92). Respondent also admitted he was "intimately involved in the entities that benefitted from

[Ms. Bell's] stolen money and that he and Mr. Dugan had actively covered up the fraud to prevent Ms. Bell from acting on it." (Tr. 99).

In March 2006, before Respondent started representing Ms. Bell, Respondent admitted he falsified minutes from an Integrated Parking Services meeting to disguise a "kickback" that Respondent gave to Mr. Bowen for bringing Ms. Bell's money to the table. (Tr. 100-101). According to Mr. Chefitz, with respect to the Las Vegas investments, Respondent was not "involved in the origination of the fraud, just in its perpetuation and cover-up." (Tr. 104-105).

### **B. Analysis and Conclusions**

Respondent is charged with violating Rule 3.4(a)(2) (1990), which states:

(a) A lawyer shall not:

(2) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

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Respondent admitted he threw away the July 19, 2007 facsimile cover sheet from Mr. Bowen and then deleted the July date from the copy of the executed Conflicts Acknowledgement he tendered to Mr. Chefitz. He also admitted he deleted the words "Client Fund Account" from the copies of the two checks he provided to Mr. Chefitz that represented portions of his capital contribution to Arden Lane LLC. In order to find that Respondent violated Rule 3.4(a)(2), we must determine if Respondent's actions amounted to falsifying evidence. The bases for that determination will also establish whether Respondent engaged in dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4).

The Court has stated, "There is essentially no way to define every act or form of conduct that would be considered a violation of Rule 8.4(a)(4). Each case is unique and the circumstances surrounding the respondent's conduct must be taken into consideration." *In re Cutright*, 233 Ill. 2d 474, 490, 910 N.E.2d 581 (2009). An examination of the circumstances surrounding Respondent's conduct in this matter shows he acted in violation of Rule 8.4(a)(4).

By the time Respondent threw away the facsimile cover sheet and altered the Conflicts Acknowledgement, he owned Arden Lane, LLC with Mr. Dugan and Salem, and acted as its general counsel. He knew that the money Mr. Dugan contributed to Arden Lane LLC had actually come from Salem and had originated from the Bell Trust through Mr. Bowen. Respondent also knew that \$2.6 million used to acquire Integrated Parking Systems came from the Bell Trust through Mr. Bowen. By December 2006, Respondent knew that the Bell Trust, through Mr. Bowen, had financed Salem Capital for most of their investments, totaling approximately \$30 million.

After Mr. Glattly died, Respondent knew that Ms. Bell had been defrauded and that he worked with, represented, and stood to profit from his relationship with those who defrauded her.

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Despite this knowledge, he accepted Mr. Bowen's request to represent the Bell Trust. Mr. Dugan's involvement in that arrangement is all the more damaging given Respondent's admissions that the Bell Trust had a potential action against Mr. Dugan.

It is undisputed that Respondent met with Mr. Chefitz on July 18, 2007. At that time, both Respondent and Mr. Chefitz were representing the Bell Trust, and Mr. Chefitz requested documents relating to transactions between Salem, Mr. Dugan, and the Bell Trust. At the time of the meeting, Respondent had been practicing law for 24 years. He was a sophisticated, experienced attorney and CPA who had spent the bulk of his career

concentrating on corporate, estate, and tax matters. Respondent knew the purpose of the meeting and the course Mr. Chefitz's investigation would take. He knew Mr. Chefitz was requesting documents that were potentially damaging to his personal interests. The next day, Respondent faxed the Conflicts Acknowledgement to Mr. Bowen and, after receiving it, threw away the facsimile cover sheet and altered the document.

During his testimony, Respondent acknowledged his actions but provided no real explanation for them. During argument, his counsel submitted Respondent was scared. He also argued the Conflicts Acknowledgement had the same legal effect both before and after Mr. Bowen signed it. However, none of these explanations negates his dishonest and deceitful actions. This was no mistake. Respondent's conduct was affirmative and intentional.

We also note that Respondent admitted the Conflicts Acknowledgement did not refer to his personal interests in Arden Lane and Integrated Parking. Moreover, his interest in Arden Lane was not included in a memo summarizing the investments made by the Bell Trust through Salem sent to Mr. Titcher. Finally, it took over three years and a motion to compel for Respondent to actually produce the documents requested by Mr. Chefitz. This evidence further

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supports the conclusion that Respondent was actively and purposefully concealing his significant involvement with the individuals who defrauded Ms. Bell. Accordingly, we find the Administrator proved by clear and convincing evidence that Respondent falsified evidence in violation of Rule 3.4(a)(2) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4).

With respect to the alteration of the two checks, Respondent argues that his actions did not constitute misconduct because he was not charged with commingling or any related violation of the Rules of Professional Conduct. This argument is misplaced. Respondent admitted he removed the words "Client Fund Account" from the checks prior to tendering them to his counsel. As a result, he is charged with falsifying evidence pursuant to Rule 3.4(a)(2) and engaging in dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4).

When Respondent wrote the relevant checks in November 2004 and June 2005, he did not remove the "Client Fund Account" language. It was only after he met with Mr. Chefitz in July 2007 that he altered the checks. As a result, we find Respondent's argument that he simply chose not to identify the origin of the funds disingenuous. In September 2008, Respondent provided the altered copies of the checks to his attorney, but did not tell him that he had altered the checks. His attorney then produced the altered copies of the checks to Mr. Chefitz.

Respondent again failed to provide any real explanation for his actions. When asked why he deleted the reference to his client fund account he answered, "I don't recall exactly." Respondent later testified the reason he provided the checks was to "support [his] investment." When asked if the checks would eventually be turned over to Ms. Bell's attorneys he answered, "I assumed [they] would, but I didn't know." Given the timing of his actions and his legal experience, we find that statement particularly incredible.

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Accordingly, based upon the analysis above and the analysis relating to the Conflicts Acknowledgement, we find the Administrator proved by clear and convincing evidence that Respondent violated Rules 3.4(a)(2) and 8.4(a)(4) when he altered the checks drawn from his client fund account.

## **EVIDENCE OFFERED IN AGGRAVATION AND MITIGATION**

### **Respondent**

For approximately eight years during the 1980s, Respondent served on the board of the American Blues Theater and later became president of the theater company. Respondent served on the board of the North Suburban YMCA in Northbrook for ten years and acted as president of that entity for four years. He also made donations to the YMCA. Respondent has volunteered on the corporate donations committee for Make-A-Wish. (Tr. 118-119).

According to Respondent, Ms. Bell seems to have lost her trust in lawyers and he feels badly about that. In hindsight, it would have been best for him not to have been involved in the representation at all; He would have stayed at a firm he loved, his marriage might still be intact, and he would not have had to file bankruptcy. (Tr. 155-156). Respondent has no prior discipline. (Tr. 232).

### **Character Evidence**

Jason Adess has been a licensed attorney in Illinois since 1995 and practices in the area of family and matrimonial law. Respondent represented Mr. Adess' firm in connection with a contract dispute and Mr. Adess represented Respondent during his marital dissolution. Respondent and Mr. Adess have also referred clients to each other, with neither accepting a referral fee. According to Mr. Adess, Respondent has an exemplary reputation for honesty and

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integrity. Respondent has also expressed regret to Mr. Adess on many occasions when discussing the issues involved in this disciplinary proceeding. (Tr. 160-166).

Peter Newton met Respondent during the time they both attended law school and has kept in contact with him since then. He and Respondent have referred clients to each other, with neither accepting a referral fee. According to Mr. Newton, Respondent has an excellent reputation for honesty, integrity, truth, and veracity. Mr. Newton and other members of his firm represented Respondent in the lawsuit filed by Mr. Chefitz. Mr. Newton testified that Respondent felt sorry that individuals lost money in the Bell matter, but did not believe he did anything wrong. (Tr. 167-174).

Lee Singer is a CPA. He has known Respondent since the mid-1980s and they have referred clients to each other. According to Mr. Singer, Respondent has his clients' best interests at heart and believes him to be "100 percent" honest. Respondent's reputation for honesty and integrity is excellent. (Tr. 175-182).

Bradley Shaps is a financial advisor at GCG Financial, a licensed attorney, and a CPA. He has known Respondent since the eighth grade and they attended high school and college together. Mr. Shaps is the health advisor for Respondent's firm and they refer cases to each other. According to Mr. Shaps, everyone trusts Respondent. (Tr. 183-187).

Mitchell S. Feiger is the CEO and President of MB Financial, Inc. and MB Financial Bank. Mr. Feiger grew up with Respondent, attended school with him through college, and has known Respondent for over 50 years. Mr. Feiger considers Respondent one of his best friends and implicitly trusts Respondent's judgment in both personal and business matters. Mr. Feiger testified that Respondent's reputation for honesty, integrity, truth, and veracity is excellent. (Tr. 188-196).

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Pete Harvey runs a manufacturing and acquisition business called Intrade. Respondent has provided legal service on approximately 50 or 60 acquisitions for Mr. Harvey. He also has a social relationship with Respondent and considers him to be an honorable man. According to Mr. Harvey, Respondent has a terrific reputation for honesty, integrity, truth, and veracity. (Tr. 198-202).

### **RECOMMENDATION**

The purpose of the attorney disciplinary system is not to punish the attorney for his or her misconduct, but "to protect the public, maintain the integrity of the legal profession, and protect the administration of justice from reproach." *In re Winthrop*, 219 Ill. 2d 526, 559, 848 N.E.2d 961 (2006). In determining the appropriate sanction, we consider the nature and seriousness of the misconduct and any aggravating and mitigating circumstances shown by the evidence. *See In re Gorecki*, 208 Ill. 2d 350, 802 N.E.2d 1194 (2003).

To begin, there appear to be numerous violations of the Rules of Professional Conduct the Administrator chose not include in the Complaint. However, in determining our sanction recommendation, we focus solely on those charges contained in the Complaint and do not consider any uncharged misconduct in aggravation.

We may consider in aggravation the actual or potential harm caused by Respondent's actions. *See In re Saladino*, 71 Ill. 2d 263, 375 N.E.2d 102 (1978). It is clear Respondent was deeply involved in the various transactions that harmed Ms. Bell financially. She had to hire additional counsel, incurred significant expense, and spent many years attempting to recoup her losses. It is also clear that Respondent was less than cooperative during that litigation and contributed to the delay. Most importantly in aggravation, we find Respondent demonstrated a complete lack of remorse and failure to accept responsibility for his actions. His only expressions of regret focused on his personal loss.

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In mitigation, Respondent has never been disciplined. We acknowledge he engaged in some charitable endeavors and provided service to the community, but give this evidence little weight. Respondent's character witnesses, while impressive personally, do not change our negative opinion of Respondent's character.

Respondent suggests censure is the appropriate sanction. In support of this recommendation, Respondent relies on numerous cases including *In re Stern*, 124 Ill. 2d 310, 529 N.E.2d 562 (1988). In *Stern*, the respondent participated in backdating a letter for use in his divorce litigation to establish that he had been providing health insurance for his family. The Court found that the respondent had engaged in dishonest conduct and had knowingly made a false statement to a tribunal. However, a censure was imposed because the respondent did not intend to perpetuate a fraud on the court and had stopped short of using the letter for his advantage.

In *In re Myers*, 98 CH 6, M.R. 16808 (Sept. 22, 2000) the respondent was reprimanded for filing a false attestation clause to a will. At the time the respondent prepared the original will for the client, there was no claim the client was not of sound mind and body. Two years later, however, the respondent became aware that the client's mental and physical health had begun to deteriorate. After learning the client's domestic staff might be taking financial advantage of her, the respondent prepared another will and signed an attestation clause falsely stating he believed his client was of sound mind and body. The action was taken, not to benefit the respondent, but rather, as a protective measure to supersede any spurious will that might have been presented to the client during her deteriorating mental condition. *See also In re Dean*, 09 CH 52 (falsely notarizing clients' signatures on quitclaim deed and then backdating deed warranted reprimand where respondent did not benefit personally); *In re Kelleher*, 93 SH 102, M.R. 11701 (Dec. 1,

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1995) (preparing, notarizing, and filing affidavit stating a defendant could not be served, even though respondent knew defendant's address and made no effort to serve her warranted censure where no evidence respondent stood to gain personally).

Unlike the attorneys in *Stern*, *Myers*, *Dean* and *Kelleher*, Respondent was motivated by personal gain. He had no altruistic motive when he falsified evidence and was certainly not acting to protect Ms. Bell's interests. Rather, he was acting to conceal his involvement in a series of fraudulent transactions with an array of dubious characters.

Respondent further relies on *In re Hayes*, 03 SH 10, M.R. 20005 (Mar. 22, 2005) (failing to disclose client's death to opposing counsel, negotiating and settling the deceased client's claim without legal authority, and filing a frivolous motion to enforce the settlement agreement resulted in censure where misconduct was an isolated incident and no evidence of harm or corrupt motive); *In re Toohill*, 99 SH 11, M.R. 16952 (Nov. 22, 2000 ) (counseling clients to engage in dishonest conduct and making false statements in court filings resulted in censure where conduct found to be an aberration and result of a misguided attempt to accommodate clients, not the result of a dishonest or corrupt motive). In those matters, a censure was imposed because the misconduct involved was an isolated incident and the attorneys were acting without a corrupt motive. Here, Respondent's misconduct was not an isolated occurrence. In addition, as discussed above, he was motivated by dishonesty.

The Administrator recommends a six-month suspension. Among the cases presented to support this recommendation, we find *In re Mendelson*, 95 CH 339, M.R. 12894 (Nov. 26, 1996), and *In re Garcia*, 2012PR0080, M.R. 26276 (Nov. 20, 2013), most applicable. These decisions support the proposition that a suspension is warranted when, as here, an attorney

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falsifies evidence in an effort to conceal his misconduct or to otherwise advance his own interests.

In *Mendelson*, the respondent agreed to represent a client, referred to him by another attorney, but never received the client's consent for representation. He then neglected the matter. When responding to the client's ARDC charge, the respondent produced a copy of a letter he claimed he sent to the client seeking the client's consent for representation. During a subsequent sworn statement he denied the letter was a fabrication. Although he ultimately admitted that the letter was fabricated and that he lied during his sworn statement, he believed he had actually sent the letter. When he could not locate a copy in his file, he simply recreated the document. He was suspended for six months.

In *Garcia*, the respondent was convicted of giving a false bankruptcy oath. The respondent initially represented the debtor in a Chapter 11 bankruptcy proceeding. However, he failed to disclose to the court, for a 17-month period, his investment in a land development deal with a creditor, and falsely stated that another person handled all aspects of the land development deal including all legal and business matters. In aggravation, the respondent was an experienced practitioner at the time of his misconduct and his conduct caused harm to the court, his client, and his former law firm. Notwithstanding his lack of prior discipline, charity work and *pro bono* services, the Court ordered a two-year suspension.

We also find *In re Betts*, 109 Ill. 2d 154, 485 N.E.2d 1081, instructive. In *Betts*, the respondent represented clients in the purchase of real property from Emil Knutson. The respondent was also a purchaser of the property and, after the property was conveyed to a trust, was named sole beneficiary. Mr. Knutson retained a small portion of the property. Later, respondent instituted a conservatorship proceeding against Mr. Knutson and made two false

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statements in the petition for conservatorship. At the conclusion of the hearing, a conservator was appointed. The next day, the respondent's clients paid respondent \$10,000 representing legal fees and his interest in the property. The clients were then named beneficiaries of the trust.

The Court acknowledged that there was no legal prohibition that prevented respondent from serving as petitioner in the conservatorship proceeding. It also appeared Mr. Knutson needed the court ordered assistance. In addition, the false statements contained in the petition did not directly concern Mr. Knutson's competency. However, they were untrue and did not comport with accepted professional standards. The Court specifically noted that respondent's false statements allowed him to avoid disclosing his own interest in the property. He was suspended for six months.

Accordingly, after considering the nature of the Respondent's misconduct, the evidence in aggravation and mitigation, and the precedent discussed above, we recommend that the Respondent, Philip E. Ruben, be suspended for six months.

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|  | Respectfully Submitted,<br><br>Brigid A. Duffield<br>Peter A. Steinmeyer<br>David A. Dattilo |
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#### CERTIFICATION

I, Kenneth G. Jablonski, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on September 5, 2014.

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|  | Kenneth G. Jablonski, Clerk of the<br>Attorney Registration and Disciplinary<br>Commission of the Supreme Court of Illinois |
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<sup>1</sup> Prior to opening statements, the Chair allowed Counsel for the Administrator's motion to strike the words "which tend to defeat the administration of justice or to bring the courts or the legal profession into disrepute, and which subjects Respondent to discipline pursuant to Supreme Court Rule 770" from the introductory paragraph of the Complaint. (Tr. 4-6).

<sup>2</sup> Prior to opening statements, the Chair allowed Counsel for the Administrator to strike the charges contained in paragraphs 23(c) and 36(c) pursuant to *In re Karavidas*, 2013 IL 115767. (Tr. 4-6).