

EXHIBIT 5

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MICHAEL GARY STEPAKOFF,

Respondent.

CASE NO. SC06-762

TFB NO. 2002-11,807(13C)

CONDITIONAL GUILTY PLEA FOR
CONSENT JUDGMENT

COMES NOW, Michael Gary Stepakoff, Respondent, pursuant to Rule 3-7.9, Rules Regulating The Florida Bar, and states his present intention to tender a conditional plea to the below-listed violations as charged in the Complaint filed by THE FLORIDA BAR in this cause, provided and conditioned upon the below-stated discipline being finally approved by the Supreme Court of Florida. The following is the stipulated factual basis:

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent is acting freely and voluntarily in this matter and has had the opportunity to consult with counsel of his choice.
3. Respondent is aware that Rule 3-7.6(o), Rules Regulating The Florida Bar, provides for the taxing of costs incurred by THE FLORIDA BAR in a

disciplinary proceeding. Respondent agrees that he will not attempt to discharge the obligation for the payment of the Bar's costs in any future proceedings, including but not limited to, a Petition for Bankruptcy.

4. Respondent is not certified in any area of practice.

5. Respondent is represented by counsel in these proceedings.

6. The allegations underlying this plea are as follows and provide the factual basis for discipline to be imposed against Respondent:

On May 20, 2002, Sherol Engelman ("Engelman"), caregiver for Henry Scherf ("Mr. Scherf"), brought Mr. Scherf to Respondent's office for preparation of a will, quitclaim deed, and durable power of attorney. Mr. Scherf was 94 years old at the time and died in 2004. Respondent did not disclose to Mr. Scherf that he knew Engelman, although he had previously been introduced to her by his business partner, Mitchell Friefeld. Respondent drafted documents giving Engelman a durable power of attorney for Mr. Scherf, deeding Mr. Scherf's house to her, and making her the primary beneficiary of Mr. Scherf's estate. Respondent did not consult with Mr. Scherf alone prior to preparing his will, quitclaim deed, and power of attorney. Using the power of attorney that Respondent prepared, Engelman transferred \$134,364.30 of Mr. Scherf's funds into Respondent's trust account. Respondent did not advise the parties of the potential conflict, obtain their informed consent to the representation, or advise Mr. Scherf and Engelman to seek

independent counsel. At the May 20, 2002 meeting, Respondent suggested that Mr. Scherf invest \$30,000.00 in Kesef Development Corporation ("Kesef"), a real estate development company formed by Respondent and Friefeld but Respondent did not disclose to Mr. Scherf that he was part owner of Kesef and served as its corporate counsel. Respondent did not advise Mr. Scherf to seek independent counsel regarding the investment in Kesef. On May 29, 2002, Respondent transferred \$30,000.00 from Mr. Scherf's trust account to Kesef's account and on June 1, 2002, Kesef executed a promissory note to Scherf in the amount of \$30,000.00. Respondent did not prepare or record a mortgage to secure the note. Respondent referred Mr. Scherf to an investment advisor at Raymond James Financial and transferred \$75,000.00 of Scherf's trust funds to a Raymond James investment account.

By June 18, 2002, Respondent had represented Mr. Scherf for almost one month and submitted a billing statement to Engelman that included \$20,000.00 in legal fees (100 hours at the rate of \$200.00 per hour). Respondent wrote a letter to Mr. Scherf outlining Respondent's concerns regarding the influence Engelman was exerting over Mr. Scherf and stating that the \$30,000.00 loan to Kesef was secured "with a lien on a property valued at over 2 million dollars on Madeira Beach" when in fact, no mortgage or any other lien was drafted or perfected by Respondent to secure Mr. Scherf's loan to Kesef.

Mr. Scherf retained new counsel who wrote a letter to Respondent dated June 24, 2002, demanding that Respondent account for and return to Mr. Scherf \$19,500.00 in attorney's fees and \$30,000.00 from Kesef. On or about July 8, 2002, Respondent refunded Scherf's \$30,000.00 investment in Kesef. Respondent prepared a billing statement listing the services he claimed to have provided for Mr. Scherf, totaling \$15,050.00 (75.25 hours at \$200.00 per hour). Additionally, Respondent withdrew \$5,000.00 from Mr. Scherf's trust account for legal fees on May 21, 2002, and another \$5,000.00 on May 29, 2002; however, Respondent's Fee Statement indicates that he had accounted for \$5,200.00 by that date (26 hours at \$200.00 per hour). Respondent produced his trust accounting records for the period of December 1, 1997 to December 1, 2003 pursuant to a subpoena issued by The Florida Bar. The audit revealed that Respondent did not substantially comply with the Rules Regulating the Florida Bar related to trust accounts. Respondent's overall trust account balance never became overdrawn; however, the balance held for Mr. Scherf in Respondent's trust account was lower than the amount Respondent was required to hold between May 29, 2002 and at least July 12, 2002. Due to the shortage in Mr. Scherf's trust account balance, Respondent did not hold in trust, separate from his own property funds belonging to Mr. Scherf. Mr. Scherf's attorney-in-fact and new counsel requested that Respondent account for and return Mr. Scherf's trust funds but Respondent did not promptly account for

and deliver Mr. Scherf's trust funds.

7. The following are the stipulated Rules Regulating The Florida Bar which were violated: Rule 4-1.3 diligence; Rule 4-1.4(a) communication, keeping client informed; Rule 4-1.4(b) communication, explaining a matter; Rule 4-1.5 excessive fee; Rule 4-1.7(b) conflict of interest, independent professional judgment; Rule 4-1.8(a) conflict, engaging in business transaction with client; Rule 4-1.15 safekeeping property; Rule 5-1.1(a)(1) money/property entrusted to attorney; Rule 5-1.1(d) controversies as to amount of fees; Rule 5-1.1(e) notice of delivery of trust funds, delivery, accounting; Rule 5-1.1(f) trust accounts; Rule 5-1.2 trust accounting records and procedures.

8. The following Mitigation applies:

- a) Absence of prior disciplinary record;
- b) Timely good faith effort to make restitution or to rectify consequences of misconduct; and
- e) Remorse.

In addition to the mitigation listed above, on or about July 8, 2002, Respondent refunded Mr. Scherf's \$30,000.00 investment in Kesef to him. Further, at the outset of these disciplinary proceedings, Respondent offered to participate in fee arbitration, fully cooperate in the arbitration process, and abide by the decision of the arbitration panel as to the reasonableness of his fee.

9. The following Aggravation applies:

h) Vulnerability of the victim.

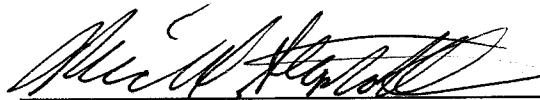
10. Respondent consents to the following disciplinary measures:

a. Six (6) month rehabilitative suspension from the practice of law;

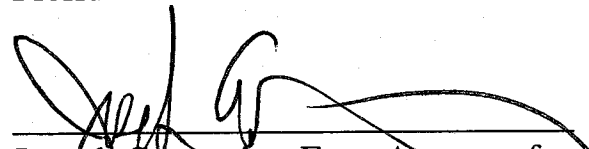
b. Attendance at the Bar's Trust Accounting Workshop, Respondent shall submit proof of attendance and completion of Trust Accounting Workshop as a condition precedent of filing a Petition for Reinstatement;

c. Payment of The Florida Bar's reasonable costs, within 30 days following the date of the Order of the Supreme Court of Florida approving the Report of Referee.

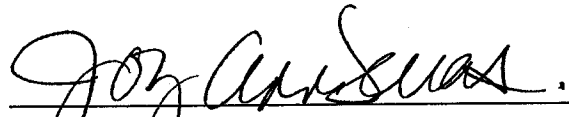
Dated: 9/25/06


Michael Gary Stepakoff, Respondent
c/o Joseph Corsmeier, Esq.
Joseph A. Corsmeier, PA
4625 East Bay Dr., Suite 110
Clearwater, Florida 33764
Florida Bar No. 861057

Dated: 9/26/06


Joseph Corsmeier, Esq., Attorney for Respondent
Joseph A. Corsmeier, PA
4625 East Bay Dr., Suite 110
Clearwater, Florida 33764
Florida Bar No. 0492582

Dated: 10/3/06


Joy Ann Demas

Assistant Staff Counsel
5521 W. Spruce Street, Suite C-49
Tampa, Florida 33607-5958
(813) 875-9821
Florida Bar No. 163759

Telephonically Approved By: Mr. William Kalish, Esq., Designated Reviewer
Kenneth Lawrence Marvin, Staff Counsel