

## STATEMENT OF FACTS

### SUPPORTING GRIEVANCE RULE VIOLATIONS

In 2005, Schwartz was appointed Trustee of his friend, Beverly Hersh's large Estate. It was in excess of \$12,000,000.00. The Discretionary Trust gave Schwartz the widest of authority to distribute funds as he determined. There was one adjusted net estate percentage specific bequest to a charity, Hadassah. Because the amount of that bequest was by a formula that needed to be determined by Probate Court following a delayed IRS audit and the need for an adjustment for Federal Estate Taxes, there was a long delay in distribution. After a Federal Estate Tax audit, Schwartz would still have had to obtain Probate Court approval before any distribution. Following the Death of Ms. Hersh, on May 5, 2005, Schwartz initially wrote a short letter to Hadassah's counsel, September 1, 2005, stating it would be paid a bequest (**EXHIBIT A**). It was too early for the bequest to be calculated, approved by Probate Court, and paid. The amount was still unknown,

Hadassah was impatient and believed it was not to going to be paid the bequest. The delayed bequest was investigated by Federal Agents who contacted Schwartz. Schwartz was a civil lawyer in Cincinnati for more than 40 years, but was totally unfamiliar with federal criminal investigations and procedures. Schwartz immediately hired Fleisher to represent him in all legal matters taking place. Schwartz and his Trust became a target of the Federal Agents and lawyers who wanted to have an interest in the large estate.

Fleisher accepted more than \$600,000.00 from Schwartz, his personal life savings. Fleisher claimed to be competent and promised a very full, comprehensive, expert representation in any and all criminal and civil matters.

Fleisher committed numerous unethical rule violations. The most obvious violations that Fleisher committed were acts of conflict and deception that directly betrayed and incriminated Schwartz. Fleisher caused Schwartz to be unnecessarily sentenced and lose his assets, while Fleisher purposely avoided blame for his own involvement and failed to provide Schwartz's needed legal representation.

When Hadassah asked for a status, Fleisher, not Schwartz, authored the two letters to Hadassah. Each deliberately failed to inform Hadassah the details of its formulated bequest. Fleisher had Schwartz sign each of those letters that purposely failed to answer what was requested.

Hadassah's fund raisers were unsatisfied with Fleisher's deceitful responses. Hadassah suspected it would not be receiving its bequest. They aggressively pressed for an immediate investigation and criminal charges.

Fleisher, who wrote Schwartz's letters, knew and told Schwartz that it was his professional duty to withdraw as his attorney and become a witness for Schwartz and admit his own personal involvement. He did not withdraw. Fleisher promised to reveal his personal involvement in writing to all concerned. He did not keep that promise and allowed the government to hold Schwartz to blame.

Federal investigators were unfamiliar with Probate matters. They suspiciously believed that Hadassah would suffer a loss of a bequest because Schwartz had not yet paid Hadassah. In fact, it will be shown that Hadassah never did suffer a loss. The Trust Schwartz had managed, later paid Hadassah in full from funds that were wrongfully claimed absent from the Trust. Another law office that Schwartz retained to advise and manage the estate withdrew and failed to further contact Schwartz.

On Fleisher's promise to correct the government's wrongful claims, Schwartz painfully agreed to a "Plea Bargain" to avoid the risk of an unlikely excessive sentence. Fleisher explained to Schwartz that Plea Bargains were often not accurate to be amended later by a hearing, Fleisher said that following the plea hearing, he, Fleisher:

1. Would engage in an evidentiary hearing and admit that he, Fleisher, wrote the *TWO* letters,
2. Would require the government to provide proof of any claimed unlawful acts and loss amounts,
3. Would prove that there was no fraud or theft by Schwartz,
4. Would prove that there was no loss to Hadassah, and
5. Would show that Schwartz's administration was transparently guided by another law office.

Fleisher failed to do any of what he had promised.

Fleisher lied to Schwartz and to the Federal Court. Fleisher never did correct any Plea Bargain statements or endeavor to conduct any post plea or Pre-Sentence hearings.

It was later learned by unsealed secret In-Chambers transcripts that the Federal Judge had pressed Fleisher several times to request the needed hearings and mitigate the facts. Fleisher, in selfish betrayal, unknown to Schwartz, refused to conduct the hearing urged by the Judge.

Without the consent of his client, Fleisher secretly, In-Chambers, insisted to **"take the shortest, easiest road"** and thereby impose a full sentence upon Schwartz without a hearing.

Schwartz was never charged with embezzlement or stealing. He was charged with Mail Fraud based on what the government said were those letters constituting a scheme and a presumed, but not proven, loss. The loss did not occur. Hadassah was eventually fully paid. At the insistence of his counsel, the Judge had no choice but to sentence Schwartz for the false, unchallenged and unlitigated claims of "loss."

In the criminal portion of this matter Fleisher acted as co-counsel for Schwartz with Cincinnati attorney, Martin S. Pinales. A Grievance against Martin Pinales is not presented at this time.

**This Grievance is not about the merits of any cases against Schwartz. It is not to re-visit the issues of Schwartz's guilt or claims of Fleisher's malpractice. This Grievance concerns many unethical Rule violations by Fleisher. It is necessary to review and understand these other more specific facts in order to focus on Fleisher's numerous, intentional unethical violations and their serious far reaching consequences.**