

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

BRUCE JACOBS,
Respondent.

Supreme Court Case
No. SC22-893

The Florida Bar File
No. 2022-70,335 (11H)
No. 2022-70,336 (11H)
No. 2022-70,337 (11H)
No. 2022-70,402 (11H)
No. 2022-70,490 (11H)

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AMENDED REPORT OF REFEREE

I. **SUMMARY OF PROCEEDINGS**

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On July 7, 2022, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. Respondent filed various pre-trial motions attacking the Bar's Complaint and asserting his defenses of free speech pursuant to the First Amendment; Florida's Anti-SLAPP law; and selective prosecution. Respondent's motions and the Bar's responses to same were considered and denied on the merits. Numerous motions concerning discovery were

filed by both parties. The Bar's motion to compel was granted.

Respondent was excluded from calling witnesses who were not provided to the Bar by the date contained in my order. Respondent was also prohibited from presenting exhibits in evidence which were not disclosed and provided by the deadlines contained in my order.

The final hearing on liability took seven (7) days to complete. It was held on April 14, April 17, 2023, through April 19, 2023, and June 12, 2023, through June 14, 2023. On June 30, 2023, after reviewing all the evidence presented in the liability portion of the case, the Respondent was found guilty on all five counts in The Florida Bar's complaint filed in this case.

The following counsel were present:

For The Florida Bar:
Tonya Avery, Bar Counsel
Jennifer Falcone, Bar Counsel
Arlene Sankel, Bar Counsel

For Respondent:
Bruce Jacobs, Esq.
David Winker, Esq.
Richard Greenberg, Esq.

The Bar presented Exhibits. All The Florida Bar's exhibits were admitted into evidence.

The Respondent entered two exhibits into evidence. The second exhibit was a composite exhibit. In total the Respondent's exhibits were 7 court orders that were admitted into evidence. See transcript of April 19, 2023, pages 1216-1220. These two exhibits were again identified during a Motion

for Rehearing granted by this Referee and held December 12, 2023. These exhibits do not change the Referee's recommendation for discipline since the Respondent had read these orders into the record during the liability phase of the trial. Therefore, this referee had considered these exhibits when the recommendation for discipline was filed on November 20, 2023.

The following witnesses testified for the Respondent:

- 1) Maria Williams James was credible but did not understand the procedural process of her case.
- 2) Ricardo Corona, Esq. is not mentioned in this report. He was credible, however none of his testimony was relevant to any of the counts charged against Mr. Bruce Jacobs.
- 3) Jim Lewis, Esq. was credible. He testified he was not an expert in foreclosure. That his testimony was his opinion only. He also testified as to what he considered the boundaries not to cross when criticizing the judiciary and the courts.
- 4) Bruce Jacobs, Esq. was not credible.

All items properly filed, including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

Narrative Summary of Case:

Respondent is charged with specific rule violations in a five-count complaint, arising from serious misconduct, including that he: filed frivolous pleadings, claims or contentions; lacked candor towards the tribunal; knowingly disobeyed the orders or rules of a tribunal; impugned the integrity of judicial officers without an objective basis in fact for same; engaged in dishonest or deceptive conduct, and conduct that prejudiced the administration of justice. Each of these serious infractions has been proven by clear and convincing evidence in Counts I, II, III, and IV. In Count IV, the Bar also alleged, and proved, that respondent engaged in conduct that disrupted the tribunal. In Count V the Bar proved the respondent again impugned the integrity of the court and engaged in conduct prejudicial to the administration of justice.

The evidence of misconduct in this matter is, indeed, clear, and convincing. It consists of respondent's own pleadings, transcripts, videos, briefs, and the court rulings thereon. Despite respondent's disingenuous claims that the Bar "presented false evidence," or that the Bar omitted pertinent portions of the pleadings to cast him in a bad light, the Bar's exhibits comprise the totality of the pertinent documents at issue, that were submitted to the court by respondent in each case. Review of these

pleadings and documents demonstrate violations of the Rules Regulating the Florida Bar on their face. In part, I also rely upon the findings and rulings of the courts below in order to support my findings in the instant matter. *The Florida Bar v. Gwynn*, 94 So.3d 425, 429-430 (Fla. 2012).

COUNT I – THE NICOLAS CASE

The Nicolas foreclosure matter was pending before Judge Butchko. (TFB Ex 2). After a contested final order of summary judgment was entered in favor of the bank, and not appealed, respondent moved to set aside the judgement for fraud. (TFB Ex 4). At an evidentiary hearing on the motion, there was a conflict in the testimony regarding the identity of the current loan servicer. (TFB Ex 2, 4). Judge Butchko entered an Order to Show Cause, drafted by respondent, against the bank's lawyers. (TFB Ex 2, 4 at p. 4-6). The Order to Show Cause was based on their presentation of testimony contradictory to the opinion espoused by respondent's expert witness. (TFB Ex 2, 4 at p. 4-6). The Order to Show Cause was issued before the conflict in the evidence was resolved in the litigation, and prior to allowing plaintiff's counsel the opportunity to respond

to the allegations. (TFB Ex 4 at 6). Accordingly, plaintiff's counsel filed an Emergency Petition for Writ of Prohibition in the Third DCA. (TFB Ex 3). The Third DCA issued a stay in the case pending resolution of the Petition for Writ. (TFB Ex 4).

The Third DCA defined the specific issue on appeal as, whether "a routine dispute over a factual issue like this one, based on the type of conflicting testimony present in the record before the trial court, fails to provide a valid basis for criminal contempt." (TFB Ex 4 at 8-9). After a thorough consideration of the specific issue on appeal, the Third DCA found that the issuance of the order to show cause was a gross error and supported its finding by citation to applicable law. (TFB Ex 4 at 10-11). The Third DCA likened respondent's actions in this matter to other instances where he escalated civil proceedings into criminal contempt prosecutions of opposing counsel "as a litigation tactic." ¹ (TFB Ex 4 at 11). The Third DCA granted the Writ and quashed the Order to Show Cause. (TFB Ex 4 at 14).

In response, respondent filed Appellee's Motion for Rehearing En Banc. (TFB Ex 5). Due to extensive violation of the Appellate Rules, the Court struck the Appendix filed by Respondent in support of his motion.

¹ Indeed, this is a frequent abusive litigation tactic employed by respondent, which he continued into the instant disciplinary action where he filed a bad faith motion to hold Bar Counsel in criminal contempt during the Final Hearing.

(TFB Ex 9). The Court denied respondent's motion for rehearing and motion for rehearing en banc. (TFB Ex 9). The Court then issued an Order to Show Cause against respondent for failure to follow the Rules of Appellate Procedure and failure to comply with professional norms governing appeals. (TFB Ex. 10). The Order to Show Cause cited six specific areas of concern regarding respondent's filings in this cause. These areas of concern give rise to the factual and legal support for a finding that respondent is in violation of the charged Rules Regulating the Florida Bar.

The Motion for Rehearing en Banc was Frivolous.

In the first area of concern, the Third DCA found that the legal arguments asserted in the motion for rehearing en banc were frivolous, in that they did not support a motion for rehearing en banc. (TFB Ex 10). This finding by the Third DCA corresponds to Rules Regulating the Florida Bar 4-3.1 (Meritorious Claims and Contentions) and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice). I rely, in part, upon the findings of the Third DCA in its Order to Show Cause (TFB Ex 10), as well as in the subsequent Order sanctioning respondent for his repeated and escalating violations of the Rules of Appellate Procedure (TFB Ex 18). *The Florida Bar v. Gwynn*, 94 So.3d 425, 429-430 (Fla. 2012).

As a preliminary matter, respondent cited Rule 9.330 in support of his motion, which is the rule governing motions for rehearing, not rehearing en banc. Had respondent even preceded under the correct rule, he made no attempt to meet the actual standard required for the Court to grant a motion for rehearing en banc. Rule 9.331(d)(1) provides *only* two grounds on which a party can move for rehearing en banc: 1) the case or issue is of exceptional importance, or 2) that it is necessary to maintain uniformity in the court's decisions.

In his motion, respondent made no such showing. Respondent made no attempt to demonstrate how the specific ruling in this case, regarding whether an unresolved factual dispute at trial could be a valid basis for indirect criminal contempt, conflicted with any other decisions of the Third DCA. Nor did the respondent demonstrate that the actual issue on appeal, whether to quash an invalid order to show cause, was of exceptional importance.

While the Rule itself does not define issues of "exceptional importance," Florida case law states, "[e]xceptional importance' cannot mean exceptionally important to the parties because every case is exceptionally important to the parties and counsel." *State v. Georgoudiou*,

560 So. 2d 1241, 1247 (Fla. 5th DCA 1990); see *Univ. of Miami v. Wilson*, 948 So.2d 774, 791-92 (Fla. 3d DCA 2007).

The only attempt respondent made to demonstrate that the issue before the Court was of “exceptional importance” was to disingenuously reframe the issue and attempt to litigate matters that were not properly before the Court. The issues respondent addressed in his Motion for Rehearing were whether there was systemic fraud in the foreclosure litigation process, such that his client was denied her Constitutional rights and due process of law; whether the Court was biased on this issue; and whether the Court should have recused itself. These, he asserted, were issues of exceptional importance, and he cited cases that stand for similar propositions. However, as none of these issues were before the Court in either fact or law, respondent wholly failed to demonstrate any legal basis on which the Court could grant rehearing en banc, and his motion was entirely frivolous. (TFB Ex 5).

“An appeal is defined as frivolous if it presents no justiciable question and is so devoid of merit on the face of the record that there is little prospect it will ever succeed.” *Visoly v. Security Pacific Credit Corp.*, 768 So.2d 482, 490-91 (3d DCA 2000). Rule 4-3.1 of the Rules Regulating the Florida Bar states: “A lawyer shall not bring or defend a proceeding, or

assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous”

Here, where respondent not only failed to demonstrate the requirements to invoke en banc review, but also entirely failed to base his motion on the facts and legal issue that were actually before the Court, his motion contained no justiciable issue and was so devoid of merit on its face that it had utterly no prospect for success.² Accordingly, his motion was frivolous and he is guilty of violating Rule 4-3.1.

Moreover, the filing of a frivolous motion for rehearing en banc is prejudicial to the administration of justice. *Visoly v. Security Pacific Credit Corp.*, 768 So. 2d at 492-93. In *Visoly*, the Court made clear that “the privilege to practice law requires an attorney to conduct themselves in a manner compatible with the administration of justice.” In addition to the duty of counsel to zealously represent his client, he has a “concurrent duty to the legal system and the public good to ensure appeals are pursued in good faith and are not frivolous,” and to thereby ensure parties are not put to the unnecessary time and expense required to defend a frivolous action,

² It is noteworthy that respondent engaged in the same conduct in the instant disciplinary action, presenting numerous days of testimony and videos that were not relevant to any actual issue in the case nor a defense to any Rule violation with which he was charged. Respondent simply reiterates his talking points, irrespective of the matter before the court.

and the Court's calendar remains available to address "cases truly worthy of consideration." *Id.*

Accordingly, as respondent filed a clearly frivolous motion for rehearing en banc in the Third DCA, he is guilty of violating both Rule 4-1.3 (Meritorious Claims and Contentions) and Rule 4-8.4(d) (Conduct Prejudicial to the administration of Justice).

**The Motion for Rehearing En Banc Impugns the Integrity
of the Court Without an Objective Basis in Fact**

In the second area of concern, the Third DCA found that the motion for rehearing en banc impugned the integrity of the Court, opposing counsel, and The Florida Bar without any relevance to the legal issue before the Court. This corresponds to Rules 4-8.2(a) (Impugning Qualifications and Integrity of Judges or Other Officers) and Rule 4-8.4(d) (Conduct Prejudicial to the Administration of Justice) of the Rules Regulating the Florida Bar. I again rely, in part, upon the findings of the Third DCA in its Order to Show Cause (TFB Ex 10), as well as in the subsequent Order sanctioning respondent for his repeated and escalating violations of the Rules of Appellate Procedure (TFB Ex 18). *The Florida Bar v. Gwynn*, 94 So.3d 425, 429-430 (Fla. 2012).

Respondent's motion for rehearing en banc contains several statements that impugn the integrity of the appellate court judges, whether they were involved in the instant matter before the Court. Some examples of same include:

- "This Court Routinely Granted the Extraordinary Remedy of Prohibition to Block Fraud Prosecutions of Powerful Parties." (TFB Ex 5 at 8)
- "In addition to this case, and the *Hudson* case, this Honorable Court exercised the extraordinary remedy to block Judge Butchko from upholding the highest standards in her courtroom so many times it almost seems personal." (string cite omitted) (TFB Ex 5 at 8)
- "This Honorable Court's new 'Butchko Rule' is in conflict with the Second DCA which has repeatedly affirmed contempt for perjury . . ." (quote and citation omitted) (TFB Ex 5 at 9-10)
- "The Butchko Rule chills trial courts who might otherwise take action to uphold the judicial canons and the Florida Bar Rules out of fear of being reversed and blasted on the front page of the Daily Business Review." (TFB Ex 5 at 10).
- "The Butchko Rule allows powerful corporations and their counsel to commit fraud with impunity and ultimately undermines the rule of law, the constitutional rights of litigants, and the integrity of the judiciary." (TFB Ex 5 at 11)

The above comments clearly impugn the integrity of the justices of the Third DCA, who are all included in this commentary, whether or not they actually participated on the panels involved in these cases.

Respondent has asserted throughout the Final Hearing that he has a Constitutional right to denigrate the judiciary in this manner, and that these

statements are protected speech pursuant to the First Amendment to the United States Constitution, Florida's Anti-SLAPP law, and federal whistleblower laws.

Contrary to respondent's assertions, the speech at issue in this case is not protected speech. I have already ruled on this issue, and rejected respondent's claims, as has the Florida Supreme Court. The practice of law is a privilege, not a right. R. Reg. Fla. Bar 3-1.1. One who chooses to avail themselves of that privilege does so on the condition that they abide by the Rules Regulating the Florida Bar.

Rule 4-8.2 prohibits lawyers from disparaging the integrity of the judiciary with statements that the lawyer knows to be false or with reckless disregard as to its truth or falsity. The Florida Supreme Court has upheld Rule 4-8.2 as constitutional and found that it does not infringe a lawyer's freedom of speech. *See The Florida Bar v. Ray*, 797 So. 2d 556, 558 (Fla. 2001) (Holding that statements in letters written by attorney questioning veracity and integrity of judge, as well as judge's fairness at hearing, were not protected speech under First Amendment for purposes of attorney disciplinary proceedings, as attorney did not have objectively reasonable basis in fact for making those statements.).

In *Ray*, the Court unequivocally held that a lawyer's statements made about the judiciary, with reckless disregard to the truth or falsity of same, is not protected speech. Where the Bar alleges that an attorney made disparaging comments about a judicial official, the burden in the ensuing attorney disciplinary proceedings properly shifts to the attorney to provide an objective factual basis in support of those statements. *The Florida Bar v. Ray*, 797 So.2d at 558 fn.3, and 559; see also *The Florida Bar v. Jacobs*, Florida Supreme Court Case No SC2020-1602 at p. 11, 2023 WL 3874681 (Fla. 2023).

Here, respondent has not met his burden to demonstrate an *objective* factual basis for the statements contained in his motion for rehearing en banc. Respondent states that the Third DCA overturned the trial court's orders *for an improper purpose*: i.e., to "block fraud prosecutions of powerful parties," or "to block [the trial court] from upholding the highest standards of conduct in her courtroom," or to "chill trial courts who might otherwise take action" in these matters. However, the only evidence respondent presented to support his statements as to the Court's improper motive are the fact that the court has previously ruled adverse to his

position.³ Same cannot provide an objective basis for respondent's assertions regarding the court's alleged improper motivation. It is well settled that adverse rulings do not establish that a court is biased or has an improper motive. See *i.e.*, *Thompson v. State*, 759 So. 2d 650, 659 (Fla. 2000); *Clark v. Clark*, 159 So.3d 1015 (1st DCA 2015) (noting: "It is well-settled that adverse rulings are insufficient to show bias").

Indeed, as the Florida Supreme Court recently held in Jacob's first disciplinary action, "[i]n the absence of evidence showing misconduct, collusion, or defiance of established law, Jacobs has not demonstrated that he had an objectively reasonable basis in fact to accuse . . ." the judges who ruled against him, especially when the judicial action "could be explained as simply following controlling case law." *The Florida Bar v. Jacobs*, Florida Supreme Court Case No SC2020-1602 at p. 13-14, 2023 WL 3874681 (Fla. 2023).

Here, the Third DCA opinion sufficiently articulated its factual and legal analysis regarding the significant infirmities in the trial court order and presented controlling case law to support its decision. (TFB Ex 9).

Moreover, the respondent has presented *no evidence* apart from his own

³ While respondent introduced, and/or attempted to introduce, numerous videos and other evidence which he stated portrayed the bank lawyers engaged in fraudulent conduct, such evidence even if true could not establish an objective basis in fact for the statements respondent made about the judiciary and the judges' improper basis or motive for various rulings.

conclusory allegations, to demonstrate that the Third DCA's decision was based on anything other than the facts and legal principles enunciated in the order. Accordingly, the respondent has not shown an objective factual basis to support the contention that the Court did anything other than abide by controlling law. He is, therefore, guilty of violating Rule 4-8.2(a).

Similarly, these statements improperly impugning the integrity of the Third DCA judges, establish respondent's guilt of conduct prejudicial to the administration of justice, in violation of Rule 4-8.4(d). These statements are designed to foster both his clients' and the public's distrust of the legal system, which affects the orderly administration of justice. These comments are further designed to be an improper litigation tactic: to allow respondent to engage in forum shopping as he attempts to force recusals of judges' who have not ruled in his favor; and/or to improperly motivate a judge to rule in his favor to avoid respondent's harassing and abusive commentary.⁴ See *The Florida Bar v. Jacobs*, Florida Supreme Court Case No SC2020-1602 at p. 8, 2023 WL 3874681 (Fla. 2023) (Respondent's statements impugning the judiciary are a litigation tactic, "to obtain relief when he [is] unable to obtain relief without such attacks.").

⁴ Significantly, respondent continued this impugning commentary into the instant disciplinary action, wherein he told me, as Referee, that I am corrupt and dishonest if I fail to rule in his favor in this case.

Based on the foregoing, respondent is in violation of Rule 4-8.2(a) (Impugning the Qualifications and Integrity of the Judiciary) and is also guilty of an additional violation of Rule 4-8.4(d) (Conduct Prejudicial to the Administration of Justice), of the Rules Regulating the Florida Bar.

The Motion for Rehearing En Banc Contains Citations to the Record That Do Not Support the Facts for Which They Are Cited

In the third area of concern, the Third DCA found that the motion for rehearing en banc contains citations to the Record, which do not support the facts for which they are cited. (TFB Ex. 10; 13A). This corresponds to Rules 4-3.3 (Candor to the Tribunal), 4-8.4(c) (Conduct Involving Dishonesty, Fraud, Deceit, or Misrepresentation), and Rule 4-8.4(d) (Conduct Prejudicial to the Administration of Justice) of the Rules Regulating the Florida Bar. I again rely, in part, upon the findings of the Third DCA in its Order to Show Cause (TFB Ex 10), as well as in the subsequent Order sanctioning respondent for his repeated and escalating violations of the Rules of Appellate Procedure (TFB Ex 18). *The Florida Bar v. Gwynn*, 94 So.3d 425, 429-430 (Fla. 2012).

As an example, in his motion for rehearing en banc (TFB Ex 5), at page 4, para. 13, respondent stated: "Mr. Heifner [the bank's witness] admitted his only preparation to testify for BONYM was to speak with Mr. Callahan who set him up to testify for BONYM falsely and to review

Carrington's loan level data for Ms. Nicolas' loan and the trust documents." (TFB Ex 5 at 4, para 13; Ex 13A, 13B). In the motion, respondent cited to "App I-A, 84:6 – 90:13." (TFB Ex 13B).

A review of that portion of the pertinent transcript contains no such admission from the witness that Mr. Callahan "set him up to testify falsely." (TFB Ex 13C). The record merely reflects that the witness stated he prepared with Mr. Callahan for his testimony. (TFB Ex 13C). Respondent's statement to the contrary was clearly intended to mislead the Court regarding the evidence presented below.

Respondent's conduct was intentional in this regard. In *The Florida Bar v. Fredericks*, 731 So.2d 1249, 1252 (Fla.1999), the Court repeated the well-established principle that "in order to satisfy the element of intent it must only be shown that the conduct was deliberate or knowing." *The Florida Bar v. Watson*, 76 So. 3d 915, 922 (Fla. 2011) (internal citations omitted). The motive behind the attorney's action is not the determinative factor. Rather, the issue is whether the attorney deliberately or knowingly engaged in the activity in question. *Id.* (internal citations omitted). Thus, if the record shows that respondent deliberately or knowingly engaged in the acts, his conduct was intentional. Here it is clear that the respondent intended to put those specific words in his pleading. The words were

deliberate and thought out. He intended to convey the message that the witness "admitted" that the bank's lawyer coached him to provide false evidence. He has repeated that mantra at every opportunity in the instant disciplinary proceeding regarding this witness and others.

This is significant. As has been demonstrated throughout these proceedings, neither the Florida Supreme Court, this Honorable Referee, nor the Florida Bar can rely on respondent's representations of what is occurring in the courts below. Respondent throws around his talking points continuously, filled with the same conclusory allegations of fraud, denial of due process, corruption, and unfair or dishonest dealings. Respondent has frequently repeated throughout these proceedings that the witnesses below admitted they lied, the lawyers admitted their witnesses lied, they were caught lying, and the like. In at least this instance, such statements were not supported by the record evidence.

Respondent's characterizations of what is happening in the court's below do not stop there. In the instant disciplinary action, respondent told me that the video of the hearing before Judge Bailey exonerates him. He has repeated several times under oath in these proceedings that Judge Bailey "created a false narrative" or lied about what occurred in the case before her. Similarly, in the third video respondent introduced into

evidence on Tuesday, April 18, 2023, respondent is seen and heard in the video making misrepresentations to the trial court. He informed the trial court in that video that the basis for the Third DCA's ruling, in which they quashed Judge Butchko's order to show cause (TFB Ex 4), was that the Third DCA said perjury is not a basis for contempt. Even allowing for hyperbole, that was not a truthful or honest representation to the trial court regarding the Appellate Court's ruling. (TFB Ex 4).

Such statements from respondent defy credulity. None of these statements can withstand scrutiny, as the records in the matters below do not support the contentions made by respondent. I have considered respondent's continuation of this conduct before me in these proceedings, in my findings regarding respondent's lack of credibility, in rejecting his denial of wrongdoing, and in determining that his misrepresentation of the witness' "admission" in his motion for rehearing was intentional conduct.

In considering violations of Rules 4–8.4(c) and 4–8.4(d), the Florida Supreme Court has explicitly stated that “basic, fundamental dishonesty ... is a serious flaw, which cannot be tolerated [because] ‘[d]ishonesty and a lack of candor cannot be tolerated by a profession that relies on the truthfulness of its members.’” *The Florida Bar v. Schwartz*, 334 So. 3d 298, 303 (Fla. 2022), citing *The Florida Bar v. Berthiaume*, 78 So. 3d 503, 510

(Fla. 2011) (*quoting The Florida Bar v. Rotstein*, 835 So. 2d 241, 246 (Fla. 2002)). Further, the Court has made plain that “[d]ishonest conduct demonstrates the utmost disrespect for the court and is destructive to the legal system as a whole.” *The Florida Bar v. Head*, 84 So. 3d 292, 302 (Fla. 2012) (*quoting The Florida Bar v. Head*, 27 So. 3d 1, 8-9 (Fla. 2010)).

Here, respondent’s misconduct occurred in a motion for rehearing en banc, filed in the Third DCA. (TFB Ex 5). As such, his misrepresentation of the record testimony demonstrates he is guilty of violating Rule 4-3.3, for making a false statement of fact to the tribunal. (Candor to the Tribunal). The statement was, itself, dishonest and misleading, and/or a deliberate misrepresentation, in violation of Rule 4-8.4(c). As the Supreme Court pointed out in *Head*, such dishonesty is destructive to the legal system as a whole and is therefore conduct prejudicial to the administration of justice, in yet another violation of Rule 4-8.4(d).

Motion For Rehearing En Banc Includes Dishonest or Misleading Argument Based on Vacated Trial Court Orders

In the seventh area of concern expressed in the Third DCA’s Order to Show Cause,⁵ the Third DCA found that the *Appendix* includes vacated trial court orders (TFB Ex 6, located in a separate binder) *but that the motion* for rehearing en banc fails to disclose the orders were vacated. (TFB Ex 5;

⁵ This Report of Referee will address the technical violations common to all three Appendices in Counts I, II, and III, in a separate section following conclusion of the Argument on Count III.

TFB Ex 16A). This corresponds to Rules 4-3.3 (Candor to the Tribunal), 4-8.4(c) (Conduct Involving Dishonesty, Fraud, Deceit, or Misrepresentation), and Rule 4-8.4(d) (Conduct Prejudicial to the Administration of Justice) of the Rules Regulating the Florida Bar. I again have relied, in part, upon the findings of the Third DCA in its Order to Show Cause (TFB Ex 10), as well as in the subsequent Order sanctioning respondent for his repeated and escalating violations of the Rules of Appellate Procedure (TFB Ex 18). *The Florida Bar v. Gwynn*, 94 So.3d 425, 429-430 (Fla. 2012).

Like respondent's misrepresentations of the record testimony above, it was dishonest and misleading for respondent to include vacated orders in the Appendix, the sole function of which is to support the arguments made in the motion, without also stating outright in the motion itself that several of the trial court orders cited in support of his argument were vacated. (See Comp Ex 16 A, B, C).

In his motion, respondent argues, generically, "Through the orders of many respected judges, Ms. Nicolas' counsel obtained evidence which shows BANA, and BONYM engaged in systemic fraud upon the court involving forgery, perjury, defiance of court orders, lack of candor, and obstruction of justice." (TFB Ex 16B).

Nowhere in the motion does the respondent indicate that several of these trial court orders have been vacated. When a lawyer makes technically truthful statements but omits pertinent information such that the resulting message is dishonest or misleading, the statement is equivalent to an affirmative misrepresentation. *The Florida Bar v. Forrester*, 818 So.2d 477 (Fla. 2002).

In *Forrester*, the Supreme Court made clear that an attorney can speak words that are “technically truthful” but omit pertinent information to make the statement misleading. In that case, Respondent Forrester attended a deposition with her client. At some point a pertinent document was removed from the conference table and placed out of sight in Forrester’s possession.

When opposing counsel inquired as to the document’s whereabouts, Forrester replied, “I’m not seeing it.” The Court found that, although Forrester’s response was technically truthful, because she was not in fact “seeing” the document at that moment, her answer was still intended to mislead because she in fact knew where the document was located and failed to disclose it to opposing counsel.

Similarly, by omitting from the body of the motion for rehearing the fact that several of the trial court orders were vacated, and only disclosing

same buried in a footnote to a pleading contained in a 600 plus page appendix, respondent's argument to the court appeared to be based on good law. Same could, and was intended to, mislead the reader into believing his arguments were based on good law.

As Respondent's intentionally misleading argument was included in a motion filed in the Appellate Court, respondent is guilty of violating the following Rules Regulating the Florida Bar: Rule 4-3.3, for his lack of candor to the tribunal; Rule 4-8.4(c) for his dishonest and misleading argument; and Rule 4-8.4(d) for his conduct prejudicial to the administration of justice.

COUNT II – THE AZRAN CASE

On September 21, 2020, respondent filed a motion to vacate the foreclosure judgment in the Azran case due to fraud. (TFB Ex 21). On November 3, 2020, the trial court denied the motion, apparently without first holding an evidentiary hearing. (TFB Ex 22). Respondent filed an appeal. The Third DCA *per curiam* affirmed the trial court order. (TFB Ex 23). The Third DCA's PCA order cited controlling case law. (TFB Ex 23).

Respondent filed a Motion to Certify Conflict, Request for Written Opinion, Motion for Rehearing, and/or Motion for Rehearing En Banc. (TFB Ex 24). Respondent thereafter filed twelve volumes of appendices,

consisting of nearly 3,500 pages, with no index or labeling. (TFB Ex 25 – contained in 4 separate binders). In an Opinion filed January 26, 2022, the Third DCA struck respondent's motion and the accompanying appendices, because they violated the Rules of Appellate Procedure and the Rules Regulating the Florida Bar. (TFB Ex 26). In the same Opinion, the Court issued its Order to Show Cause, making findings regarding respondent's numerous violations of the Rules. (TFB Ex 26).

In the instant Bar disciplinary action, respondent's misconduct set forth in Counts I, II and III of the Bar's Complaint is similar and cumulative conduct. The legal issues, analysis, and my findings are the same as described above in Count I and are hereby adopted and incorporated into my discussion of Counts II and III.

The Motion to Certify Conflict, etc., Raises Frivolous Contentions and/or Makes One or More Arguments in Bad Faith

Like the Motion at issue in Count I above, the Third DCA's Order to Show Cause in Count II found that respondent raised frivolous positions, and/or made one or more arguments in bad faith. These findings by the Third DCA correspond to Rules Regulating the Florida Bar 4-3.1 (Meritorious Claims and Contentions), and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice). I have relied, in part, upon the findings of the Third DCA in its Order to Show Cause (TFB Ex 26), as well as in the

subsequent Order sanctioning respondent for his repeated and escalating violations of the Rules of Appellate Procedure (TFB Ex 31). *The Florida Bar v. Gwynn*, 94 So.3d 425, 429-430 (Fla. 2012).

As the first example of respondent's frivolous and/or bad faith arguments, the Third DCA pointed to respondent's assertion of conflict jurisdiction. (TFB Ex 26; 28A). To qualify for conflict jurisdiction, a party must demonstrate that the Opinion or Order at issue is in express and direct conflict with the decision of another District Court of Appeal. Fla. R. App. P. 9.330(a)(2)(c). (TFB Ex. 26; Comp. Ex. 28 A2). The express and direct conflict must appear within the four corners of the two orders or opinions and cannot be supported by reference to facts not contained therein. (TFB Ex 26).

After conducting a lengthy and thorough analysis of the Order at issue (TFB Ex 23) and comparing same to the issues and holdings in the three cases certified by respondent to create conflict jurisdiction: *Sorenson*, *Schwartz*, and *Barsan* (TFB Comp Ex.'s 28 A3, A4, and A5), the Third DCA concluded that there was virtually no overlap between them. (TFB Ex 26). Indeed, the Third DCA stated, "The only aspects shared by this case and *Sorenson* are that both are foreclosure cases; both involve Jacobs as

counsel for the defendant; and both involve an allegation of fraud.” (TFB Ex 26 at 10).

In *Azran*, the case which is the subject of Count II of the Bar’s Complaint, the issue pending before the Court was whether the trial court erred in denying the motion to vacate judgment due to fraud without first holding an evidentiary hearing. The 3d DCA *per curiam* affirmed the trial court, finding no error. (TFB Ex 23, 26).

By contrast, in the cases respondent used to certify conflict:

- the issue before the *Sorenson* Court was whether the trial court erred when it denied the defendant’s motion to amend his Answer and affirmative defenses to add a fraud defense. The 2d DCA found error and reversed (TFB Ex 26 at 8; TFB 28 A3);
- the issue before the *Schwartz* Court was whether the trial court erred in granting summary judgment where discovery was still outstanding. The 4th DCA affirmed the trial court, finding no error where the bank proved standing, and respondent failed to timely submit evidence to rebut the summary judgement motion (TFB Ex 26 at 11; TFB Ex 28 A4); and
- the *Barsan* case could not be used to establish conflict jurisdiction because it was a PCA with no facts, and because it was also decided by the Third DCA, and thus does not demonstrate that the holding conflicted with another District Court of Appeal’s decision.

As respondent filed a motion to certify conflict and did not cite a single case that could be used to establish conflict jurisdiction, that claim in his motion was frivolous. *Visoly v. Security Pacific Credit Corp.*, 768 So.2d 482, 490-91 (3d DCA 2000). Moreover, the filing of a frivolous claim to

certify conflict is conduct prejudicial to the administration of justice. *Visoly v. Security Pacific Credit Corp.*, 768 So. 2d at 492-93. Accordingly, respondent is guilty of violating Rules 4-3.1 (Meritorious Claims and Contentions) and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice) of the Rules Regulating the Florida Bar.

The Motion to Certify Conflict, etc., Is Frivolous and Impugns the Integrity of the Judiciary without an Objective Factual Basis

As the second example of respondent's frivolous and/or bad faith arguments, the Third DCA found that respondent quoted from, and relied upon – as ostensible support for his legal position – a 2018 trial court order issued in the unrelated *de Morales* case, in which she sanctioned the bank and its lawyers. (TFB 24 at 5-6). The sanction order was vacated a few weeks later after a subsequent hearing. (TFB Ex 26 at 12-13).

The Third DCA acknowledged that respondent disclosed the order was vacated, but found it to be frivolous and bad faith that he “fails to explain why he would quote from a vacated order in an unrelated case, or how such a vacated order from an unrelated case is anything more than a legal nullity, much less an order upon which this court should rely as persuasive authority for some legal proposition advanced by him.” (TFB Ex 26 at 13).

A review of respondent's motion demonstrates that the Third District is correct. Respondent indeed argues, without explanation, the vacated order as if it had precedential value. (TFB Comp Ex 28 B2). It is axiomatic that an argument that relies on a legal nullity as supporting authority is frivolous. Accordingly, this contention asserted by respondent in his motion was frivolous, in violation of Rule 4-1.3, and was also prejudicial to the administration of justice, in violation of Rule 4-8.4(d) of the Rules Regulating the Florida Bar. *Visoly v. Security Pacific Credit Corp.*, 768 So. 2d at 490-93.

Moreover, it is apparent that respondent had a bad faith motive to include this legal nullity in his motion. The trial court judge who issued the order in the unrelated case, and subsequently vacated it after another hearing, was Judge Bronwyn Miller. In the interim, she had been elevated to the Third DCA, and was on the panel that served the decision in the *Azran* appeal. (TFB Ex 26 at 13, fn 8). Respondent used this as another opportunity to impugn the integrity of Judge Miller. In his motion, respondent stated, "In full candor, Judge Miller vacated her sanctions order that called out willful bad faith by BANA and BONYM just before Governor Rick Scott elevated her to the Third DCA." (TFB Ex 24 at 5-6).

By linking those two facts together – 1) Judge Miller vacated her order, 2) just before she was elevated to the Third DCA by the Governor – respondent conveyed a clear message that Judge Miller vacated the sanction order for an improper purpose, i.e., her own personal gain, and not for a legitimate legal purpose. This is the same conduct that occurred in Count I of this Complaint.

Here, just as there in Count I, the respondent has not, and indeed has admitted that he cannot, present an objective factual basis for his personal attack on Judge Miller. Respondent admitted the same in his testimony before me in this proceeding. At first, in response to my direct questioning, the respondent told me that he never said Judge Miller vacated her order for an improper purpose. According to respondent, all he did was lay out “true facts.” When I inquired as to why he would link those two facts together, respondent admitted that he knew he had to disclose that the order was vacated, and *he wanted it to be clear that it wasn’t on the merits.*

Accordingly, the respondent acknowledged that he meant to convey there was another purpose, other than the merits, for Judge Miller to vacate the order. In his testimony before me, respondent stated the actual purpose of the order was vacated was to allow another witness to testify.

This explanation, if true, demonstrates conclusively that respondent meant to impugn Judge Miller's integrity with his comment in the motion. If that were indeed the case, respondent could have simply stated that the order was vacated on procedural grounds and not on the merits. He did not do so, rather choosing to link the vacating of the order to Judge Miller's ascension to the Third DCA.

That respondent intended to mislead the Court with his message is, therefore, self-evident. He deliberately omitted pertinent information, i.e., that there was a legally legitimate basis for the order to be vacated, and that omission made the statement dishonest or misleading. See *The Florida Bar v. Forrester*, 818 So.2d 477 (Fla. 2002).

Moreover, respondent did not, and cannot, present an objective factual basis for the misleading commentary that Judge Miller had an improper motive for vacating the order. Indeed, following the lunch break, respondent revisited our discussion on this issue and admitted that he had "zero evidence" that Judge Miller traded the contempt order for a seat on the Third DCA. Furthermore, Mr. Jim Lewis, Esquire testified that there are boundaries when criticizing the judiciary and the Courts. Lewis testified that it must be done in good taste, and you cannot accuse them of a crime or taking a bribe or doing something just to get to a particular place in life, that

he said you cannot do. See, transcript Volume II dated April 17, 2023, page 423 lines 12-25 and page 424 line 1-2. Based on Mr. Lewis testimony, regarding the boundaries not to cross, the Referee can conclude that Mr. Lewis agreed that Bruce Jacobs went too far by making those statements about Judge Miller. Mr. Lewis also testified that "Treason is not a term he would use under any circumstance. See, Transcript Volume II dated April 17, 2023, page 439 line 20-21. Mr. Lewis was a credible witness.

Based on the foregoing, respondent has made frivolous arguments and dishonestly impugned the integrity of the court. As the dishonest comments were included in a court filing, respondent also lacked candor to the tribunal. This conduct is prejudicial to the administration of justice. Respondent is accordingly guilty of violating Rules 4-3.1 (Meritorious Claims and Contentions), 4-3.3 (Candor to the Tribunal), 4-8.2(a) (Impugning the Integrity of the Tribunal, 4-8.4(c) (Conduct that is Dishonest, Deceitful, Fraudulent or a Misrepresentation), and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice), of the Rules Regulating the Florida Bar.

COUNT III – THE BONTOUX CASE

Respondent represented the defendant in the matter styled *Bank of New York Mellon v. Bontoux*. A general magistrate, Elizabeth M.

Schwabedissen, was appointed to hear discovery issues and disputes. (TFB Ex 35). Following a two-day hearing, the General Magistrate issued her 21-page Report and Recommendations, in which she made factual findings, castigated respondent's bad faith discovery practices, found no bad faith on the part of the bank, granted the bank's motion for protective order, and sustained the bulk of the bank's objections to respondent's discovery requests and overruled others. (TFB Ex 35, Ex. 40 at 3).

Respondent filed his objections to the Magistrate's Report and Recommendations. (TFB Ex 36). Respondent did not provide the transcript or any other record of the proceedings below to the circuit court judge tasked with reviewing the General Magistrate's Report in an appellate capacity. (TFB Ex 40 at 3, 5). As a result, the trial court was required to deny respondent's exceptions to the magistrate's report, pursuant to Fla. R. Civ. P. 1.490(h). (TFB Ex 40 at 5). The trial court was also required to review the Magistrate's Report in the capacity of an appellate court, with deference, and could only overrule same if she made "clearly erroneous legal conclusions or misconceived the legal effect of the evidence." (TFB Ex 40 at 4). At the hearing on respondent's exceptions to the magistrate's report, respondent did not demonstrate any clear legal error on the face of

the report. (TFB Ex 40 at 5). Rather, respondent argued facts and orders outside the record before the magistrate. (TFB Ex 40 at 5).

Following the hearing, the trial court issued an order granting respondent's objections to the magistrate's report, making a finding of bad faith on the part of the bank, and requiring the bank to respond and produce the requested discovery. (TFB Ex 37, 40 at 3). In the order, the trial court did not make the required findings necessary to overturn the magistrate's report. (TFB Ex 40).

The Bank filed a Petition for Writ of Certiorari to quash the trial court's order. (TFB Ex 38). Respondent filed his Response to the Petition for Certiorari. (TFB Ex 39). On January 5, 2022, the Third DCA issued the Writ of Certiorari and quashed the order of the trial court, finding as a matter of law that the trial court departed from the essential requirements of law, because its order failed to address whether the general magistrate's findings were supported by competent and substantial evidence, or whether the general magistrate made clearly erroneous conclusions of law. (TFB Ex 40 at 5-6).

Respondent filed an Amended Motion for Rehearing En Banc (TFB Ex 41), and an appendix in support of that motion (TFB Ex 42). The Bank filed its Opposition to the Motion for Rehearing. (TFB Ex 43). The Third

DCA issued an Opinion in which it struck both the motion for rehearing and its appendix, finding same to be in violation of the Rules of Appellate Procedure. (TFB Ex 44). In the same Opinion, the Court issued a Rule to Show Cause against respondent. (TFB Ex 44).

The Response to Certiorari and the Motion for Rehearing En Banc Raise Frivolous And/or Bad Faith Arguments and Contentions

In Count III, respondent repeats and exacerbates the same misconduct identified in Counts I and II. I, again, incorporate herein the analysis and authorities presented in my findings concerning Count I.

Respondent argued in his motion that Rehearing En Banc was appropriate because the matter deals with an issue of exceptional importance. (TFB Ex 41, 44). Respondent contends that the issue of exceptional importance is that the case deals with the deprivation of a constitutional right. (TFB Ex 41, 44). The Court found this to be frivolous, finding, "Mr. Jacobs, however, fails to show how this Court's opinion quashing a discovery order that fails to comply with the Florida Rules of Civil Procedure deprived his client of any of his constitutional rights." (TFB Ex 44 at 4). Moreover, respondent's claim that his client was deprived of due process because he was not "before a fair and impartial tribunal" is not supported by the record evidence and improperly impugned the integrity of the Court. (TFB Ex 44 at 4).

As previously demonstrated, respondent's pleadings in this case were entirely frivolous. In both his response to the Petition for Certiorari, and in the Motion for Rehearing, respondent *did not address the specific issue identified in the Petition*. (TFB Ex 39). Notably, respondent's response to the Petition for Certiorari *did not even mention* the Magistrate's Report, the standard of review in certiorari proceedings, or whether the trial court erred in overruling the magistrate without making required findings. (TFB Ex 39). As such, the issues and contentions in his pleadings were entirely frivolous. See *Visoly v. Security Pacific Credit Corp.*, 768 So. 2d at 490-93. Respondent is guilty of violating Rules 4-3.1 (Meritorious Claims and Contentions) and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice).

Moreover, the respondent made arguments in bad faith in his Response to the Petition for Certiorari. In his zeal to demonstrate systemic fraud, respondent affirmatively misrepresented that another judge in an unrelated proceeding, issued an order vacating Ms. Maria William-James' foreclosure judgment based on a finding of fraud by the bank. (See generally Count IV, *infra*). This misrepresentation was more insidious, because Judge Bailey had just informed respondent two days prior that she made no such finding, and that the order was not vacated on that basis.

(TFB Ex's 55, 56, 57). Accordingly, it is abundantly clear that respondent's misrepresentation was intentional. Based on the foregoing, respondent is guilty of violating Rules 4-3.3 (Candor to the Tribunal), 4-8.4(c) (Conduct Involving Dishonesty, Deceit, Fraud or Misrepresentation), and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice).

In his Motion for Rehearing En Banc, respondent continued with his frivolous, bad faith arguments. Again, the respondent did not argue the actual issue before the Court – whether the trial court departed from the essential requirements of law when it issued its discovery order. Rather, respondent cast aspersions on the integrity of the Appellate Court, claiming it's bias and partiality deprived his client of due process, with no objective basis in fact for that statement. (TFB Ex 41).

As previously noted in Count I, prior adverse orders of the court do not demonstrate bias. Further, the record on its face demonstrates that the respondent and his client received all the process that was due. (TFB Ex's 34-44). Respondent's dissatisfaction with rulings of the Court that are grounded in law does not constitute a lack of due process. Respondent's bad faith claims of bias and lack of due process, simply because the Court issues rulings based on the merits of the claim actually before them, and not on the irrelevant claims of systemic fraud that are not before them in

the case, constitutes a violation of Rules 4-1.3 (Meritorious Claims and Contentions), Rule 4-8.2(a) (Impugning the Integrity of the Judiciary), and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice).

In his Motion for Rehearing En Banc, respondent continued to cite to vacated and reversed orders as authoritative support for the trial court's ruling in his favor, and for the action he urged the Appellate Court to take. (TFB Ex 41 at i.e., 8-11, 11-13, and 17-18, TFB Comp Ex 47). While the respondent did in fact disclose that the orders were vacated or reversed in this motion, he failed to explain why he continued to cite orders that are in fact legal nullities, and which have no authoritative value. For the reasons addressed in Count I, *supra*, this constitutes a violation of Rules 4-3.1 (Meritorious Claims and Contentions), and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice).

The Third DCA further found that respondent misrepresented the holdings of appellate cases in his Motion for Rehearing. For instance, respondent claimed that *Sorenson* carved out a right for him to allege fraud and thereby obtain discovery to prove the fraudulent conduct. (TFB Ex 41). As demonstrated in Count 2, *supra*, *Sorenson* does not stand for that principle and did not carve out any such right. Rather, *Sorenson* cites long standing principles of law to find that it was error to deny a defendant the

opportunity to amend his pleadings to include a defense of fraud. (TFB Ex 28 A3; TFB Ex 44 at 6). The Court included additional examples of this same misconduct in its Order to Show Cause, and the Bar provided those cases to me in the evidence in this matter. (TFB Ex 44 at 7, Composition Ex 48 A and B). Based on the foregoing, and the analysis and authorities cited in Count I, *supra*, respondent is guilty of violating Rules 4-3.1 (Meritorious Claims and Contentions), 4-3.3 (Candor to the Tribunal), 4-8.4(c) (Conduct involving Dishonesty, Deceit, Fraud, or Misrepresentation), and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice).

**Respondent's Motion for Rehearing En Banc Improperly
Impugns the Integrity of the Court without an
Objective Basis in Fact for the Statements**

In repetitive acts of misconduct throughout Counts I-V, respondent continues to disparage the judges of the Appellate court and the trial court, with no objective basis in fact for his statements. Based on the same analysis and authorities cited in Count I, *supra*, the below list is just a sampling of the statements made by respondent in his motion, which attribute an improper motive to the Court's rulings, with no objective basis in fact for those statements:

- Mr. Jacobs is "a victim of the Third DCA's abuse of its contempt powers . . ." (TFB Ex 41 at 7-8)

- “It is self-evident that . . . [Mr. Jacobs’] clients are not before a fair and impartial tribunal [as] guaranteed by the constitution.” (TFB Ex 41 at 8)
- “There is a question whether this Honorable Court is fair and impartial when it refuses to act against clear misconduct and manufactures contempt charges against the attorney who has uncovered systemic fraud . . . [j]udicial canons and the constitution do not permit such an abuse of power.” (TFB Ex 41 at 32)
- This Court’s attempt to “disbar” Mr. Jacobs “is unconstitutional, inequitable, and unjust.” (TFB Ex 41 at 37)
- [T]he court below violated judicial canons, allowed banks and powerful special interests and their counsel to violate the Florida Bar Rules with impunity, and knowingly deprived foreclosure defendants of their Fifth Amendment rights by depriving them of their property without due process of law.” (TFB Ex 41 at 51)
- [T]he panel’s overriding personal bias against [Mr. Jacobs] has deprived [Bontoux] of a fair and impartial appellate review.” (TFB Ex 41 at 56)

Based on the analysis and authorities cited in Count I, *supra*, these statements constitute a violation of Rules 4-3.1 (Meritorious Claims and Contentions), 4-8.2(a) (Impugning the Integrity of the Judiciary), and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice).

**VIOLATIONS OF APPELLATE RULES RELATED TO THE
APPENDICES FILED IN SUPPORT OF RESPONDENT’S PLEADINGS
– GENERALLY COMMON TO COUNTS I, II AND III**

Each of the Court's Orders to Show Cause cite violations of the Appellate Rules regarding the filing of Appendices. The Bar provided the Appendices to me in their entirety. (TFB Ex 6, TFB Ex 25, both provided in separate binders; TFB Ex 42, included in the binder for Count III). The various violations of the Rules are self-evident, even after only a cursory glance through same. The Appendices were struck by the Third DCA. (TFB Ex 9, 26, 44). These offenses correspond generally to Rules 4-3.4(c) (Knowingly Disobey an Obligation Under the Rules of a Tribunal) and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice). In some instances, the conduct was also violative of Rule 4-8.4(c) (Dishonesty, Fraud, Deceit, or Misrepresentation).

As an issue generally common to Counts I, II, and III, respondent knowingly attached appendices comprised of documents that were outside the record on appeal, regarding events or proceedings that occurred after the order under review, and otherwise unrelated to the actual issues before the Court. In all three counts, respondent failed to ask the Third DCA for leave to file such documents. *See, e.g., Konoski v. Shekarhar*, 146 So. 3d 89 (Fla. 3d DCA 2014) (striking appellee's appendix, which contained documents outside the record, noting that appellee did not seek leave to

file such extra-record documents, and admonishing counsel for filing the unauthorized appendix).

For example, the order under review in Count I, the *Carrington Mortgage Services, LLC v. Nicolas, et al.* case, is dated June 2, 2021. Respondent included in his appendix to his motion for rehearing en banc a Daily Business Review article dated November 18, 2021, as well as two pleadings from the previous disciplinary case, namely the report of this referee in *The Florida Bar v. Jacobs*, Case No. SC20-1602 dated November 16, 2021, and this referee's order in the same case denying respondent's motion to reopen case for consideration of new information concerning selective prosecution, also dated November 16, 2021. (See TFB Composite Exhibit 15).

Another example is found in Count II, *Azran Miami 2, LLC v. U.S. Bank Trust, N.A.*, where respondent's notice of appeal was filed on November 18, 2020. In the same pattern of improperly citing matters not contained in the record before the trial court, respondent attached to his appendix his affidavit in an unrelated case dated October 27, 2021; a transcript of *The Bank of New York v. Nicolas* proceedings dated May 10, 2021; and another transcript of *US Bank v. BCML* deposition of Kristen Trompiz dated July 21, 2021. (See TFB Composite Exhibit 27)

Again, in Count III, *The Bank of New York Mellon v. Bontoux, et. al.* where the order under review was entered August 18, 2021, respondent included in his appendix an excerpt of deposition transcript in *Bank of New York v. Gouda* that took place on September 3, 2021; and Judge Miller's order in *The Bank of New York v. Morales*, a proceeding unrelated to the matter on appeal. (See TFB Composite Exhibit 45 A1-A4)

The second example of technical violations found by the Third DCA is respondent's lack of proper organization of his Appendices. The appendices were disorganized; failed to contain a paginated index, bookmarks, or even consecutive pagination; and/or the index listed documents that were not actually included in the appendix. Each of these examples is a violation of Fla. R. App. P. 9.220(c). The Third DCA struck all appendices, respectively. This in turn constitutes a violation of Rule 4-3.4(c) for failure to abide by the rules of a tribunal.

In Count I, *Carrington Mortgage Services, LLC v. Nicolas, et al.* respondent's motion for rehearing en banc attached 604 disorganized pages in an appendix that enabled mis-citations to the record (See TFB Exhibit 6). In Count II, *Azran Miami 2, LLC v. U.S. Bank Trust, N.A.* respondent attached 12 separate appendices totaling over 3,300 pages, unpaginated and unindexed (See TFB Exhibit 25). Lastly, in Count III, *The*

Bank of New York Mellon v. Bontoux, et. al. the index to the appendix lists documents that are not actually included and the documents that are included are either mislabeled or missing from the index. The index lists “Appendix I-C: Bank of America voluntarily produced Bank of America portal checklist”, but the document is missing from the appendix; what the index lists as Appendix I-B, is instead found under Appendix I-D; and what the index lists as Appendix I-F, is instead found under Appendix I-E. (See TFB Exhibit 42)

COUNT IV – THE MATTER BEFORE JUDGE BAILEY

Respondent represented Maria Williams-James. On November 22, 2021, respondent attended a hearing on a Motion for Attorney Fees, which had been filed by prior counsel on July 19, 2014, in Case No. 2010-045438-CA-01, before the Honorable Jennifer Bailey, in the Miami Dade Circuit Court. (TFB Ex 56, 57, Rebuttal-1).

On November 29, 2021, Judge Bailey wrote an order detailing the procedural history of the case, and the events that occurred before, during, and after, the November 22, 2021, hearing. (TFB Ex 56).

In the 2010 foreclosure case, Ms. Williams-James was represented by Ms. Abitz. (TFB Ex 54, 56). Ms. Williams-James was served with the foreclosure action but did not respond and was defaulted on September 19,

2012. (TFB ex 56). The case was set for trial, however Ms. Abitz appeared and requested a continuance prior to trial. Significantly, Ms. Abitz did not move at any time during the pendency of the case to vacate the default, nor did she otherwise plead on behalf of her client. (TFB ex 56). The matter proceeded and final judgment of foreclosure was entered on April 22, 2013. (TFB Ex 56).

Thereafter, plaintiff moved to vacate the judgment because it had discovered a necessary defendant and needed to amend the pleadings. (TFB Ex. 56). Ms. Abitz, on behalf of Ms. Williams-James, countered with her own motion to vacate the final judgment based on fraud. (TFB Ex 56). Rather than rule on the merits of either of those motions, on May 6, 2014, Judge Bailey entered an order vacating the foreclosure judgment based solely on the agreement of the parties. (TFB Ex. 55, 56).

Although Ms. Abitz's Motion to Vacate for Fraud requested sanctions and attorney fees, same were not granted, and the issue of fraud was not addressed in the court's pro forma vacatur order. (TFB Ex 55, 56). Upon issuance of the vacatur order, all matters raised in those motions were concluded, and Judge Bailey did not reserve jurisdiction to address sanctions for fraud. (TFB Ex 56 at 3, 57). Judge Bailey *made no findings* concerning fraud. (TFB ex 56, 57).

On the eve of the subsequently rescheduled trial, plaintiff voluntarily dismissed the case, apparently due to a settlement between the parties. The Order of Voluntary Dismissal did not award attorney fees to either party and did not reserve jurisdiction to address issues of attorney fees or fraud. (TFB Ex 56).

Thereafter, on July 19, 2014, Ms. Abitz filed the Defendant's Motion for Attorney's Fees, which is the motion at issue in the hearing underlying the instant disciplinary action. (TFB Ex 56, Rebuttal-1). This motion simply requested fees on a prevailing party claim and did not, in any manner, raise the issue of fraud or argue for sanctions based on fraud. (TFB ex 56, Rebuttal-1). Neither plaintiff nor defendant set this motion for hearing. (TFB Ex 56). Ms. Abitz was subsequently disbarred three years after the motion was filed. (TFB Ex 56).

In the interim, the mortgage note that was the subject of the settlement and voluntary dismissal in the 2010 case was transferred to another lender, who thereafter initiated foreclosure proceedings in Miami-Dade Circuit Court Case Number 2015-18433. (TFB Ex 56). That matter was not assigned to Judge Bailey upon filing. Similarly, respondent did not move to have the matter transferred to Judge Bailey, a motion commonly

granted in these situations, and a process in which respondent was well versed. (TFB Ex 56).

Respondent represented Ms. Williams-James in the subsequent 2015 case, before a different judge. (TFB Ex 56). A judgment of foreclosure was entered in the successor case. (TFB Ex 56). On October 19, 2021, respondent filed motions to attack the judgment in the 2015 case. (TFB Ex 56). Those motions included a Motion to Vacate Judgment and a Motion to Enforce Settlement, both of which were based on allegations of fraud by the lender. (TFB Ex 56).

The only motion pending before Judge Bailey at the November 22, 2021, hearing was the motion for attorney's fees based on prevailing party claim. (TFB Ex 56; 57, Rebuttal-1). Judge Bailey had fully disposed of the prior motion for fees based on fraud, and it was no longer pending on the docket. (TFB Ex 56, 57). It is significant to note that respondent made an affirmative misrepresentation to this Honorable Referee in his testimony under oath on this issue. During the Final Hearing, in response to questioning by Your Honor, respondent stated the motion set for hearing that day was the motion for fees based on fraud. When confronted with the actual motion on the docket, respondent again made a misrepresentation, and stated that both motions for fees (based on fraud and based on

prevailing party) were pending before Judge Bailey in November 2021.
(TFB Ex 56, 57, Rebuttal-1).

Accordingly, when Judge Bailey was preparing for the hearing on the only motion that was set before her - the July 2014 Motion for Attorney Fees based on prevailing party - she became concerned when she noticed that respondent inserted his post-judgment motions from the 2015 case into his submissions concerning the July 2014 motion for fees. (TFB Ex 56). Judge Bailey directed her Judicial Assistant to send an email to the counsel of record, indicating:

On Nov 22, 2021, at 9:42 AM, Prieto, Maria
<mprieto@jud11.flcourts.org> wrote:

Please see email below from Judge Bailey: To Counsel of Record:

In preparing for the 15-minute hearing set at 2:30 today on Defendant's Motion for Attorney's fees (filed 7/19/2014-seven years ago), the Court observed a number of motions in the supporting documents which are not set, and which do not pertain to this case, instead being filed on 10/19/21 in case number 2015-18433. These include defense motions to enforce settlement and to vacate a final judgment of foreclosure and for sanctions. The 2015 case is assigned to a different judge. This email is to clarify that those motions are not set for hearing today, are not assigned to this judge, and will not be heard.

The Court also advises that due to scheduling, the hearing will begin promptly at 2:30 and the 15 minutes requested will be provided and enforced with the hearing ending at 2:45. The time will be split between the parties.

Maria E. Prieto

Judicial Assistant to
The Honorable Jennifer D. Bailey

(TFB Ex 56).

Respondent replied to the court, apparently without copying opposing counsel on the email, despite the fact his response contained substantive facts and argument about the case. Moreover, the responsive email indicated that respondent "did not intend to comply with the Court's direction":

From: BJ Efile <bjefile@jakelegal.com>
Date: November 22, 2021, at 11:59:11 AM EST
To: "Prieto, Maria" <mprieto@jud11.flcourts.org>

Subject: Re: 2010-045438-CA-01: Bac Home Loans Svcing (lp)
vs. Williams-James, Maria K

Please advise the Court that Bank of America, N.A. ("BANA") continued to accept payments from Ms. Williams James for years after she granted the motion to vacate judgment due to fraud. BANA also transferred servicing to a new servicer that started another foreclosure based on the same exact fraudulent evidence. The new judge just reinstated the fraudulent judgment you vacated and recently recused herself.

Ms. Williams James respectfully requests the Court review the pleadings from the new foreclosure. There is a serious violation of the constitution, and this Honorable Court has the power to stop it.

Thanks, and regards, Bruce Jacobs
Jacobs Legal, PLLC

(TFB Ex 56)

Upon commencement of the November 22, 2021, hearing via Zoom, Judge Bailey began by disposing of a procedural issue raised by the plaintiff in the 2010 case. She then immediately inquired of respondent as to the only material issue before her, regarding whether Ms. Williams-James was entitled to fees on a prevailing party claim in the 2010 case, based on the 2014 motion filed by Ms. Abitz, where the defendant was defaulted and did not defend in the trial court. (TFB Ex 56, 57). In a now familiar pattern, rather than address that specific issue, respondent immediately attempted to link the 2015 case with the 2010 proceedings, arguing that issues of fraud entitled his client to fees. (TFB Ex 56, 57).

Judge Bailey did not permit respondent to make that argument, reminding him of her Judicial Assistant's email. (TFB Ex 56, 57). Notwithstanding the same, the respondent became disruptive and refused to argue the motion which he had set and which the court was trying to hear. (TFB Ex 56, 57). Despite the court pointing out numerous times that no issues of fraud were raised in the specific 2014 fees motion noticed for hearing, respondent continued to insist, without legal support or authority, that the issue before the court was whether the lender's fraud entitled Ms. Williams-James to attorney fees. (TFB Ex 56, 57, Rebuttal-1).

When respondent's unsupported argument did not prevail, he attempted to *ore tenus* amend the motion to include fraud. (TFB Ex 57). The court immediately denied the *ore tenus* motion. (TFB Ex 57). Respondent refused to accept the court's ruling and continued in his attempts to make the *ore tenus* motion. (TFB Ex 57). When that failed, respondent stated, "This is a crazy injustice. The most unjust situation I've seen in all of my years of practicing law --... -- and now I'm trying to speak to the Court and you're not letting me speak." (TFB Ex 57 at 16).

Judge Bailey stated, "Mr. Jacobs, you're right about this. You are not and this Court will not allow you to make an argument that is not properly noticed before the Court, not properly before the Court in this case. And while I understand your sense of outrage, that doesn't allow you to unilaterally change the rules which govern court." (TFB Ex 57 at 17).

Rather than accept the court's ruling, respondent continued to interrupt the judge and speak over her. The court was finally required to mute him so that she could make her ruling. During the time that he was muted, respondent continued to gesticulate. (TFB Ex 57).

Judge Bailey's November 29, 2021, order documented all the above facts and findings. Additionally, Judge Bailey found that respondent was manipulating the court process and engaged in forum shopping in his

attempts to have her hear the issues that were squarely before another circuit court judge in the 2015 case. (TFB Ex 56). Her finding was further supported by respondent's post hearing submission of a memorandum of law in which he attempted to consolidate the 2010 matter with the 2015 case. (TFB Ex 56).

It is also significant to note, that in the pleadings respondent filed in a subsequent matter, contained in Count III of the instant Bar Disciplinary Complaint, respondent affirmatively misrepresented that Judge Bailey had vacated the 2010 foreclosure judgment based on a finding of fraud. (See Count III, *supra*, and TFB Comp Ex 58). The first such misrepresentation was made a mere two days after Judge Bailey told respondent in the hearing that she had not vacated the case on that basis, and he acknowledged hearing same; and the second such misrepresentation was made in a pleading filed January 24, 2022, just two months later. (TFB Ex 57, Comp Ex 58).

Based on the above facts, and the analysis and authorities presented in Count I, *supra*, I find that respondent is guilty of pursuing frivolous claims. Respondent set one motion for hearing, a motion for fees based on prevailing party claim. Irrespective of what was set for hearing, respondent attempted to argue an entirely different claim and motion at the duly noticed

hearing. Accordingly, he is guilty of violating Rules 4-3.1 (Meritorious Claims and Contentions), and Rule 4-8.4(d) (Conduct Prejudicial to the Administration of Justice).

Based on the above facts, I find that the respondent is also guilty of making affirmative misrepresentations about this matter to the trial court in two separate motions filed in Count III of the instant disciplinary action. In those motions, respondent affirmatively asserted that Judge Bailey vacated the foreclosure judgment in the 2010 case based on fraud. (TFB Comp Ex 58).

In his defense in the instant Final Hearing, respondent claimed that his statements were true, the order was vacated due to fraud of the banks. He claims the form order signed by Judge Bailey (TFB Ex 55) granted the motion to vacate due to fraud. Respondent also presented the testimony of Maria Williams-James, who testified to her belief that Judge Bailey found fraud when she vacated the foreclosure order.

However, this defense defies credibility. Had Judge Bailey found fraud, she would not have simply set the matter for trial, as she did in this case. (TFB Ex 56). Rather, she would have held a special set evidentiary hearing, and not dealt with the issue on a busy motions calendar, as she did in this case. (TFB Ex 56). Significantly, the fact that this occurred on a

motions calendar was corroborated by Ms. Williams-James, who testified there were other people present in the courtroom unrelated to her case, and that the hearing was quick. Judge Bailey would also have sanctioned counsel and set additional hearings to determine the amounts of sanctions. No such orders or hearings were held.

Rather, it is apparent that Judge Bailey's account of what took place is correct. It is verified by the record in this case, where none of the things that would necessarily have happened had she made a finding of fraud. While Ms. Williams-James was certainly sincere in her belief in what occurred, on cross-examination it was clear that she had no idea what was happening procedurally at the time the order was vacated.

As a lay person, Ms. Williams-James' lack of comprehension is understandable. Respondent has no such excuse. Instead, to support his own agenda, respondent deliberately and knowingly repeated his false statements in at least two pleadings filed in Count III, despite Judge Bailey telling him point blank that it did not happen. Unbelievably, respondent then turned around and called Judge Bailey a liar in the instant Final Hearing. He testified on numerous occasions throughout the instant disciplinary proceedings that Judge Bailey created a false narrative in her November 29, 2021, order. (TFB Ex 56).

Based on the foregoing, and the case law and analysis set forth in Count I, *supra*, I find that respondent is guilty of violating Rule 4-3.3 (Candor Towards the Tribunal); 4-8.4(c) (A Lawyer Shall Not Engage in Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation); and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice).

Based on the above referenced facts, respondent is also guilty of disobeying the rules of a tribunal, and disruption of the tribunal. Despite Judge Bailey's pre-hearing email ordering respondent to refrain from arguing the 2015 foreclosure case's fraud claims at the hearing before her on a different motion, respondent refused to comply with that order. At the hearing on the prevailing party fees motion, respondent refused to accept Judge Bailey's rulings, and continued to argue matters she stated would not be heard because they were not properly before her and had not been properly noticed for hearing. Respondent continued in that manner until Judge Bailey finally had to mute him, so that she could make her ruling. (TFB Ex. 56, 57, Rebuttal-1). Accordingly, respondent is guilty of violating Rules 4-3.4(c) (Knowingly Disobey an Obligation Under the Rules of a Tribunal); 4-3.5(c) (Disruption of Tribunal); and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice).

COUNT V – KLU KLUX CLAN ORDERS

In the final count of the Bar's Complaint, respondent engaged in inexcusable, unprofessional conduct in violation of Rules 4-8.2(a), and 4-8.4(d). In two separate, unrelated actions, in different courts, respondent filed motions to disqualify the trial judges. In both motions, respondent continued his familiar pattern of making scandalous accusations against the court, without an objective basis in fact to support same. However, in these two motions, respondent escalated his misconduct to include racial slurs, in a reprehensible act of race-baiting. (TFB Ex 59, 61).

In one such motion, respondent stated, "It is shocking that an experienced African American judge would openly and flagrantly violate the Klu Klux Clan Act of 1871. It is illegal to deprive Persaud of his constitutional rights under color of law." (TFB Ex 59). Respondent's scandalous allegations achieved the desired result and the judge disqualified himself. (TFB Ex 60).

In another action, respondent stated, "It is shocking that an experienced judge would openly and flagrantly violate the Klu Klux Clan Act of 1871 which makes it a federal issue when the Gil del Reals are deprived of their property and their constitutional rights under color of law." (TFB Ex 61). In this case, respondent's dishonest gamesmanship did not prevail.

The trial court found the motion legally insufficient and denied the motion to disqualify. (TFB Ex 61).

Respondent continued his unprofessional race baiting in the instant disciplinary action, in a clear attempt to obtain a result, based not on the law and facts, but on a manufactured emotional response to his vitriolic commentary. His attorney, Mr. Winker, joined in this clearly organized trial tactic. In opening statements, Mr. Winker stated, "what was Mr. Jacobs supposed to do? . . . say, hey, sorry, black lady, I'm sorry, that's just how it is. You're going to lose your home." (Trial Transcript, Vol. 1 at 21). Similar commentary continued throughout the Final Hearing, with respondent taking every opportunity to assert the banks, and apparently the courts, were purposely targeting his black clients, Jewish clients, and vulnerable women. He invoked the spectra of Nazis on numerous occasions. All these improper appeals to emotion and inflamed passions are a bad faith trial tactic, designed to prejudice the trier of fact in the case in an act of despicable gamesmanship.

As a result of the two scandalous motions to disqualify filed by respondent in Count V, respondent is guilty of violating Rules 4-8.2(a) (Impugning the Judiciary), and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice).

Accordingly, the Bar has proven the factual allegations and charged rule violations in each of the five Counts of its Complaint, by clear and convincing evidence, and I find respondent guilty of each of the charged rule violations.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating the Florida Bar:

As to Count 1: The Florida Bar File No. 2022-70,335 (11H): Rules 4-3.1 (Meritorious Claims and Contentions); 4-3.3 (Candor Towards the Tribunal); 4-3.4(c) (Knowingly Disobey an Obligation Under the Rules of a Tribunal); 4-8.2(a) (Impugning Qualifications and Integrity of Judges or Other Officers); 4-8.4(c) (A Lawyer Shall Not Engage in Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation); and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice).

As to Count II: The Florida Bar File No. 2022-70,336(11H): Rules 4-3.1 (Meritorious Claims and Contentions); 4-3.3 (Candor Towards the Tribunal); 4-3.4(c) (Knowingly Disobey an Obligation Under the Rules of a Tribunal); 4-8.2(a) (Impugning Qualifications and Integrity of Judges or Other Officers); 4-8.4(c) (A Lawyer Shall Not Engage in Conduct Involving

Dishonesty, Fraud, Deceit or Misrepresentation); and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice).

As to Count III: The Florida Bar File No. 2022-70,402(11H): Rules 4-3.1 (Meritorious Claims and Contentions); 4-3.3 (Candor Towards the Tribunal); 4-3.4(c) Knowingly Disobey an Obligation Under the Rules of a Tribunal); 4-8.2(a) (Impugning Qualifications and Integrity of Judges or Other Officers); 4-8.4(c) (A Lawyer Shall Not Engage in Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation); and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice).

As to Count IV: The Florida Bar File No. 2022-70,337(11H): Rules 4-3.1 (Meritorious Claims and Contentions); 4-3.3 (Candor Towards the Tribunal); 4-3.4(c) (Knowingly Disobey an Obligation Under the Rules of a Tribunal); 4-3.5(c) (Disruption of Tribunal); 4-8.4(c) (A Lawyer Shall Not Engage in Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation); and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice).

As to Count V: The Florida Bar File No. 2022-70,490(11H): Rules 4-8.2(a) (Impugning Qualifications and Integrity of Judges or Other Officers); and 4-8.4(d) (Conduct Prejudicial to the Administration of Justice).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

- A. Disbarment
- B. Evaluation and treatment (if necessary) for personal/ emotional problems through the Florida Lawyers Assistance program.
- C. Respondent is to successfully complete The Florida Bar's Ethics School and Professionalism School, including The Florida Bar's most current Masters in Ethics courses.

Prior to making this recommendation, I considered: the case law pertinent to this matter; the Florida Standards for Imposing Lawyer Sanctions; the Record in this matter, as well in the prior disciplinary matter over which I presided for purposes of aggravating and mitigating factors; respondent's continuing and escalating conduct even after the prior disciplinary action, and indeed into the Final Hearing in this matter; as well as the aggravating factors proven by the Bar, and respondent's decision to present no mitigation in the instant case.

V. CASE LAW

- In *The Florida Bar v. Ratiner*, 238 So. 3d 117 (Fla. 2018), the respondent stated “lie, lie, lie” in quick succession while opposing counsel examined a witness and repeatedly kicked opposing counsel’s table. The respondent was disrespectful toward the court, disobeyed the judge’s orders, engaged in intentionally disruptive behavior, and generally acted like a bully. The respondent had a history of similar misconduct and refused to acknowledge the wrongful nature of his actions by attempting to shift the blame to others. Accordingly, the Court held that disbarment was the appropriate sanction in his case.

- In *The Florida Bar v. Norkin*, 183 So. 3d 1018 (Fla. 2016), the respondent was permanently disbarred for practicing law while suspended and for continuing to engage in conduct prejudicial to the administration of justice. The respondent sent offensive and threatening e-mails to bar counsel and behaved in a contemptuous manner during a previous public reprimand before the Supreme Court by intentionally smirking and staring down each justice. Norkin had a prior history of similar misconduct and exhibited no remorse. The court determined that the *respondent was not amenable to rehabilitation*. The court stated that “[s]uch misconduct cannot

and will not be tolerated as it sullies the dignity of judicial proceedings and debases the constitutional republic we serve.” *Id.* at 1023.

- In *The Florida Bar v. Klein*, 774 So.2d 685 (Fla. 2000), the Court disbarred an attorney for forum-shopping, incompetence, knowingly disobeying the rules of the tribunal, filing frivolous pleadings, and engaging in conduct that was dishonest and prejudicial to the administration of justice. The *Klein* court stated: “Klein's trail of misconduct began as a legitimate attempt to qualify his community as one for older persons under the Fair Housing Act. While we recognize that such a goal may have initially been a meritorious pursuit shared by the community, Klein failed to accept defeat when he had exhausted all legal remedies. A lawyer must have the independent judgment to objectively advise his clients as to meritorious claims that may be pursued, and has the duty, once such claims have been pursued to the fullest extent allowed by law and defeated, to refrain from continuing to assert frivolous matters”.

Similarly, respondent began with a legitimate attempt to defeat foreclosure proceedings for his clients, but failed to accept defeat when he exhausted all legal remedies, instead continuing to argue dishonest and/or frivolous matters. Accordingly, just as in *Klein*, disbarment is the appropriate sanction.

- In *The Florida Bar v. Dove*, 985 So. 2d 1001 (Fla. 2008), the Court imposed a three-year suspension on an attorney who made knowing material misrepresentations in termination of parental rights and adoption matters, and who withheld material information from the courts, which potentially could and did cause a significant adverse effect on the legal proceedings and the interested parties.

In *Dove*, the Court stated that a three-year suspension, instead of disbarment, was warranted because of the significant mitigation presented in his case, including substantial evidence of his rehabilitation and his commitment to public service and the legal community. By contrast, respondent Jacobs has presented no such mitigation in these proceedings. Indeed, respondent abandoned all pretense of the mitigation presented in the prior disciplinary action, acknowledging he only asserted same there because his attorney told him that was the way to avoid greater sanctions.

- In *The Florida Bar v. Nunes*, 734 So. 2d 393 (Fla. 1999), the Court held that a three-year suspension was warranted for an attorney who was found guilty of violations arising from his disparaging remarks about judges and opposing counsel, filing a frivolous lawsuit, representing clients after being discharged, and making false representations to a tribunal. Significantly, *Nunes'* prior offenses, resulting in public reprimands and

suspensions, were close in time to the current offenses, and the only mitigation was that Nunes had shown remorse.

Respondent Jacobs is guilty of the same misconduct here, and his prior disciplinary offenses were close in time to the present misconduct; however, unlike in Nunes, Jacobs has demonstrated no mitigation, and is particularly unremorseful. Additionally, the sanction issued in Nunes is dated, and does not reflect the current Court's stance towards discipline. *The Fla. Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015) ("... the Court has moved toward imposing stronger sanctions for unethical and unprofessional conduct. See *Fla. Bar v. Adler*, 126 So.3d 244, 247 (Fla.2013) (noting that "this Court has moved towards stronger sanctions for attorney misconduct"); *Fla. Bar v. Rotstein*, 835 So.2d 241, 246 (Fla.2002) (noting that many of the cases cited by the respondent were inapplicable "because the cited cases are dated and do not reflect the evolving views of this Court" and that "[i]n recent years, this Court has moved towards stronger sanctions for attorney misconduct").

- In *The Florida Bar v. Spolter*, 126 So. 3d 1059 (Fla. 2013) (Table), the Court suspended the attorney for one year due to his dishonest motions to recuse Federal Judge Zloch, alleging bias. Judge Zloch denied the motions and referred the matter to a magistrate for an evidentiary

hearing to determine whether there was any factual support for the respondent's accusations. Following the magistrate's ruling, Judge Zloch issued an order finding that *Spolter* filed bad faith, frivolous pleadings for an improper purpose. The United States Court of Appeals for the Eleventh Circuit upheld the order, finding that Spolter "failed to provide a scintilla of evidence supporting his claims of misconduct against Judge Zloch or the clerk's office." The subsequent disciplinary proceeding brought by the Florida Bar resulted in a one-year suspension. Significantly, in that case, Spolter showed little remorse, and continued to maintain that his actions were correct.

- In *State ex rel. Florida Bar v. Calhoon*, 102 So. 2d 604 (Fla. 1958), the Court held that an attorney's use of false accusations that a circuit judge had accepted a bribe required disbarment, even though he believed the accusation to be true at the time it was made. The Court held that any conduct of an attorney which brings the administration of justice into scorn and disrepute demands condemnation and the application of appropriate penalties. The *Calhoon* court stated that: "A judge or court is not beyond bona fide comments and criticisms which do not exceed the bounds of decency and truth and are not aimed at the destruction of public confidence in the judicial system as such, but where the likely impairment

of the administration of justice is the direct product of false and scandalous accusations, the rule is otherwise.”

- In *The Florida Bar v. Walkden*, 950 So.2d 407, 410 (Fla. 2007) the Court held that disbarment is appropriate where there is a pattern of misconduct and a history of discipline. See also, *The Florida Bar v. Heptner*, 887 So.2d 1036, 1045 (Fla. 2004); and *The Florida Bar v. Vinning*, 761 So.2d 1044 (Fla. 2000).

VI. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline. The Florida Standards for Imposing Lawyer Sanctions also supports a recommendation of disbarment in this case.

- Standard 6.1(a)(2), entitled “False statements, fraud, and misrepresentation” states: Disbarment is appropriate when a lawyer improperly withholds material information and causes serious or potentially serious injury to a party or causes a significant or potentially significant adverse effect on the legal proceeding.

- Standard 6.2(a), entitled “Abuse of the legal process” states: Disbarment is appropriate when a lawyer causes serious or potentially serious interference with a legal proceeding or knowingly violates a court

order or rule with the intent to obtain a benefit for the lawyer or another and causes serious injury or potentially serious injury to a party.

- Standard 7.1(a), entitled “Violations of other duties owed as a professional” states: Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another and causes serious or potentially serious injury to a client, the public, or the legal system.

- Standard 8.1(a)(2), entitled “Violation of Court Order or Engaging in Subsequent Same or Similar Misconduct” states: Disbarment is appropriate when a lawyer has been suspended for the same or similar misconduct and intentionally engages in further similar acts of misconduct.

Standard 8.1(a)(2) is particularly persuasive. Where Respondent is either unwilling or unable to control, modify, or conform his conduct to acceptable professional standards, or even to acknowledge the wrongful nature of the conduct, the only appropriate sanction is disbarment. Here, as evidenced by respondent’s conduct following the Report of Referee issued in the first case, and the multiple sanctions issued against him by the Third DCA, it is apparent that additional discipline will not change respondent’s conduct or behavior. Respondent is not amenable to rehabilitation.

The Standards and analysis applied by the referee in the *Ratiner* cases are also instructive. Here, as there, it is clear that “there is no evidence of an ability on [respondent’s] part to evaluate the effect of his actions on third parties and the legal system.” “It is clear that he does not accept or believe that he has done anything wrong.” Disbarment is “necessary to protect the public, bench and bar from the manner in which [respondent] practices law since he has not shown any indication, belief or self-reflection that any changes are necessary or forthcoming.”

Disbarment is appropriate where there is a pattern of misconduct and a history of discipline. Disbarment is the appropriate sanction where respondent repeatedly engages in rude, disruptive, antagonistic, and unprofessional behavior towards the court and opposing counsel, and where he exhibits neither remorse nor acceptance of responsibility for his misconduct.

Accordingly, both Florida case law, and the applicable Standards for Imposing Lawyer Sanctions, support disbarment in this case. A weighing of the applicable aggravating and mitigating factors reinforces this conclusion.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 52

Date admitted to the Bar: September 24, 1997

A. Aggravating Factors:

- 3.2(b)(1) prior disciplinary offenses.

In *The Florida Bar v. Knowles*, 99 So. 3d 918, 921 fn.1 (Fla. 2012), the Florida Supreme Court upheld the referee's finding that a disciplinary case which was still pending on appeal constitutes a "prior" disciplinary offense for purposes of this aggravator. At the time the referee filed his report of referee in the second disciplinary case, Knowles first disciplinary case was pending on appeal before the supreme court. In applying the "prior disciplinary offense" aggravator, the referee found that both cases involved similar misconduct.

Similarly, the recommendation of suspension in respondent's first disciplinary action involving similar misconduct was pending on appeal at the Florida Supreme Court at the time respondent committed the instant disciplinary offenses. The Florida Supreme Court has now issued its

Opinion in respondent's prior case, upholding this Referee's findings, and imposing a 91-day suspension for the similar misconduct. See TFB Ex 67.

- 3.2(b)(2) dishonest or selfish motive.

In the instant case, the bar presented evidence of respondent's "ends justify the means" mentality. He has made actual misrepresentations, and baseless, scandalous allegations against the courts and litigants who oppose him, as a bad faith litigation tactic, to force recusals of judges unfavorable to his legal positions, or to obtain some other benefit for himself or his clients.

Notwithstanding the same, the respondent's antics and trial tactics harm his clients by preventing any potentially legitimate issues from being considered by the court because he did not present them in a manner that the courts could rule upon.

- 3.2(b)(3) a pattern of misconduct.

This aggravator is clear, based on 1) the similar misconduct between the first and second disciplinary actions; 2) the similar misconduct between each of the five counts of the instant complaint; and 3) the similar misconduct employed by respondent in the instant disciplinary hearings. The Supreme Court has often stated that cumulative and similar misconduct will be treated more harshly than isolated instances of

misconduct. See i.e., *The Florida Bar v. Ratiner*, 238 So. 3d 117, 123 (Fla. 2018).

- 3.2(b)(4) multiple offenses.

See commentary under pattern of misconduct, *supra*.

- 3.2(b)(5) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency.

This aggravator is evidenced by respondent's failure to comply with this Referee's orders on the motion to compel, and his continued attempts to introduce testimony and exhibits which were prohibited by this Referee's orders. It is also evident from respondent's failure to abide by orders and directives of this Referee during the instant trial.

- 3.2(b)(6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process.

As an example, respondent made an affirmative misrepresentation to this Referee during the proceedings. During respondent's defense, I asked him what specific motion was noticed for hearing, or on the docket, during the Judge Bailey hearing that was the subject of Count IV. Respondent replied that it was the motion for fees due to fraud (contained in the motion to vacate due to fraud). When I inquired again, the respondent stated that both motions for fees were still pending on the docket (fees and prevailing party).

However, later in his narrative, respondent inadvertently demonstrated his own misrepresentation, and confirmed Judge Bailey's recitation of the events contained in her Order. Respondent admitted that he was trying to do something to assist Ms. Williams James after the trial court ruled against her in the second foreclosure action, so he looked around for some other means to afford her relief. The only thing he found that was still pending before Judge Bailey was the motion for fees filed by prior counsel. The evidence shows that this statement can only refer to the motion for fees specifically based on a prevailing party claim, which was the only motion that had not been heard and ruled upon by Judge Bailey.

- 3.2(b)(7) refusal to acknowledge wrongful nature of conduct
- 3.2(b)(9) substantial experience in the practice of law

B. Mitigating Factors:

- 3.3(b)(11) imposition of other penalties or sanctions

The Florida Bar conceded to this mitigating factor.

- 3.3(b)(3) personal or emotional problems.

During the disciplinary proceeding the Respondent's behavior was cause for concern. At one point during the proceedings, Respondent shared thoughts he had to "end it all".

It must also be noted that the respondent elected to present no evidence of mitigation at the sanctions hearing in this second disciplinary matter. Rather, the respondent used that time to continue his diatribe against the process, the bar, and the courts. Respondent previously mentioned his intent to adopt testimony from his first disciplinary action in the instant case, but to the undersigned's recollection he failed to do so during the hearing.

Even if I wished to consider the evidence presented at the prior hearing, the only evidence that could be considered is the character and reputation evidence advanced by respondent's witnesses. During the present proceedings, respondent specifically rescinded his prior statements concerning remorse, responsibility, and/or mental health issues, and denied that any possible emotional problems or mental health issues contributed to his present misconduct. He informed me that the mitigation testimony he gave in the first disciplinary action was not genuine. Rather, he gave such testimony because his lawyer advised him that it was the only way to get a non-rehabilitation suspension.

The Standards for Imposing Lawyer Sanctions is a balancing of the numerous and significant aggravating factors, against the present

mitigating factors, in determining the appropriate sanction to be recommended in this case. That analysis necessarily results in a finding that the recommended sanction must be elevated to account for the overwhelming aggravation. Accordingly, disbarment is appropriate in this case plus the additional sanctions listed in items (B) and (C) in section VIII below.

VIII. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Based on the cited case law and Standards, the proper weighing of the significant aggravation and mitigating factors in this case, I recommend that Respondent be found guilty on all five counts of misconduct justifying disciplinary measures, and that he be disciplined by:

A. Disbarment

B. Evaluation and treatment (if necessary) for personal/ emotional problems through the Florida Lawyers Assistance program.

C. Respondent is to successfully complete of The Florida Bar's Ethics School and Professionalism School, including The Florida Bar's most current Masters in Ethics courses.

Based on the cited case law and Standards, the proper weighing of the significant aggravation and mitigating factors in this case.

Dated this 15th day of December 2023.



Honorable Betsy Alvarez-Zane, Referee
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