

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

MATTHEW F. HERMAN,

Respondent.

Supreme Court Case No.
SC2025-0754

The Florida Bar File No.
2024-50,061(17J)

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REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

The undersigned was appointed as referee under R. Regulating Fla. Bar 3-7.6 to preside over the proceedings in this case.

On May 29, 2025, The Florida Bar (the bar) filed its complaint against respondents in these proceedings. The Supreme Court of Florida entered an order on June 2, 2025, designating the Chief Judge of the Fifteenth Judicial Circuit of Florida to appoint a referee in this case. The Honorable Glenn D. Kelley appointed the undersigned to serve as the referee.

Throughout these proceedings, the bar was represented by Tracy Lee Sorcek. Respondent was represented by Barry Rigby.

On November 24, 2025, a final hearing as to guilt only was held in this matter. At the final hearing on guilt, the following exhibits were entered into

evidence: The Florida Bar's Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, and Q. Respondent offered no exhibits into evidence. At the final hearing on guilt, the bar called the Honorable Judge Carlos Rodriguez to testify; respondent testified on his own behalf, as well as his father, Bruce Karl Herman. A separate sanctions hearing was held on January 21, 2026. At the sanctions hearing, the following exhibits were entered into evidence: The Florida Bar's Exhibits 1, 2, 3, 4, and 5.

At the sanctions hearing, the undersigned received testimony under oath from the following witnesses: Matthew Herman, respondent, Bruce Herman, respondent, Jonathan H. Kline, Esq., and Jeff Shalek, Esq.

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 filed with the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during these proceedings was, a member of The Florida Bar, subject to the jurisdiction and Rules Regulating The Florida Bar adopted by the Supreme Court of Florida.

B. Narrative Summary of Case, Findings of Fact and Conclusions of Law.

The instant discipline case arises from a complaint lodged against respondents by Honorable Judge Carlos Rodriguez. The complaint stems from the respondents' conduct as The Herman Law Group, P.A.'s ("THLG") counsel in The Herman Law Group, P.A., v. Peter Herman, case number CACE 2022-004734 in Broward County. During that time, respondent on behalf of THLG filed a Verified Motion to Disqualify Trial Judge. During the protracted litigation, the respondents, with little regard for the truth or falsity of their allegation, and without personal knowledge or any independent verification, and thus with reckless disregard, impugned the integrity of Judge Rodriguez. To disqualify Judge Rodriguez, the respondents filed a Motion to Disqualify that was rife with false statements regarding an alleged relationship between the opposing party, Peter Herman, and Judge Rodriguez.

On July 24, 2023, Judge Rodriguez denied the respondent and THLG's Motion to Disqualify stating the Motion was legally insufficient. This was based on it being untimely. Thereafter, on July 24, 2023, Judge Rodriguez signed an Order of Sua Sponte Disqualification, putting respondent and THLG on notice that he was referring the matter to the

Broward County State Attorney for investigation for the perjurious statements contained within the Motion to Disqualify. Additionally, on July 21, 2023, the underlying defendant, Peter Herman, signed the declaration of Peter Herman swearing that he did not and does not have a close personal friendship with Judge Rodriguez and that the allegations contained in the Motion to disqualify were false. Additionally, respondents displayed a pattern of abusive litigation tactics, respondents were the subject of more than seven Orders to Show Cause for their failure to adhere to court orders, failure to timely provide discovery, refusing to attend depositions, and filing frivolous pleadings, including two more motions to disqualify the subsequent judge. Both motions to disqualify Judge Frink were denied. See TFB-Exhibits 1-5.

III. RECOMMENDATIONS AS TO GUILT

In these proceedings, the evidence demonstrates a persistent and escalating course of conduct by respondent and Bruce Herman, marked by their continued advancement of allegations, even after being placed on notice of their falsity. Rather than withdrawing or correcting their allegations, respondent and Bruce Herman doubled down, reiterating the same claims in successive filings, including appellate pleadings and later during the bifurcated guilt phase of these proceedings held on November 24, 2025.

Accordingly, on December 19, 2025, after an evidentiary hearing, the undersigned recommended respondent be found guilty of violating the following Rules Regulating The Florida Bar: 3- 4.3 [Misconduct and Minor Misconduct.]; 4-8.2(a) [A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member of the venire, or candidate for election or appointment to judicial or legal office.]; and 4- 8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice ...]

IV. SANCTION HEARING

On January 21, 2026, a sanction hearing to determine the appropriate sanction for the respondent's misconduct was held via Zoom.

At the outset, this Referee addressed and resolved several housekeeping matters. The witnesses identified by the respondents, Mr. Jonathan H. Kline and Mr. Jeff Shalek, were ordered sequestered. Additionally, five stipulated exhibits offered by the bar were admitted into evidence without objection. These included a series of orders issued by the Honorable Keathen Frink in the underlying litigation: Exhibit 1, the Order After Show Cause Hearing dated November 23, 2025; Exhibit 2, the Order on

Motion to Reconvene Show Cause Hearing dated December 19, 2025; Exhibit 3, the Order Granting Motion to Release Escrowed Funds dated December 19, 2025; Exhibit 4, the Order Denying The Herman Law Group's Motion to Vacate or Modify Contempt Purge Condition and for Protective Order dated January 9, 2026; and Exhibit 5, the Order Granting Motion for Clarification (Disbursing Funds) dated January 11, 2026.

Following these preliminary matters, the bar presented its opening statement, reiterating the established three-pronged purpose of lawyer discipline, as articulated in The Florida Bar v. Lord, 433 So. 2d 983, 986 (Fla. 1983), that it be fair to society; (2) it be fair to a respondent; and (3) it be severe enough to deter other attorneys from similar misconduct. The Bar further noted the Supreme Court of Florida's recent move toward imposing harsher punishments generally, citing The Florida Bar v. Altman, 294 So. 3d 844, 847 (Fla. 2020).

Consistent with these principles, the bar advised this Referee that it seeks the imposition of a one-year suspension, together with the imposition of attendance at Ethics School, as an appropriate and necessary sanction given the gravity and respondent's persistent misconduct.

The bar's opening further addressed respondents' continued refusal to comply with lawful orders in the underlying litigation. The bar emphasized

respondents' conduct is antithetical to the most fundamental and rudimentary principles of civil litigation, and noted that the matter had devolved into protracted motion practice requiring repeated, forceful judicial intervention, including reiteration of the enforceability of the Final Judgment entered October 17, 2025, *nunc pro tunc* to September 2, 2025, finding THLG liable to Peter Herman for \$196,875.00. The bar contended that respondent and Bruce Herman's continued failure to comply with these clear orders reflects the same course of conduct that has characterized their behavior throughout these proceedings.

Finally, the bar reviewed the underlying events and its prior arguments, asserting the conduct at issue was not isolated or inadvertent but instead emblematic of a sustained disregard for judicial authority, professional obligations, and the orderly administration of justice.

Respondents declined to present an opening statement, instead immediately calling respondent as their first witness. At that juncture, I advised counsel that I hoped the testimony to follow would reflect a greater degree of contrition than had been displayed during earlier phases of these proceedings.

Matthew Herman, respondent: During direct examination when respondent was questioned regarding whether, if given the opportunity to

“turn back the clock,” he would have approached the underlying matters differently, respondent offered only that he would “be more careful” and that he had “no intent to impugn.” Respondent further stated, in hindsight, he might have drafted the filings in a manner that “left room for a more cautious draft.” Unfortunately, these statements fell short of a complete acknowledgment of wrongdoing or recognition of the gravity of advancing unverified allegations against members of the judiciary.

Respondent further gave a series of shifting explanations for why he repeated the purported statements attributed to Peter Herman. He asserted variously that he “had no reason not to believe him,” and that, at the time Peter made those statements, “he was practicing at The Herman Law Group.” This rationale is particularly troubling. Taken at face value, respondent’s position would suggest that he saw no impropriety in the alleged judicial relationship until his personal and business relationship with Peter deteriorated. Such reasoning contradicts the affirmative duty imposed by Rule 4-8.3(a), not charged here, which requires any lawyer who knows of another lawyer’s violation of the Rules of Professional Conduct must report the misconduct to appropriate authorities. Respondent’s testimony therefore highlights, rather than mitigates, the absence of professional judgment.

Respondent further complained these disciplinary proceedings had “tarnished [his] otherwise stellar reputation” because Internet searches now associate him with his own actions. Framing the process as a form of punishment, rather than as a safeguard for the public and the bar, reflects a continued lack of insight into the nature of these proceedings.

When confronted with the inverse—that his own verified allegations potentially harmed Judge Rodriguez’s reputation—respondent minimized the impact, stating there was “no harm in recusal,” that he was “regretful [Judge Rodriguez] took it that way,” and that it was “simply a recusal.” He then asserted that an unidentified ethics professor at Nova Southeastern University had publicly written about the matter, allegedly suggesting that the “Judicial Qualifications Commission should investigate.” These statements appeared designed to recast the severity of the accusations, rather than to acknowledge their impropriety.

Respondent said that he was “sorry for the way he took it or understood it to be.” This statement does not constitute acceptance of responsibility. Rather, it diminishes respondent’s own conduct while implicitly suggesting that the judge overreacted or misinterpreted respondent’s allegations. Such testimony is consistent with the respondent’s unwavering refusal throughout these proceedings to recognize the seriousness of submitting verified

accusations against a judicial officer without an objectively reasonable factual basis.

During cross examination, respondent continued to exhibit the same lack of insight and indifference, when asked directly whether he had given any consideration to how his allegations might have impacted Judge Rodriguez, respondent stated he had “no idea,” thereby demonstrating a marked disregard for the consequences of filing verified accusations impugning the integrity of a sitting judicial officer.

Respondent further reiterated the timing of Peter Herman’s purported statements were what, in his view, lent them credibility. Respondent testified that “had he said it in 2022 or 2023, [respondent] wouldn’t have believed” the assertions. This explanation again underscores the respondent’s reliance on these statements was not grounded in any objective inquiry, due diligence, or evidentiary verification, but rather in subjective assumptions tied to personal or familial context.

The Court then heard from **Jonathan Kline**, Esquire, who testified that he has known the respondents for 15 years. Witness testified that respondents have a great reputation in the legal community. Witness further testified that it could have been a misunderstanding. When asked on cross examination if he was aware that respondent had filed two

subsequent motions to disqualify (bringing the total motions to disqualify to 3 in the same action), he stated he was not. When asked on cross examination if he thought it was unusual to file 3 motions to disqualify in one action, he stated yes, it was unusual.

Under questioning by this Referee, Mr. Kline appeared not to take the respondent's and Bruce Herman's conduct with the seriousness the circumstances warranted. He stated, "You have to understand the nature of these proceedings with family involved," necessarily implying that litigation between family members should be viewed differently or afforded some degree of leniency. The Court rejects any such suggestion. The Rules Regulating The Florida Bar apply uniformly to all practitioners, irrespective of whether litigants are related by blood, marriage, or otherwise. Family discord does not create a separate standard of ethical conduct, nor does it excuse reckless accusations directed at the judiciary. The Referee finds the testimony of Jonathan Kline credible and accepts his testimony as true but finds that his testimony offers little to no value in resolving the issues presented in this case.

The Court then heard from **Jeffrey Shalek**, Esquire, who testified that he has known the respondents for 14 years and is their neighbor. Witness further testified that he believes the respondent to be honest, kind, and highly

ethical and principled. When asked on cross examination if he was aware that respondent had filed two subsequent motions to disqualify (bringing the total motions to disqualify to 3 in the same action), he stated he was not. When asked on cross examination if he thought it was unusual to file 3 motions to disqualify in one action, he stated yes, it was unusual. The Referee finds the testimony of Jeffrey Shalek credible and accepts his testimony as true but finds that his testimony offers little to no value in resolving the issues presented in this case.

The Court then heard from **Bruce Herman**, respondent. The witness testified that he was embroiled in litigation with his brother, Peter Herman, and that Judge Frink was the presiding judge. Witness testified that the underlying action was in the post judgment phase, the jury having found for his brother, Peter Herman.

Witness further testified that his brother, Peter Herman, had “convinced” Judge Frink to rule against him. See TFB Ex. 1-5. The Court finds this assertion to be offensive to the judiciary, as it reflects Bruce’s cavalier attitude toward the judiciary by attributing adverse judicial rulings to alleged impropriety rather than the merits of the case. Such testimony further demonstrates Bruce’s disregard for the integrity and independence of the

judicial process. As such, this Court finds Bruce likewise has no remorse for his reckless statements and fails to understand the gravity of his actions.

When questioned regarding his present view of the motion to disqualify Judge Rodriguez, Bruce stated that, in retrospect, he would not have filed the motion because it was “not worth it.” In elaborating on this position, witness emphasized that he has no prior disciplinary history and has an AV rating. He went on to state the motivation behind filing the verified disqualification motion was an attempt to “level the playing fields” based on an allegation Peter had extensive and improper judicial connections throughout Broward County due to his former association with a so-called “mega-litigator” firm. The respondent’s testimony further demonstrated contempt, rather than contrition, with Bruce testifying that if he had the opportunity to do things over again, having now “listen[ed] to the Judge,” he would not have pursued any of the conduct at issue, adding the phrase “none of it.” The Court does not find this testimony to reflect genuine insight or remorse; rather, it appears to be offered in mitigation without meaningful acknowledgment of misconduct.

The witness appeared dismayed that these proceedings are public. He explained that he allegedly lost business opportunities because of these public proceedings and filings, including a prospective client with a purported \$4 million closing. He stated that “we look like bad guys,” and further

complained that the Daily Business Review had “rigged” Google searches so that these disciplinary proceedings appear prominently on the first page of search results associated with his name. The Court finds this testimony significant not for its substance, but for what it reveals about the respondent’s focus: namely, concern for reputational and financial consequences rather than accountability or respect for the disciplinary process. Additionally, it is not lost on the Court that the reputational harm of which Bruce now complains arises from official findings and public proceedings grounded in evidence, whereas Bruce himself, without proof, impugned the integrity of Judge Rodriguez based solely on subjective suspicions and dissatisfaction with judicial rulings. The contrast underscores Bruce’s failure to appreciate the seriousness of his unfounded attacks on the judiciary.

On cross examination, the respondent was questioned regarding his refusal to attend court-ordered depositions and his prior claim that he feared for his personal safety if required to attend a deposition with Peter Herman. Bruce testified he sought a protective order because he was so afraid of Peter Herman and what he might do during a deposition. However, Bruce admitted he has shared an office suite with his brother for years specifically since before the inception of the underlying litigation. This admission substantially undermines the credibility of his claimed fear. Additionally, this admission

substantially undermines the credibility of Matthew Herman's claimed fear. This Referee further notes the underlying motion relied, in part, on allegations involving conduct purportedly occurring more than twenty years earlier between Peter Herman and his then wife, matters wholly remote in time and attenuated from the asserted basis for present fear. The invocation of such stale and unrelated allegations underscores Bruce's claim of fear was not grounded in an objectively reasonable concern for safety but rather is another instance of his misuse of legal process. Such conduct not only lacks credibility but also serves to trivialize and diminish genuine claims of fear and the legitimate protections afforded by the courts to those who truly require them.

Based on the totality of the testimony and Bruce's demeanor, the Court finds that portions of his testimony lack credibility. Bruce's statements consistently minimize his conduct, shift blame to others and reflect resentment toward the judiciary and the disciplinary process, rather than acceptance of responsibility.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Before recommending discipline under R. Regulating Fla. Bar 3-7.6(m)(2)(D), I considered the following:

Personal History of Respondent:

Age: 43

Date admitted to the Bar: September 21, 2010

Prior Discipline: None

VI. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards for Imposing Lawyer Sanctions before recommending discipline:

6.1 False Statements, Fraud, and Misrepresentation

(b) Suspension: Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld and takes no remedial action. Here, the statements were made with reckless disregard for their truth.

6.2 Abuse of the Legal Process

(b) Suspension is appropriate when a lawyer knowingly violates a court order or rule and causes injury or potential injury to a client or a party or causes interference or potential interference with a legal proceeding.

The undersigned Referee further considered the Comment to this Standard:

In many cases, lawyers are suspended when they knowingly violate

court orders. Knowing violations can occur when a lawyer fails to comply with a court order that applies directly to the lawyer, as in the case of lawyers who do not comply with a divorce decree ordering spousal maintenance or child support. Suspension is also appropriate where the lawyer interferes directly with the legal process. In The Florida Bar v. Gwynn, 94 So. 3d 425 (Fla. 2012), the respondent was suspended for 91 days for engaging in a pattern of misconduct which interfered with the legal process and the administration of justice. Specifically, a bankruptcy judge found that the respondent had (1) filed frivolous claims to harass the opponent and opposing counsel; (2) failed to research and verify claims advanced in motions respondent filed; (3) engaged in willful abuse of the judicial system; and (4) continually made allegations, both in pleadings and in testimony before the bankruptcy court, that were incorrect or false. The judge found that the respondent's conduct was "objectively unreasonable and vexatious" and "sufficiently reckless to warrant a finding of conduct tantamount to bad faith ... for the purpose of harassing her opponent." Id. at 427.

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

(b) Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

The undersigned Referee further considered the Comment to this Standard:

Suspension is appropriate when a lawyer knowingly violates a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system, even when the lawyer does not intentionally abuse the professional relationship by engaging in deceptive conduct. In The Florida Bar v Draughon, 94 So. 3d 566 (Fla. 2012), the respondent was suspended from the practice of law for 1 year for transferring real property and other assets from a corporation he wholly owned and controlled, to himself without any consideration at a time when the transfers left the corporation unable to satisfy its obligations to existing creditors.

3.2(b) Aggravating Factors

I find the following aggravating factors:

(2) dishonesty or recklessness, disregard for the truth and selfish motive;

(4) multiple offenses;

(8) vulnerability of the victim.

3.3(b) Mitigating Factors

I find the following mitigating factors:

- (1) absence of prior disciplinary record;
- (5) full and free disclosure to the bar or cooperative attitude toward the proceedings;
- (7) character or reputation.

VII. CASE LAW

I considered the following case law before recommending discipline:

The Florida Bar v. Patterson, 257 So. 3d 56, 62 (Fla. 2018), the applicable standard, under Rule 4-8.2(a), is not whether the statement is false, but whether the lawyer had an objectively reasonable factual basis for making the statement. The Florida Bar v. Patterson, 257 So. 3d 56, 62 (Fla. 2018) (citing The Florida Bar v. Ray, 797 So. 2d 556, 558-59 (Fla. 2001)). Clearly, this violation is at the heart of the violations and conduct.

The Florida Bar v. Parrish, 241 So. 3d 66 (Fla. 2018), the Florida Supreme Court views cumulative misconduct more seriously than an isolated instance of misconduct, and cumulative misconduct of a similar nature warrants an even more severe discipline than might dissimilar conduct. While related, Respondents kept compounding the violations by repeated, cumulative conduct.

The Florida Bar v. Ray, 797 So. 2d 556, 558 (Fla. 2001), the Court held when an attorney's statements concern "the qualifications or integrity of a judge," the burden in ensuing attorney disciplinary proceedings properly shifts to the attorney to provide an objectively reasonable factual basis in support of those statements.

The Florida Bar v. Norkin, 132 So. 3d 77 (Fla. 2013), the Court imposed a two-year suspension and public reprimand for unprofessional and antagonistic behavior aimed at judges. The Court cited to the Guidelines for Professional Conduct which state that "[a] lawyer should be courteous and civil in all professional dealings with other persons. . . . Whether orally or in writing, lawyers should avoid vulgar language, disparaging personal remarks, or acrimony toward other counsel, parties, or witnesses."

In the Florida Bar v. Patterson, 257 So. 3d 56 (Fla. 2018), when the Florida Supreme Court rejected the referee's recommendation of an admonishment and one-year probation with various conditions, finding Paterson's conduct was "far more egregious in that he deliberately placed his personal and financial interests ahead of his client's interests and did not limit his misconduct to a single proceeding or filing." The Florida Bar v. Patterson, 257 So. 3d 56 (Fla. 2018). The Court remarked it has become increasingly concerned by the lack of respect and professionalism exhibited

by many Florida lawyers during judicial proceedings and would in all likelihood impose a much lengthier suspension on the respondent.

In The Florida Bar v. Dupee, 160 So.3d 838 (Fla. 2015), Respondent was suspended for 1 year for assisting the client in a pattern of deceptive conduct. Respondent filed the client's inaccurate financial statement, withheld financial documents during discovery, allowed the client to present false testimony during a deposition without taking any remedial action.

The Florida Bar v. Gwynn, 94 So. 3d 425 (Fla. 2012), the respondent was suspended for 91 days for engaging in a pattern of misconduct which interfered with the legal process and the administration of justice.

Specifically, a bankruptcy judge found that the respondent had (1) filed frivolous claims to harass the opponent and opposing counsel; (2) failed to research and verify claims advanced in motions respondent filed; (3) engaged in willful abuse of the judicial system; and (4) continually made allegations, both in pleadings and in testimony before the bankruptcy court, that were incorrect or false. The judge found that the respondent's conduct was "objectively unreasonable and vexatious" and "sufficiently reckless to warrant a finding of conduct tantamount to bad faith ... for the purpose of harassing her opponent." Id. at 427.

In The Florida Bar v. Martinez, 412 So. 3d 731 (Fla. 2025), the Supreme Court of Florida rejected the referee's recommendation of a 10-day suspension and public reprimand, instead imposing a 90-day suspension. The Florida Supreme Court found Martinez engaged in conduct involving dishonesty and failed to comply with court orders. Martinez obstructed another party's access to evidence, filed frivolous assertions in pleadings, and engaged in conduct prejudicial to the administration of justice. In mitigation the referee found (1) absence of a prior disciplinary record; (2) personal or emotional problems; (3) inexperience in the practice of law; (4) unreasonable delay in the disciplinary proceedings; and (5) imposition of other penalties or sanctions.

VIII. RESPONDENTS' POSITIONS THAT THE COURT CONSIDERED

Governing Framework: The Florida Standards Control

The Florida Standards emphasize that a primary purpose of lawyer discipline is the protection of the public and the administration of justice, rather than punishment for its own sake. (Florida's Standards for Imposing Lawyer Sanctions, § 1.3(a)).

Consistent with that purpose, sanctions are intended to be calibrated to the nature of the misconduct, the lawyer's mental state, the degree of

harm, and the presence of aggravating and mitigating factors. (Florida's Standards for Imposing Lawyer Sanctions, § 1.1).

“After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.” (Florida's Standards for Imposing Lawyer Sanctions, § 3.1). Mitigating factors recognized by the Standards include, among others, the absence of a prior disciplinary record; absence of a dishonest or selfish motive; a cooperative attitude toward the proceedings; and remorse. (Florida's Standards for Imposing Lawyer Sanctions, § 3.3(b)(1), (2), (5), (12)).

Separately, Standards 6.1 and 6.2 address violations of duties owed to the legal system, including conduct that is prejudicial to the administration of justice, and conduct involving misuse or abuse of the legal process, evaluated under the lawyer's mental state and the resulting actual or potential injury, as described in those Standards. The accompanying commentary explains that the appropriate sanction depends on the lawyer's mental state, the extent of actual or potential injury, and the presence of aggravating or mitigating factors. (Florida's Standards for Imposing Lawyer Sanctions, §§ 6.1–6.2, Commentary).

Equally important, sanctions must be tied to the rules actually violated. In this case, the Referee found violations of:

- Rule 3-4.3
- Rule 4-8.2(a)
- Rule 4-8.4(d)

No violation of Rule 4-8.4(c) (dishonesty, fraud, deceit, or misrepresentation) was charged or found. This distinction can and does matter greatly at this sanctions stage. In this instance, the Referee does find that the behavior evinced a reckless disregard for the truth.

Segregation of Rule 4-8.4(c) Authorities

Many Florida Bar discipline cases that result in lengthy suspensions or disbarment are driven by findings under Rule 4-8.4(c)—involving intentional dishonesty, misrepresentation, trust-account violations, or financial harm.

This distinction is illustrated by cases such as *Florida Bar v. Watson* and *Florida Bar v. Mirabal*, in which lengthy suspension or disbarment was imposed following findings of intentional dishonesty or misrepresentation under Rule 4-8.4(c). (*Florida Bar v. Watson*, 76 So. 3d 915, 918–20 (Fla. 2011)); (*Florida Bar v. Mirabal*, 390 So. 3d 1172, 1176–78 (Fla. 2024)). In those cases, the severity of discipline flowed directly from that intentional dishonesty-based misconduct — a theory neither charged nor found in the instant case.

Other cases sometimes cited by the Bar to support harsher sanctions, including *Florida Bar v. Patterson*, resulted in increased discipline due to additional violations, aggravating factors, or the Florida Supreme Court's determination that a referee's recommendation was insufficient — not because of any Rule 4-8.4(c) dishonesty finding. Those authorities therefore occupy a fundamentally different sanction lane and should not guide sanction severity in the absence of a Rule 4-8.4(c) charge or finding. (*Florida Bar v. Patterson*, 257 So. 3d 56, 60–62 (Fla. 2018)).

Authorities grounded in Rule 4-8.4(c) typically reflect:

- A higher culpable mental state
- Greater actual or potential harm
- A different sanctions range under the Standards

The Referee does believe that intentional fraud is significantly more egregious than recklessness. Neither however should go unpunished.

Rule 4-8.4(d) (Conduct Prejudicial to the Administration of Justice)

Similarly, under Rule 4-8.4(d), *Florida Bar v. Cohen* confirms that where suspension is imposed absent dishonesty, it may be brief and corrective rather than punitive. Here, the conduct was with reckless disregard for the truth.

Aggravating and Mitigating Factors

Respondents respectfully submitted that the mitigating factors in this case warrant significant weight in determining proportional sanctions, particularly as to Matthew Herman. (The Referee is of a like mindset as concerns some of the factors, particularly as to Matthew.)

Mitigating Factors:

- No prior disciplinary history
- Full participation in the disciplinary process
- Express willingness to attend ethics school, testified to under oath
- Professional and reputational consequences already incurred

Specific Distinctions between Matthew and Bruce:

- Matthew Herman was not counsel of record.
- Matthew did not participate in subsequent efforts to disqualify Judge Frink.
- Matthew's statements arose from his understanding of events informed by information he received from a family member.
- When the Referee asked Matthew Herman why he believed Judge Rodriguez's testimony was not accurate, Matthew explained that his response was based on his understanding of the record at the time. As reflected in sworn testimony cited in the record, Judge Rodriguez stated that Matthew Herman had appeared before him on multiple occasions. Matthew, who has never appeared before Judge Rodriguez in any capacity, understood that statement to be inconsistent with

actual history, as he had not appeared before Judge Rodriguez and had no prior interaction with him before seeing him for the first time during his testimony in Phase I of these proceedings. This context bears on Matthew's mental state and may explain why he responded as he did. It does not excuse the conduct found by the Referee, but it informs proportional sanctions.

Addressing the Risk of Sanctions on Review

Respondents are mindful that the Florida Supreme Court has, in some cases, increased sanctions where a referee's recommendation was viewed as insufficient in light of the record and applicable precedent. This institutional reality informs Respondents' proposed discipline below.

The goal is not to minimize the seriousness of the findings, but to ensure that the recommended sanction is balanced, defensible, and fully consistent with the Standards, thereby reducing the risk of escalation by The Florida Supreme Court upon its review.

Requested Discipline

- Mandatory ethics school; and
- Assessment of costs incurred by The Florida Bar.

Respondents submitted that this combination sufficiently protects the public, reinforces professional boundaries, and promotes rehabilitation.

Alternative Request (If Suspension Is Deemed Necessary):

The Respondents suggested that if the Referee concludes that some period of suspension is required, Respondents respectfully request that any suspension be:

- Brief and measured in days, not months;
- Ten (10) days, and not exceeding thirty (30) days; and
- Accompanied by ethics school and assessment of costs.

This alternative is offered in good faith, as an acknowledgment of the Court's authority and the seriousness of the findings, and as a measured option consistent with the protective purposes of lawyer discipline.

IX. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED

I, the Referee, recommend that respondent Matthew F. Herman be found guilty of misconduct justifying disciplinary measures and that he be disciplined by:

- A. 30-day suspension;
- B. Ethics school to be completed within 6 months of the Court's Order; and

C. Payment of The Florida Bar's costs in these proceedings.

X. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida

Bar:

Administrative Fee	\$1,250.00
Court Reporters' Fees	\$697.50
Investigative Costs	\$90.75
 TOTAL	 \$2,038.25

I recommend that the above costs be charged to respondent and that interest accrue at the statutory rate. Respondent will be delinquent 30 days after the judgment in this case becomes final unless respondent pays the costs in full or the Board of Governors of The Florida Bar defers payment under R. Regulating Fla. Bar 1-3.6.

Dated this 2nd day of February, 2026.

_____/S/_____
Honorable Gerard J. Curley, Jr., Referee

Filed with the Supreme Court of Florida via the Florida Courts E-Filing Portal with copies served via the Portal to:

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