

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

LEO BENITEZ,
Respondent.

Supreme Court Case
No. SC22-649

The Florida Bar File
No. 2018-70,399(11G)

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 May 11, 2022, The Florida Bar filed its Complaint against respondent, as well as its Request for Admissions in these proceedings. On January 19, 2023, the parties submitted Stipulated Facts and respondent admitted his guilt of the charged rule violations. The final hearing as to sanction was held on February 1, 2023. 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.

The following facts were stipulated to by the parties:

A. Respondent represented Mr. Roberto Kasinsky in a lawsuit he filed against Mr. Kasinsky's former lawyer, Mr. Richard Diaz, the complainant in this matter.

B. Mr. Kasinsky's brother-in-law, Mr. Jorge Dario Montoya, was arrested in Colombia, along with another co-defendant. Mr. Kasinsky wanted to hire counsel to represent his brother-in-law and the co-defendant. To that end, he consulted Mr. Diaz.

C. Complainant Diaz informed Mr. Kasinsky that, while he frequently travels to Colombia and has many connections in the legal community there, he himself is not licensed to practice in Colombia. Accordingly, he could assist only by making a referral to a Colombian firm for the representation of Jorge Dario Montoya.

D. Following this consultation, complainant Diaz also agreed to facilitate payment of the \$100,000.00 retainer to the Colombian firm to

which Montoya had been referred, due to Mr. Kasinsky's concerns about sending that sum to Colombia himself.¹

E. Accordingly, Mr. Kasinsky provided two payments totaling \$100,000.00 to complainant Diaz for the retainers. The retainers were for both defendants, in the amount of \$50,000.00 each. These payments were the subject of the lawsuit later filed by respondent against complainant Diaz.

F. Complainant Diaz referred Mr. Kasinsky and Jorge Dario Montoya to the Colombian law firm of Casallas, Suarez, and Rincon (hereinafter "CSR"). CSR entered into a representation agreement with Mr. Kasinsky and the two criminal defendants. CSR provided significant legal services on Jorge Dario Montoya's behalf and was successful in obtaining Jorge Dario Montoya's release from pre-trial incarceration to house arrest.

¹ Receipt of these monies was also the subject of a bar complaint filed against Mr. Diaz by Mr. Kasinsky. In that bar investigation, Mr. Diaz demonstrated that the Colombian law firm that was engaged to represent Jorge Dario Montoya was holding \$100,000.00 of funds which were owed to Mr. Diaz. Rather than engage in a mutual transfer of funds, both firms agreed to a mutual credit of funds. The Colombian firm, therefore, retained for itself the \$100,000.00 in its possession that was due and owed to Mr. Diaz and credited same as the retainer fee for Jorge Dario Montoya and his co-defendant; and Mr. Diaz, in turn, retained the \$100,000.00 paid by Mr. Kasinsky for the representation of Jorge Dario Montoya and his co-defendant, and credited same against the amount that the Colombian firm was holding for his benefit. Following investigation and hearing, the Grievance Committee found no probable cause for the matter to proceed through the disciplinary system, and issued a letter of advice to Mr. Diaz.

G. The retainer agreement between CSR and Jorge Dario Montoya included a bonus payment to the law firm in certain situations. Following his release to house arrest, Jorge Dario Montoya determined that he did not wish to pay the bonus legal fees. He terminated CSR's representation and hired new counsel.

H. Thereafter, Mr. Kasinsky returned to complainant Diaz's office and demanded the return of the \$100,000.00 retainer payment. Mr. Kasinsky took the position that he had retained Mr. Diaz for the representation and that Mr. Diaz never informed him that he was not licensed in Colombia, nor that another law firm would be engaged for the legal work. Mr. Kasinsky asserted he had no knowledge that any other law firms or lawyers had been engaged in the matter, nor had performed any services.

I. Mr. Kasinsky contended that since Mr. Diaz did not perform any legal services, he was entitled to a full refund of the retainer.

J. Complainant Diaz explained that the representation agreement was made with CSR, that all the funds were provided to CSR, and that if any refund was due, Mr. Kasinsky should seek same from CSR.

K. On September 18, 2009, respondent sent correspondence to complainant Diaz indicating his representation of Mr. Kasinsky in this

matter and demanding a refund of the full retainer of \$100,000.00 plus interest. When no refund was issued, respondent filed suit against complainant Diaz on December 29, 2009, in Miami Dade County Circuit Court, Case Number 2009-93740-CA-01.

L. After a year of litigation, in January 2011, complainant Diaz moved for summary judgement, which was subsequently denied.

M. In 2013, complainant Diaz filed a second motion for summary judgment. In preparation for the summary judgment hearing, complainant Diaz produced to respondent an affidavit from CSR attesting to its representation of Jorge Dario Montoya and the legal services performed during the representation. Complainant Diaz also produced copies of contemporaneous emails between Mr. Kasinsky and CSR discussing in detail the status and strategy of the Jorge Dario Montoya representation. These emails clearly refuted Mr. Kasinsky's position that he was unaware, and had no knowledge, of another law firm being engaged to represent Jorge Dario Montoya in Colombia.

N. Respondent countered this evidence at the summary judgment hearing with an affidavit he obtained from Jorge Dario Montoya, referred to by subsequent trial court orders as the Montoya Affidavit. In the affidavit, Jorge Dario Montoya denied: 1) hiring, 2) communicating with, or 3)

receiving any legal services from, any of the CSR attorneys. In prosecution of the case, respondent and his client further claimed that it was not CSR that had obtained Jorge Dario Montoya's pre-trial release to house arrest. Rather, it was asserted that Jorge Dario Montoya hired Mr. Pizza Parra, and that he was the attorney who obtained the release to house arrest.

O. The trial court denied the second motion for summary judgment without prejudice, *specifically based on the Montoya affidavit*, which the court concluded created an issue of fact in the case.

P. Motion practice and discovery continued three more years, through early 2016, during which time complainant Diaz went to enormous effort and expense to obtain certified documents from the Colombian court. These court documents, once obtained, demonstrated that CSR was significantly involved in, and conducted substantial work on, the criminal defense of Jorge Dario Montoya. Some of these documents included the actual motions and orders from the Colombian court file, demonstrating that the pre-trial release to house arrest was granted on CSR's motion; and additionally, there were "poders" or power of attorneys, that both Jorge Dario Montoya and his co-defendant signed, and placed their thumb fingerprint on, which specifically authorized CSR to represent them in the criminal matter.

Q. Complainant Diaz made these documents known to respondent on multiple occasions and offered to make the many banker's boxes of documents available for respondent's review. Nevertheless, the respondent declined to view the documents and continued to press his case.

R. Accordingly, in March and May 2016 respectively, complainant Diaz, through counsel, forwarded two Fla. Stat. 57.105 safe harbor letters to respondent, attaching the most pertinent documentation, and requesting a voluntary dismissal of the suit. When that did not occur, complainant Diaz filed a renewed motion for summary judgement, a motion to dismiss, and a motion for sanctions against both respondent and his client.

S. On September 7, 2016, following a hearing on the renewed motion for summary judgment and motion to dismiss, the trial court issued a scathing order, granting the motion for summary judgement and dismissal. In the order, the trial court struck the Montoya affidavit, finding by clear and convincing evidence that it was false and perjurious. The court found that the continued reliance on the clearly false affidavit in the second summary judgment proceeding, despite all the evidence refuting same, amounted to an "outrageous and willful abuse of the justice system, which justifies the dismissal of all the plaintiff's claims with prejudice."

T. The trial court further found that, "This case presents precisely the sort of fraud upon the court that Florida common law finds to be the most egregious and worthy of ultimate sanction."

U. A Final Judgement was issued on September 16, 2016, in favor of Mr. Diaz, which reserved jurisdiction to determine sanctions. Respondent appealed the trial court order to the Third District Court of Appeal. The Third District per curiam affirmed the trial court.

V. Despite the scathing findings in the order granting summary judgement, the court made no specific finding at the time of that order as to whether respondent knowingly perpetrated the fraud upon the court. On December 22, 2017, the trial court granted Mr. Diaz's motion for sanctions and for fees and set the matter over for a hearing to determine the assessment of attorney's fees, and to make a determination of responsibility for and assessment of section 57.105 attorney's fees and sanctions against plaintiff's counsel, respondent Benitez.

W. Judge De La O conducted a full evidentiary hearing on the issue. On August 5, 2018, Judge De La O entered a Final Judgement for Defendants and found both Mr. Kasinsky and respondent liable for bad faith sanctions pursuant to Fla Stat 57.105. The court found that respondent's determination not to seek out any objective evidence to

confirm or disprove his clients' statements was inexcusable willful ignorance.

X. The court's order demonstrates that it was inclined to give respondent the benefit of the doubt, and determine it was sufficient for him to simply confer with his client(s), at least through 2016, before the actual Colombian court pleadings were presented to respondent. Thereafter, however, the court determined that simply speaking with his clients was not sufficient. Specifically, the court found:

By this point, if not earlier, Mr. Benitez had obviously erected a "wall of willful ignorance" regarding information adverse to Plaintiff's position. Faced with actual Colombian court records, Mr. Benitez had a duty to do more and he breached that duty. By March 30, 2016, if not earlier, this breach was equivalent to bad faith and the Court finds that by March 30, 2016 Mr. Benitez knew or should have known that the Montoya affidavit was a perjury.

This order was also affirmed on appeal.

Y. In the subsequent bar investigation, respondent maintained his position advanced in the trial court. He argued his use of the Montoya Affidavit was proper, because it was supported by his client's continued denials of the evidence put forth by complainant Diaz. Respondent continued to assert to the bar, despite the contrary certified Colombian court records, that it was Mr. Pizza Parra, and not CSR, that represented

Jorge Dario Montoya in Colombia and secured his release from incarceration.

III. EVIDENCE PRESENTED AT SANCTIONS HEARING

During the sanctions hearing on February 1, 2023, the Bar called one witness, the complainant Richard Diaz, Esq., and introduced 3 Exhibits, identified in the record as Florida Bar's Exhibits 1-3.

The respondent called five live character witnesses: Judge Peter Lopez, Arnaldo Velez, Esq., Olga Palma, Juan Carlos Alvarez, and Lizette Benitez, Esq., and the respondent testified on his own behalf. Respondent introduced 16 exhibits into evidence, identified in the record as Respondent's Exhibits A-P.

In lieu of his counsel providing an opening statement, Respondent began the hearing by personally providing an apology to the Court and the Bar for having to go through these proceedings, and then said to the complainant, Richard Diaz, who was in the courtroom:

"To Mr. Diaz, I need to apologize to him, and I do. Although the fees that were awarded to him were paid, I recognize that that does not absolve me from my responsibility as an officer of the court."

(T. 9)

1. Testimony of Respondent Leo Benitez Regarding His State of Mind

I find that respondent's state of mind, although clearly not in any way a defense, is mitigation and, therefore, relevant to my recommendation of the sanction to be imposed.

Respondent testified that Roberto Kasinsky was respondent's first client and that he represented Mr. Kasinsky in his business ventures from 1994 up until Mr. Kasinsky's recent death. Respondent testified that, although initially it began as an attorney-client relationship, the relationship developed into a close, personal friendship. Fifteen years into their relationship, in 2009, Mr. Kasinsky hired respondent to seek to recoup money paid to criminal defense attorney Richard Diaz for the purpose of obtaining the release of Mr. Kasinsky's brother-in-law, Montoya, from prison in Colombia.

I agree with the underlying court's finding that, when the respondent initiated litigation on behalf of Mr. Kasinsky against Mr. Diaz in 2009 and continuing up to March 30, 2016, the information and documents known to respondent supported his reliance upon, and belief in, his client, Mr. Kasinsky. Respondent testified in the Bar proceedings that, from the first description Mr. Diaz provided in his emails, to his response to the bar complaint to Mr. Diaz's answers to interrogatories, the various differing

explanations Mr. Diaz provided regarding what happened to the funds Mr. Kasinsky paid to Mr. Diaz only increased respondent's faith in and reliance on Mr. Kasinsky's claims.

However, on March 30, 2016, when Mr. Diaz produced a "poder," akin to an authority to represent, signed by Montoya giving the Colombian lawyers authority to represent him, along with some uncertified records from Colombia, as respondent admitted in his testimony during the sanction hearing, it should have slowed, if not stopped him. And then when Mr. Diaz had obtained and offered Respondent the opportunity to review certified court records from Colombia, respondent testified that he failed to review the records, put his head in the sand and engaged in willful ignorance, letting his close relationship with Mr. Kasinsky cloud his judgment.

2. Evidence of Good Character and Reputation

A total of twelve (12) individuals, five (5) as live witnesses and seven (7) in the form of a Declaration, provided sworn evidence of Respondent's good character, and most of them also provided evidence of Respondent's good reputation.

Respondent provided each of the twelve character witnesses the Stipulated Facts and discussed the Stipulated Facts with all of them. Most of the witnesses opined that Respondent admitted he was wrong, that he is

remorseful, and he accepts full, personal responsibility for his misconduct.

All the character witnesses opined that, knowing what Respondent did wrong in the matter leading to this Bar case, their opinion of Respondent's good character remains intact.

a) *Live witnesses:*

(1) Judge Peter Lopez:

Judge Lopez has been an Eleventh Judicial Circuit Court Judge since 1996. He was duly subpoenaed, and he testified he has known the respondent for two decades, professionally on one case, and personally through respondent's wife and shared experiences with their children. "I've always found him to be honest, trustworthy, upstanding gentleman, as far as everything I've ever dealt with him, whether it was school related or otherwise." (T. 123)

(2) Juan Carlos Alvarez:

Mr. Alvarez is a business owner and a long-time client of respondent. He, too, considers respondent a friend.

(3) Olga Palma:

Ms. Palma is a long-time client of Respondent. She is a retired financial professional and owner, with her family, of a successful real estate business. She and her husband, personally, and the family company have

been clients of respondent for nearly two decades. They now consider themselves friends of the respondent. Ms. Palma testified: "In the 18 years that my husband and I have known Leo, he has always -- and I want to emphasize that -- always been truthful, ethical, competent. He's been very respectful of whatever legal procedure. And he has been very respectful of all the participants, including the opposing attorney. He has been a fierce advocate of our interests. He has championed them in an honorable way." (T. 140-141)

(4) Arnaldo Velez:

Mr. Velez has been a member of The Florida Bar since 1972. He is a highly respected and well-known lawyer who has known, mentored, and worked with the respondent. Mr. Velez was also involved with the underlying matter on the fee issue. He testified in the hearing, that knowing the facts and respondent's admission of wrongdoing, regarding respondent: "I have great admiration and great respect for counsel." (T. 157) Mr. Velez also said: "You asked me how I feel about him today. And I will tell you he is knowledgeable. He is well-skilled. He has a high respect for our legal system, the process, and its goals. At every corner a professional. That would be the answer that I think would be routine. He is honorable, sincere, truthful." (T. 159)

(5) Lizette Benitez:

Ms. Benitez is the respondent's wife of 24 years, mother to their teenaged son and stepmother to respondent's other three, grown children. Ms. Benitez has been an attorney since 1989, defending traffic and criminal cases. In her testimony she said: "Me, as his wife and as a human being, I know that Leo would never do anything that would harm the integrity of the court, of a client, or to cheat or to lie. That's just not who he is." (T. 175)

b) *Character witnesses who provided Character Declarations with evidence of good character:*

(6) Clara Cerda:

Along with her now deceased husband, was a long-time client of respondent.

(7) and (8) Luis and Maria Costa:

The owners of a fuel service business, who have known and worked with respondent as their counsel for over a decade.

(9) Jose P. Fernandez:

Olga Palma's husband and an owner of the family business mentioned above.

(10) Eduardo A. Justo:

Used respondent for his vehicle leasing business for

approximately 20 years.

(11) Jose Sanchez-Gronlier:

A member of The Florida Bar for over 30 years, has known respondent for a quarter of a century.

(12) Dania Suarez:

A client of Respondent, who has known him for approximately 7 years.

IV. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rule 4-3.3 (Candor Toward the Tribunal), 4-3.4(c) (A lawyer must not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists), 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), 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).

V. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

5.1 Failure to Maintain Personal Integrity

5.1(b) Suspension is appropriate when a lawyer knowingly engages in criminal conduct which is not included elsewhere in this subdivision or other conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

6.1 False Statements, Fraud, and Misrepresentation

6.1(b) 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.

6.2(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.

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

7.1(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.

8.1 Violation of a Court Order or Engaging in Subsequent Same or Similar Misconduct

8.1(a)(2) Disbarment is appropriate when a lawyer has been suspended for the same or similar misconduct and intentionally engages in

further similar acts of misconduct.

VI. CASE LAW

I considered the following case law prior to recommending discipline:

- *The Florida Bar v. Talbott*, SC20-1612, 2021 Fla. LEXIS 572

(Apr. 15, 2021) - 60-day suspension imposed for attorney hired to represent a client in a federal case under the Fair Labor Standards Act. In an order denying Talbott's motion for attorney fees from the opposing party, the federal court found that Talbott pursued the litigation in bad faith and engaged in frivolous filings during the proceedings to obtain higher attorney fees. Talbott was charged with conducting frivolous litigation, failing to expedite litigation, filing exaggerated billing sheets with the court, as well as extensive and unnecessary discovery to increase attorney fees when there was no dispute of damages between the parties resulting in conduct prejudicial to the administration of justice.

- *The Florida Bar v. Tropp*, 112 So.3d 101 (Fla. 2013) - Public reprimand with 3 years of probation for violations of Rules 4-3.1 (meritorious claims and contentions); 4-3.3(a) (candor toward the tribunal); 4-8.2(a) (impugning qualifications and integrity of judges or other officers); 4-8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and 4-8.4(d) (conduct in the connection with the practice of law that is

prejudicial to the administration of justice). Respondent Tropp, an attorney acting as co-counsel in the post-dissolution portion of his own divorce case, personally filed a fourth motion to disqualify the trial judge, alleging that the judge had an improper, essentially ex parte, discussion outside of respondent's presence with Tropp's ex-wife's attorney concerning the amount of respondent's support payments, but failed to disclose in the motion that respondent's co-counsel was present during the discussion in question. The omission was found to be a misrepresentation designed to mislead the court because respondent knew that his co-counsel was present.

- *The Florida Bar v. Russell-Love*, 135 So.3d 1034 (Fla. 2014) – 91-day suspension imposed for attorney found to have knowingly and deliberately made false statements on immigration visa forms submitted to the United States government on behalf of a client. The attorney signed the forms declaring under penalty of perjury the information being provided was true and correct.

- *The Florida Bar v. MacNamara*, 132 So. 3d 165, 171 (Fla. 2013) (90-day suspension): The respondent attorney was found to have committed repeated acts of dishonesty in violation of Rule 4-8.4(c), including intentionally filing a false petition with the probate court,

misleading the IRS and making false statements to the Bar. In finding that a 90-day non-rehabilitative suspension was appropriate, the Court noted the respondent had no prior disciplinary history and admitted to the Referee at the final hearing that his prior statements were misrepresentations, thus, ultimately accepting responsibility for his dishonest conduct.

- *The Florida Bar v. Head*, 84 So.3d 292 (Fla. 2012) (91-day suspension): The respondent attorney engaged in conduct involving dishonesty and fraud, in the course of representing a commercial landlord in an eviction proceeding against a tenant. The attorney drafted, signed and submitted an affidavit to the court in which he falsely claimed he allowed the tenant's employee to have access to the tenant's business records when, in fact, he did not do so. In addition, the attorney used a fraudulent case number in a letter he created and posted on premises indicating that a complaint for distress for rent had been filed, when, in fact, such proceedings had not been filed, in order to mislead others and gain a tactical advantage. Aggravating factors included prior discipline, dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge wrongful nature of conduct and substantial experience in the practice of law. No mitigating factors were noted by the Court. The Court

noted that the lawyer's dishonest acts constitute "serious misconduct," and that he also "testified untruthfully before the referee."

- *The Florida Bar v. Berthiaume*, 78 So. 3d 503 (Fla. 2011) (91-day suspension): The respondent attorney engaged in deceit and misrepresentation by deliberately crafting and mailing a fraudulent subpoena to a bank that was "clearly designed to cause the bank to produce the records without legal authority."

- *The Florida Bar v. Gwynn*, 94 So.3d 425 (Fla. 2012) - 91-day suspension for attorney who engaged in unprofessional conduct in litigation, filed numerous frivolous motions to harass her opponent and opposing counsel and for needlessly delaying court proceedings. A referee in a bar disciplinary proceeding can properly rely upon facts established in orders and decisions of other tribunals to support his or her findings of fact.

- *The Florida Bar v. Dove*, 985 So.2d 1001 (Fla. 2008). An attorney's act in making knowing material misrepresentations to the termination of parental rights and adoption courts, failing to deal with those tribunals with candor, and withholding material information from the courts, which potentially could cause and did cause a significant adverse effect on the legal proceedings and the interested parties, warranted three-year

suspension from the practice of law, rather than disbarment, in light of mitigating factors, including substantial evidence of attorney's rehabilitation and attorney's commitment to public service and the legal community.

- *The Florida Bar v. Dupee*, 160 So.3d 838 (Fla. 2015). The Court imposed a one year suspension where attorney knowingly allowed false evidence to be presented in dissolution proceedings, by wife's inaccurate deposition testimony about withdrawal and redeposit of funds from credit union account, without taking any remedial action, in violation of rules of professional conduct governing candor to a tribunal and prohibiting attorney from fabricating evidence; attorney did not interrupt deposition to counsel wife, and although attorney asserted that she waited until a break and informed opposing counsel that accurate information about amount of money in account could be obtained by reference to certain documents, the transcript did not reflect such a clarification, and counsel for husband did not recall one being made.

- *The Florida Bar v. Cox*, 794 So. 2d 1278 (Fla. 2001). A one-year suspension was the appropriate sanction for a prosecuting attorney who allowed a confidential informant to testify at trial under a false name, even though disbarment was presumptive penalty, where evidence showed that attorney's conduct was aberration in otherwise unblemished career,

attorney believed she was acting to protect the informant, attorney had no prior disciplinary record, and was sincerely remorseful.

- *The Florida Bar v. Forrester*, 818 So. 2d 477 (Fla. 2002) – 60-day suspension with 1 year of probation imposed on respondent found in violation of rule 4-8.4(c) for engaging in intentional misrepresentation during a deposition. Forrester knowingly and intentionally removed and concealed an exhibit for a period of time during the deposition and, when opposing counsel asked whether she had it, Forrester accurately replied, "I'm not seeing it." Forrester's answer was intentionally misleading because she knew the document was located by her briefcase and she deliberately failed to disclose that information to opposing counsel. Forrester was given more than one opportunity to return the document, but she did not do so until she was confronted by opposing counsel.

- *The Florida Bar v. Committee*, 916 So.2d 741 (Fla. 2005) - 90-day suspension, followed by 1 year of probation. Committee knowingly failed to comply with discovery requests, filed frivolous lawsuits designed to harass an attorney and abused the legal process.

- *The Florida Bar v. Shankman*, 908 So.2d 379 (Fla. 2005) - Shankman was found guilty of violating Rules 4-1.3, 4-1.7(b), 4-4.1(a), 4-5.4(a), 4-8.4(a), 4-8.4(c), and 4-8.4(d). Based on the amount and type of

misconduct which occurred, the court found that that this “was not a momentary lapse of judgment but a pattern of dishonest and unethical conduct that occurred for at least three months and involved multiple clients and other parties.” The Supreme Court of Florida increased the suspension from 90 days to 91 days. Cumulative misconduct must be treated more severely than isolated misconduct.

- *The Florida Bar v. Rotstein*, 835 So.2d 241 (Fla. 2002) - The court approved the referee’s recommended discipline of a one-year suspension for violations of Rules 3-4.3, 4-1.4(a), 4-8.1(a), 4-8.4(c) and 4-8.4(d). Rotstein was negligent in the handling of a personal injury claim and instead of being truthful and admitting his mistake, the attorney attempted to cover up his mistakes. Rotstein also knowingly took positions adverse to his clients by attempting to enforce settlement agreements against his clients. The court stated, “we find that Rothstein’s intentional and egregious misconduct has demonstrated an attitude that is wholly inconsistent with professional standards.”

- *The Florida Bar v. Rosenberg*, 169 So. 3d 1155 (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”).

- *The Florida Bar v. Bosecker*, 259 So. 3d 689, 699 (Fla. 2018)

The 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.

- *The Florida Bar v. Orta*, 689 So.2d 270 (Fla. 1997). Each instance of dishonesty is a separate offense.

VII. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

- A. Suspension for a period of one year.
- B. Payment of The Florida Bar's costs in these proceedings.

Respondent will eliminate all indicia of respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards office signs or any other indicia of respondent's status as an attorney, whatsoever.

In making this recommendation, I took note of respondent's acceptance of responsibility in this matter, and his genuine *mea culpa* during his opening statement at the sanctions hearing in these proceedings. However, I am required to weigh and balance these commendable actions against the years of harm that inured from respondent's misconduct.

It is well settled, and the law of the case, that as of March 30, 2016, seven (7) years after being hired and more than six (6) years after he filed the civil complaint, that respondent continued to maintain an entirely frivolous lawsuit, on behalf of his very close friend, in the face of significant and incontrovertible evidence demonstrating his client's position and evidence to be false. Respondent testified that he continued in the face of such evidence because he believed his client's denials. As a close and dearly loved friend, he did not believe that his client would use him in such a manner.

However, it is clear to me, from respondent's stipulations and testimony herein, that, as of March 30, 2016, respondent had actual knowledge of the misrepresentations in the Montoya affidavit before the final summary judgement hearing in this matter held in August 2016. During his testimony before me, the respondent stated that he required Mr.

Montoya to come to Miami to meet with him in person. (Transcript of Hearing, p. 235). At that time, Mr. Montoya admitted to respondent that it was his signature on the poder but stated that he just did not remember it. Such acknowledgment from Mr. Montoya should have prompted respondent to immediately remove the affidavit from the evidence he submitted to defeat summary judgment; and indeed, should have prompted a disclosure and removal from the record of the prior summary judgment hearing.

In his testimony before me, the respondent stated that, if he had just gone and seen the certified pleadings that Mr. Diaz obtained from the Colombian court file, he would have known that the affidavit was false, and presumably, would have done things differently. However, the evidence and testimony show this not to be the case.

I find that respondent had seen uncertified copies of some of the pleadings from the Colombian court file prior to the final summary judgment hearing in this matter. In his stipulation, at paragraph P, respondent stipulated that the documents Mr. Diaz went to great hardship and expense to obtain included "the actual motions and orders from the Colombian court file, demonstrating that the pre-trial release to house arrest was granted on CSR's motion; and additionally, there were "poders" or power of attorneys,

that both Jorge Dario Montoya and his co-defendant signed, and placed their thumb fingerprint on, which specifically authorized CSR to represent them in the criminal matter.”

Mr. Diaz testified before me, more specifically, that the documents he secured from the court file included, “habeas corpus petitions, bond petitions, medical release petitions filed, medical records.” (Transcript of Hearing, p.27, 36-37). Mr. Diaz acquired screenshots of those documents from official embassy staff and presented them to the underlying court and to respondent. (Transcript of Hearing, p 27-28). Mr. Diaz caused those documents to be attached to a 57.105 safe harbor letter served on the respondent prior to the final summary judgment hearing. (See stipulation para R).

In his testimony before me, the respondent confirmed that he had seen some of the records, but only uncertified copies. (Transcript of Hearing, p. 277). Thereafter, even after the certified documents were obtained and respondent failed to go to review them, respondent demanded that every single page of the ten plus banker’s boxes of documents from the court file be officially translated into English before a single document could be introduced. (Transcript of Hearing, p. 36-37). Indeed, Judge Schlesinger documented in his Order:

In hindsight, it is no wonder that plaintiff [respondent] has fought hard to deny the defense the opportunity and time to obtain and translate these records, and has argued at every turn that the records from Colombia must be excluded as inauthentic and unreliable, no matter how much time or opportunity might be provided to plaintiff to examine them. Plaintiff has also argued adamantly that the defense must first officially translate every jot of information in the six foot tall stack of banker's boxes, at ruinous cost, before *any* of the foreign records should be considered for admissibility. Had the court heeded plaintiff's argument or plaintiff's previous entreaties to deny defense requests for additional time to finally dislodge the records from the prosecution files in Colombia, plaintiff might have successfully run out of the clock on this abuse of the court system. This case presents precisely the sort of fraud upon the court that Florida common law finds to be the most egregious and worthy of the ultimate sanction.

(TFB Ex. 1 at 9-10).

Accordingly, it is clear to me that the respondent's failure to go and inspect the certified court documents was a deliberate choice. He knew what the documents were, and that those documents proved his client's position to be false. I find that respondent deliberately chose not to "see" any evidence which may have required him to take a voluntary dismissal of the case, and which may have subjected him and his client to fees and sanctions.

For these reasons, I cannot find that the respondent's misconduct was negligent or unknowing. It cannot be excused as the result of his

"laser focus" on finding issues of fact to defeat summary judgement.

Rather, I find that, even after weighing his subsequent acceptance of responsibility and remorse, and compelling evidence of good character and reputation, the significant misconduct at issue herein requires the imposition of a significant rehabilitation suspension.

VIII. 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: 58

Date admitted to the Bar: November 15, 1989

Aggravating Factors (Florida Standards for Imposing Lawyer Sanctions):

- 3.2(b)(1) prior disciplinary offenses; pursuant to Florida Supreme Court Order dated February 17, 2011, respondent was suspended for a period of thirty days in *Supreme Court Case No. SC10-1518*; *Florida Bar File No. 2009-70,594(11G)* (TFB Ex. 3) Respondent made misrepresentations in a HUD-1 Settlement Statement and executed a no lien and gap affidavit when selling his property despite knowing a promissory note was not recorded but was still due. Notably, the conduct at issue occurred in 2001 and the matter was not related to the practice of law. It was a personal matter relating to the sale of property and the payoff of a loan. In that case, not only did Mr. Benitez take full responsibility for his actions, he made full restitution of all amounts due to the mortgagee.

3.2(b)(2) dishonest or selfish motive; Judge De La O found that respondent erected a "wall of willful ignorance," and acted in bad faith when he refused to review the evidence which would demonstrate the lawsuit he filed on behalf of his close friend to be entirely frivolous. (TFB Ex 2). I relied on Judge De La O's findings herein. *The Florida Bar v. Gywnn*, 94 So.3d 425 (Fla. 2012)(A referee in a bar disciplinary proceeding can properly rely upon facts established in orders and decisions of other tribunals to support his or her findings of fact.) Accordingly, I find that respondent deliberately chose not to review any evidence which may have required him to take a voluntary dismissal of the case, and which may have subjected him and his client to fees and sanctions.

3.2(b)(3) a pattern of misconduct; it is noted that respondent's prior disciplinary sanction also resulted from dishonest conduct in violation of Rule 4-8.4(c) of the Rules Regulating the Florida Bar. (See TFB Ex 3). *See The Florida Bar v. Bosecker*, 259 So. 3d 689, 699 (Fla. 2018)("the 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").

3.2(b)(4) multiple offenses; Even after Montoya acknowledged that it was his signature on the poder, respondent continued to rely on the false affidavit in the third and final motion for summary judgment, in the subsequent appeal, and even in his defense in the instant Bar proceedings. Each time respondent relied on the false affidavit after the date Judge De La O found he knew or should have known that it was false, is a separate instance of misconduct. *See ie., The Florida Bar v. Orta*, 689

So.2d 270 (Fla. 1997)(each instance of dishonesty is a separate offense)

3.2(b)(6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; even after the scathing judicial orders and his settling a subsequent lawsuit against him for malicious prosecution, initially in response to the bar complaint, respondent continued to rely on the false affidavit. Notably, prior to the final hearing in this matter, respondent did admit and accept full responsibility for his wrongful conduct.

3.2(b)(9) substantial experience in the practice of law.

Mitigating Factors (Florida Standards for Imposing Lawyer Sanctions):

3.3(b)(3) personal or emotional problems; respondent testified that his close relationship with his client clouded his judgment in this case.

3.3(b)(4) timely good faith effort to make restitution or to rectify the consequences of the misconduct; I note that respondent timely paid the sanctions ordered in this case. However, I gave this mitigator less weight, as I also note that respondent did not make any attempt to rectify the consequences of his misconduct, or to ensure that the record contained only truthful evidence, as is his duty as an officer of the court. He continued to rely on the false affidavit in the final summary judgment hearing, despite Mr. Montoya's admission that it was signature on the poder. He did not withdraw that affidavit from the evidence submitted to defeat summary judgement, and instead continued to argue that it created an issue of fact in the case. It was not removed from the record until Judge Schlessinger found it to be an obvious fraud on the court and struck it himself.

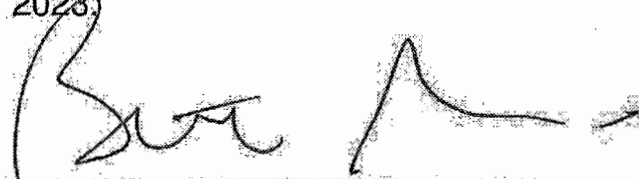
- 3.3(b)(5) full and free disclosure to the bar or cooperative attitude toward the proceedings; I find that respondent had a cooperative attitude with the Bar. Although at the initiation of these proceedings, respondent continued to rely on the false affidavit, he eventually accepted responsibility for his misconduct, and stipulated to the facts and to the rule violations charged in the bar's complaint.
- 3.3(b)(7) character or reputation; multiple witnesses testified as to respondent's good character and reputation in the community. As attested to by the five (5) individuals who testified on Mr. Benitez's behalf at the sanctions hearing in the matter, and the seven (7) individuals who provided Character Declarations, there is overwhelming evidence of his good character and outstanding personal and professional reputation. I found these witnesses to be credible and their testimony was compelling. I have given this factor great weight in determining the recommended sanction.
- 3.3(b)(11) imposition of other penalties or sanctions; respondent was sanctioned in the trial court and required to pay attorney fees commensurate with the degree of liability attributed to him. Respondent timely paid the sanction.
- 3.3(b)(12) remorse; Respondent presented in the hearing before me as credible, honest and sincerely remorseful for his misconduct. However, I note that he had not previously apologized to Mr. Diaz before doing so in court on the morning of the sanction hearing in these disciplinary proceedings.
- 3.3(b)(13) remoteness of prior offenses; The prior disciplinary sanction imposing a thirty-day suspension was ordered February 17, 2011, over twelve years ago, relating to conduct more than two decades ago, that did not relate to the practice of law. However, I gave

these factors slightly less weight, as the prior offense was also for dishonest conduct, demonstrating a pattern of misconduct, which I found to be an aggravating factor in this case.

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

The Florida Bar, having been successful in this matter, shall be awarded their necessary taxable costs of this proceeding and shall submit their statement of costs, as well as a motion to assess costs against respondent.

Dated this 29th day of March, 2023,



Honorable Bertila Soto, Referee
Dade County Courthouse
73 West Flagler Street, Room 311
Miami, Florida 33130

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