IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

DARIN JAMES LENTNER,

Respondent.

_____/

Supreme Court Case
No. SC13-390

The Florida Bar File
No. 2008-51,561(17B)

INITIAL BRIEF OF THE FLORIDA BAR

Ghenete Elaine Wright Muir, Bar Counsel
The Florida Bar
Ft. Lauderdale Branch Office
Lake Shore Plaza II
1300 Concord Terrace, Suite 130
Sunrise, Florida 33323
(954) 835-0233
Florida Bar No. 550728
gwrightmuir@flabar.org

Alan Anthony Pascal
Chief Branch Discipline Counsel
The Florida Bar
Ft. Lauderdale Branch Office
Lake Shore Plaza II
1300 Concord Terrace, Suite 130
Sunrise, Florida 33323
(954) 835-0233
Florida Bar No. 961663
apascal@flabar.org

Adria E. Quintela, Staff Counsel
The Florida Bar
Lakeshore Plaza II, Suite 130
1300 Concord Terrace
Sunrise, Florida 33323
(954) 835-0233
Florida Bar No. 897000
aquintel@flabar.org

John F. Harkness, Jr., Executive Director
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600
Florida Bar No. 123390
jharkness@flabar.org

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PRELIMINARY STATEMENT

The Complainant, The Florida Bar, is seeking review of a Report of Referee recommending a two year suspension and is seeking disbarment.

Complainant will be referred to as The Florida Bar or as The Bar. Darin Lentner, Respondent, will be referred to as Respondent.

References to the Report of Referee shall be by the symbol RR followed by the appropriate page number (e.g., RR 1).

References to specific pleadings will be made by title. References to the transcript of the final hearing are by symbol TR, followed by the volume, followed by the appropriate page number (e.g., TR 1).

References to the transcript of the Sanctions Hearing are by symbol TR followed by Sanctions Hearing and by the appropriate page number (e.g., TR Sanctions Hearing 1).

References to Bar exhibits shall be by the symbol TFB Ex followed by the appropriate exhibit number (e.g., TFB Ex. 1).

STATEMENT OF THE CASE AND OF THE FACTS

The Florida Bar filed its Complaint against Respondent, Darin Lentner, on or about March 13, 2013, charging Respondent with violating numerous Rules Regulating The Florida Bar. The allegations concerned Respondent's ethical misconduct during his participation in a secret settlement with Progressive Insurance Company ("Progressive"). The Florida Bar also filed Complaints against Harley Kane, Charles Kane, Gary Marks and Amir Fleischer. Respondents Harley Kane and Charles Kane's cases were consolidated for trial with Respondent.

On or about June 17, 2013, County Judge Curtis L. Disque, was initially appointed as Referee. As a result of scheduling conflicts, County Judge Disque requested that the Chief Judge reassign the case to a new Referee. On or about February 2, 2014, Senior Judge George Shahood was appointed to preside over the proceedings.

Respondent was represented by John P. Seiler. The Florida Bar was represented by David B. Rothman and Jeanne T. Melendez, Special Counsel, and by Ghenete Elaine Wright Muir and Alan A. Pascal, Bar Counsel.

On April 14, 2014, Respondent filed a Motion to Dismiss Due to Limitations on Actions and Delay of Prosecution. A hearing on the Motion was held on July 7, 2014. The Referee denied the Motion on July 31, 2014.

On July 1, 2014, The Florida Bar filed its Motion for Summary Judgment. The Respondent filed his Affidavit in Opposition on July 23, 2014 and a Memorandum in Opposition on July 25, 2014. A hearing on the Motion was held on August 4, 2014. This Referee entered an Order denying The Florida Bar's Motion for Summary Judgment on August 8, 2014.

The guilt phase of the Final Hearing commenced on August 18, 2014 and continued on August 19-22, August 25-28 and October 14 and 16, 2014. The Referee heard the testimony of the Bar's witnesses: Todd Stewart, William Hearon, Harley Kane, Charles Kane and Darin Lentner. In addition, transcript excerpts of testimony of the following individuals were offered by the Bar and admitted into evidence: Joshua Smith, James Kirvin and Francis Anania.

The Referee also heard the testimony of Respondent's witnesses: Respondent and transcript excerpts of James Kirvin.

At the conclusion of the hearing, the Referee found that Respondent had violated Rules 3-4.3, 4-1.4(b), 4-1.5(f)(5), 4-1.7(b), 4-1.7(c), 4-1.8(g) and 4-8.4(c) of The Rules Regulating The Florida Bar. The Referee found Respondent did not violate Rules 4-1.4(a), 4-1.7(a) and 5-1.1(f).

The Florida Bar's Memorandum Regarding Sanctions was filed on December 29, 2014, requesting disbarment, restitution and forfeiture of fees. On January 6,

2015, the Respondent filed his Memorandum Regarding Sanctions, requesting a 60 day suspension. The Florida Bar filed its Reply on January 7, 2015. The Respondent filed a Supplemental Memorandum Regarding The Florida Bar's Request for Sanctions on January 15, 2015. The sanctions phase of the Final Hearing commenced on January 9, 2015 and continued on January 21 and February 26, 2015.

The Referee issued his Report of Referee on June 8, 2015. The trial transcript was filed with the Court on June 11, 2015.

In his report, the Referee recommended that Respondent be suspended from the practice of law for two years (RR 30). The Florida Bar appeals the recommended two year suspension against Respondent, Darin Lentner, and argues that based on Respondent's conduct disbarment is the appropriate discipline.

The ethical misconduct found by the Referee stems from Respondent's involvement with a secret settlement with Progressive. At the time of the secret settlement and the additional allegations within The Florida Bar's Complaint the Respondent was associated with the firm Laura M. Watson, P.A. d/b/a Watson & Lentner (hereinafter "Watson & Lentner"). Respondent did not have an ownership interest in the Watson & Lentner law firm, however, marketing materials

distributed to prospective clients described the Respondent as a "partner" of the firm (RR 5) (TFB Ex. 1).

Commencing in approximately 2001, Watson & Lentner and two other personal injury protection (PIP) law firms began to pool their resources and jointly solicit healthcare providers as clients to be represented in PIP claims against insurance companies (TFB Ex. 1) (RR 5) (TR 44). The three firms "assume[d] joint legal responsibility" to the clients (TFB Ex. 1(A)) (RR 6) (TR 37-38, 193-97).

The PIP law firms investigated the PIP cases and discovered that Progressive was systematically denying valid insurance claims for their clients (RR 6) (TR 48, 190). Respondent's law firm and the other two PIP law firms filed bad faith claims for their clients by filing bad faith Civil Remedy Notices with the Florida Department of Insurance (RR 6) (TFB Ex. 10) (TR 52-55, 58-59, 69, 203-24). The PIP lawyers decided to hire Todd Stewart and later Larry Stewart and William Hearon ("bad faith lawyers") to file and litigate these bad faith suits against Progressive (RR 6) (TR 44-52, 59-60, 74-75, 85, 189-190, 203, 214-215, 115-56). The PIP lawyers and the bad faith lawyers agreed on the following contingency fee: the PIP lawyers would receive 100% of any fees collected from the underlying PIP benefit cases; there would be a 40% contingency fee from any bad faith cases with

the bad faith lawyers receiving 60% and the PIP lawyers receiving 40% of the fees collected (RR 6) (TFB Ex. 1) (TR 207, 220-21).

Eventually, a bad faith lawsuit was filed against Progressive (the "Goldcoast" case) naming 37 PIP clients as plaintiffs. Fishman & Stashak, M.D., P.A. d/b/a Goldcoast Orthopedics et al., v. Progressive Bayside Insurance Company, et al., Case No. CA-01-11649 (TFB Ex. 2) (TR 85-86) (RR 6-7). The three PIP law firms executed additional attorney fee contracts with the bad faith lawyers agreeing to jointly represent each of the 37 clients in that litigation (TFB Ex. 11, 14) (RR 7) (TR 976, 1156, 1198, 1791-94).

For over two years, the bad faith lawyers litigated the cases against Progressive. The PIP law firms, including Watson & Lentner, continued to litigate their clients' underlying PIP claim cases and sought to preserve potential bad faith claims of the PIP clients when settling individual PIP cases. During the negotiations of PIP cases for Watson & Lentner clients, Respondent and Laura Watson informed Progressive representatives that they did not have authority to resolve the bad faith claims and that bad faith claims needed to be resolved via negotiations with Larry Stewart (RR 7) (TFB Ex. 21).

During the course of the litigation against Progressive, the PIP lawyers provided the bad faith lawyers with a list of 441 healthcare provider clients to be

used in settlement negotiations. Progressive vigorously defended the case and refused to produce vital internal documents. However, through persistent litigation, the bad faith lawyers finally obtained a key ruling compelling Progressive to produce internal documents, that opened the door to settlement negotiations (RR 7) (TFB Ex. 16, 17, 18, 19, 26) (TR 309-317).

In early 2004, the bad faith lawyers entered into settlement negotiations with Progressive regarding the universe of bad faith claims of all 441 clients, not just the 37 named clients in the Goldcoast case. The Respondent and the other PIP lawyers were aware of and consented to these settlement negotiations (RR 8) (TFB Ex. 12, 20) (RR 7) (TR 260-267, 335-338). The Watson & Lentner law firm emailed a list of its PIP clients to Larry Stewart to ensure that its clients were included in the settlement negotiations (RR 8) (TFB Ex. 7, 12) (TR 249-253, 260-267, 295-298, 301, 1349-1350). Progressive later indicated that it wanted to expand negotiations to include the PIP benefit claims of all of the clients. The Respondent and the other PIP lawyers agreed and gave the bad faith lawyers authority to negotiate both sets of claims at a mediation with Progressive in April 2004 (RR 8) (TFB Ex. 12, 20, 28, 29) (TR 324-329, 367-374, 377, 381, 386-390, 934). Before the mediation, the Respondent agreed to a modification of the fee division agreement on behalf of the Watson & Lentner law firm. Respondent agreed to give the bad faith lawyers 75%

of attorney fees on any bad faith recovery in the event the bad faith lawyers were able to settle the PIP benefit claims (RR 8) (TR 386-290, 1452-1454).

The Respondent attended the April 19, 2004 mediation along with Larry Stewart, William Hearon and two of the Respondent's clients in the Goldcoast case: Doctors Fishman and Stashak (RR 8) (TR 395). Progressive offered $3.5 million to settle the universe of bad faith claims of all the clients (RR 9) (TR 408-411). Drs. Fishman and Stashak rejected the offer and neither the bad faith claims nor the PIP benefit claims were settled (RR 9) (TFB Ex. 31) (TR 411-413).

Larry Stewart sent an email to the PIP attorneys following the mediation, informing them about the mediation, the $3.5 million offer and that the bad faith lawyers "are in the process of resetting our Motion to Compel for hearing" to obtain the internal documents from Progressive. (RR 9) (TFB Ex. 31). On April 22, 2004, the Respondent sent an email to Larry Stewart and William Hearon stating "both of you did an excellent job at the mediation" and that he could not "think of one thing we shoudl [sic] have done differently."

Respondent informed the bad faith lawyers that Doctors Fishman and Stashak were "concerned that their interest in any bad faith settlement is getting diluted by the number of potential claims," he also "concede[d] that any potential settlement is enhanced by the number of claims and providers willing to sign a

release." He further stated that "it has always been my perception that the named plaintiff's should be entitled to a greater share of any recovery…" (RR 9) (TR 1469) (TFB Ex. 32). Larry Stewart replied that their concern was "premature" and that the distribution could be made in any formula once everyone agrees on that "[t]he key is that everything is totally transparent and all health care providers are informed and sign off on it" (RR 9) (TFB Ex. 34).

On May 6, 2004, the Motion to Compel hearing was held and Progressive lost its last effort to prevent the production of its internal documents (RR 10) (TFB Ex. 33, 34, 35, 36, 37, 38) (TR 429-435). Although the Respondent had consistently told Progressive that negotiations of the bad faith claims needed to be with Larry Stewart (RR 10) (TFB Ex. 21), the Respondent and the other PIP lawyers went behind the backs of the bad faith lawyers and secretly negotiated a settlement with Progressive for a global settlement for all of their clients' claims, including the bad faith claims (RR 10) (TFB Ex. 40) (TR 435-442, 450-452).

During the secret settlement negotiations, Progressive offered aggregate, undifferentiated lump sums to each of the three PIP law firms, totaling $14.5 million as a settlement of all of their bad faith claims, PIP claims and attorneys' fees (RR 10) (TFB Ex. 39). On Friday, May 14, 2004, the Respondent accepted Progressive's $4 million offer to settle all of Watson & Lentner's cases against

Progressive (RR 10) (TR 1483-1486). When the Respondent agreed to accept the $4 million dollars, Respondent was aware that Progressive was requiring general releases from the clients, including the release of all potential bad faith claims (RR 10, 11) (TR 1490, 1492).

On Sunday, May 16, 2004, Respondent and all of the other PIP lawyers excluded the bad faith lawyers and met with the Progressive legal team to draft a Memorandum of Understanding (hereinafter "MOU") (RR 11) (TFB Ex. 29) (TR 1003, 1010-1013, 1015, 1194-96, 1201, 1201-1213, 1215-1218, 1350-51, 1355, 1490-1493). The MOU released all claims and attorneys' fees but did not specify how the undifferentiated funds of the settlement should be allocated (RR 11) (TR 452-453, 457-462, 1228, 1255). The only requirement to trigger payment under the MOU was to deliver releases from 100% of the named Goldcoast case plaintiffs and 80% of the remaining PIP clients of all three PIP law firms (RR 11) (TFB Ex. 39). The MOU also required that Watson & Lentner and the other PIP law firms agree to "defend, indemnify and hold THE PROGRESSIVE ENTITITES harmless from all claims" of their own clients (RR 11) (TFB Ex. 39 at p. 11).

The Respondent and the other PIP lawyers met with Larry Stewart several days later and offered only $300,000.00 to compensate all three bad faith law firms (RR 12) (TR 440-443, 445, 1029-1030, 1228-1230, 1355). The PIP lawyers refused

to disclose the details of the settlement only sharing that the cases had been settled without specifically allocating any settlement proceeds for the bad faith claims (RR 12) (TR 443-444, 1230-1231). Larry Stewart did not accept the offer and warned the PIP lawyers that settlement was improper as it did not specifically allocate proceeds to the bad faith claims (RR 12) (TR 463-1230).

On May 28, 2004, the bad faith lawyers wrote to the named plaintiffs in the Goldcoast case informing them that their legal rights regarding their bad faith claims may have been "compromised or even sacrificed," due to the actions of the PIP lawyers (RR 12) (TFB Ex. 43). The bad faith lawyers sent the PIP lawyers a copy of their May 28th letter requesting that the PIP lawyers send the letter to all of their PIP clients because the bad faith lawyers only had addresses for the Goldcoast clients (RR 12) (TFB Ex. 45). The Respondent did not forward the letter to the Watson & Lentner PIP clients. Instead, on June 1, 2004, in an attempt to get the releases under the MOU, Respondent signed a letter entitled "Notice of Disagreement Between Counsel," that was sent out to all Watson & Lentner clients who were in the Goldcoast case (RR 12) (TFB Ex. 46) (TR 1501-1502). The letter contained misleading statements about the bad faith attorneys and the mediation with Progressive.

After the meeting with Larry Stewart, Charles Kane became concerned about the way the MOU had failed to differentiate the settlement and instructed one of the other PIP lawyers to go back to Progressive to work on the numbers (RR 13) (TR 1227-1228). On June 16, 2004, the MOU was amended to allocate $1.75 million of the settlement proceeds to the bad faith claims of the now 36 remaining named plaintiffs in the Goldcoast case (RR 13) (TR 1227-1228, 1508-1509). The Amendment to Memorandum of Understanding (Hereinafter "AMOU") was signed by Laura Watson on behalf of the Watson & Lentner law firm (RR 13) (TFB Ex. 48). The AMOU failed to specifically any monies allocate to the bad faith claims of the nearly 400 remaining clients who were not named in the Goldcoast case. It was still left up to the PIP lawyers to determine how much of the remaining settlement proceeds would be paid to the non-Goldcoast PIP clients and how much would be taken as attorneys' fees (RR 13). The Respondent's firm and the other two PIP firms decided the non-Goldcoast PIP clients would only be paid the amount of PIP benefits actually owed to them by Progressive plus interest (RR 13, 14) (TR 985-986, 988, 990-992, 1358). After paying costs the remaining monies would be taken as attorneys' fees. Thus, the non-Goldcoast case PIP clients would not receive any compensation for their bad faith claims, although they were required to release those claims. In addition to the Respondent and all of the other PIP lawyers

agreeing to defend Progressive against their own clients, a clause was added absolving Progressive of any responsibility relating to disbursement of funds under the settlement (RR 14) (TFB Ex. 48, p. 3) (TR 519-520).

The Respondent had the responsibility of communicating with all of the Watson & Lentner clients to inform them of the settlement and obtain releases from them in order to trigger payment under the AMOU (RR 14) (TR 1497-1504, 1632-1638). The Respondent signed letters sent to his clients (RR 14) (TFB Ex. 44, 46, 50, 53). Further, the Respondent testified during the final hearing that he personally called every client (RR 14) (TR 1503-1504, 1637-1638). However, the clients were not informed of the conflicts of interests created by the MOU/AMOU, the total amount of the settlement, the amount of attorneys' fees the firm intended to take from the undifferentiated settlement proceeds, the value of the clients' bad faith claims and that Progressive had previously offered money to settle all the bad faith claims (RR 14, 15) (TFB Ex. 44, 46, 50, 53) (TR 1503-1507, 1653-58). In addition, the clients were never provided with closing statements (RR 15) (TR 1513).

Another conflict was created when the Respondent and Laura Watson created a secret side deal with Goldcoast Orthopedics (RR 15) (TFB Ex. 49). This secret side deal provided that Goldcoast Orthopedics would receive the largest portion of the settlement proceeds. The Respondent failed to disclose this arrangement with

the other plaintiffs in the Goldcoast case (RR 15) (TFB Ex. 5, p. 11). After the required amount of releases were obtained, Respondent's law firm received $3,075,000.00 from Progressive. Respondent's firm deducted $190,736.00 in costs, paid the PIP clients $361,470.00 for the PIP claims plus interest and took $2,522,792.00 in attorneys' fees (RR 15) (TFB Ex. 77). Once the PIP law firms received the settlement proceeds they discharged the bad faith lawyers and filed a Notice of Voluntary Dismissal with Prejudice ending the Goldcoast litigation (RR 15) (TFB Ex. 54, 55, 56 and 57) (TR 533-535).

The bad faith lawyers soon thereafter filed suit against the Respondent and the other PIP lawyers and law firms for quantum meruit and/or unjust enrichment and fraud in the inducement in the case styled Stewart Tilghman Fox & Bianchi, P.A., a professional association; and Todd S. Stewart, P.A., a professional association, v. Kane & Kane, Laura M. Watson, P.A. d/b/a Watson & Lentner, a professional corporation; and Charles J. Kane, Harley N. Kane, Laura M. Watson, and Darin J. Lentner, individually, Case No. 2004-CA006138, in the Circuit Court of the Fifteenth Judicial Circuit of Florida in and for Palm Beach County. (hereinafter "Unjust Enrichment case") (RR 15) (TFB Ex. 5).

In June 2004, after filing the lawsuit, the bad faith lawyers sought a temporary restraining order to freeze the attorneys' fees received by Watson &

Lentner and the other PIP lawyers received from the secret settlement. The court denied the injunction finding that there was an adequate remedy at law (RR 16) (TR 543). Counsel for the bad faith lawyers sent a letter notifying counsel for the PIP lawyers that the proceeds should be treated as disputed funds under the Florida Bar Rule 5-1.1(f) (RR 16) (TFB Ex. 59) (TR 544-545). The PIP lawyers were advised by their counsel that they were not required to treat the proceeds as disputed funds (TR 1961-1965) and the funds were transferred from the firm's trust account to the firm's operating account and disbursed (RR 16) (TFB Ex. 64, 64A). The PIP lawyers and the bad faith lawyers litigated the Unjust Enrichment case for over four years, but after a two month bench trial in 2008, the trial court ruled in favor of the bad faith attorneys as to their quantum meruit/unjust enrichment claim (RR 16) (TFB Ex. 5, p. 21-22) (TR 545). The trial court found that:

> The bad faith claims were an important pressure point on Progressive, they represented the biggest damage threat, they were a driving force behind the settlement, and their release was one of the principal considerations of the settlement. Moreover, it was Plaintiffs' [bad faith lawyers] labor that made a global settlement of the PIP claims possible. In addition to being disproportionately rewarded, Defendant law firms'[PIP lawyers] after the fact conduct and methodology in settling the "bad faith" claim – also amount to circumstances that make it unjust for Defendant law firms [PIP lawyers] to retain the benefits Plaintiffs [bad faith lawyers] conferred…In addition, the evidence establishes that Defendant law firms [PIP lawyers] unfairly deprived Plaintiffs [bad faith lawyers] of a fee by ignoring multiple conflicts of interest, misrepresenting the terms of the settlement to the Plaintiffs [bad faith lawyers], misrepresenting the terms of the settlement to the clients to obtain the releases to trigger payment, manipulating the

allocation of the settlement to obtain most of it as attorneys' fees, and by discharging the Plaintiffs [bad faith lawyers] for no reason (RR 16-17).

The trial court found the Watson & Lentner law firm liable to the bad faith lawyers in the amount of $981,792.00 plus interest (TFB Ex. 5, pp. 20-22). While the trial court declined to hold the Respondent personally liable to the bad faith lawyers there was no evidence presented as to how much money if any Respondent received. Subsequently, the bad faith lawyers obtained evidence that the Respondent had received payments and disbursements from the Watson & Lentner law firm. Respondent received a total of $1,127,500.00 within one year after the Progressive settlement proceeds were deposited into the Watson & Lentner operating account (RR 17, 18) (TFB Ex. 64). The Respondent also agreed to accept 50% of the liabilities arising from the judgment in the civil case in a Letter of Agreement between Respondent, Laura Watson and the Watson & Lentner law firm dated April 19, 2005 (RR 18) (TFB 101). The Respondent has not restituted the bad faith lawyers (RR 18).

Based on the factual findings by the Referee and the severity of the misconduct by Respondent, The Florida Bar petitions for review of the recommended sanction of a two year suspension and seeks disbarment.

SUMMARY OF ARGUMENT

The Respondent engaged in multiple acts of dishonesty and deceit in his dealings with his clients and the bad faith lawyers. The Respondent completely ignored his ethical obligations and was clearly driven solely by greed.

The Referee erred in his report when he recommended suspension rather than disbarment. The Referee found that Respondent directly contacted and deceived his own clients so that his clients would agree to the settlement and Progressive would release the proceeds to Respondent. In order to get as much money for himself as possible the Respondent withheld critical information from his clients. Solely to further his own interests, Respondent further failed to tell his clients the total amount of the settlement, the amount of attorneys' fees the firm planned to take, the value of the clients' bad faith claims nor the conflicts of interests created by the MOU/AMOU.

Additionally, Respondent created another blatant conflict of interest and once again was dishonest with his own clients and deceived them by participating in a secret side deal with Goldcoast Orthopedics that provided the largest portion of the Goldcoast settlement proceeds to be distributed to Goldcoast Orthopedics.

Further, the Referee found that Respondent committed acts "contrary to honesty and justice" in connection with the secret settlement with Progressive.

Respondent was dishonest and deceitful when he fully participated with the exclusion of the bad faith lawyers from the settlement. Respondent attended the meeting where the PIP lawyers offered Larry Stewart $300,000.00 to compensate the three bad faith law firms.

Although the Referee found this serious misconduct, the Referee imposed only a two year suspension rather than disbarment. The findings, the case law, and the Standards for Imposing Lawyer Sanctions support much greater discipline. The only appropriate sanction based on Respondent's egregious conduct is disbarment.

ARGUMENT

DISBARMENT IS THE APPROPRIATE DISCIPLINE GIVEN THE REFEREE'S FINDINGS OF MULTIPLE ACTS OF DISHONESTY AND DECEIT BY RESPONDENT IN THE SECRET SETTLEMENT WITH PROGRESSIVE AND THE SECRET SIDE DEAL WITH GOLDCOAST ORTHOPEDICS.

While a Referee's findings of fact should be upheld unless clearly erroneous, this Court is not bound by the Referee's recommendations in determining the appropriate level of discipline. The Florida Bar v. Wohl, 842 So. 2d 811 (Fla. 2003); The Florida Bar v. Rue, 643 So. 2d 1080 (Fla. 1994); and The Florida Bar v. Vannier, 498 So. 2d 896 (Fla. 1986). Furthermore, this Court has ruled that the review of the discipline recommendation does not receive the same deference as the guilt recommendation because this Court has the ultimate authority to determine the appropriate sanction. The Florida Bar v. Grief, 701 So. 2d 555 (Fla. 1997); and The Florida Bar v. Wilson, 643 So. 2d 1063 (Fla. 1994). In The Florida Bar v. Pahules, 233 So. 2d 130 (Fla. 1970), this Court found that three purposes must be kept in mind when deciding the appropriate sanction for an attorney's misconduct: 1) the judgment must be fair to society; 2) the judgment must be fair to the attorney; and 3) the judgment must be severe enough to deter other attorneys from similar conduct. This Court has further stated that a Referee's recommended discipline must have a reasonable basis in existing case law or the Standards for Imposing

Lawyer Sanctions. The Florida Bar v. Sweeney, 730 So. 2d 1269 (Fla. 1998); and The Florida Bar v. Lecznar, 690 So. 2d 1284 (Fla. 1997). The Court will not second guess a Referee's recommended discipline "as long as that discipline has a reasonable basis in existing case law." This standard also applies when reviewing a Referee's finding of mitigation and aggravation. The Florida Bar v. Arcia, 848 So. 2d 296 (Fla. 2003).

Here, the recommended sanction is far too lenient given Respondent's multiple acts of deceit and dishonesty, his total disregard of his ethical duties, and given the numerous aggravating factors found by the Referee. Disbarment rather than suspension is the appropriate sanction.

The Referee found that Respondent engaged in multiple acts of misconduct during the Progressive Settlement when he found that:

(i) Darin Lentner directly participated in entering the MOU and AMOU which created a series of inherent conflicts of interest. There were conflicts of interest between various groups of clients, between the clients and the PIP lawyers and between the PIP lawyers and the bad faith attorneys.

(ii) The PIP lawyers including, Darin Lentner, were the one who decided not to compensate the non-Goldcoast case PIP clients even one penny for the release of their bad faith claims. Except for greed, there was nothing, including the MOU and AMOU, that prevented the PIP law firms from allocating additional money from the settlement to the non-Goldcoast clients of each of the three law firms.

(iii) The settlement pitted the lawyers' interests against the interests of their own clients. The less the clients received, the more the PIP attorneys received.

(iv) Then, the PIP lawyers, including Darin Lentner, agreed to defend Progressive against their own clients.

(v) The most egregious violation occurred when Darin Lentner abandoned the bad faith claims of his non-Goldcoast case clients, who received absolutely nothing for those claims, in order to obtain substantial attorneys' fees for himself and Laura Watson.

(vi) There is clear and convincing evidence that Darin Lentner knowingly and intentionally participated in and accepted the benefits of the aggregate settlement, and that he knowingly and intentionally failed to inform the clients of the conflicts and obtain waivers for those conflicts.

(vii) Darin Lentner's duty to his clients was to explain the settlement "to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Rule 4-1.4(b). He did the opposite. He withheld from his clients nearly all the information about the settlement with Progressive, entirely to further his own interests.

(viii) The clients should have been informed that their bad faith claims had a value, that Progressive had already offered $3.5 million for those claims with an indication there was more in the offing, that the clients would receive 60% of all bad faith damages, that the total settlement was $14.5 million and that the PIP lawyers claimed the vast majority of the proceeds as attorneys' fees.

(ix) Darin Lentner never told his clients that his firm ultimately received more than $3 million from Progressive, of which only approximately $361,470.00 was paid to the clients, $190,736.00 was paid in cost reimbursement, but more than $2.5 million was kept as attorneys' fees.

(x) Darin Lentner also signed the "Notice of Disagreement of Counsel" letter sent to the Goldcoast clients that contained misleading statements and false accusations against the Stewart bad faith team (TFB Ex. 48, 50).

(xi) There is clear and convincing evidence Darin Lentner knowingly and intentionally deceived the clients to obtain the necessary releases, and that he did so with the specific intent to benefit himself and Laura Watson.

(xii) It is undisputed no closing statements were provided to any of the clients.

(xiii) In addition to misleading his clients, there is clear and convincing evidence Darin Lentner committed acts "contrary to honesty and justice" in his dealings with the bad faith lawyers in connection with the secret settlement with Progressive. He knew about and went along with the exclusion of the bad faith lawyers from the settlement.

(xiv) He also refused to disclose any of the terms of the settlement to Larry Stewart and the other bad faith attorneys until ordered by the court to disclose the MOU. In the civil proceedings, Darin Lentner vigorously fought having to pay to the bad faith (RR 19-26).

These findings demonstrate the lengths Respondent went to in order to further his personal gain support disbarment. The Standards for Imposing Lawyer Sanctions also mandate disbarment for Respondent's misconduct. The Referee found the following standards applicable:

A. Violations of Duties Owed to Clients

(i) Standard 4.31 (Conflicts of Interest)
"Disbarment is appropriate when a lawyer, without the informed

consent of the client(s): (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client…"

(ii) Standard 4.61 (Lack of Candor)
"Disbarment is appropriate when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another regardless of injury or potential injury to the client."

B. Violations of Duties Owed to the Public

(i) Standard 5.11(f) (Failure to Maintain Personal Integrity)
"Disbarment is appropriate when…a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice."

C. Violations of Other Duties Owed as a Professional

(i) Standard 7.1
"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 a lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system" (RR 27-28).

Each Standard considered by the Referee on its own support disbarment, however, the Referee only recommended a two year suspension. This recommendation is inconsistent with the Standards.

Not only do the specific findings by the Referee and the applicable Standards for Imposing Lawyer Sanctions support disbarment but so does the existence of

aggravating or mitigating circumstances. See The Florida Bar v. Marrero, 157 So. 3d 1020, 1026 (Fla. 2015) ("The referee shall . . . make findings of fact regarding possible aggravating and mitigating factors. . . ."); The Florida Bar v. Greene, 926 So. 2d 1195, 1201 (Fla. 2006) ("[A] presumptive sanction under the Standards are subject to aggravating and mitigating circumstances."); see also The Florida Bar v. Abrams, 919 So. 2d 425, 430-31 (Fla. 2006); and The Florida Bar v. Kavanaugh, 915 So. 2d 89, 94 (Fla. 2005).

In the instant case, the Referee found a number of aggravating factors including:

9.22(b) Dishonest or selfish motive;

9.22(c) Pattern of misconduct;

9.22(d) Multiple offenses;

9.22(f) False statements during the disciplinary process;

9.22(g) Refusal to acknowledge wrongful nature of conduct;

9.22(i) Substantial experience in the practice of law; and

9.22(j) Indifference to making restitution (RR 28-29).

The Referee found two mitigating factors, 9.32(a) Absence of a prior disciplinary record and 9.32(g) Good character and reputation (RR 29- 30),

however these mitigating factors do not overcome the many aggravators nor mitigate Respondent's egregious unethical misconduct.

The case law further supports disbarment for the type of misconduct engaged in by Respondent. In The Florida Bar v. St. Louis, Jr., 967 So. 2d 108 (Fla. 2007), the Court found that disbarment was the appropriate sanction rather than a 60 day suspension. St. Louis was representing a number of clients against DuPont Corporation when he entered into a secret "engagement agreement" with DuPont. St. Louis's firm was paid over $6 million for agreeing to refrain from bringing any suits against DuPont. St. Louis entered the agreement purely for financial gain and purposefully failed to inform his clients of the existence of the agreement. Further, as a result of the agreement St. Louis created an attorney-client relationship with DuPont while he was still representing his clients against DuPont. The Court noted that St. Louis "engaged in several acts of dishonesty" and as such disbarment rather than a suspension is the appropriate sanction Id. at 122.

As in St. Louis, the Respondent in the instant case engaged in several acts of dishonesty, was driven by greed, betrayed his clients, and his conduct therefore warrants a more harsh sanction than a two year suspension.

As additional support for this Court imposing more severe sanctions on a Respondent that engages in deceit and dishonesty, in The Florida Bar v. Hall, 49

So. 3d 1254 (Fla. 2010), the Court found that Hall's dishonest course of conduct while attempting to purchase real estate warranted disbarment and not a 90 day suspension. Hall forged documents to change a contract to lease property to include an agreement allowing her to purchase the property. For a number of years, Hall also harassed the owners of the property in attempts to persuade them to sell her the property. Hall later admitted that she changed the title and language of the documents for her own personal gain. The Court found there that Hall "engaged in ongoing, continuous misrepresentations for several years." Similarly, Respondent engaged in an ongoing course of dishonest conduct for several years solely for his own personal benefit.

Similarly, in The Florida Bar v. Kaufman, 684 So. 2d 806 (Fla. 1996), the Court found that disbarment was the appropriate sanction for Respondent's dishonest conduct in a civil suit. Kaufman was a landlord who filed suit against his tenants. The tenants filed a counterclaim and prevailed. The trial court entered a judgment against Kaufman for more than $300,000.00. Kaufman testified falsely about his assets and both transferred and dissipated his assets to avoid paying the judgment. Similarly to the instant case, the Court applied Standard 5.11(f) of the Standards for Imposing Lawyer Sanctions: "Disbarment is appropriate when…a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit,

Referee, disbarment is the only appropriate sanction. The Respondent completely disregarded The Rules Regulating The Florida Bar and the high ethical standards that is to be held by all lawyers. Respondent was driven by greed and not by the moral compass that guides lawyers through the practice of law. The Court cannot tolerate such serious misconduct. Disbarment is the only sanction that is appropriate for Respondent's egregious misconduct.

CONCLUSION

The Florida Bar respectfully submits that the Referee's recommendation of discipline is too lenient. The Respondent should be disbarred.

Ghenete Elaine Wright Muir, Bar Counsel

CERTIFICATE OF SERVICE

I certify that this document has been E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with copies provided via E-mail using the E-filing Portal to John P. Seiler, Respondent's Counsel, at his designated E-mail addresses of jseiler@sszrlaw.com, dcosmo@sszrlaw.com, lsasser@sszrlaw.com, rzaden@sszrlaw.com; and David B. Rothman, Special Bar Counsel via E-Mail at DBR@Rothmanlawyers.com, Jeanne T. Melendez, Special Bar Counsel via E-Mail at jtm@Rothmanlawyers.com; and to Staff Counsel, The Florida Bar, at her designated E-mail address of aquintel@flabar.org on this 12 day of August, 2015

Ghenete Elaine Wright Muir, Bar Counsel
The Florida Bar
Ft. Lauderdale Branch Office
Lake Shore Plaza II
1300 Concord Terrace, Suite 130
Sunrise, Florida 33323
(954) 835-0233
Florida Bar No. 550728
gwrightmur@flabar.org

CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN

Undersigned counsel does hereby certify that this Brief is submitted in 14 point proportionately spaced Times New Roman font, and that this brief has been filed by e-mail in accord with the Court's order of October 1, 2004. Undersigned counsel does hereby further certify that the electronically filed version of this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

Ghenete Elaine Wright Muir, Bar Counsel