IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

RITA HORWITZ ALTMAN,

Respondent.
_____/

Supreme Court Case
No. SC18-724

The Florida Bar File
No. 2018-50,808(15C)OSC

REPLY BRIEF OF THE FLORIDA BAR

Linda Ivelisse Gonzalez, Bar Counsel
The Florida Bar
Lakeshore Plaza II, Suite 130
1300 Concord Terrace
Sunrise, Florida 33323
(954) 835-0233
Florida Bar No. 63910
lgonzalez@floridabar.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@floridabar.org

Joshua E. Doyle, Executive Director
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600
Florida Bar No. 25902
jdoyle@floridabar.org

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Florida Standards for Imposing Lawyer Sanctions

Rules Regulating The Florida Bar

ARGUMENT

DISBARMENT IS THE ONLY APPROPRIATE DISCIPLINE FOR RESPONDENT'S HABITUAL FAILURE TO RESPOND TO THE BAR, GRIEVANCE COMMITTEES, CLIENTS, SUBPOENAS AND THE FLORIDA SUPREME COURT AND FOR HER MISREPRESENTATIONS

As to one of Respondent's misrepresentations, the Referee found:

> As cited above, the Response to the Committee specifically states, "As the only child living in Florida ... " The undersigned Referee finds that this misrepresentation was an attempt to minimize her culpability in failing to timely respond.

(RR 9).

Respondent argues that she did not act with intent when she made misrepresentations in an attempt to minimize her culpability in failing to timely respond to the Bar. This argument should be disregarded since Respondent did not file a Notice of Intent to Seek Review in accordance with rule 3-7.7(c)(1)("A party to a bar disciplinary proceeding wishing to seek review of a report of referee shall give notice of such intent within 60 days of the date on which the referee's report is docketed ….''). The findings in the Referee's report are final and uncontested since Respondent failed to file a Notice of Intent to Seek Review.

Further, this was the same misrepresentation that Respondent made to this Court in response to the instant contempt proceeding. Respondent asserted as a

basis for failing to respond to the Florida Bar that she was consumed with her mother's care as the "only child living in Florida." In reality, Respondent is one of 4 siblings with one sibling living locally in Pompano Beach and the other in Sarasota, Florida. This misrepresentation should not be overlooked or minimized. Respondent is an attorney with 27 years of legal experience. Respondent had previously violated Rule 4-8.4(g) of the Rules Regulating The Florida Bar multiple times *prior* to the Bar filing its Petition for Contempt. Respondent has had 5 disciplinary cases involving failing to timely respond to the Bar. It is indisputable that Respondent should have been at her best during these disciplinary proceedings, but instead, falsely bolstered her excuses for failing to respond to the Bar.

The fact that Respondent misrepresented her personal situation in order to obtain leniency is unequivocally material to these proceedings, especially in light of the fact that she made them to "minimize her culpability" during these proceedings, as found by the Referee (RR 9).

Moreover, Respondent attempts to hide behind her counsel by shifting the blame for the misrepresentation to him. Respondent reviewed and authorized the Response to the Committee and the Response to this Court *prior* to her counsel

filing them (RR 7)(TR 65, 159). When asked in her deposition about her review efforts, Respondent and her counsel stated as follows:

> Q. Okay. And did you read -- you know, I understand you have an attorney, Mr. Rothman, and he filed a response to your Order to Show Cause.
>
> Did you read that before Mr. Rothman filed it with the Supreme Court?
>
> A. I'm sure that I read everything I needed.
>
> MR. ROTHMAN: Read it, reviewed it, commented on it. We went back and forth, back and forth. We got the emails for it.

(TFB Ex. 16, pg. 72). Respondent's misrepresentations were deliberate and knowing and the record supports such finding. As confirmed by her counsel above, Respondent was very involved in her own defense. It was Respondent's responsibility to review her responses for accuracy *prior* to filing them. Now, instead of accepting responsibility for her misrepresentations, she continues to provide excuses by shifting the blame to her attorney. Further, Respondent, a 27-year member of The Florida Bar, who "represents, hundreds of new immigration clients each year, with at least a thousand clients with open matters at any point in time" is fully capable of reviewing pleadings for accurate information. If her counsel misunderstood information provided to him, Respondent had ample time and opportunity to correct him. Her failure to do so further supports the "deliberate

and knowing" component of her misconduct.

Respondent's statements that she was the "only child living in Florida" is absolutely a material element in these proceedings. Respondent was attempting to obtain leniency from the Committee and this Court. Respondent had already violated Rule 4-8.4(g) of the Rules Regulating The Florida Bar multiple times when she responded to the Committee. Even worse, Respondent was responding in a contempt proceeding when she provided the same false statement to this Court. Such serious misconduct should not be lost on this Court.

Similarly, Respondent attempts to justify the additional misrepresentation in the letter to the Investigating Member. Respondent claims that she made "an error in remembering the sequence of events." (Respondent's Answer Brief, pg. 28). Respondent has a duty to set forth accurate and truthful statements during these proceedings. Here, Respondent has failed to be truthful three separate times.

Respondent' s due process argument is misplaced. Respondent suggests that since the Bar's Petition for Contempt did not allege misrepresentation, or charge a violation of rule 4-8.4(c) of the Rules Regulating The Florida Bar, "the alleged conduct could not properly be considered to find a new uncharged Rule violation." (Respondent's Answer Brief, pg. 29). First, the Referee did not find a rule 4-8.4(c) violation. The Referee found that Respondent's response (a pleading), made in the

course of these disciplinary proceedings, contained a misrepresentation (RR 9). In The Florida Bar v. Batista, 846 So.2d 479 (Fla. 2003), this Court was presented with a strikingly similar situation. Two days before the final hearing, Batista had an investigator visit each complaining clients' home to offer them a refund in exchange for their signature on an affidavit stating that Batista did a good job and that they never intended to pursue a disciplinary case against him. Id. at 482. The referee made findings regarding Batista's conduct, findings that "Batista had improperly attempted to have the witnesses sign false affidavits in exchange for the return of their attorneys' fees." Id. at 483. Batista argued that because the allegations were neither presented in the Bar's complaint nor were they within the scope of the allegations, his due process rights were violated. Id. at 484. In turn, this Court held:

> Here, the witness-contact allegations were clearly not within the allegations set forth in the Bar's complaint. Therefore, the referee properly refused to consider them as a new rule violation. The referee, however, did consider the conduct, made findings of fact in reference to it, and specifically stated that it 'hurt [Batista's] cause.' Thus**, in essence**, it appears that the referee considered the conduct as an aggravating circumstance.
>
> Florida Standard for Imposing Lawyer Sanctions 9.2 provides, 'Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.' Further, standard 9.22(f) specifically lists 'submission of false evidence, false statements, or other deceptive practices **during**

> **the disciplinary process**' as an aggravating factor which can be considered by the referee in recommending discipline. Here, the referee found that Batista attempted to have his former clients sign affidavits that essentially repudiated their Bar complaints. This constitutes a deceptive practice that the referee could consider in aggravation of the proper discipline. Thus, we conclude that the improper witness-contact incident could properly be treated as an aggravating factor and that it could be utilized to enhance Batista's discipline.

(emphasis supplied) Id. at 484.

This Court agreed with Batista in that "a new rule violation could not be considered without adequate notice." Id. at 484. However, it upheld the referee's finding of fact which would have formed the predicate for that new rule violation, despite the lack of reasonable notice because it was done in the course of the Bar proceeding and the referee could properly use it in aggravation to increase discipline. Here, the Report of Referee did not reflect that the Referee used the misrepresentation to increase discipline or even in aggravation. The finding of misrepresentation was a reference in the Referee's report which the Bar urges this Court to consider in imposing the appropriate discipline.

Although the issue of prior notice pertaining to the witness tampering is not mentioned in the Court's opinion, the Court considered whether Batista's due process was violated and determined that it was not. Id. at 484. Here, Respondent's due process was not violated as the conduct was discovered in the "midst" of the

final hearing itself and the Referee properly made a finding of fact, not a rule violation, as to the conduct discovered during the course of Respondent's testimony.

Second, this finding is a part of the Referee's findings of fact which have been established and are uncontested, since Respondent did not file a Notice of Intent to Seek Review of the Referee's report.

Respondent further argued that the Bar did not place Respondent on notice as to her misrepresentations. However, the Bar could not have known that Respondent had made misrepresentations during these proceedings, until the final hearing when the Bar asked Respondent the following:

> Q. Do you have other siblings, Miss Altman?
>
> A. I do.
>
> Q. And are they all from your mom and your father?
>
> A. Yes.
>
> Q. Where do your siblings live, Miss Altman?
>
> A. My siblings live in London, England; New York, New York; Sarasota, Florida; and Pompano, Florida.
>
> Q. So is it true that two of them actually live in the State of Florida?
>
> A. They do.

Q. And one of them is actually local?

A. In Broward.

(TR 58).

This is Respondent's fifth disciplinary case involving failing to timely respond to the Bar (among other misconduct). Each disciplinary case involving Respondent, contains more than one failure to respond during the disciplinary proceeding, including the instant case. In each case the discipline imposed has gradually increased. In the latest disciplinary matter, Respondent was effectively suspended for 1 year for her failure and refusal to abide by two valid grievance committee subpoenas. Respondent's assertion that this conduct does not justify "disbarment, or even a suspension" is surprising (Respondent Answer Brief, pg. 31). Even more incomprehensible is her statement that this is "isolated conduct." (Respondent's Answer Brief, pg. 31). There is nothing isolated about Respondent's misconduct. First, this is Respondent's fifth disciplinary case for the same misconduct (failing to respond during disciplinary proceedings). Second, Respondent failed to respond to two separate inquiries during these proceedings. Third, the finding of misrepresentation is additional misconduct rendering her failures to respond not isolated misconduct. Fourth, the Referee found the aggravating factor of multiple offenses as follows:

> Multiple offenses: Each time Respondent failed to timely respond to the Bar's inquiries, Respondent violated Rule Regulating The Florida Bar 4-8.4(g). Respondent has committed multiple offenses of the same nature.

(RR 24). Respondent's contention that this was isolated conduct is belied by the record evidence, the findings, and her history of discipline.

Respondent suggests that since her last disciplinary case in which she was effectively suspended for a year for refusing to comply with two grievance committee subpoenas occurred in 2007, Standard 8.1 does not apply. Standard 8.1 provides, in pertinent part, "Disbarment is appropriate when a lawyer has been suspended for the same or similar misconduct, and intentionally engages in further similar acts of misconduct." This standard does not include a statute of limitations or other reference to inapplicability based on time lapsed. In The Florida Bar v. Varner, 992 So.2d 224 (Fla. 2008), this Court found that Varner's conduct in which he was disciplined in 2001 did not warrant a finding of remoteness since the conduct at issue was strikingly similar to that of the instant case.

Respondent is correct in that "the Bar's recent priority initiative [is] to foster and support the mental health and wellbeing of its members." (Respondent's Answer Brief, pg. 34). This "priority initiative" applies to members who sincerely need treatment because of an actual diagnosis or mental health condition, not for attorneys to use it to obtain leniency in a disciplinary matter. Notably, Respondent

never testified that she needed mental health or stress management treatment. Dr. Weinstein testified that the last time he saw Respondent was in 2006, when she completed her group therapy as a condition of probation in another disciplinary case (TR 239-240). Dr. Weinstein's knowledge of Respondent is what he was able to observe during the group therapy sessions 12 years ago (TR 242). He further testified regarding his written opinion after having reviewed a report in 2005, issued by a doctor who evaluated Respondent, as follows:

> Q. And do you remember having an opinion after you read the report that perhaps Miss Altman was just a little above having to answer to an authority?
>
> A. I think that -- yes, I believe I wrote that as a note someplace and it was sort of a cursory review of what we saw.
>
> Q. Based on the report –
>
> A. Based on the report.

(TR 243-244). There was no past or present diagnosis.

Tellingly, Respondent hopes to enter FLA in lieu of any other discipline this Court may impose. If Respondent truly felt that she needed treatment, she would have begun such voluntarily treatment when she contacted Dr. Weinstein in April of 2018. The Bar must also be weary of Respondents who attempt to use the Bar's "priority initiative" for improper purposes. Respondent had her opportunity to

obtain assistance through FLA. As stated in the Bar's Initial Brief (pg. 36-37), placing Respondent on probation with FLA as a condition (three times) has not served to deter Respondent from engaging in the very same conduct. Likewise, suspending Respondent three times for the same conduct has not deterred Respondent from obstructing Bar investigations.

The Referee recommended that Respondent be held in Contempt. This is the second contempt action in which Respondent has been disciplined. The Referee's report cites to unpublished dispositions. The published cases that Respondent cites to are inapposite and are not controlling since they were decided 25-27 years ago. The Florida Bar v. Parrish, 241 So.3d 66 (Fla. 2018)("Rotstein, however, is not controlling because it was decided over fifteen years ago and in more recent years the Court has imposed even more severe discipline for unethical and unprofessional conduct than in the past.") Further, they do not deal with a respondent who has been held in contempt twice or has had 5 disciplinary cases for failing to respond to subpoenas, the Bar, investigating members of the grievance committee, and the Florida Supreme Court. The remainder of the cited cases are unpublished dispositions, which do not provide a reasonable basis in existing case law. The Florida Bar v. Wynn, 210 So.3d 1271, 1274 (Fla. 2017)("First, the main case relied upon by the referee, The Florida Bar v. Lopez, 83 So.3d 710 (Fla.

2012), is an unpublished disposition, approving an uncontested report of referee; thus, it cannot constitute "case law" providing a reasonable basis for the referee's recommendation.")

It is respectfully suggested that this Court should send the message that a respondent who habitually fails to respond in Bar matters will face the same discipline as a respondent who habitually engages in any other misconduct. Additionally, a respondent, who habitually disregards their basic fundamental duties to respond timely in a Bar investigation, forfeits his or her privilege to practice law. Here, Respondent has had five cases with the same type of misconduct. This is exactly the kind of case that Standard 8.1 was designed for: A Respondent who has been suspended and continues to intentionally engage in the same or similar misconduct.

Standard 8.1 and the cases cited by the Bar in its Initial Brief provide guidance as to the applicable discipline in this case. The Bar would refer this Court to those cases: The Florida Bar v. Cox, 718 So.2d 788 (Fla. 1998)("Disbarment is appropriate where, as here, there is a pattern of misconduct and a history of discipline."); The Florida Bar v. Horowitz, 697 So.2d 78, 83 (Fla. 1997)("It is imperative that a clear and unmistakable message be sent that callous disregard for clients, The Florida Bar, and the attorney disciplinary process are serious

infractions which may not be committed with impunity."); The Florida Bar v. Walkden, 950 So.2d 407, 411 (Fla. 2007)("The Court has sanctioned Walkden three times previously, imposing increasingly heavier sanctions …. The next level of discipline is disbarment.").

Respondent seeks leniency from this Court because she responded to the Investigating Member's inquiry days prior to the Committee's decision to move forward with the contempt proceeding. Respondent should not be given leniency for responding after the Bar had instituted contempt proceedings before the grievance committee, especially since the response contained multiple false statements.

Respectfully submitted,

Linda Ivelisse Gonzalez, 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. 63910
lgonzalez@floridabar.org
dmacha@floridabar.org

CERTIFICATE OF SERVICE

I certify that this Reply Brief of The Florida Bar has been Efiled with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida with a copy provided via email to Respondent's Counsel, David Bill Rothman, at dbr@rothmanlawyers.com; and to Staff Counsel, The Florida Bar, via email at aquintel@floridabar.org on this 5th day of June, 2019.

Linda Ivelisse Gonzalez, Bar Counsel

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.

Linda Ivelisse Gonzalez, Bar Counsel