IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant, Case No.: SC19-2070

v. Fl. Bar File No.: 2018-10, 412 (13F)

KELSAY DAYON PATTERSON,

Respondent.
_____/

THE FLORIDA BAR'S INITIAL BRIEF

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PRELIMINARY STATEMENT

A. Abbreviated Names

Kelsay Dayon Patterson, the Respondent, will be referred to as Mr. Patterson or the Respondent. The Florida Bar will be referred to as the Bar.

B. Citations to the Record

References to the Report of Referee will be cited as (ROR p.**).

References to specific pleadings will be made by Tab number in the Index of Record and, when appropriate, to a document within the tab. (Tab #1, document).

The transcript of the final hearing will be cited as (T.**).

The transcript of the hearing announcing findings on guilt will be cited as (T2.**).

The transcript of the sanction hearing will be cited as (TS. **)

The Bar's exhibits will be cited as (TFB-Ex. *) with specific reference to the transcript page number when needed.

Respondent's exhibit will be cited as (R-Ex. *).

The Bar provides an appendix of critical portions of the record to facilitate review. This brief cites to the appendix as (A. **).

NATURE OF THE CASE

The Bar seeks review of the Report of Referee in this disciplinary proceeding in which Kelsay Dayon Patterson is the Respondent. The Bar seeks review of only the Referee's recommended sanction, which is a non-rehabilitative 90-day suspension. There is no cross review in this case.

In a prior disciplinary proceeding, Mr. Patterson received a one-year suspension from this Court beginning in November 2018. *See The Florida Bar v. Patterson*, 257 So. 3d 56 (Fla. 2018) (A. 25) (Case No. SC16-1438). That proceeding addressed misconduct primarily in a case referred to as the *Faddis* case. *See Faddis v. City of Homestead*, 157 So. 3d 447 (Fla. 3d DCA 2015).

In this proceeding, Case No. SC19-2070, the Bar's complaint alleged misconduct primarily in a case referred to as the *Bussey-Morice* case. *See Bussey-Morrice v. Kennedy*, 775 Fed. Appx. 1003 (11th Cir. 2019).[1] The time periods for the two cases overlap, but they are completely separate cases with differing misconduct. The seven violations of the Rules of Professional

[1] Apparently, the correct spelling of the Personal Representative's name in this case is "Bussey-Morice," but at times in the record it is spelled "Bussey-Morrice," as reflected in the style of the Eleventh Circuit's opinion.

Conduct in this proceeding are based on conduct that is separate from the conduct resulting in the four violations in the *Faddis* case.

The Referee in this case is recommending a 90-day suspension because of the overlap in the cases and because only one of the three federal judges involved in the case complained to the Bar. The Bar maintains that the Referee's findings as to the absence of aggravating factors and as to one of the mitigating factors are not supported by competent substantial evidence, and that the Report's recommendation does not have a reasonable basis in existing case law and the Standards. The Bar recommends a two-year suspension as the appropriate sanction.

STATEMENT OF THE CASE AND FACTS

The Bar filed this proceeding in December 2019, after opening its file in 2018. Judge Ernest A. Kollra, Jr. was assigned to be the referee. (Tab# 7). The Referee held the final hearing remotely on September 14 and 15, 2020. (T. 1-426). The Bar introduced 82 exhibits, (T. 8, 199-200), and the testimony of four witnesses. The 82 exhibits are over 1400 pages in length and, primarily, are documents from the *Bussey-Morice* case. The witnesses were attorneys Robert Bonner, Joshua Walker, and Joseph Flood, all of whom were attorneys in the *Bussey-Morice* case, and U.S. District Judge Carlo Eduardo Mendoza, who was the final assigned judge in the *Bussey-Morice* case. Mr. Patterson testified on his own behalf and introduced Exhibits A through I. (T. 8).

On October 21, 2020, at a telephonic hearing, the Referee announced his recommendations of guilt and explained his reasoning. (T2. 1-14). Consistent with the Report of Referee, he recommended findings of guilt for seven violations:

1. Rule 3-4.3, misconduct;
2. Rule 4-3.1 meritorious claims;
3. Rule 4-3.3 failure to expedite litigation;
4. Rule 4.3.4(c) & (d) fairness to opposing parties and counsel;
5. Rule 4-4.4(b) failure to respect right of third parties;

6. Rule 4-8.2(a) impugning the integrity of judges; and,
7. Rule 4-8.4(d) misconduct prejudicial to the administration of justice.

On November 2, 2020, the Referee held a sanction hearing at which neither party presented evidence. At the conclusion of the hearing, the Referee orally announced his recommendation that the sanction be a 90-day non-rehabilitative suspension. (TS. 661-67). That oral ruling is consistent with the written findings and recommendations in the Report of Referee. (ROR. p. 22-27)(A. 62).

Because neither Mr. Patterson nor the Bar is challenging the findings of fact for the recommendation of guilt, the Bar relies upon the findings in the Report. This statement of facts will emphasize the evidence relevant to the issue of the appropriate sanction.

In recommending a 90-day suspension for these seven violations, the Referee relied on Standard 6.2, Abuse of the Legal Process. (ROR p. 24). Specifically, he relied on its recommendation for a suspension "when a lawyer knowingly violates a court order or rule and causes injury or potential injury to a client or a party or causes interference or potential interference with a legal proceeding."

The Bar had requested that the Referee find several aggravating factors under Section 3.2. It requested:

(1) prior disciplinary offenses,

(3) pattern of misconduct,

(4) multiple offenses, and

(9) substantial experience in the law.

As to prior disciplinary offenses and pattern of misconduct, this Court's opinion in *The Florida Bar v. Patterson*, 257 So. 3d 56 (Fla. 2018), finding four violations in Mr. Patterson's first disciplinary proceeding, had already been published. (A. 25). The Referee found the earlier proceedings to be the "much of the same conduct" and conduct of "the same nature as what occurred here." (ROR p. 26)(A. 87). On that reasoning, he did not find either of these aggravating factors.

As to multiple offenses, the Referee found seven violations in this case based on several different events, but he did not find multiple offenses to be an aggravator. At the sanctions hearing, he explained that he thought Mr. Patterson had already been punished for these violations in the earlier case. (TS. 68).

As to substantial experience in the law, the Referee found that Mr. Patterson was 49 years old and had been a member of the Bar since October 1997. (ROR p. 27)(A. 88). But he did not find Mr. Patterson's experience as a litigator to be substantial for violations between 2011 and 2015, which at

the sanctions hearing the Referee described as “ten years ago.” (TS. p. 68). In summary, he found no aggravating factors. (ROR p. 23).

Concerning mitigating factors under Section 3.3, the Referee found: (2) absence of dishonest or selfish motive, (5) full and free disclosure, (11) imposition of other penalties or sanctions, (12) remorse, and (13), remoteness of prior offenses. (ROR p. 23-24). The Bar contests only the finding of the remoteness of prior offenses.

The Referee also placed “great weight” on the fact that Judge Honeywell did not submit a complaint to the Bar like Judge Mendoza did. (ROR p. 26)(A. 87). This brief addresses this issue as a special mitigating factor.

The facts in the *Faddis* case.

Because the Referee considered the facts in the prior disciplinary proceeding involving the *Faddis* case to be same conduct or overlapping conduct with this proceeding, the facts of that disciplinary proceeding are important to discuss. The facts are more fully stated in this Court’s opinion in *The Florida Bar v. Patterson*, 257 So. 3d 56 (Fla. 2018). (A. 25).

The *Faddis* case was a state court action filed by Mr. Patterson in October 2011, alleging that Johanna Faddis’s right of privacy had been violated by a disclosure of certain emails by the City of Homestead. (A. 4,

14). Because of conflicting testimony in a prior deposition, the circuit court struck Ms. Faddis's pleading and entered judgment in favor of the City. It found that Mr. Patterson should have been aware of this testimony and imposed attorneys' fees against both Mr. Patterson and his client. (A. 4-5, 14, 27). The Third District concluded that Ms. Faddis's conduct "constituted a deliberate scheme to subvert the judicial process, and amounted to fraud upon the court." *Faddis v. City of Homestead*, 121 So. 3d 1134, 1135 (Fla. 3d DCA 2013)(A. 28).

The circuit court also entered a final judgment awarding fees in excess of $160,000 to the defendants – against both Ms. Faddis and Mr. Patterson. (A. 4). Mr. Patterson appealed that judgment for Ms. Faddis, but not for himself. But in the briefing, he argued that the judgment should be reversed for himself. The Third District affirmed the award as to Ms. Faddis, and dismissed the appeal as to Mr. Patterson for lack of jurisdiction. (A. 28).

The Third District also ordered both Ms. Faddis and Mr. Patterson to show cause why fees should not be imposed against both of them. (A. 28). In the response, Mr. Patterson argued only for himself, and made improper arguments in that response. (A. 28-29). *See Faddis v. City of Homestead*, 157 So. 3d 447, 453 (Fla. 3d DCA 2015).

Mr. Patterson had also filed a federal lawsuit for Mr. Faddis under 42 U.S.C. § 1983. In that case, Mr. Patterson sent the assigned judge, Judge Jose E. Martinez, a letter with very improper content on September 20, 2013. The letter was also distributed to other judges. (A. 29).

In *Faddis*, this Court found that Mr. Patterson was guilty of four violations. (A. 44),

First, this Court agreed with the referee in that case that Rule 3-4.3, misconduct, was violated by the content of the letter to Judge Martinize in September 2013. (A. 32).

Second, this Court found that Mr. Patterson violated Rule 4-1.7 because he had a conflict of interest when he argued the issue of attorneys' fees in the Third District from December 2013 to the end of that appellate proceeding. (A. 33-35).

Third, this Court found that Mr. Patterson violated Rule 4-8.2(a) by impugning the integrity of judges in his letter to Judge Martinez in September 2013. (A. 35-39).

Finally, the Court found that Mr. Patterson violated Rule 4-8.4(d) by engaging in conduct prejudicial to the administration of justice. The conduct this Court relied upon was Mr. Patterson's pursuing his own interests in the

appeal to the Third District, and the improper statements that he made to Judge Martinez and the other judges in his letter. (A. 39-40).

Thus, despite the fact that the *Faddis* lawsuit began in October 2011 and did not end until after December 2015, the conduct that resulted in sanctions in the first disciplinary proceeding focused on two events – (1) a letter sent to Judge Martinez in September 2013, and (2) his handling of an appeal when he had a conflict with the interests of his client between June 2013 and December 2015.

The facts in the *Bussey-Morice* case

In *Bussey-Morice*, Mr. Patterson filed a federal action that was initially assigned to Judge Scriven, then to Judge Honeywell, and finally to Judge Mendoza. This action was a wrongful death action, based on the death of Preston Bussey III in Brevard County, Florida, in December 2010. (ROR p. 5). Mr. Bussey's mother, Pearl Bussey-Morice, was appointed personal representative, and Mr. Patterson filed the action alleging excessive force and battery by several police officer employed by the City of Rockledge. (ROR p. 5). In addition to the excessive force claims, the complaint alleged negligent training by the City of Rockledge. (ROR. p. 5). It did not allege that the officers' conduct involved racial discrimination or racial animus. (ROR p.5).

The underlying facts of that case are not well-developed in the record, but it appears that Mr. Bussey had been detained under the Baker Act and was at a hospital when he was tased. He died in the hospital. One of the opinions issued by the Eleventh Circuit describes the facts in considerable detail. *See Bussey-Morice v. Gomez*, 587 Fed. Appx. 621, 623 (11th Cir. 2014).

The qualified immunity of the officers under federal law was a key issue in this case. Judge Honeywell denied a motion for summary judgment on that issue in February 2013. *See Bussey-Morice v. Kennedy*, 2013 WL 12095210, at *1 (M.D. Fla. 2013). The Eleventh Circuit reversed that decision, as to two of the officers, in the above- cited case. Ultimately, the district court granted a summary judgment to all officers on the issue of qualified immunity and to the City of Rockledge on the basis of sovereign immunity. A judgment was entered on that ruling. (TFB-Ex. 62). The Personal Representative moved to vacate that judgment based on newly discovered evidence on January 25, 2015. (TFB-Ex. 65). Judge Mendoza denied that motion. (TFB-Ex. 69). *See Bussey-Morice v. Kennedy*, 2015 WL 12089720, at *1 (M.D. Fla. 2015). The judgment in the case was affirmed by the Eleventh Circuit in August 2016. *See Bussey–Morice v. Kennedy,* 657 Fed.Appx. 909 (11th Cir. 2016).

The Bar's complaint, of course, was not based on the fact that the case was lost. Instead, it was based on Mr. Patterson's conduct essentially throughout the entire proceeding. As discussed in the Report of Referee, the first major problem involved initial interrogatories and requests for production served by the defendants in September 2011. (ROR p. 10). Mr. Patterson did not file timely answers or responses to this discovery, resulting in a motion to compel.

Mr. Patterson also did not file sufficient disclosures under Rule 26, and did not respond when the defendants filed a motion to compel. The district court granted the motion, in part, and Mr. Patterson was still late in providing this information. (ROR p. 11).

In October 2011, one of the police officers returned his draft answers to interrogatories and the signed jurat for his interrogatories to Mr. Patterson rather than to his attorney. (ROR p. 6). The police officer's attorney, Mr. Flood, quickly discovered this problem and asked Mr. Patterson to send the documents to him without retaining copies. (TFB-Ex. 4). Mr. Patterson refused to comply, and the defendants were required to file time-consuming motions. (TFB-Ex 7). Mr. Patterson filed a response moving to disqualify defense counsel. In the motion he claims that days before receiving the draft answers he had received an anonymous voice message in his voice mail

from a male stating that he regretted what he and the other officers did. (TFB-Ex 8, p. 5). That remarkable claim never was substantiated by Mr. Patterson even at the hearing in this case.

Apparently, the answers to interrogatories later provided contained modified answers using the same jurat that the officer had provided with the interrogatories inadvertently sent to Mr. Patterson. He relied on this, describing it as "premeditated fraud and deceit" and other stronger terms in his response and motion to disqualify, filed in October 2011. (TGF Ex. 8).

Judge Scriven held a hearing on the motions and other discovery issues in November 2011. (TFB-Ex 15). She ordered Mr. Patterson to return the documents. (TFB-Ex. 15, p. 5). She clearly saw some fault in the situation on both sides, directing the lawyers to "break bread" together and suggesting to Mr. Patterson that a Bar grievance he had filed against defense counsel was not well taken and should be withdrawn. (TFB-Ex 15, p. 9, 11).

Two months later, Mr. Patterson took the depositions of several police officer with the Personal Representative and others in attendance. Mr. Flood interrupted the deposition asking Mr. Patterson to tell the non-lawyer participants to stop "chuckling, making faces" and "grunting" noises in response to the deponent's answers. (ROR p. 7). The transcript of the event

is in the record as Exhibit A to the Bar's Exhibit 19. It probably should be read in its entirety.

Mr. Patterson disagreed with the assessment of what the non-lawyers were doing. But instead of stating that on the record and simply asking them to avoid all noise and facial responses to the deponent's answers, he launched into a speech about how "I'll be the first to say and I want the record to reflect that just because we're in situations like this where I'm an African American and my clients are African Americans it is always consistent that white American attorneys and white police officers always love to accuse Africans and blacks of always being hostile of always being argumentative and always being nasty." (TFB-Ex 19, Ex A p. 6). The deposition went downhill from there and it was abruptly terminated.

Following the deposition, Mr. Walker testified that he and Mr. Patterson engaged in a loud argument in the parking lot. (T. 112-114). Two of the officers provided affidavits describing the event. (T. 112-13, TFB-Ex. 19, exhibits b and c)(A. 140). Mr. Patterson denied it occurred. (T. 230, TFB-Ex. 20, p.9). This too led to motions, memorandums, and further proceedings in the federal court. (TFB-Ex. 19, 20). The Referee describes these events in his Report on Findings of Fact and Guilt, (Tab# 50, p.7-8), but at the sanction hearing he said that, because the officers' affidavits were

verbatim identical, he was giving “absolutely no credence” that it occurred the way that Mr. Walker said it occurred. (TS. 61). The Report of Referee also quotes email communications from Mr. Patterson to opposing counsel in late January 2012 that contribute to the violations for conduct unfair to opposing counsel. (ROR p. 5)(A. 70).

The Personal Representative’s deposition was scheduled about a month after the terminated depositions of the police officers on February 3, 2012, Mr. Patterson refused to appear for the depositions scheduled at the offices of counsel at the Dean, Ringers Morton and Lawton. His communications are quoted in the Report of Referee, (ROR p. 9), and indicate that he was afraid that it might result in his untimely death at the deposition. The email should be read in its entirety. (TFB-Ex 27)(A. 181).

As the Report of Referee explains, Mr. Patterson filed a motion for protective order shortly before the deposition “relying on speculative or conclusory statements.” (ROR p. 10). It was denied the same day as the deposition. Despite the fact that Mr. Patterson had not received a protective order prior to the deposition, he and the Personal Representative did not appear.

Mr. Patterson arranged for co-counsel, Wendell T. Locke, to appear in May 2012. He testified that he did this to try to calm matters. (T. 364). But matters did not get calmer.

In September 2012, the parties were to meet to prepare the detailed pretrial statement required in federal court. As explained in the Report of Referee, (ROR p. 12-14), Mr. Patterson arrived about an hour late. He claims that was the result of unexpected traffic on Interstate 4, and the Bar recognizes that could well be an accurate statement. But when he arrived, he did not have all of his exhibits, proposed voir dire questions, jury instructions, and the exhibit and witness lists required by the local rules. (ROR p. 12)(A. 73). As a result, the Defendants filed a unilateral pretrial statement. Mr. Patterson's co-counsel filed a motion for extension of time, as an emergency motion. Mr. Patterson did not attend the telephone hearing on that motion, but the Court still gave him an extension through October 24, 2012. Plaintiffs were unprepared on that date and filing a second emergency motion, the parties finally were able to file the pretrial statement. (ROR p.13)(A. 74).

In October 2012, the defendant's filed a motion to strike asking the Court to prohibit plaintiff's counsel from referring to the police officers that were defendants as "Brutality Officers." The motion cites references to this

problem beginning in June 2012. (TFB-Ex. 42). In response to this motion, co-counsel with Mr. Patterson argued it was perfectly okay to file documents using this nomenclature. (TFB-Ex. 50). Mr. Patterson tries to wash his hands of this conduct by explaining he did not write the offending documents, but he was lead counsel and took no steps even to correct the documents once they were filed.

Following the entry of the judgment in favor of the defendants in January 2015, (TFB-Ex. 62), the Personal Representative filed an amended motion to vacate the judgment based on newly discovered evidence. (TFB-Ex. 65). The pleading was drafted by Mr. Locke, but Mr. Patterson provided information for the pleading and was still lead counsel when it was filed. (TS. 52-53). There is no evidence he encouraged Mr. Locke to withdraw the motion. It was based on a handwritten affidavit of Mr. Volpetti, who had been a witness interviewed by FDLE at the beginning of the case. The motion attempted to explain why the affidavit could not be obtained until post-judgment. Judge Mendoza issued a stern order denying the motion for failure to establish any of the grounds necessary for such a claim and finding it legally frivolous. (TFB-Ex. 69) (ROR p. 16). *Bussey-Morice v. Kennedy*, 2015 WL 12089720, at *1 (M.D. Fla. 2015).

The Referee found that this amended motion to vacate was not a meritorious claim and a violation of Rule 4-3.1 by Mr. Patterson. (ROR p. 17).

Following the judgment, the defendants also filed motions for Rule 11 sanctions. (TFB-Ex. 63, 64). These motions resulted in a 42-page order issued by Judge Mendoza on January 12, 2017, which ordered his clerk to send the matter to the Bar. (TFB-Ex. 1, p. 42)(A. 98). This order is discussed in the Report of Referee, (ROR. p. 17-19), and it warrants a full review by this Court. (A.98).

As the Report of Referee explains, years earlier, Judge Honeywell had gently tried to mentor Mr. Patterson to tone this all down at a hearing in November 14, 2012. (ROR p. 19). She was basically taking the same mentoring stance that Judge Scriven had a year earlier. But Mr. Patterson still did not heed this advice in the following years.

As a final matter, in the quotation from Judge Honeywell's lecture to Mr. Patterson about his need to stop injecting racial politics into his pleadings, she stated:

> I reached the same conclusion when I read an objection you filed with regard to an order of the magistrate judge where, if you didn't directly call him a racist, the inference was clear from what you had in your pleading and throughout your pleadings. One of the reasons that we have had as much difficulty getting

> rulings out is because two or three pages are spent on stuff that's superfluous to the legal issues before the Court.

(ROR p. 19)(A. 80).

The Report has no detailed finding on this issue, but the filings discussed by Judge Honeywell are the source of the finding that Mr. Patterson violated Rule 4-8.2(a) by impugning the integrity of judges. There was additional testimony from the attorneys that Mr. Patterson would not agree to the magistrate because the magistrate was white. (T. 154-156). Mr. Patterson is also cross-examined on this subject during the hearing. (T. 308-311).

The docket in the Bussey-Morice case has 654 entries. (TFB-Ex. 3). Simply put, from beginning to end, it is a non-stop failure to abide by rules of procedure and to work to resolve the litigation expeditiously. Mr. Patterson may well have believed that he was being treated unfairly due to his race, but the record has slim proof of that, it proves he was not living up to his requirements under the rules of procedures and that his own pleadings and reactions were excessive over-reactions to the circumstances.

These facts allow us to examine the conduct the resulted in the violations in this second disciplinary proceeding. The Referee found:

1. Rule 3-4.3, misconduct, was violated by the pleadings filed by Mr. Patterson that were "disparaging in nature." (ROR p. 20). Those pleadings began in 2011 and continued throughout the case.

2. Rule 4-3.1 meritorious claims, was violated by the filing of the amended motion to vacate in 2015, (ROR p. 17).

3. Rule 4-3.3 failure to expedite litigation arose out of his handling of the discovery and the many avoidable contentious issues that delayed the case and consumed the resources of the federal court.

4. Rule 4.3.4(c) & (d) fairness to opposing parties and counsel, was violated by Mr. Patterson's failure to handle discovery and other requirements in a timely fashion with opposing counsel. (ROR p. 14). This occurred from 2011 through at least 2012.

5. Rule 4-4.4(b) failure to respect right of third parties, occurred as a result of his failure to return the draft discovery when it was sent by the police officer to his email address in 2011. This was the conduct that concerned the Referee most. (ROR p. 27).

6. Rule 4-8.2(a) impugning the integrity of judges occurred because of Mr. Patterson's statements about a white magistrate judge. (ROR. p.19). Where Judge Honeywell found that he did not directly call the judge a racist, but he inferred it.

7. Rule 4-8.4(d) misconduct, was also violated by the pleadings filed by Mr. Patterson that were "disparaging in nature."

The Bar had also claimed that Mr. Patterson engaged in conduct involving a conflict of interest with his client. The Referee rejected that evidence because of the involvement of co-counsel and did not find conduct violating Rule 4-1.7. (ROR p. 21).

SUMMARY OF THE ARGUMENT

There is no dispute in this matter that Mr. Patterson violated seven Rules of Professional Conduct for his actions in the *Bussey-Morice* case. The Referee erred and his finding that these separate acts of misconduct were essentially the same conduct that this Court sanctioned in *The Florida Bar v. Patterson*, 257 So. 3d 56 (Fla. 2018)(A. 25)(Case No. SC16-1438), was clearly erroneous.

The Bar does not want this Court to sanction Mr. Patterson for any conduct for which this Court imposed a sanction in the prior disciplinary proceeding. The Referee simply did not understand that this conduct in this case, which began prior to the *Faddis* case and continued for years, is separate, cumulative misconduct for which an additional sanction should be imposed. If the timing of the complaints would have allowed for both matters to be contained in a single disciplinary proceeding, the combined misconduct

would have warranted a sanction in excess of the one-year suspension imposed in that proceeding.

Because the Referee viewed these two proceedings as one generalized violation arising from Mr. Patterson's mindset, he also made errors in his findings of fact concerning aggravating and mitigating factors. He found no aggravating factors despite the factual findings in the Report of Referee itself warranting findings of multiple offenses, demonstrating a pattern of misconduct, that Mr. Patterson, as a litigator with more than ten years' experience, should not have committed. He found no prior disciplinary offenses despite this Court's published opinion finding such offenses, including violations in that case for conduct that occurred prior to some of the later misconduct in this case.

After finding no prior disciplinary offenses, the Referee found, as a mitigating factor, that prior offenses were "remote." Yet if he had actually found a prior offense, it would have been so recent as to qualify as an aggravating factor. His reasoning in this regard is simply very hard to understand.

The Referee also gave "great weight" to the fact that Judge Honeywell did not file a Bar complaint against Mr. Patterson and chose, like Judge Scriven, to try to mentor him. There are many valid reasons that

understandably cause judges to be hesitant to initiate Bar complaints. Judge Mendoza was able to review the whole panoply of events throughout this case and conclude that, after warnings from his two predecessors, a Bar complaint was in order. The Bar frankly does not understand why Judge Honeywell's inaction is even relevant, much less a matter that should receive great weight.

When the aggravating factors and mitigating factors are readjusted and this case is analyzed under the new stricter sanction policies, and when one considers that this Court added the "pledge of fairness, integrity, and civility" to the Oath of Admission, giving notice to Mr. Patterson of the importance of professionalism at precisely the same time he began his unprofessional conduct in this case, the Bar submits that the Referee's recommendation of a 90-day, non-rehabilitative sanction is not supported by the Standards or the case law.

This is a case where true rehabilitation is the most important of the three purposes for lawyer sanctions. The Bar truly hopes that Mr. Patterson can achieve his goal of becoming a well-qualified human-rights attorney. But it submits that this goal will require some hard effort on his part at rehabilitation. The Bar suggests that a two-year rehabilitative suspension is appropriate in this case.

THE DECISION-MAKING PROCESS IN THIS SANCTION PHASE OF A DISCIPLINARY PROCEEDING

In a typical review of an opinion from a district court of appeal, the parties are obligated to discuss the standard of review in their briefs. But this is an original proceeding filed under this Court's exclusive jurisdiction to "to regulate the admission of persons to the practice of law and the discipline of persons admitted." Art. V, §15, Fla. Const.

Nevertheless, it is still useful to begin a review of the referee's report with a consideration of the decision-making process and the applicable rules governing this Court's ultimate determination on the issues presented, which in this review are only the issues necessary to determine an appropriate sanction.

Findings of Fact

As this Court explained in *The Florida Bar v. Picon*, 205 So. 3d 759, 764 (Fla. 2016): "This Court's review of a referee's findings of fact is limited. If a referee's findings of fact are supported by competent, substantial evidence in the record, this Court will not reweigh the evidence and substitute its judgment for that of the referee. *The Florida Bar v. Frederick*, 756 So. 2d 79, 86 (Fla. 2000)." *See also The Florida Bar v. Schwartz*, 284 So. 3d 393, 396 (Fla. 2019); *The Florida Bar v. Parrish*, 241 So. 3d 66, 72 (Fla. 2018); *The Florida Bar v. Vining*, 721 So. 2d 1164, 1167 (Fla. 1998); *The Florida*

Bar v. Jordan, 705 So. 2d 1387, 1390 (Fla. 1998); *The Florida Bar v. Spann*, 682 So. 2d 1070, 1073 (Fla. 1996).

Recommendation of the Disciplinary Sanction

The Referee's recommended sanction in a disciplinary proceeding is subjected to greater review by this Court because of this Court's ultimate responsibility to make that decision:

> In reviewing a referee's recommended discipline, this Court's scope of review is broader than that afforded to the referee's findings of fact because, ultimately, it is the Court's responsibility to order the appropriate sanction. *See The Florida Bar v. Picon*, 205 So. 3d 759, 765 (Fla. 2016) (citing *The Florida Bar v. Anderson*, 538 So. 2d 852, 854 (Fla. 1989)). At the same time, this Court will generally not second-guess the referee's recommended discipline, as long as it has a reasonable basis in existing case law and the standards. *See The Florida Bar v. Alters*, 260 So. 3d 72, 83 (Fla. 2018); *The Florida Bar v. De La Torre*, 994 So. 2d 1032 (Fla. 2008).

The Florida Bar v. Altman, 294 So. 3d 844, 847 (Fla. 2020).

It is also important to consider that this Court has given notice to the members of the Bar that it is moving toward harsher sanctions than in the past. *See The Florida Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015). In *Rosenberg*, this Court explained that since the decision in *The Florida Bar v. Bloom*, 632 So. 2d 1016 (Fla. 1994), the Court has moved toward imposing

stricter sanctions for unethical and unprofessional conduct. *See also Altman* at 847. As a result, case law prior to 2015 needs to be examined carefully to make certain that the application of sanctions in these earlier cases comports with current standards.

Consideration of Mitigating and Aggravating Factors – Both as Findings of Fact and as a Mixed Question of Law and Fact during the Decision to Select the Appropriate Sanction.

A Referee's findings on mitigating and aggravating factors are treated essentially like any other finding of fact:

> [A] referee's findings of fact carry a presumption of correctness that should be upheld unless clearly erroneous or without support in the record. *See The Florida Bar v. Summers*, 728 So. 2d 739, 741 (Fla. 1999). This standard applies in reviewing a referee's findings of mitigation and aggravation. *See, e.g., The Florida Bar v. Wolis*, 783 So. 2d 1057, 1059 (Fla. 2001); *The Florida Bar v. Hecker*, 475 So. 2d 1240, 1242 (Fla. 1985).

The Florida Bar v. Arcia, 848 So. 2d 296, 299 (Fla. 2003).

"[A] referee's findings of mitigation and aggravation carry a presumption of correctness and will be upheld unless clearly erroneous or without support in the record." *The Florida Bar v. Germain*, 957 So. 2d 613, 621 (Fla. 2007). The burden of demonstrating that the findings in aggravation or mitigation are clearly erroneous lies with the party challenging the findings. *See The Florida Bar v. Glick*, 693 So. 2d 550, 552 (Fla. 1997) (holding that

the burden of disproving a referee's findings of fact or recommendations as to guilt is upon the party challenging those findings). *The Florida Bar v. Marcellus*, 249 So. 3d 538, 544 (Fla. 2018).

The Referee's findings on the factors of aggravation and mitigation are applied to "justify" an increase or a decrease in the "degree of discipline to be imposed." *Florida Standards 3.2(a), 3.3(a).* This process of balancing the positive and negative factors is a mixed question of fact and law. It is part of the ultimate decision to impose a sanction.

ARGUMENT

I. The Referee erred in concluding that the conduct in this case was the same conduct or even predominantly in the same nature as the conduct in the first disciplinary proceeding.

The Referee saw this disciplinary proceeding and the prior disciplinary proceeding as overlapping both in time and topic. He did not wish to recommend a sanction that gave double punishment for conduct already sanctioned in the prior proceeding. To be clear, the Bar does not want this Court to impose a sanction that results in double punishment for Mr. Patterson's conduct that was the subject of the prior proceeding.

All of these events in both cases occurred somewhere between 2011 and 2015. But the misconduct in this disciplinary proceeding starts with

discovery violations in the *Bussey-Morice* case and the police officers' misdelivered draft interrogatories in 2011, which is actually before the conduct in the prior disciplinary proceeding. This misconduct is a continuing series of events happening within the federal lawsuit that ends with the frivolous prosecution of a motion to vacate the final judgment in early 2015. The Bar was put on notice of this conduct by Judge Mendoza in January 2018. (TFB-Ex. 1)(A. 139).

By contrast, the misconduct that resulted in the violations in the prior disciplinary proceeding occurred in the *Faddis* case and involved a letter sent to Judge Martinez and other judges in September 2013 and an appeal taken to the Third District in early 2014 when Mr. Patterson had a conflict with his client. The specific conduct that actually violated the rules was quite different in these two proceedings and it occurred at different times.

Moreover, the violations that were of the greatest concern to this Court in the prior disciplinary proceeding related to conduct in *Faddis* that impugned the integrity of judges and created a serious conflict between Mr. Patterson and his client. The conduct in the *Bussey-Morice* case, by the Referee's own ruling does not involve a conflict with the client. While the *Bussey-Morice* case did present a violation for impugning of the judicial

reputation of a magistrate, that violation is a relatively small part of the multiple violations in the second disciplinary proceeding.

Thus, the actual conduct that warrants punishment in these two separate cases is not overlapping and even the applicable Rules of Professional Conduct are only somewhat overlapping.

The Bar believes that the Referee was troubled by his perception that much of this conduct originates from Mr. Patterson's mindset at the time. As Mr. Patterson explained:

> And I think at that time emotionally in my mind I was frustrated, and my writings showed a sense of frustration during that time because I had been dealing with, you know, a certain sort of despair and feeling like I wanted the world to be better.

(T. 287).

At the hearing conducted by Judge Mendoza in September 2017, Mr. Patterson explained:

> Maybe you're not aware that perhaps you're seeing a young Thurgood Marshall. I have aspirations.

(TFB-Ex 77, p. 14).

The Bar does not doubt Mr. Patterson's ambitions and goals. It also does not doubt that 40-year-old African Americans, including lawyers, experience forms of discrimination and racism in this era, perhaps more

subtle than what Thurgood Marshall experienced during his career,[2] but racism none the less. It welcomes lawyers who wish to use their training and skills to achieve today's goals of social justice and human rights.

The Bar also realizes that some lawyers who attend law school to pursue a career in "justice" can become frustrated and depressed when they discover that the rule of law and one's personal sense of justice can sometimes reach very different outcomes. It does not question that Mr. Patterson was frustrated throughout this period of years because that frustration quite clearly shows through in his writings and his conduct.

But Mr. Patterson's mindset, as a contributing cause to these substantially different cases of misconduct, does not make it all one amorphous violation. This is not a factor that allows us to say that separate acts of misconduct in different lawsuits in different forums are all the same thing. They simply are not.

But his mindset is not irrelevant to his suspension. It should play a major role in his proof of rehabilitation when he seeks reinstatement. To return to the law, especially if he wishes to continue a career in human rights

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[2] The racism that Thurgood Marshall endured while maintaining professionalism even occurred in Florida when he defended the Groveland Boys in Lake County. *See* Gilbert King, *The Devil in the Grove Harper,* Perennial Citation 2012.

litigation, he needs to be armed with at least some of the same strengths and discipline that allowed Thurgood Marshall to channel his strong emotional commitment to racial equality into well-prepared and carefully crafted legal arguments.

The Referee's decision that the conduct in this proceeding is the same conduct or even in the same nature as the conduct in the first disciplinary proceeding is incorrect – both as a matter of law and a matter of fact.

II. The Referee erred in finding no aggravating factors in this case and in considering "remoteness of prior offenses" as a mitigating factor. The Referee also erred in placing heavy reliance on the absence of a complaint by a specific federal judge.

The Bar maintains that several of the Referee's findings on aggravating factors and mitigating facts were clearly erroneous or legal error. The Bar believes that the Referee's vision of this case as a double for the first case probably impacted his analysis.

A. Aggravating factors

The Bar asked the Referee to consider four aggravating factors, and the Referee expressly found that there were no aggravating factors. (ROR p. 23).

1. Multiple offenses

Standard 3.2(b)(4) recognizes multiple offenses as an aggravating factor. It is undisputed in this case that the Referee found seven violations

of the rules. Those violations involve misconduct that is spread over a period of years. The conduct began in 2011 with the discovery misconduct and continued at least through 2015 with the frivolous motion to vacate. Admittedly, this conduct was virtually non-stop throughout the lawsuit, but that does not make it a unitary offense.

It is true that a finding of multiple offenses sometimes involves multiple clients or lawsuits. But this Court also makes that finding when there are separate acts involving harm only to one person or entity. For example, this Court relied on multiple offenses for a suspension when a lawyer took three small amounts of money from a cash register on separate days while working in a store. *See The Florida Bar v. Kinsella*, 260 So. 3d 1046, 1047 (Fla. 2018). The Bar in this case is not arguing that a single act that can be analyzed as several violations of the Rules of Professional Conduct results in multiple offenses. These offenses occurred on different days and even involved different types of conduct. Just examining the delay in complying with deadlines, refusing to return documents inadvertently disclosed, and filing a frivolous motion to vacate, the Bar submits that there are three separate offenses as a matter of undisputed fact. The Referee's rejection of this factor is clearly erroneous.

2. Pattern of misconduct

Standard 3.2(b)(3) recognizes a pattern of misconduct as an aggravating factor. The Referee rejected this aggravating factor, in large part, because he saw the pattern as constituting an improper filing of a second disciplinary proceeding overlapping the first disciplinary proceeding. In explaining his reason for the lesser sanction, the Referee stated: "Respondent has already been punished for much of the same conduct as he is being accused of here. . ." He explained that "a lot of what respondent was sanctioned for in SC16-1438 is of the same nature as what occurred here." (ROR p.26).

In the first section of this argument, the Bar explains that the conduct in this second disciplinary proceeding is not actually the same conduct and even the nature of the misconduct is significantly different. But it is true that both cases demonstrate a pattern of misconduct that resulted in three violations in both cases for violating the same rules: Rule 3-4.3, misconduct; Rule 4-8.2, impugning the integrity of judges, and Rule 4-8.4(d,) misconduct prejudicial to the administration of justice. Much of this misconduct does seem to relate to a mindset or an attitude that caused Mr. Patterson to act out his frustrations in improper ways in both cases. But in this case alone, the pattern of not complying with rules of procedure in discovery, a pretrial,

post-judgment and on appeal is a pattern of misconduct that seems to have been ongoing for at least the first half of the decade.

Patterns of misconduct and multiple violations often occur together. Thus, the multiple violations discussed above in *Kinsella* were also a pattern of misconduct even though there were fewer violations involved and a shorter window of time than is involved in Mr. Patterson's case. *See The Florida Bar v. Kinsella*, 260 So. 3d 1046, 1047 (Fla. 2018). *See also The Florida Bar v. Parrish*, 241 So. 3d 66, 68 (Fla. 2018)(multiple violations while representing a corporation and its principal); *The Florida Bar v. Brutus*, 216 So. 3d 1286, 1288 (Fla. 2017)(multiple improper withdrawals from trust account in one dissolution proceeding).

The Bar recognizes that a pattern that continues over many years is worse than a pattern that is repeated in a smaller window of time. Mr. Patterson's pattern did last years. On the other hand, habitual offenders who repeat conduct after they have completed the sanction in a prior disciplinary proceeding should be treated more harshly than those who have ongoing patterns that were not addressed in prior proceedings before the misconduct occurred. Mr. Patterson is not such a habitual offender. Thus, the Bar is not maintaining that this factor could warrant disbarment or even a suspension

of maximum length. But it is a factor that should be part of the overall equation.

It was clearly erroneous for the Referee to find no pattern of misconduct and to actually use the pattern essentially as a mitigating factor.

3. Prior discipline

There can be no dispute that Mr. Patterson was disciplined by this Court in the prior case, which commenced in 2016. The sanction was imposed by this Court on October 19, 2018, in its published opinion. (A. 25). This second disciplinary case was not opened by the Bar until 2018, after Judge Mendoza issued his order in January 2018.[3] This proceeding was not filed until December 2019.

Thus, the discipline was imposed prior to this case, but for separate acts of conduct that occurred between 2013 and 2015, essentially in the middle of the period when the ongoing series of misconducts in this case were occurring.

This is a case involving prior discipline for cumulative misconduct. This Court has never given a lawyer a pass on misconduct because other

[3] The order is dated at the end as if it were "done and ordered" on January 12, 2107. But this is clearly a New Year's error. It was docketed on January 12, 2018, and it ordered certain actions to occur in January and February of 2018. (TFB-Ex. 1).

misconduct occurred in the midst of the charged misconduct. As this Court explained in *The Florida Bar v. Walkden*, 950 So.2d 407, 410 (Fla. 2007):

> As noted by the Bar, this Court views cumulative misconduct more seriously than an isolated instance of misconduct. *The Florida Bar v. Carlon*, 820 So. 2d 891, 899 (Fla. 2002). In determining the appropriate discipline, we consider prior misconduct and cumulative misconduct, and treat cumulative misconduct more severely than isolated misconduct."

See also The Florida Bar v. Parrish, 241 So. 3d 66, 79 (Fla. 2018); *The Florida Bar v. Bosecker*, 259 So. 3d 689, 699 (Fla. 2018).

The Bar agrees with the Referee that the cumulative misconduct should not "double down" on punishment already imposed, but the prior discipline was imposed for cumulative conduct that should be considered as an aggravating factor when assessing the appropriate discipline in this case. The Referee' s error in this regard is probably an error of law rather than an erroneous finding of fact, but either way it is an error this Court should consider when re-examining the appropriate sanction for this case.

4. Substantial experience

The Referee declined to find that substantial experience was an aggravating factor in this case. The Referee did find that Mr. Patterson was 49 years old and had been a member of the Bar since October 1997. Thus, for violations between 2011 and 2015, Mr. Patterson was between 40 and

45 years old and had been a lawyer for 14 to 18 years. Mr. Patterson had explained in his testimony that, after graduating from the University of Akron Law School, he had started work for a small boutique plaintiff's law firm in Coral Gables and from there "was sort of geared towards human rights litigation." (T. 202-203). The Referee, in assessing the issue of substantial experience, thought the conduct had occurred ten years' ago, when some of the conduct was actually as recent as five years ago. (TS. 68).

There is no definition in the Florida Rules of Professional Conduct or in the Florida Standards for Imposing Lawyer Sanctions for "substantial experience." By contrast, in the law governing dissolution of marriage, the statutes actually create a rebuttable presumption to help determine when a marriage is short-term, long-term, or in the gray area. *See* § 61.08(4), Fla. Stat. (2020). But legal experience is not really defined merely by time. And, although Rules 3.3(b)(6) and 3.2(9) seem to create a binary divide between experience and inexperience in the practice of law, the truth is there is a spectrum of experience when evaluating the experience of a professional.

Thus, twelve years of experience may not be as substantial as thirty years, but it is not comparable to a young lawyer with two years' experience. Many lawyers are partners in the prime of their practice by twelve years. Some are already judges. The Referee did not need to give extreme weight

to this aggravating factor, but he was clearly erroneous in finding that it did not exist.

As an example, in *The Florida Bar v. Marcellus*, 249 So. 3d 538, 544 (Fla. 2018), this Court disapproved the Referee's recommendation of a one-year suspension and imposed an eighteen-month suspension where the Referee had found substantial experience in the law to be an aggravating factor. The Report of Referee in that case shows that Mr. Marcellus was licensed in 2003 and committed his offenses in 2009 and 2010. (Case No. SC16-1773).

B. Mitigating factors

1. The factors under Rule 3.3

Concerning mitigating factors under Section 3.3, the Referee found: (2) absence of dishonest or selfish motive, (5) full and free disclosure, (11) imposition of other penalties or sanctions, (12) remorse, and (13), remoteness of prior offenses. (ROR p. 23-24). The Referee also treated the fact that Judge Honeywell did not file a Bar complaint as essentially a mitigating factor. (ROR p. 26).

The Bar does not contest that Mr. Patterson had no selfish motive in this case.

He cooperated and gave full and free disclosure at the hearing although some of his testimony was in direct conflict factually with that of the other witnesses. Concerning the inadvertent disclosure of the draft interrogatories, his written explanation to the trial court had been that he received an anonymous telephone call from one of the officers that was in the nature of a confession. But he never provided that explanation under oath to the trial court or in these proceedings.

As to the additional penalties imposed, he was not sanctioned for this conduct in the prior disciplinary proceeding. He did receive Rule 11 sanctions in federal court. In the *Faddis* case that was involved in the prior disciplinary proceeding, the judge had imposed a large monetary sanction, but it was discharged in Mr. Patterson's bankruptcy. (T. 409)

The Referee described Mr. Patterson's remorse as "extreme," and the Bar does not contest that his remorse is genuine.

But the finding of "remoteness of prior offenses" is clearly erroneous. The Referee declined to find prior discipline, but then found that the prior offenses were remote. The Referee apparently was influenced by the fact that the earlier disciplinary proceeding involved misconduct in 2013, but this case involves conduct even earlier.

Prior offenses can actually be an aggravating factor until the lawyer has no sanction during a seven-year period. Rule 3.2(b)(1). The Referee is treating the prior proceeding as remote when it is still in the window to be used as an aggravating factor.

In *The Florida Bar v. John A. Barley*, 831 So. 2d 163, 164 (Fla. 2002), as an example, remoteness of discipline was found in a case where this Court disbarred the respondent. But in the *Barley* case the period between the two acts of misconduct exceeded ten years. *See The Florida Bar v. Barley*, 541 So. 2d 606 (Fla. 1989).

Thus, the Referee erred either as a matter of law on this mitigating factor or his finding of fact is clearly erroneous.

2. Judge Honeywell's inaction as grounds to mitigate.

The Referee explained that he put "great weight" on the fact that Judge Honeywell did not make a complaint to the Bar like Judge Mendoza later did. (ROR p. 26). But there are lots of reasons why judges try to avoid initiating Bar complaints. Certainly, a federal judge has no duty to make state bar complaints under the Code of Conduct for United States Judges.

From the record, it appears that Judge Honeywell tried to mentor Mr. Patterson, as Judge Scriven had before the case was reassigned to Judge Honeywell. That is perfectly appropriate for a judge. But after these two

attempts at mentoring, Mr. Patterson still sent the letter to Judge Martinez and the other judges in the prior case. In this case, he did nothing when his co-counsel filed a response to a motion to strike in March 2013 repeatedly naming the defendant police officers, not as defendants or police officers, but as "Brutality Officers." (TFB-Ex. 59). He allowed his co-counsel to file the frivolous motion to vacate based on the affidavit that he helped obtain in January 2015. (T. 54). The Referee found this conduct to be a violation in this case. Simply put, Judge Honeywell's decision not to make a complaint to the Bar carries very little, if any, weight that might mitigate the sanction in this case, which was prompted by the complaint of her successor.

III. A non-rehabilitative sanction in this context is not a sanction reasonably supported by the Standards or the case law. The Bar suggests a two-year suspension.

The Referee finds "that a non-rehabilitative suspension is most appropriate here. . . ." (ROR p. 26). The Bar submits that a non-rehabilitative suspension for a lawyer – who is already ineligible to practice law due to a prior rehabilitative suspension – is hardly a sanction at all. A non-rehabilitative sanction is designed to punish and deter offenses that do not involve serious underlying issues and are circumstances in which it is safe to allow the lawyer to return to practice immediately without proof of rehabilitation. That simply is not the case here.

The Referee obviously wishes these two proceeding could have been prosecuted together and could have had one sanction imposed. Unfortunately, the Bar did not receive the complaint from Judge Mendoza until after it would have possible to prosecute the violations together.

But of greater importance, if these matters had been prosecuted together, the Bar would not have suggested that a one-year suspension was the appropriate sanction. If the cumulative misconduct had been considered at one time, it would have warranted a three-year suspension.

There is no dispute in this case that a suspension is the appropriate sanction. The only question is the length of that suspension. Under Standard 6.2, "[s]uspension 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. In this case, Mr. Patterson did not violate "a court order." He repeatedly violated court orders and rules. He caused needless expense for his opposing party and needless use of court resources to resolve the issue over the draft discovery that he refused to return. He caused more harm by escalating the disagreement at the deposition and then failing to appear at the next deposition when he had no protective order. He did the same when he came unprepared to pretrial, and still was not prepared the second time. He participated with his co-counsel in filing a frivolous motion

to vacate. One of these matters might warrant a lesser sanction, but cumulatively they warrant far more.

Mr. Patterson provided the Referee with no case law. (ROR p. 24). The Bar filed and argued quite a few cases. (TAB # 51); (TS. pp. 40-41). The Referee cites those cases in the Report of Referee, but he does not explain why they would cause him to conclude that a non-rehabilitative suspension was appropriate.

In *The Florida Bar v. Marcellus*, 249 So. 3d 538, 545 (Fla. 2018), this Court considered Mr. Marcellus's first disciplinary proceeding involving one case – his own divorce. He disobeyed orders concerning the disposition of the family home, moving back into the home, and engaging in an improper refinancing of the home. His violations involve some of the violations involved in this case, and as discussed earlier, the aggravating factors included substantial experience in the law when he had less experience than Mr. Patterson. This Court rejected the Referee's proposed one-year suspension and imposed an eighteen-month suspension, noting that the Court was now moving toward strong sanctions for unprofessional conduct. *Id*. at 545. There was a selfish motive in the *Marcellus case,* but the harm to the opposing party in this case may actually be worse.

In *The Florida Bar v. Rosenberg,* 169 So. 3d 1155, 1158 (Fla. 2015), Mr. Rosenberg engaged in discovery violations similar to the problems in this case. The Referee recommended a ninety-one-day suspension. But this Court explained:

> However, we find that Rosenberg's repeated failures to comply with court orders and his bad faith conduct, together with the aggravating factors found by the referee, warrant a suspension longer than ninety-one days. We conclude that a one-year suspension is appropriate.

Id. at 1161–62. Mr. Rosenberg did not show the same remorse that has been shown by Mr. Patterson, but his conduct was not cumulative of misconduct in another disciplinary proceeding, as is the case here.

In *The Florida Bar v. Spolter*, 2013 WL 5494596, at *1 (Fla. 2013)(table opinion), this Court rejected a proposed ninety-one day suspension and instead imposed a one-year suspension. The Report of Referee reflects there was no prior disciplinary history. (Tab # 51, Spolter ROR, p. 8). Mr. Spolter engaged in frivolous filings in federal court and made false allegations against a federal judge that probably are a little more extreme than the allegations against the magistrate in this case. The sanction was imposed for conduct in one case without indication that the conduct was cumulative to conduct in another case. (Tab# 51, Spolter ROR).

Finally, in *The Florida Bar v. Norkin*, 132 So. 3d 77 (Fla. 2013), this Court rejected the Referee's proposed 90-day suspension and instead imposed both a two-year suspension and a public reprimand. It involves repeated acts of unprofessional conduct. Some of that conduct was perhaps more extreme than in this case, although the handling of the inadvertent disclosure and the misconduct at and after the deposition that was cancelled in this case is quite extreme. Claiming that you cannot attend a deposition at the office of a large law firm because you might get shot is extreme as well. The Bar is not suggesting a public reprimand because Mr. Patterson probably needs to address his issues in a more private setting, but a suspension long enough to permit full rehabilitation is needed in this case.

The *Norkin* case emphasizes the new importance that this Court has placed on professionalism. Ironically, the Court added the "pledge of fairness, integrity, and civility" to the Oath of Admission on September 1, 2011. *See In re Oath of Admission to The Florida Bar*, 73 So. 3d 149 (Fla. 2011). Thus, Mr. Patterson began this series of misconducts at virtually the same time this Court informed that Bar that professionalism was part of their oath as a lawyer.

In 1970, this Court explained the three purposes of lawyer discipline in *The Florida Bar v. Pahules,* 233 So. 2d 130, 132 (Fla. 1970):

1. The judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing a penalty.
2. The judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation.
3. The judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations.

These purposes have remained the same for fifty years.

In this case, the Bar submits that Mr. Patterson still has the ability to be a qualified lawyer, and it is not seeking disbarment. The public could be well-served by Mr. Patterson if he could find the balance and discipline to pursue human rights cases with the professionalism required to extend human dignity to the judiciary and his colleagues in the Bar. He needs to learn and to obey the rules of procedure and professionalism even when his emotions run high.

The Bar is not seeking this longer rehabilitative suspension as a form of “punishment” in the sense of a penalty as retribution for an offense. Mr. Patterson has shown remorse. It seeks a longer term of suspension because

it maintains that this additional time is needed for full rehabilitation in this case.

Finally, the Bar does believe that a longer term of rehabilitative suspension will have a greater deterrent effect on lawyers who commit similar acts. The Bar does not maintain that Mr. Patterson actually engaged in this conduct as an intentional tactic. If he had, that would be grounds for disbarment. But other lawyers do engage in similar unprofessional conduct as a tactic. For lawyers who see an opponent's commitment to the practice of professionalism as a vulnerability to be exploited, this sanction will serve as a useful deterrent.

CONCLUSION

The Bar asks this Court to reject the recommendation of the Referee for a non-rehabilitative 90-day suspension and impose a rehabilitative suspension of two years' duration. The Court should impose the costs recommended by the Referee.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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