

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No.: SC20-286

v.

Fl. Bar File No.: 2020-30, 104 (09C)

KARL O. KOEPKE,

Respondent.

**THE FLORIDA BAR'S
INITIAL BRIEF**

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RECEIVED, 11/19/2020 11:09:32 AM, Clerk, Supreme Court

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PRELIMINARY STATEMENT

A. Abbreviated Names

Karl O. Koepke, the Respondent, will be referred to as Mr. Koepke 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 paragraph within the pleading. (Tab #1, ¶5).

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

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

This is a disciplinary proceeding in which the Bar seeks disbarment of the Respondent, Mr. Koepke. The underlying facts concern Mr. Koepke's conduct in his own dissolution proceeding in which he was co-counsel for himself. The circuit court held him in criminal contempt in that proceeding for withholding information about a written settlement agreement under which he ultimately received a large contingency fee that could have been used to pay back alimony to his former wife. While the information about the fee was being withheld, those funds were channeled through his client's Virginia trust to another Virginia trust for which Mr. Koepke is a beneficiary. This prevented the circuit court in the dissolution proceeding from gaining access to the funds.

The Referee found that Mr. Koepke violated eight different provisions of the Rules Regulating the Florida Bar. The Bar does not challenge those findings or the recommendations of guilt for those eight violations.

However, the Referee decided that the recommended sanction should be a one-year suspension. The Bar challenges that recommendation and asks this Court to disbar Mr. Koepke. He has not sought review of the Report of Referee.

STATEMENT OF THE CASE AND FACTS

A. Proceedings in the Koepke dissolution prior to the resulting criminal contempt proceeding.

Mr. Koepke was admitted to the Bar in 1965 and is currently 83 years old. (ROR p. 17); (A. 19). He practiced in Orlando, primarily as a plaintiffs' personal injury attorney for many years. (TS. 22-25; TFB-Ex. 12); (A. 33). He currently is an active member of the Bar, but he is essentially retired. (TS. 6).

Thirty years ago, he divorced his first wife, Nancy Koepke, who is now in her late seventies. (TS. 6-8). The final judgment of dissolution required that he pay her permanent alimony at the rate of \$8000 per month. (Tab #1, ¶4 & Tab #16). In December 2002, this amount was reduced to \$1,100 per week. (TFB-Ex. 1).

In 2014, Ms. Koepke filed a motion for contempt, seeking payment of alimony arrearages of approximately \$88,000. (TFB-Ex. 2). She was represented at that time by Gregory M. Wilson. (TFB-Ex. 2).

Mr. Koepke was represented in these proceedings by an attorney, but he entered an appearance "as assistant" to his attorney. (TFB-Ex. 4).

In late 2016, Mr. Wilson began to pursue discovery about the possibility that Mr. Koepke was settling a personal injury case, (the "Anthony Williams case"), which would generate a significant attorney's fee. (Tab #1, ¶13 & Tab #16). Mr. Koepke did not produce the discovery that Mr. Wilson wished to review, so Mr. Wilson filed a motion to compel production. On June 29, 2017, the circuit court

entered an order requiring Mr. Koepke to produce: (1) “a redacted copy of his retainer agreement,” (2) “all settlement correspondence and written communications with the defendants, all documents that are not atty-client privileged, related to any settlement payments by the insurance company,” and (3) “any settlement agreements.” (TFB-Ex. 6); (Tab 1, ¶14 & Tab #16); (A. 21).

Mr. Koepke, who then was represented by Anthony J. Caggiano, filed a notice of compliance on July 10, 2017, but he produced no document relevant to the settlement agreement that later became the focus of the contempt hearing. (Tab #1, ¶15 & Tab #16). He filed an amended notice of compliance concerning this order on July 20, 2017, providing a redacted copy of the retainer agreement with Mr. Williams. (TFB-Ex. 8 & Ex. 17); (A. 22-26), and representing:

as to category (2) there being no settlement, no documents exist or could be found that are responsive; and, as to category (3) there being no settlement, no documents exist or could be found that are responsive.

(TFB-Ex. 17); (A. 22).

On August 24, 2017, the matter came on for trial before Judge Heather Rodriguez. (TFB-Ex. 18). Mr. Wilson had served a subpoena duces tecum for trial on Mr. Koepke, requiring him to bring his complete office file on the Anthony Williams case to trial. Mr. Koepke did not bring that file to the trial, apparently believing that a pending motion to quash the subpoena relieved him of that

obligation. (TFB-Ex. 12, ¶G); (A. 35). The circuit court ordered him to return to his office and return with the file. (TFB-Ex. 12); (A. 35).

When Mr. Koepke returned with the file, the circuit court reviewed it in camera and ordered Mr. Koepke to produce a document from the Anthony Thompson case entitled “Settlement Agreement at Mediation,” dated September 9, 2016, in which the defendant agreed to pay \$1,000,000 to settle the case. (R-Ex. 9); (A. 27-29). This settlement occurred after Progressive Express Insurance Company extended its full policy limits to resolve this matter in a letter sent to Mr. Koepke on July 21, 2016. (R-Ex. 9C). The circuit court was unable to finish the trial on the issue of back alimony, and the division rotated to a new judge, Judge Donald Myers, Jr.

B. The Indirect Criminal Contempt Proceeding.

On September 27, 2017, Mrs. Koepke filed a motion for rule to show cause why Mr. Koepke should not be held in indirect criminal contempt for failing to comply with the court order in June requiring him to produce “any settlement agreements.” The circuit court entered an amended order to show cause in February 2018, (TFB-Ex. 10), and held a trial on the indirect criminal contempt on April 26, 2018. The transcript of that trial is in the record. (TFB-Ex. 13).

In essence, Mr. Koepke argued that he did not need to produce the “Settlement Agreement at Mediation,” because several small payments to minors needed court

approval. He also needed to resolve medical liens and create a structure that would allow Anthony Williams to have access to the funds without losing other government benefits. (TFB-Ex. 13, pp.113-116). His theory was that he did not have any settlement agreement until all aspects of the settlement had been resolved. He did not think the parties having reached a written, signed agreement at mediation for the defendant's insurance company to pay \$1,000,000 was "any settlement agreement."

During this contempt trial, it became clear that Mr. Koepke had concluded the settlement after he failed to disclose the settlement agreement in July 2017 and before this trial in April 2018. Mr. Koepke testified that the order approving the settlement was entered in the personal injury case on November 7, 2017. (TFB-Ex. 13, p. 117). He regarded that order as the settlement, and he did not inform his former wife's attorney of that settlement. (TFB-Ex. 13, p. 121).

The structure of the settlement was quite unusual. Mr. Koepke testified that the entire \$1,000,000 went to a Virginia trust, entitled "The Anthony Williams Special Family Needs Trust." (TFB-Ex. 13, p. 122). The funds never went through his trust account. (TFB-Ex. 13, p. 122).

At this point in the trial, Judge Myers started asking the questions himself. (TFB-Ex. 13, p. 123). He asked Mr. Koepke if he took a fee, and Mr. Koepke said: "Not a bit. Uh-Uh." (TFB-Ex. 13, p. 123). Mr. Koepke acknowledged that he was entitled to a \$400,000 fee, but he claimed he did not take a fee. (TFB-Ex. 13, p. 124-

125). Then he explained that the Anthony Williams Trust voluntarily transferred \$400,000 to the “Bailey Trinity Koepke Trust.” (TFB-Ex. 13, p. 124, 141). Mr. Koepke claimed that he did not have the ability to do whatever he wanted with this money “because then I would’ve taken possession of it.” (TFB-Ex. 13, p. 142).

The trust document itself was never produced at trial. It is a Virginia trust, and Mr. Koepke claims not to know the trustee. (TFB-Ex. 13, p. 144). Mr. Koepke claimed that the trust paid his attorney \$30,000 from the \$400,000. (TFB-Ex. 13, p. 144-145). He further explained:

When the trust was created, sir, I sent the trustee certain provisions that I wanted in my irrevocable trust for Bailey Trinity and then for your client and if that didn’t work out, then a kicker to Mr. Caggiano, to my tax returns, and also to pay the secretary who was not paid, and then \$100,000 for me.

(TFB-Ex. 13, p. 145).

The reference to “for your client and if that didn’t work out,” relates to Mr. Koepke’s offer, presented in writing by Mr. Caggiano on Thursday, December 14, 2017, agreeing “in the spirit of Christmas” to settle all past and future claims for alimony and all claims for attorneys’ fees for a lump sum of \$100,000. (R-Ex. 14). This offer expired at noon on Monday, December 18, 2017. This offer did not reveal the payment of the settlement in the personal injury case or any disposition of the \$400,000. It, of course, placed Mr. Wilson in a conflict situation with his client

because he would have needed to negotiate a partial payment of his own fee with Ms. Koepke, and this proposed settlement amount was only a fraction of the amount she was owed in back alimony at that time, without regard to the support she needed for the rest of her life.

At the conclusion of the indirect criminal contempt hearing, Judge Myers provided a lengthy pronouncement of guilt. (TFB-Ex. 14, p. 43-51); (A. 42-51). It warrants reading in its entirety. In sentencing Mr. Koepke to 30-day in jail, Judge Myers explained: “But I find beyond a reasonable doubt that your decisions in this issue have been motivated by an intent to deceive Ms. Koepke on the availability of settlement monies in a way that has disrupted the orderly administration of this case.” (TFB-Ex. 14, p. 44); (A. 44). He goes on in detail to explain that disruption of orderly administration.

Judge Myers later explains:

That [it] is now clear to the Court, and that has come out during the case – or during the trial of this issue, that all of the money that would have been available to satisfy the alimony obligation has now been secreted away into some sort of a trust that is no longer available, according to Mr. Koepke’s own statements, for distribution in satisfaction of the alimony obligation.

(TFB-Ex. 14, p. 49-50); (A. 49-50).

Judge Myers reduced his oral pronouncement to a detailed written order. (TFB-Ex. 12); (A. 32-41). Mr. Koepke appealed this order to the Fifth District Court of Appeal. That court affirmed the order in an unwritten opinion, containing a special concurrence by Judge Cohen.¹ *Koepke v. Koepke*, 275 So. 3d 1278 (Fla. 5th DCA 2019) (TFB-Ex. 15); (A. 52-58). Judge Cohen described Mr. Koepke’s argument that the evidence did not support the conviction or establish willfulness as “meritless.” (A. 53).

C. The Guilt Phase of the Bar Proceeding.

The Bar filed its complaint against Mr. Koepke on February 25, 2020. (Tab #1); (TFB-Ex. 1). It alleges the basic fact of the events in the divorce proceeding and the indirect criminal contempt proceeding. It quotes at length from Judge Myers’ order. It alleges thirteen violations: (1) Rule 3-4.3, (misconduct); (2) Rule 4-3.4(a), (obstructing access to evidence); (3) Rule 4-3.4(b), (fabricate evidence); (4) Rule 4-3.4(c), (disobey an obligation under the rules); (5) Rule 4-3.4(d), (intentionally fail to comply with legal discovery); (6) Rule 4-3.4(e), (trial misconduct); (7) Rule 4-3.4(f), (request person to refrain from giving relevant information); (8) Rule 4-3.4(g), (threaten criminal charges to obtain advantage); (9) Rule 4-3.4(h), (threaten disciplinary charges to obtain advantage); (10) Rule 4-

¹ Then Judge, now Justice Grosshans, was a member of the panel that affirmed this order.

8.4(b), (commit a criminal act); (11) Rule 4-8.4(c), (dishonest conduct, misrepresentation); (12) Rule 4-8.4(d), (conduct prejudicial to the administration of justice); (13) The Oath of Admission, (mislead judge by artifice, delay anyone's cause for lucre or malice). Mr. Koepke, pro se, filed an answer that admits most of the operative facts but denies any wrongdoing. (Tab #16).

The final hearing occurred on August 3 and 4 by videoconference before the Referee, Judge Ellen Masters. (T. 1). At the beginning of the hearing, the Bar and Mr. Koepke stipulated to the admission of the Bar's 21 exhibits and Mr. Koepke's 24 exhibits, and the Referee admitted those exhibits. (T. 25). The exhibits are a large portion of the Bar's proof in this case and include the transcripts of the indirect contempt proceeding.

The Bar presented the testimony of one witness, Gregory Wilson, who was Ms. Koepke's attorney in her effort to collect the back alimony. He identified many of the documents, explained his role as Ms. Koepke's attorney and as the special prosecutor in the indirect contempt proceeding. (T. 53-92).

Mr. Koepke called Gary Doane and Anthony Caggiano. Mr. Doane served as the guardian ad litem for the two minor children in the settlement of the Anthony Williams case. (T. 113). He opined that the Anthony Williams case was not settled, at least for purposes of the personal injury action, until after court approval because section 744.387(3)(a), Florida Statutes, provides that no such settlement "shall be

effective unless approved by the court.” He also discussed confidentiality issues related to mediation and minors’ claims. (T. 115, 117). Mr. Doane had filed the motion to quash the subpoena that resulted in Mr. Koepke not bringing his file to the hearing. (T. 115-116). He was not aware that Mr. Koepke had not objected to the production on the basis of a privilege, having instead simply claimed no documents existed. (T. 136).

Anthony Caggiano represented Mr. Koepke at the time the subpoenaed files were not produced at the hearing. (T. 139). He had participated in the decision to respond to the discovery, claiming that there was no settlement. (T.143). He claimed that nothing needed to be disclosed because the case had not settled despite the written settlement agreement. (T. 145). It is clear that he viewed “settlement” for purposes of discovery in the dissolution proceeding to mean only an agreement at the point where the money needed to be transferred, not when the insurance company had agreed in writing with Mr. Koepke to pay the million dollars. (T. 145-146).

Because Mr. Caggiano was scheduled for surgery, he also provided testimony as a character witness for use in a sanction hearing. (T. 213-222). Mr. Caggiano gave Mr. Koepke high marks for his professionalism and character, noting that Mr. Koepke was a member of ABOTA and had long been board-certified as a civil trial

lawyer. (T. 217). Without objection, he was allowed to give a heart-felt narrative of his admiration for Mr. Koepke. (T. 217-222)

Closing arguments occurred on the following day, after which the Referee took the matter under advisement for three hours in order to prepare her ruling. (T. 206). When court reconvened, the Referee announced that she would recommend to this Court that Mr. Koepke had violated eight of the thirteen rules charged by the Bar. (T. 207). Those same violations are contained in the Report of Referee. (ROR p. 10-12). The Referee found that Mr. Koepke was not deceitful because he failed to bring his file to court when there was a pending motion to quash. The Referee, however, found that he was deceitful when he failed to disclose the settlement agreement. (T. 209-10).

D. The Sanction Hearing.

The Sanction Hearing occurred on August 5, 2020. (TS.1). At the hearing, the Bar called Mr. Koepke as a witness. This was the only time in the proceedings that he testified. (TS. 5). He testified that he is 83 years old and considers himself retired. (TS.6). He confirmed that he still owes his former wife \$1100 per week and that he is still in arrears. (TS 7-8). He estimated the arrearage at approximately \$200,000, and the related attorneys' fees at an equal amount. (TS. 8, 19). He confirmed that his former wife was born in 1941. (TS.8). He explained that when he offered \$100,000 to settle with his former wife, the money would have come from

his irrevocable trust. (TS.9). He explained again the process by which the proceeds of the settlement went to the “Anthony Williams Settlement Fund,” which apparently is another description for the trust described earlier. (TS. 10-11). In this explanation, he explained that some of the trust money was planned to go to grandchildren to help pay for college. (TS. 11). Finally, he explained that the remaining \$100,000 would be paid to Mr. Koepke in \$1000 per month payments for eight years and four months. (TS. 12). He claimed his only other income was social security. (TS. 18-19).

Mr. Koepke then called Gary Doane back to the stand as a character witness. (TS. 21). Before he was the guardian ad litem in this case, he had begun his legal career working for Mr. Koepke. (TS. 21-22). Like Mr. Caggiano, he testified that Mr. Koepke had been a very good mentor for him and had a fine reputation for professionalism. (TS. 22-26, 35-36). Because Mr. Koepke was serving as his own attorney, the Referee allowed Mr. Doane to give his opinion on what sanction Mr. Koepke should receive. He suggested a public reprimand, mostly for reasons unrelated to the Florida Standards for Imposing Lawyer Sanctions. (TS. 40-46).

Following the arguments on sanctions during which the Bar argued for a recommendation of disbarment, the Referee orally announced her recommendation for a sanction. She explained that her findings of guilt were heavily influenced by Judge Myers findings in the criminal contempt proceeding. (TS. 91). She recited

her findings on mitigation – no prior record of discipline, his cooperation during this proceeding, his character and reputation, and the imposition of other penalties. She recited her findings on aggravation – dishonest and selfish motive, refusal to acknowledge the wrongful nature of his conduct, and his substantial experience in the practice of law. (TS. 93). She identified the case law that informed her decision. (TS. 94). Without expressly discussing the relevant standards, she recommended a one-year suspension.

The Bar seeks review and asks this Court to impose disbarment as the appropriate sanction.

SUMMARY OF THE ARGUMENT

In his own dissolution proceeding, in which his former wife was trying to collect a large arrearage of alimony before he retired – ignoring an order to produce “any settlement agreement” – Mr. Koepke did not produce a signed settlement agreement that would have revealed he was about to receive \$400,000 as a contingency fee. During the period of delay created by that violation of a court order, he completed the settlement process and managed to avoid taking possession of the funds, which ended up in an out-of-state trust for his benefit. As a result, the judge in the dissolution proceeding could not award any portion of the funds to Mr. Koepke’s former wife.

Mr. Koepke was held in criminal contempt for this conduct by the dissolution court. That judgment and sentence was upheld by the Fifth District. He served only 20 days in jail to achieve the right to keep his money.

In this Bar proceeding, the Referee recommends that he be found guilty of eight separate violations of the Rules of Professional Conduct. Neither side seeks review of that recommendation.

But the Referee recommends that Mr. Koepke receive a one-year suspension when four standards in the *Florida Standards for Lawyer Sanctions* (July 17, 2020) recommend disbarment under the findings of fact in this case. Moreover, the mixture of mitigating and aggravating factors, which were correctly found by the Referee, when applied in the legal process of deciding upon an appropriate sanction for this severe misconduct, do not justify reducing the *Florida Standards'* recommendation of disbarment. If anything, Mr. Koepke's selfish motive and his refusal to acknowledge the wrongful nature of his conduct, especially given his extraordinary experience as a lawyer, would justify an increase in the sanction.

The Referee's recommendation does not have a reasonable basis in the standards. Moreover, the three cases cited by the Referee are actually the cases cited by the Bar for disbarment. As explained in this brief, when the facts of this case are compared to these earlier cases, the misconduct here warrants disbarment under the discussions in those cases.

Accordingly, the Bar asks this Court to reject the recommendation of the Referee for a one-year suspension and impose the sanction of disbarment.

THE DECISION-MAKING PROCESS IN A DISCIPLINARY PROCEEDING AND THE STANDARD OF REVIEW

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 in a disciplinary proceeding. It helps everyone focus on the structure that leads to a correct decision.

1. 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).

2. Credibility

In reaching its findings of fact, the Referee has a heightened role in determining issues of credibility, which are important in this particular review.

This Court has long held, “The referee is in a unique position to assess the credibility of witnesses, and his judgment regarding credibility should not be overturned absent clear and convincing evidence that his judgment is incorrect.” *The Florida Bar v. Tobkin*, 944 So. 2d 219, 224 (Fla. 2006) (quoting *The Florida Bar v. Thomas*, 582 So. 2d 1177, 1178 (Fla. 1991)); *See also The Florida Bar v. Petersen*, 248 So. 3d 1069, 1077 (Fla. 2018); *The Florida Bar v. Brutus*, 216 So. 3d 1286, 1290 (Fla. 2017); *The Florida Bar v. Head*, 27 So. 3d 1, 8 (Fla. 2010).

3. The Referee’s Independent Decision-Making

This Court correctly believes that the Referee should be independently involved in the decision. This seems particularly important because the Referee is making his or her findings and recommendations based on the clear and convincing evidence standard. “As a general rule, a referee’s findings and recommendations must demonstrate independent decision-making.” *The Florida Bar v. Picon*, 205 So. 3d 759, 763 (Fla. 2016).

In this case, the Referee took the matter under advisement and took the time to prepare her oral findings and recommendations. There is no issue that this Referee took her responsibilities seriously and made independent decisions. However, the Referee's explanation of the application of the standards, as well as the aggravating factors, in the process of recommending an appropriate sanction is very limited.

5. Recommendation of Discipline

The Referee's recommendation of discipline 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.

6. 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).

In this case, the problem is not whether the Referee's findings of fact concerning mitigation and aggravation are supported by evidence. They are. But the factors of mitigation and aggravation are used 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.

Thus, when this Court makes the final decision to impose a sanction, the balancing of the mitigating and aggravating factors to justify a sanction is ultimately for this Court to decide. This Court is not second-guessing the referee's findings of fact by concluding that the facts, as found by the referee, do not justify using mitigating factors or aggravating factors to adjust the sanction. Likewise, when the aggravating factors, objectively applied to the facts, either corroborate the sanction recommended by the standards or support a greater sanction, this Court is free to conclude that a lesser sanction recommended by a referee does not have a "reasonable basis" in the standards and the factors considered together.

ARGUMENT

I. The Referee's recommendation of the appropriate sanction relied upon standards recommending a suspension when her findings of fact support standards recommending disbarment.

The Referee recommends this Court find Mr. Koepke guilty of eight separate violations of the Rules Regulating the Florida Bar. (ROR p. 10-12):

1. Under Rule 3-4.3, the Referee recommends that Mr. Koepke be found guilty of conduct that is unlawful or contrary to honesty and justice.
2. Under Rule 4-3.4(a), the Referee recommends that Mr. Koepke be found guilty of obstructing another party's access to evidence.
3. Under Rule 4-3.4(b), the Referee recommends that Mr. Koepke be found guilty of fabricating evidence and assisting a witness to testify falsely.
4. Under Rule 4-3.4(d), the Referee recommends that Mr. Koepke be found guilty of intentionally failing to comply with pretrial discovery.
5. Under Rule 4-8.4(b), the Referee recommends that Mr. Koepke be found guilty of committing a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer.
6. Under Rule 4-8.4(c), the Referee recommends that Mr. Koepke be found guilty of engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

7. Under Rule 4-8.4(d), the Referee recommends that Mr. Koepke be found guilty of engaging in conduct that is prejudicial to the administration of justice.
8. The Referee finally recommends that he be found guilty of violating his Oath of Admission.

The Bar is not seeking review of these recommendations and requests their adoption by this Court. Likewise, Mr. Koepke has not sought review of these recommendations.

Concerning the appropriate sanction in this case the Bar argued, and the Referee considered, four standards addressed in the *Florida Standards for Imposing Lawyer Sanctions* (June 17, 2020 ed.). In each instance, the Referee selected the subsection of the standard recommending suspension. But in at least three of these instances, the Referee's findings of fact support the subsection recommending disbarment.

Standard 6.1. – False Statements, Fraud, and Misrepresentation.

Absent aggravating or mitigating circumstances, and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation:

(a) Disbarment. Disbarment is appropriate when a lawyer:

- (1) with the intent to deceive the court, knowingly makes a false statement or submits a false document; or
- (2) improperly withholds material information and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

(b) Suspension. Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld and takes no remedial action.

(underlining emphasis supplied).

Mr. Koepke hid a \$1,000,000 signed settlement agreement under which he was entitled to a contingency fee of \$400,000 because he did not want any part of that settlement to be used to pay his lawful obligation to support his former wife. He hid this agreement from the court, and he hid it from his former wife's attorney. He constructed an elaborate, out-of-state, scheme to use trusts in a legally dubious manner so that he could claim he never had possession of the fees that were due to him.

There is no doubt that Mr. Koepke's eight violations in conjunction with this scheme were "prejudicial to the administration of justice" and also involved "dishonesty" and "misrepresentation," at a minimum. As quoted above, this standard recommends disbarment when the acts are done "with the intent to deceive the court," by "knowingly mak[ing] a false statement or [by knowingly submitting] a false document. When Mr. Koepke filed his amended notice of compliance concerning the court's order to produce documents on July 20, 2017, he told the court and his wife's attorney that there was no settlement document, explaining: "there being no settlement, no documents exist or could be found that are responsive." Simply put, that was a false statement, a knowing misrepresentation,

that gave him time to commit essentially a fraudulent conveyance of his fee to the Virginia trust more than three months later in November 2017.

The standard also recommends disbarment when the lawyer “improperly withholds material information and causes serious or potentially serious injury to a party.” Again, the facts found by the Referee by clear and convincing evidence, and also found by the trial court in the contempt proceeding beyond a reasonable doubt, demonstrate that this misconduct caused serious financial injury to a party – to a party that was the mother of his children.

Instead of recommending this subsection of Standard 6.1 to this Court, the Referee recommended subsection (b), which supports suspension when “a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld and takes no remedial action.” But as the comment to this standard explains, this addresses situations where the lawyer “does not intentionally abuse the professional relationship by engaging in deceptive conduct.” Essentially, when a lawyer knows that deception is occurring by others, the lawyer has an obligation to take remedial action. It is not intended as a standard to apply when it is the lawyer himself who deceives the court, and it is the lawyer himself who knowingly injures a party in the lawsuit.

Thus, the Referee erred when she relied upon subsection (b) instead of subsection (a). Disbarment is the appropriate sanction under this standard unless the balance of mitigation and aggravation is sufficient to shift the recommendation.

Standard 6.2 – Abuse of the Legal Process

Absent aggravating or mitigating circumstances, and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

(a) Disbarment. Disbarment is appropriate when a lawyer causes serious or potentially serious interference with a legal proceeding or knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another and causes serious injury or potentially serious injury to a party.

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

(underlining emphasis supplied).

Mr. Koepke not only failed “to expedite” the discovery in the dissolution proceeding, he knowingly delayed that discovery so he could arrange for his fee to be delivered to the out-of-state trust to evade paying alimony to his wife. He purported to comply with the order requiring discovery. He did not openly refuse to obey the order “on an assertion that no valid obligation” to obey existed. Thus, the Referee correctly concluded that this standard applied in this case.

The Bar argued for the application of subsection (a). That subsection recommends disbarment when the lawyer “knowingly violates a court order or rule

with the intent to obtain a benefit for the lawyer or another and causes serious injury or potentially serious injury to a party.” Mr. Koepke knowingly violated the dissolution court’s June 29, 2017 order. By doing so, it gave him time to implement the elaborate scheme that deprived his former wife of her fair share of the \$400,000. This action benefitted him and caused serious harm to his former wife.

Nevertheless, the Report of Referee recommends suspension under subsection (b) of this standard. That subsection applies when the facts demonstrate merely “injury or potential injury” to a party or “interference” with a legal proceeding. While it is true that Mr. Koepke’s actions caused injury and interference, they caused much more.

With all due respect for this Referee, unless this Court concludes that the loss of an alimony payment of \$100,000 or more is not a “serious injury,” she erred in selecting the (b) standard when (a) was the appropriate standard. Disbarment is the appropriate sanction under this standard.

Standard 7.1 – Deceptive Conduct or Statements and Unreasonable or Improper Fees.

Absent aggravating or mitigating circumstances and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving deceptive conduct or statements, improper division of fees, or unreasonable or improper fees.

(a) Disbarment. 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 the lawyer or another and causes serious or potentially serious injury to a client, the public, or the legal system.

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

(Underlining emphasis supplied).

It is hard to imagine that Mr. Koepke prepared an ethically accurate closing statement under Rule 4-1.5 that discussed this very unusual distribution of the settlement proceeds. But that is not the focus of the Bar's case.

It is the Bar's position that Mr. Koepke engaged in deceptive conduct in the dissolution proceeding when he hid the existence of the Settlement Agreement in Mediation. This is a highly experienced lawyer that knows full well that the details of obtaining court approval of the several small settlements benefitting minors, or structuring the client's settlement funds so that they did not impact government benefits that he was receiving, did not prevent him from disclosing the existence of a signed settlement document under which he was virtually certain to receive a large fee in the near future. His professional duties to his client did not include hiding his own fee from the judge in the dissolution proceeding. Thus, the Referee correctly found that this standard applied.

The tests used to determine whether suspension or disbarment are the appropriate recommendation under this standard are very similar to those under Standard 6.2, which is discussed above. Mr. Koepke's deception was performed to benefit himself and to harm his former wife.

It should be noted that this standard does not expressly state “injury to a party.” It lists clients, the public, and the legal system. It is submitted that Ms. Koepke was not only a party, but also a member of the “public.” Moreover, it is very clear that Judge Myers in the dissolution proceeding perceived this conduct as serious damage to the “legal system.” It is harmful to the legal system when any party hides crucial evidence. But when a board-certified lawyer with many years of experience hides crucial evidence as a party to a dissolution proceeding, it is far worse.

Under subsection (a), as quoted above, Standard 7.1 properly requires a recommendation of disbarment in this proceeding.

Standard 5.1 – Failure to Maintain Personal Integrity.

Standard 5.1 explains:

Absent aggravating or mitigating circumstances and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

(a) Disbarment. Disbarment is appropriate when a lawyer:

(1) is convicted of a felony under applicable law;

(2) engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft;

(3) engages in the sale, distribution, or importation of controlled substances;

- (4) engages in the intentional killing of another;
- (5) attempts, conspires, or solicits another to commit any of the offenses listed in this subdivision; or
- (6) engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

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

(Underlining emphasis supplied).

The Referee correctly found that Standard 5.1 applied in this case. This case involves the commission of a criminal contempt that was tried in the dissolution proceeding and affirmed by the Fifth District. There is no question that it seriously reflects on Mr. Koepke's honesty, trustworthiness, and fitness as a lawyer.

For this standard, the Bar recognizes that the recommendation of suspension versus disbarment is not as open and shut as it is for the other three standards. The list of actions that justify disbarment in subsection (a) includes several very serious violations: conviction for a felony; committing a homicide, and selling drugs are all very serious acts of misconduct. The Bar admits that this common law criminal contempt does not rise to the level of these listed criminal acts.

But subsection (a) also applies to a lawyer who "engages in serious criminal conduct, a necessary element of which includes intentional interference with the

administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft. It further applies to a lawyer who engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that “seriously adversely” reflects on the lawyer’s fitness to practice.

This is not a case where the lawyer committed contempt because he was angry or over-zealous or exhausted during trial; he did this with a careful, premeditated design. This common law contempt, factually, was serious criminal conduct.

An element of such a contempt of court is necessarily an intentional interference with the administration of justice. This act misappropriated funds to an out-of-state trust by misrepresenting that there was no settlement when there was a detailed, signed settlement agreement and a letter from an insurance company committing its entire policy limits to that settlement. This intentional nondisclosure, in disobedience of a court order, was step one in a complex scheme to defraud his former wife that severely interfered with the administration of justice.

Objectively, in assessing Mr. Koepke’s character, these actions reflect “seriously adversely” on Mr. Koepke’s honesty, trustworthiness, and fitness to practice law. Thus, it is reasonable to conclude that the findings of fact in this case support disbarment under subsection (a).

In summary, there are three separate standards, each of which should have required the Referee to recommend disbarment. There is a fourth standard that, in

the context of this particular case, also supports disbarment rather than suspension. The Referee's recommendation is not supported by a "reasonable basis" under these standards.

II. The Referee found the correct mitigating and aggravating factors. But an objective balance of these competing factors, based on the overall findings of fact, supports disbarment and not suspension.

The Report of Referee lists four mitigating factors and three aggravating factors. (ROR p.13). The Bar does not claim that the Referee made incorrect findings of fact concerning these factors.

But the factors of mitigation and aggravation are used to "justify" an increase or a decrease in the "degree of discipline to be imposed." Florida Standards 3.2(a), 3.3(a). The process of balancing the positive and negative factors to recommend an appropriate degree of discipline is a mixed question of fact and law. It is part of the decision-making process involved in selecting the sanction. Thus, the Court plays a more independent role in evaluating this balance. And in this case, these factors, applied objectively, do not justify decreasing the degree of discipline to a suspension. If anything – if it were actually necessary – these factors might justify an increased penalty.

Mitigating Factors. As mitigating factors under 3.3(b), the Referee listed: Absence of a prior disciplinary record; full and free disclosure to the bar and cooperative attitude; character or reputation; and imposition of other penalties.

The Referee does not elaborate on her application of these factors at the sanction hearing or in the Report. (TS. 93-94). As to the mitigating factors, the Bar acknowledges that this is a first offense, but it is a very serious offense by a long-time lawyer. Mr. Koepke was most polite and cooperative at the hearing, but his testimony under oath at that hearing was disingenuous at best. The Bar does not dispute his long-earned reputation as a trial attorney, but that reputation seems completely offset in this case by the aggravating factor of substantial experience in the practice of law.

Finally, as to the imposition of other sanctions, the Bar recognizes the 30-day sentence Mr. Koepke received for the criminal contempt and the 20 days of actual time he spent in jail. (TS. 36). If Mr. Koepke had disclosed that he was going to receive this \$400,000 fee, the judge could have given Mr. Koepke's former wife at least \$200,000. Thus, Mr. Koepke has effectively "earned" \$10,000 per day in jail because he chose to disobey a court order and did not disclose the settlement document. While the 20-day experience must surely have been humiliating to Mr. Koepke, it is likely that he sees it as a good investment.

In the newly revised *Florida Standards*, two examples of prior sanctions are recognized. In *The Florida Bar v. Kinsella*, 260 So. 3d 1046 (Fla. 2018), a brand-new lawyer was suspended for stealing three small amounts from a department store where she worked (apparently not as an attorney). She stole \$140 on April 21, 2016, \$100 on April 25, 2016, and \$520 on May 6, 2016. *Id.* at 1047. She pleaded no contest when arrested and was placed on probation for a year with typical conditions of probation, including community service hours. *Id.* at 1047.

Ms. Kinsella had three aggravating factors and seven mitigating factors. She admitted her wrongful conduct both in the criminal proceeding and the Bar proceeding. This Court engaged in considerable debate about the appropriate sanction and a majority of the justices voted to suspend her for three years. Justices Canady and Lewis voted to disbar her.

When one compares the mitigators and aggravators in this case, the amount taken from the victim, and the fact that the money was owed under a judgment of a Florida court, *Kinsella* is probably an argument for a disbarment in this case, not an argument against it.

In *The Florida Bar v. Picon*, 205 So. 3d 759 (Fla. 2016), Ms. Picon was ordered to pay a \$250 fine, perform twenty-five hours of community service, and write a letter of apology to every judge and judicial assistant in the criminal division. This mitigation was not sufficient to overcome her serious misconduct, which

resulted in a suspension of one-year. The misconduct in that case was unacceptable, but it does not hold a candle to Mr. Koepke's conduct.

Aggravating factors. As aggravating factors under 3.2(b), the Referee listed: dishonest or selfish motive, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law. Like with the mitigating factors, the Referee provides no discussion of how she weighted these factors.

The Bar submits that when these three factors are considered together they have exceptionally strong weight. Mr. Koepke was a board-certified attorney with approximately 50 years of experience; a member of ABOTA. It is hard to imagine a lawyer with more substantial experience in the practice of law.

His dishonest and selfish motive involved an elaborate scheme to harm his former wife. This scheme was aimed to avoid paying lawful amounts under a judgment of a court. After a full and successful career, his motive was to cheat this woman out of her fair share of the last substantial contingency payment that he would likely receive.

And, throughout this proceeding, despite his polite demeanor, Mr. Koepke did not come remotely close to acknowledging the wrongfulness of his conduct. He vigorously maintained he could hide the written settlement agreement that the circuit court needed to address the issue of his unpaid alimony on a theory that his secrecy was needed to protect the interest of his clients. Simply put, that was a frivolous

argument, and this experienced litigator had to know it was a frivolous argument. On appeal, Judge Cohen was correct to describe it as “meritless.”

This Court does not second-guess a referee’s findings of fact by concluding that the referee gave insufficient weight to aggravating or mitigating factors when recommending a sanction. For the reasons explained in these first two issues, the Referee did not have a “reasonable basis” in the *Florida Standards* for the recommendation of suspension.

III. The Case Law does not support a suspension.

In 1970, this Court explained in *The Florida Bar v. Pahules*, 233 So. 2d 130, 132 (Fla. 1970), the three-part test that is usually relied upon in evaluating a sanction:

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.

Of course, since 1970, this Court has moved toward more stringent sanctions. *See The Florida Bar v. Altman*, 294 So. 3d 844, 847 (Fla. 2020); *The Florida Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015).

In this case, the third part of the *Pahules* test – deterrence – is probably the most important factor to consider. Certainly, disbarment would be fair to society. Because Mr. Koepke has essentially retired, there is no reason to give significant weight to the issue of depriving the public of his services.

The judgment must be fair to Mr. Koepke. As a practical matter, however, this is not a case in which rehabilitation to permit reinstatement to the practice of law is a significant goal of the sanction. Given the extreme misconduct in this case, it is hard to argue that the standards are wrong in recommending disbarment or that disbarment is unfair to Mr. Koepke.

Although the Referee did not say as much, the Bar suspects that the Referee was influenced by Mr. Koepke’s age and the fact that he is retiring after a long career. The Bar does not disagree that there is little joy in recommending disbarment at this stage in Mr. Koepke’s career.

But this is not a case where Mr. Koepke’s misconduct is the product of dementia or lack of mental acuity. All older lawyers, including the undersigned, worry about whether they will know when it is time to quit. No lawyer wants to

blemish his or her career by staying too long and making mistakes due to a loss of mental skills.

However, in this case Mr. Koepke used his extensive experience to put together a sophisticated plan to short-change his former wife. There is absolutely no evidence to suggest that his complex plot was the product of a frail or elderly mind. Certainly, his *pro se* defense in this case did not demonstrate any mental deficiency. His age should not play a special role in determining the fairness of this sanction.

Thus, the question remains whether a suspension would adequately deter other lawyers from engaging in similar acts to hide their assets in dissolution proceedings. The Bar submits that the penalty for these eight violations needs to be disbarment if this Court wishes to send the proper message to other attorneys who are tempted to use their legal acumen to cheat a spouse in a divorce. And this Court should not send a message that older lawyers get a pass on disbarment.

In the Report, the Referee relied on three cases that the Bar actually relied upon in the sanctions hearing to support its position that disbarment was the appropriate sanction. (ROR p. 14-16); (TS. 62-69). First, the Referee relied on *The Florida Bar v. Bischoff*, 212 So. 3d 312 (Fla. 2017). It is similar in some respects and does involve a mixture of aggravating and mitigating factors. *Id.* at 317. But Mr. Bischoff's motivation and intent were quite different from Mr. Koepke's.

The opinion explains:

Indeed, the referee found that Bischoff's conduct demonstrated a lack of competency in handling the client's case, and that his misrepresentations to the court and other conduct served to obstruct the discovery process.

Id. at 316. Mr. Bischoff was not a party to the action and was not engaged in misconduct to benefit himself financially in the same way that Mr. Koepke was. Mr. Bischoff's refusal to properly engage in discovery was not designed to allow him to fraudulently transfer his own assets to an out-of-state trust. In the underlying action, Mr. Bischoff had been required to pay (and apparently did pay) \$77,790.49 to opposing counsel. Here, Mr. Wilson left the criminal contempt hearing without any recovery from Mr. Koepke. If this Court concluded Mr. Bischoff deserved a one-year suspension, the heightened intent and the additional damage caused in this case, coupled with the financial benefit Mr. Koepke accomplished for himself, warrant a disbarment.

The second case cited by the Referee is *The Florida Bar v. Dupee*, 160 So. 3d 838 (Fla. 2015), in which this Court rejected the referee's recommendation of a ninety-day suspension and imposed a one-year suspension. Ms. Dupee represented the wife in a divorce. With her knowledge, the wife attempted to hide \$480,000 from her husband by writing a check to a non-existent trust and then moving the funds to other accounts. Unlike Mr. Koepke's case, this ruse was not successful.

Despite numerous discovery violations that admittedly are egregious misconduct, the husband's attorney was able to ferret out the hidden money before the end of the case. Thus, the wife's financial affidavit was amended to reveal an additional \$437,422.04. *Id.* at 843.

There is no discussion of aggravating or mitigating factors in *Dupee*. The harm, beyond delay in litigation, apparently was minimal; the dissolution judge had all the funds needed to adjust equitable distribution and attorneys' fees to account for any harm occurring earlier in the case. The case did not involve a lawyer who tried, much less, successfully obtained a financial benefit for herself. Thus, when the facts are adjusted to add the success of Mr. Koepke's \$400,000 concealment and his motives to provide economic benefit for himself and harm to his former wife, the appropriate sanction recommended under *Dupee* would seem to move from a rehabilitative suspension to disbarment.

Finally, the Referee also cites to *The Florida Bar v. Hmielewski*, 702 So. 2d 218 (Fla. 1997). This somewhat older case appears to support the Bar's position. Mr. Hmielewski represented a plaintiff in a wrongful death, medical malpractice case in Minnesota. The client had taken the decedent's medical records from the Mayo Clinic, and thus the Clinic could not find its records to produce. Mr. Hmielewski alleged that the Clinic failed to maintain records when he knew his client had the records. In discovery, Mr. Hmielewski hid this fact until his client's

deposition. Before the deposition, the client was told to tell the truth if asked. And he did tell the truth at the deposition. *Id.* at 220.

In Minnesota, Mr. Hmielewski's client was fined \$105,159. Mr. Hmielewski agreed to pay this fine for his client. When the matter was referred to the Florida Bar, the referee recommended a one-year suspension. This Court disagreed and suspended him for three years. In so doing, this Court emphasized that the referee had found that Mr. Hmielewski did not have a selfish motive, and explained:

If it were not for this finding, the extremely strong character evidence, and Hmielewski's relatively unblemished record (one admonishment for minor misconduct in twenty-one years of practice), this Court would have no hesitation in imposing disbarment. Under the circumstances, we have determined that Hmielewski's misconduct warrants imposition of a three-year suspension.

Id. at 221.

Mr. Koepke's motive was primarily selfish. He never volunteered to pay his former wife or her lawyer anything. And he did not have a timely change of heart and decide to reveal to the Court the hidden settlement agreement. If Mr. Hmielewski received a three-year suspension in 1997 for his conduct, clearly Mr. Koepke deserves disbarment today.

Accordingly, the case law cited by the Referee did not provide a “reasonable basis” for the recommendation of a one-year sanction. It actually provided a reasonable basis for disbarment.

CONCLUSION

The Bar asks this Court to reject the recommendation of the Referee for a one-year suspension and impose the sanction of disbarment. The Court should impose the costs recommended by the Referee.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above and foregoing was this date filed and served by using the Florida Courts e-Filing Portal on this 19th day of November 2020 to:

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CERTIFICATE OF TYPE SIZE & STYLE

I certify that the type, size, and style utilized in this Brief is 14-point Times New Roman.

/s/ Chris W. Altenbernd
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