IN THE SUPREME COURT OF FLORIDA

Case No. SC21-933
The Florida Bar File No. 2020-30,738 (9A)

THE FLORIDA BAR,

Complainant,

v.

ODIATOR ARUGU,

Respondent.

THE FLORIDA BAR'S INITIAL BRIEF

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STATEMENT OF THE CASE AND FACTS

I. NATURE OF THE CASE

Complainant The Florida Bar ("TFB") seeks review of the Report of Referee, which found Respondent Odiator Arugu guilty of violating several Rules Regulating The Florida Bar ("RRTFB") and recommended that this Court suspend Mr. Arugu from the practice of law for 60 days.[1] TFB respectfully requests that this Court reject the Referee's recommended sanction and suspend Mr. Arugu from the practice of law for 91 days.

II. FACTUAL BACKGROUND AND COURSE OF THE PROCEEDINGS

A. Pertinent Facts

Mr. Arugu is 61 years old, having been admitted to The Florida Bar in 1995. (Tab 1, Compl. ¶ 1; Tab 8, Ans. ¶ 1; ROR at 15-16.) Mr. Arugu was previously disciplined in 2009 for the failure to properly maintain client trust account records, receiving a public reprimand

[1] Citations are to the record, including to the appropriate "Tab" number in the Index of Record. Citations to "ROR" refer to the Report of Referee dated December 9, 2021 (Tab 34 in the Index). Citations to "Tr." are to the transcript of the final hearing held on November 10, 2021. Citations to "TFB Ex." correspond to the exhibits TFB admitted into evidence at the final hearing, while citations to "Resp. Ex." correspond to Mr. Arugu's exhibits admitted at the final hearing.

and a two-year probation. (Tab 32, Mem. of Law Regarding Sanctions at 3; ROR at 11); *Fla. Bar v. Arugu*, 4 So. 3d 1221 (Fla. 2009).

Mr. Arugu's present disciplinary proceeding stems from his conduct in a contentious dissolution of marriage proceeding in which he represented the husband, Mr. Rodriguez. (ROR at 2.) The central facts giving rise to this proceeding are not in dispute.

During the course of the litigation, counsel for the father of Mr. Rodriguez's soon-to-be ex-wife sent a letter to Mr. Arugu claiming that the father, Mr. Filippone, owned a 50% undivided interest in the marital home at issue in the divorce. (ROR at 2; Tr. 55:1-19; TFB Ex. 2 at 017.) Upon learning of this, Mr. Arugu spoke with his client, who disputed that the father had contributed to the purchase of the home. (Tr. 91:21-92:1.) Not long thereafter, on May 13, 2020, Mr. Arugu prepared and filed a notice of production from the non-party mortgage company, Freedom Mortgage Corporation ("Freedom"), seeking bank records of the father and his daughter. (ROR at 2; TFB Ex. 4; Tr. 92:2-12.) The notice attached a proposed subpoena duces tecum that listed seven production requests to Freedom; the time to respond was indicated as ten days after service. (ROR at 3; TFB Ex. 4 at 041-042.) The notice also stated that any "[o]bjection to the

issuance of the attached subpoena to non-party must be filed with the clerk not later than the time indicated for issuance." (ROR at 3; TFB Ex. 4 at 038.)

After ten days passed without objection, Mr. Arugu decided to add three additional production requests to the subpoena before serving it. (ROR at 3-4; TFB Ex. 5.) As Mr. Arugu later explained, "Well, after the ten days, when there was no objection and I was getting ready to issue the subpoenas, it occurred to me that I did not request for those three documents in 8, 9, and 10, and I decided to include them." (ROR at 3; TFB Ex. 9 at 116 (46:1-4).) The subpoena duces tecum ultimately served included three brand new requests:

- all mortgage loan applications by Mr. Filippone and/or his daughter (as well as Mr. Rodriguez);
- all credit check reports obtained from or with the consent or authorization of Mr. Filippone and/or his daughter (as well as Mr. Rodriguez); and
- any power of attorney executed by Mr. Filippone to his daughter used in connection with the closing of the mortgage loan.

(ROR at 4; *see also* TFB Ex. 5 at 045.) The subpoena warned that Freedom's noncompliance might result "in contempt of Court." (TFB Ex. 5 at 045.)

On May 27, 2020, the same day Mr. Arugu appears to have sent the subpoena out for service, Mr. Arugu filed a copy of the subpoena with the family court. (TFB Ex. 5 at 043.) Not long after receiving electronic service of the subpoena, the wife's counsel, Mr. Luther, contacted Mr. Arugu and objected to the "materially and substantially different" subpoena Mr. Arugu had served compared to the one noticed on May 13. (ROR at 4; TFB Ex. 6 at 047.) Mr. Luther demanded that Mr. Arugu either not serve the subpoena on Freedom or, if it had already been served, that Mr. Arugu contact Freedom immediately to withdraw the subpoena. (ROR at 5; TFB Ex. 6 at 047.)

Mr. Arugu denied that the subpoena served on Freedom was materially different from the one he had noticed on May 13, and asked Mr. Luther to provide support for his position. (ROR at 5; TFB Ex. 1 at 012.) Mr. Arugu did not contact Freedom to withdraw the subpoena. (*See* Tr. 62:6-8.) Mr. Luther did not respond to Mr. Arugu's request for support, which Mr. Arugu took as corroboration

for the decision not to withdraw the subpoena. (ROR at 5; *see also* Tr. 103:5-12.)

The subpoena was ultimately served on or about June 3, 2020, and Freedom produced some but not all documents responsive to the subpoena. (ROR at 5; Tr. 105:18-106:1, 132:22-133:11; *see* Resp. Ex. 11.) Mr. Luther requested copies of the documents Mr. Arugu had obtained from Freedom, but Mr. Arugu never shared the documents with Mr. Luther before leaving the case. (Tr. 106:2-22.)

The Freedom subpoena was raised at a hearing before the family court on September 24, 2020, concerning a number of discovery disputes including some related to Mr. Filippone. After that hearing, the family court, in a written order, found that Mr. Arugu had improperly sent the subpoena to Freedom after providing notice of a different version of the subpoena. (ROR at 5-6; TFB Ex. 8 at 068-070.) The family court specifically found that "counsel for Husband improperly sent a Subpoena to Freedom . . . requesting financial information from David Filippone by improperly amending such subpoena to include such information after having provided notice to Wife's counsel of a version of the subpoena without such information." (TFB Ex. 8 at 070.) The family court also upheld

objections to other discovery requests related to Mr. Filippone as being overbroad in seeking his financial information, including credit reports, credit card statements, and bank statements—some of which was also sought through the Freedom subpoena. (TFB Ex. 8 at 069; *see also* Tr. 66:10-24.) After receiving the family court order, Mr. Arugu did not withdraw the subpoena or otherwise alert Freedom to the court order, but simply decided "out of respect for the Court" that he "wasn't going to pursue production of those documents." (Tr. 132:15-134:1.)

B. Disciplinary Proceedings

On June 22, 2021, TFB filed the complaint against Mr. Arugu, charging him with violating RRTFB 4-3.4 (Misconduct and Minor Misconduct), 4-3.3 (Candor Toward the Tribunal), 4-3.4 (Fairness to Opposing Party and Counsel), 4-4.1 (Truthfulness in Statements to Others), 4-8.4(c) (Dishonesty), and 4-8.4(d) (Conduct Prejudicial to the Administrative of Justice). (Tab 1.) Tenth Judicial Circuit Chief Judge Ellen S. Masters was appointed to serve as Referee. (Tab 4.)

1. *Proceedings on Guilt*

The Referee held a final hearing on November 10, 2021. In addition to admitting documentary evidence, TFB presented the

testimony of Mr. Filippone and his counsel Mr. Hennen, Mr. Luther, and Mr. Arugu. Mr. Arugu admitted a number of exhibits and also testified in his own defense.

Mr. Filippone testified to the basic facts of the subpoena substitution and attested to being present at a family court hearing at which the issue arose. (Tr. 40:11-14.) According to Mr. Filippone, the family court judge was upset about the subpoena substitution and said that, in "all [her] years of being on the court, [she had] never seen anything like this before." (Tr. 40:18-25.) Mr. Hennen similarly testified that the family court judge stated she had "never had this happen before," and that such practice was "absolutely inappropriate." (Tr. 64:12-65:3.) Mr. Hennen stated that if he had been given the opportunity, he would have "[a]bsolutely" objected to the subpoena that was ultimately filed including the three new requests 8, 9, and 10, which sought financial information including credit check reports for Mr. Filippone. (Tr. 60:24-61:20.)

Mr. Arugu testified that he is a sole practitioner juggling his cases with a number of family responsibilities, but agreed that he is an experienced lawyer. (Tr. 77:23-78:21, 140:2-22.) With respect to the case at hand, Mr. Arugu emphasized that no party filed any

formal objection or motion directed to the Freedom subpoena. (Tr. 90:2-8; *see also id.* 122:9-123:11, 123:20-23.) After the ten days to object had passed and he was preparing to send out the subpoena, Mr. Arugu realized he had omitted the three requests and added them to the subpoena that was filed and sent out for service on May 27, 2020. (Tr. 93:12-17, 138:12-19.) When Mr. Arugu received no response after questioning the basis for Mr. Luther's objection, Mr. Arugu said he thought Mr. Luther "was trying to trick me" and that there was "nothing to this." (Tr. 103:4-13.) Only later, after reviewing the court rules on notices of production to non-parties, did Mr. Arugu come to the different opinion that the rules require you to "issue the same subpoena that you proposed." (Tr. 104:18-105:8.) Mr. Arugu agreed too that under the relevant rule, had an objection been served, he would have been required to refrain from serving the subpoena and it would have been incumbent on him to go to the court and get a ruling on the objection. (Tr. 125:9-126:20.)

Mr. Arugu's account of the family court's September 24, 2020 hearing differed from that of TFB's witnesses. According to Mr. Arugu, at the end of the hearing Mr. Luther mentioned the substituted subpoena only in passing. (Tr. 112:8-13.) The family

court judge asked Mr. Arugu if Mr. Luther's account was correct, to which Mr. Arugu responded yes and acknowledged that it "was improper." (Tr. 112:14-17.) But according to Mr. Arugu, the judge said nothing else. (Tr. 112:21-113:3.) When Mr. Arugu saw a draft of the proposed court order to be entered after the September 24 hearing, he did not object to the paragraph stating he had improperly served the subpoena on Freedom because he simply "missed" it as he was "very busy" at the time. (Tr. 109:6-15.) Mr. Arugu also did not dispute that at least some of the discovery sought through the Freedom subpoena was disallowed by the family court. (Tr. 114:24-115:23.)

Mr. Arugu emphasized that this was a "harmless procedural error," and that "[n]othing was intended to be dishonest and nothing was intended to gain advantage"; otherwise, he would not have filed the substituted subpoena the same day it was sent out for service. (Tr. 130:22-131:19.)

After both parties presented closing arguments, the Referee took a recess. (Tr. 203:19-204:9.) When she returned, the Referee announced her recommendations on guilt, accepting the facts as pled in TFB's complaint and recommending findings that Mr. Arugu had

violated all rules charged by TFB, with the exception of RRTFB 4-3.3 regarding candor toward the tribunal. (Tr. 204:10-209:9.) The Referee found that "[w]hile the evidence does establish that the respondent did substitute the subpoena, he was certainly honest to the judge about it when the judge inquired whether he had done just that." (Tr. 205:8-15.) With respect to RRTFB 4-8.4(c), the Referee acknowledged that based on this Court's decisions in cases like *The Florida Bar v. Berthiaume*, 78 So. 3d 503 (Fla. 2011), Mr. Arugu's knowing and deliberate act of serving the different subpoena to Freedom sufficed to establish intent to deceive. (Tr. 207:20-209:11.) With respect to RRTFB 4-8.4(d), requiring a lawyer to refrain from engaging in conduct that is prejudicial to the administration of justice, the Referee recommended a finding of guilt, as the respondent's actions resulted in documents being produced pursuant to a subpoena that the respondent "had led the producing entity to believe there was not an objection to." (Tr. 207:2-19.)

2. *Proceedings on Sanctions*

In the sanctions phase, Mr. Arugu offered his own testimony and also the testimony of two character witnesses, I.J. Wesley Ogburia and Fehintola Oguntebi. Mr. Ogburia testified that Mr.

Arugu had an "impeccable" reputation within the community and that he is a "fair and respectful individual, [a] truthful individual." (Tr. 212:11-19.) Ms. Oguntebi testified that she had known Mr. Arugu since they were classmates in law school (Tr. 218:9-19), and stated her belief that he is "an honest person" (Tr. 221:6-7).

Both parties offered argument concerning the appropriate discipline to be applied. TFB's counsel asked the Referee to find the following aggravating factors under Florida's Standards for Imposing Lawyer Sanctions ("Standards"): (1) prior disciplinary offenses (Standard 3.2(b)(1)); (2) dishonest or selfish motive (Standard 3.2(b)(2)); and (3) substantial experience in the law (Standard 3.2(b)(9)). (Tr. 228:2-229:5.) TFB acknowledged the presence of two mitigating factors: (1) the remoteness of Mr. Arugu's prior offense in 2009 (Standard 3.3(b)(13)); and (2) full and free disclosure to TFB and cooperative attitude (Standard 3.3(b)(5)). (Tr. 229:6-230:6.) TFB asked for a 91-day suspension, particularly in light of the applicability of two Standards: Standard 6.2(b), for abuse of legal process, and Standard 7.1(b), for deceptive conduct. (Tr. 230:7-232:4.)

After hearing from both counsel, the Referee found all of the aggravating and mitigating factors argued by TFB, but found one additional mitigating factor: Mr. Arugu's character or reputation under Standard 3.3(b)(7). (Tr. 238:3-239:1.) While acknowledging that several of this Court's cases counseled for a 91-day suspension, the Referee said that it struck her that "the respondent's conduct may not be quite as bad" as in those cases. (Tr. 239:2-6.) Thus, the Referee recommended a sanction of 60 days and an order to pay TFB's costs in these proceedings. (Tr. 239:10-12.)

3. *The Report of Referee*

The Referee issued her report on December 9, 2021. In line with her recommendations announced at the final hearing, the Referee found Mr. Arugu had violated each of the RRTFB charged in the complaint, with the exception of RRTFB 4-3.3(a)(1). (*See* ROR at 6-11.)

Turning to the presumptive discipline under the Standards, the Referee considered and applied both of the Standards argued by TFB: Standard 6.2, abuse of the legal process, and Standard 7.1, deceptive conduct or statements. (ROR at 11.) The Referee also accepted the aggravating and mitigating factors argued by TFB, but found one

additional mitigating factor: Mr. Arugu's character and reputation under Standard 3.3(b)(7). (ROR at 11-12.)

Turning to the suggested sanction, again in line with her oral ruling at the hearing, the Referee agreed that suspension was appropriate, but thought 91 days was too long a sanction. (ROR at 15.) Thus, the Referee instead recommended a 60-day suspension and the payment of TFB's costs. (*Id.*.)

TFB's request for review followed. Mr. Arugu has filed a cross-notice seeking review of the Report of Referee on various grounds.

SUMMARY OF ARGUMENT

Mr. Arugu's misconduct is deserving of a 91-day suspension in light of this Court's case law, the applicable Standards, and the balancing of the relevant aggravating and mitigating factors.

Although the Referee correctly recommended suspension, she nevertheless judged Mr. Arugu's conduct less egregious than that of other respondents and accordingly recommended a lighter suspension. But Mr. Arugu was found guilty of several RRTFB, including, importantly, rules 4-8.4(c) and 4-8.4(d)—in other words, Mr. Arugu was found to have engaged in deceptive conduct prejudicial to the administration of justice. This Court does not take

such violations lightly, and the cases most like Mr. Arugu's—including a case concerning abuse of the subpoena power and violations of RRTFB 4-8.4(c) and 4-8.4(d)—support imposition of a 91-day suspension.

The balancing of aggravating and mitigating factors found by the Referee do not warrant a lesser sanction. There are no substantial mitigating factors, and Mr. Arugu has previously been subject to discipline and has substantial experience in the practice of law. Thus, the record supports a suspension greater than 60 days.

Accordingly, this Court should reject the Referee's recommendation for a 60-day suspension and instead impose a 91-day suspension.

ARGUMENT

I. MR. ARUGU SHOULD RECEIVE A 91-DAY SUSPENSION.

A. Standard of Review

This Court's scope of review is broad when reviewing a referee's recommended discipline. *See Fla. Bar v. Altman*, 294 So. 3d 844, 847 (Fla. 2020). "[U]ltimately, it is the Court's responsibility," not the referee's, "to order the appropriate sanction." *Id.*; *see also* art. V, § 15, Fla. Const. "[G]enerally speaking, this Court will not second-

guess the referee's recommended discipline as long as it has a reasonable basis in existing case law and the Florida Standards for Imposing Lawyer Sanctions." *Fla. Bar v. Norkin*, 183 So. 3d 1018, 1023 (Fla. 2015).

Though the Standards instruct when a suspension is the appropriate discipline, the Court determines "the length of the suspension . . . guided by case law and the Court's discretion." *Fla. Bar v. Marcellus*, 249 So. 3d 538, 545 (Fla. 2018). Where the referee's recommended sanction is insufficient, as is the case here, this Court does not hesitate to impose harsher discipline. Florida lawyers have long been on notice that "since . . . [1994], the Court has moved toward imposing stronger sanctions for unethical and unprofessional conduct." *Fla. Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015); *see also Fla. Bar v. Adler*, 126 So. 3d 244, 247 (Fla. 2013) (observing that the Court's older cases are "dated and do not reflect the evolving views of this Court" and noting that "[i]n recent years, this Court has moved towards stronger sanctions for attorney misconduct" (internal quotation marks and citation omitted)).

B. The Nature of the Misconduct and the Aggravating Circumstances Warrant a 91-Day Suspension.

As recognized by the Referee, pursuant to the applicable Standards, suspension is the presumptive discipline in this case. Standards 6.2(b), 7.1(b). In deciding the length of the recommended suspension, however, the Referee ignored the most on-point authorities and found that Mr. Arugu's conduct was not "as bad as" the conduct of other respondents, warranting a more lenient suspension in her judgment. But, when the case law is considered along with the aggravating factors, Mr. Arugu's dishonest and prejudicial conduct requires a rehabilitative suspension of at least 91 days.

In the closest case on point, *The Florida Bar v. Berthiaume*, 78 So. 3d 503 (Fla. 2011), the respondent knowingly and deliberately used a subpoena without authorization in an attempt to obtain records from a bank. This Court rejected the respondent's explanation that she had simply "made a mistake." *Id.* at 508, 511. Considering the respondent's violations of RRTFB 4-8.4(c) and 4-8.4(d) in particular, the *Berthiaume* Court said that "Respondent has engaged in serious misconduct—she abused the subpoena power,

which is a power of the court, for her personal investigation. Such dishonest conduct demonstrates the utmost disrespect for the court and is destructive to the legal system as a whole." *Id.* at 510. The Court further reasoned that "basic, fundamental dishonesty . . . is a serious flaw, which cannot be tolerated because dishonesty and a lack of candor cannot be tolerated by a profession that relies on the truthfulness of its members." *Id.* (internal quotation marks omitted); *see also Fla. Bar v. Head*, 27 So. 3d 1, 8 (Fla. 2010) (This Court does not view violations of "rule 4-8.4(c) . . . and rule 4-8.4(d) . . . as minor."). The Court thus found the referee's recommended sanction of a ten-day suspension as lacking a reasonable basis in existing case law, and instead instituted a 91-day suspension. *Berthiaume*, 78 So. 3d at 511.

Likewise here, the Referee correctly recommended Mr. Arugu be found guilty of violating several RRTFB, including rules 4-8.4(c) and 4-8.4(d), for serving a subpoena different than the one noticed in violation of court rules. But the Referee failed to acknowledge the seriousness of that misconduct through her recommended sanction, which should have been in line with the sanction ordered in *Berthiaume*. Although the respondent in *Berthiaume* used a

subpoena outside of the context of pending litigation and for her own personal gain, that does not distinguish her case from Mr. Arugu's enough to warrant a lesser sanction, particularly as this Court has continued to move toward harsher sanctions for lawyer misconduct. *See, e.g.*, *Rosenberg*, 169 So. 3d at 1162.

Indeed, the seriousness of Mr. Arugu's RRTFB violations alone should counsel for a suspension longer than 60 days. For example, in *The Florida Bar v. Russell-Love*, 135 So. 3d 1034 (Fla. 2014), the respondent was found guilty of violating ***only*** RRTFB 4-8.4(c), and the referee found no aggravators and several mitigating factors, *id.* at 1037. Yet the Court still rejected the referee's recommended sanction of a 10-day suspension in favor of a 91-day suspension, finding that the numerous mitigating factors "do not outweigh [the respondent's] serious misconduct." *Id.* at 1040.

The aggravating factors present in Mr. Arugu's case, particularly Mr. Arugu's history of prior discipline, also warrant a longer suspension as this Court "deals more severely with cumulative misconduct than with isolated misconduct." *Fla. Bar v. Williams*, 753 So. 2d 1258, 1262 (Fla. 2000); *see also Fla. Bar v. Patrick*, 67 So. 3d 1009, 1018 (Fla. 2011) (calling disciplinary history for similar

misconduct a "significant aggravating factor"). For example, in *The Florida Bar v. Nicnick*, 963 So. 2d 219 (Fla. 2007), the Court imposed a 91-day suspension against a respondent who violated RRTFB 4-8.4(c) by deliberately and knowingly concealing a signed settlement agreement from opposing counsel. The respondent alleged that he felt compelled to investigate the authenticity of the document before turning it over to opposing counsel as he suspected it had been forged. *Id.* at 223. He also claimed that he believed opposing counsel was aware of the settlement agreement. *Id.* In finding the respondent guilty of RRTFB 4-3.4(a), the Court said that the respondent's assertion that it was within ethical boundaries to conceal a potentially forged settlement agreement until he felt the time was right to reveal it was not a decision that the respondent was entitled to make. *Id.* The Court imposed a 91-day suspension on the respondent after considering a similar set of aggravating and mitigating factors as found for Mr. Arugu: the respondent's prior disciplinary history and substantial experience in the practice of law as aggravating factors on the one hand, *id.* at 222, and on the other hand, the respondent's full cooperation with TFB, good character and reputation, and the remoteness of his prior offense, *id.* Notably, the

referee found even more mitigating factors in *Nicnick* than the Referee did for Mr. Arugu. *See id.* (finding as additional mitigation the absence of a dishonest or selfish motive and the respondent's remorse). The balance of similar factors here for Mr. Arugu weighs in favor of imposing at least a 91-day suspension.

In arriving at her recommendation, the Referee appears to have relied in part on *The Florida Bar v. Forrester*, 818 So. 2d 477, 485 (Fla. 2002), wherein this Court ordered a 60-day suspension, but Mr. Arugu's conduct is more egregious than that of the respondent in *Forrester*. In *Forrester*, the respondent concealed an exhibit while opposing counsel questioned the respondent's witness in a deposition. When opposing counsel initially confronted her about the missing exhibit, the respondent answered, "I'm not seeing it." *Id.* at 480. Later during the deposition, the respondent handed over the exhibit when more directly asked if she had it. *Id.* This Court found the respondent guilty of violating RRTFB 4-3.4(a) which prohibits the concealment of evidence and other obstructive discovery tactics and suspended her from the practice of law for 60 days. *Id.* Mr. Arugu, in contrast, was found guilty of violating RRTFB 4-8.4(c) and 4-8.4(d), rule violations which have been at times treated more severely by this

Court. *See, e.g.*, *Head*, 27 So. 3d at 8. And although this Court did not find the short duration of the concealment necessarily material in *Forrester*, the fact remains that Mr. Arugu's case is unlike that of the respondent in *Forrester* because he never "corrected" his misconduct.

Thus, contrary to the Referee's observation, Mr. Arugu's conduct was more egregious than that of the respondent in *Forrester*, and is as egregious as the conduct of the respondents in *Berthiaume* and *Nicnick*. Indeed, just like the respondent in *Berthiaume*, Mr. Arugu abused the subpoena power. Mr. Arugu concedes that he served a subpoena on a non-party not in compliance with court rules—and in a way that foreclosed any other party from timely objecting to the subpoena before it was served—and sought discovery that was later partially disallowed by the family court. (Tr. 114:24-115:23,124:17-23.) When confronted with the error, Mr. Arugu did not review the rules to see if there was something to the objection; instead, he stubbornly doubled down and simply assumed Mr. Luther was trying to "trick" him. (Tr. 103:4-11.) Mr. Arugu never withdrew the subpoena nor alerted Freedom to the objection. And even upon receiving the family court order declaring the Freedom

subpoena improper, Mr. Arugu did not withdraw the subpoena or alert Freedom; instead, he simply decided not to further pursue the documents. (*See* Tr. 133:16-134:14.)

That Mr. Arugu now admits his mistake does not entitle him to a lesser sanction. Mr. Arugu "engaged in conduct aimed at defeating" the opposing party's ability to object to discovery, "undermining the adversarial process" and warranting a severe sanction. *See Fla. Bar v. James*, 329 So. 3d 108, 112 (Fla. 2021) (disapproving referee's recommended sanction based on the referee's view that the respondent's conduct was "not sufficiently egregious" and instead imposing a 91-day sanction). For all these reasons, the Court should disapprove the suspension recommended by the Referee and instead impose a 91-day rehabilitative suspension on Mr. Arugu.

CONCLUSION

The Referee correctly recommended that Mr. Arugu be found guilty of violating several rules of the RRTFB, including rules 4-8.4(c) and 4-8.4(d). But based on this Court's precedent, the recommended sanction is too lenient given the gravity of Mr. Arugu's misconduct and the aggravating circumstances found, including his prior disciplinary history. For the foregoing reasons, this Court should

approve the Referee's findings of fact, recommendations of guilt, and findings of aggravation and mitigation, and disapprove the Referee's recommended discipline and impose instead a 91-day suspension.

Respectfully submitted on March 14, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was served via the Florida Courts E-Portal and by email on March 14, 2022:

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CERTIFICATE OF COMPLIANCE

I certify this document complies with the applicable font and word count limit requirements. *See* Fla. R. App. P. 9.045 & 9.210.

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