IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JEFFREY ALAN NORKIN,

Respondent.
_____/

Supreme Court Case
No. SC21-1025

The Florida Bar File
No. 2021-50,193

THE FLORIDA BAR'S INITIAL BRIEF

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PRELIMINARY STATEMENT

Complainant is referred to as The Florida Bar or as the Bar. Respondent Jeffrey Alan Norkin is referred to as Mr. Norkin.

Bar exhibits are referred to by TFB-Ex. followed by the exhibit number. Respondent's exhibits are referred to as R-Ex. followed by the exhibit number.

The documents comprising the Index of Record are referred to by the applicable tab number (e.g., Tab#1). The report of referee is referred to as (ROR:).

A transcript of the sanction hearing has been filed contemporaneously with this brief. It contains all testimony and argument during the sanction hearing conducted on December 16, 2022, and is cited as T: followed by the applicable page number(s).

NATURE OF THE CASE

On July 9, 2021, the Bar filed a petition for contempt and order to show cause alleging Mr. Norkin committed indirect criminal contempt by continuing to engage in the practice of law and marketing himself to the public as a lawyer after he was permanently disbarred by this Court in

2015.[1] As a permanently disbarred lawyer, Mr. Norkin may be held in indirect criminal contempt for engaging in the unlicensed practice of law.

This Court issued an order to show cause and referred the matter to a referee. This resulted in a five-day final contempt hearing from September 19-23, 2022. After the hearing, the referee issued a preliminary report which found Mr. Norkin guilty of indirect criminal contempt for intentionally violating this Court's order disbarring him from the practice of law. The referee then held a sentencing hearing to determine the appropriate recommended sanction based on the criminal violation at issue. The Bar sought Mr. Norkin's incarceration for 60 days, asserting that nothing other than a meaningful period of incarceration would serve as an adequate deterrent. Mr. Norkin asked that the referee recommend no period of incarceration for myriad reasons, but mainly based on his insistence that he never committed any unlawful act, and because he suffers from emotional problems.

The report of referee recommends Mr. Norkin's incarceration for a 10-day period followed by five months' probation. Mr. Norkin initially sought

[1] Unlike a typical disbarment, Mr. Norkin's permanent disbarment precludes the possibility of his reinstatement to the practice of law after five years. Though this brief occasionally refers to Mr. Norkin as 'disbarred' for brevity's sake, whenever the term is used with regards to Mr. Norkin, the bar is referencing his permanent disbarment in 2015.

review of the referee's findings of guilt, but on May 19, 2023, this Court dismissed Mr. Norkin's Notice of Appeal due to his failure to file an initial brief and transcripts in accordance with Rule 3-7.7(c)(2)-(3). The bar filed a Notice of Intent to Seek Cross-Review of Report of Referee, seeking appellate review of the recommended sentencing only. Based on this Court's dismissal of Mr. Norkin's appeal, the referee's recommended sentencing—based on uncontested findings of guilt—is the only litigable issue to be briefed by the parties on appeal.

STATEMENT OF THE CASE AND FACTS

I. After his permanent disbarment, Mr. Norkin committed indirect criminal contempt by repeatedly engaging in the practice of law and otherwise holding himself out as a practicing attorney.

On October 8, 2015, this Court entered an order permanently disbarring Mr. Norkin, because he continued practicing law while subject to a two-year suspension. See *The Florida Bar v. Norkin*, 183 So. 3d 1018 (Fla. 2015). In imposing disbarment, this Court noted that Mr. Norkin "continue[d] his defiant and contemptuous conduct that is demeaning to this Court, the Court's processes, and the profession of attorneys as a whole." *Id*. at 1023. Mr. Norkin's inability or refusal to reform his behavior

led this Court to the conclusion that he "is not amenable to rehabilitation." *Id*.

Unfortunately, Mr. Norkin continued this same course of conduct after he was permanently disbarred. The referee's findings of guilt are no longer subject to challenge and fully explain the breadth and depth of Mr. Norkin's continued practice of law constituting indirect criminal contempt. After his disbarment, Mr. Norkin continued representing his former client, David Beem, in the Eleventh Judicial Circuit of Florida, the Third District Court of Appeal, and this Court. (ROR:3). Mr. Norkin also continued communicating with opposing counsel in a legal capacity, even after he was criminally charged with the unlicensed practice of law. (ROR:3-4).

Specifically, in several post-trial matters in *Ferguson, et. al. v. Beem, et. al.*, Case No. 2007-34790-CA-01 (Fla. 11th Cir. Ct. 2007), Mr. Norkin sought to attain party status after he was disbarred and could no longer serve as counsel. (ROR:4). He asserted that Mr. Beem assigned an interest in the civil judgment to him, which gave him a financial interest in the outcome of the post-trial proceedings. *Id*. Mr. Norkin was not granted party status, but he nevertheless filed motions, responses, memoranda of law, and continued to appear before judges. *Id*. Further, Mr. Norkin's opposing counsel in the *Beem* litigation, Alan Geffin, engaged in direct

settlement discussions with Mr. Beem in February 2021. (ROR:4). At that point, Mr. Beem was representing himself, but Mr. Norkin later contacted opposing counsel and demanded that the settlement payment include a direct payment to him. (ROR:5).

On legal filings, Mr. Norkin's signature block included his norkinlaw.com e-mail address, and they were filed through the e-filing portal using Mr. Norkin's defunct bar credentials. (ROR:5, 15). In fact, Mr. Norkin testified that he filed more than 200 documents using his attorney e-portal account since his disbarment, and he did not open a separate e-portal account until more than a year after the bar filed its petition for contempt. (ROR:15-16). Nevertheless, he still asserted before the referee that if the bar had simply asked him to discontinue using his attorney e-portal account, he would have voluntarily complied. (T:25).

On September 15, 2016, an information charged Mr. Norkin with the unlicensed practice of law. The referee noted this was charged as a single count but could have been separately charged in a multi-count complaint for each distinct filing. (ROR:5, 13). Initially, Mr. Norkin characterized the criminal prosecution as "just the latest in an extremely long series of abuses that have been heaped upon me." (TFB-Ex.4). Later, Mr. Norkin pled no contest and was sentenced to one year of administrative probation

with special conditions to cease contact with the opposing party and cease using his norkinlaw.com e-mail address. (ROR:6).

Mr. Norkin's two-year suspension, his disbarment, and his continued practice of law leading to his plea of no contest to a felony is not at issue. But this context is nevertheless relevant to explain the insufficiency of prior measures in discouraging Mr. Norkin's recidivism. Specifically, this contempt proceeding was not initiated due to any conduct by Mr. Norkin leading to the criminal charge or earlier, but because Mr. Norkin continued acting as legal counsel for Mr. Beem *after* he had been both disbarred and charged criminally. (See ROR:23) ("[T]he indirect criminal contempt prosecution does not implicate the Double Jeopardy Clause because it concerns offenses that are completely different from the ones charged in the felony information."). The information was filed on September 15, 2016. The report of referee summarizes a litany of pleadings by Mr. Norkin filed after that date in the *Beem* litigation. (ROR:7-11).

This brief will not summarize the content of all such motions, but a 2019 filing by Mr. Norkin in the appeal, *Beem v. Ferguson*, Case No. 3D18-1725 (Fla. 3d DCA Apr. 5, 2019), warrants review as an exemplar of the overall content in these repetitive filings. The filing asserts fraudulent conduct by the opposing party and the damage this alleged fraud has

caused to both Mr. Beem and Mr. Norkin. (TFB-Ex.3). It portrays Mr. Norkin as the only person willing to help Mr. Beem by dedicating hundreds of hours to exposing the fraud. *Id*. Mr. Norkin offered similar arguments at the contempt hearing on this issue, though the referee found this lacked relevance to the indirect criminal contempt charge. (ROR:20). The filing also glosses over a prior unauthorized motion for extension filed on behalf of Mr. Beem as a ministerial act performed out of necessity, which the referee found unpersuasive. (TFB-Ex.3; ROR:7).

The case style on this filing lists Mr. Norkin as an appellant, even though it states that the trial court denied Mr. Norkin's request to be added as a party, and this decision is one of the orders subject to appeal. (TFB-Ex.3). The signature block identifies Mr. Norkin as representing himself *pro se*, but also contains his norkinlaw.com e-mail address. The filing also plainly acknowledges that Mr. Norkin is not currently a named party. It asks the appellate court to provide this relief—which the trial court already denied—during the remainder of the appellate proceeding. Specifically, it asserts Mr. Norkin's continued involvement in the litigation should be permitted for two reasons: (1) Mr. Beem assigned a 30% share of a judgment to Mr. Norkin as compensation for unpaid attorney's fees earned before his disbarment; and (2) Mr. Norkin was personally liable for a 50%

share of a $340,000.00 award of sanctions entered in favor of the opposing party. (TFB-Ex.3). He repeated many of these assertions in an April 12, 2019 filing, which again contained his norkinlaw.com e-mail address in the signature block. (TFB-Ex.4).

To be clear, Mr. Norkin has never attained party status based on either his assigned interest or his personal liability, but he continued to litigate matters as though he were a named party at the trial court level, on appeal, and in a related bankruptcy case. (ROR:13). On April 22, 2019, the appellate court denied Mr. Norkin's request to add him as a co-appellant. (TFB-Ex.2). The referee similarly rejected Mr. Norkin's argument that he essentially pioneered a way to practice law without a license by acquiring standing via an assigned interest in a judgment. After the appellate court denied this relief, Mr. Norkin continued undeterred in practicing law on behalf of Mr. Beem under the rejected pretense that he was a *pro se* party with aligned interests. The report of referee lists 21 pleadings filed by Mr. Norkin in the appellate court after it denied his request to be added as a party. (ROR:9-10). These included several motions for rehearing, two briefs, and filings in this Court seeking discretionary review.

In addition to the filings, Mr. Norkin sent a demand letter to the opposing party on behalf of himself and Mr. Beem in which he threatened "scathing motions for rehearing" filed by both of them. (TFB-Ex.5). The referee found that the demand letter's use of the words "we" and "us" was a clear indication that Mr. Norkin was negotiating on behalf of Mr. Beem and a blatant example of the unlicensed practice of law. (ROR:11-12).

This pattern of practicing law undeterred—irrespective of adverse rulings rejecting his claimed standing—was in keeping with Mr. Norkin's promise to another court that he will "act within this case as [he] please[s]." (TFB-Ex.4). His steadfast refusal to disengage from the practice of law appears to be driven by his claimed belief the disbarment order is illegitimate. A federal lawsuit by Mr. Norkin against the bar, this Court, and others evidenced not only his vehement disagreement with the disbarment order, but also asserted the disciplinary proceedings and disbarment order are illegitimate and criminal. (ROR:19-20) (citing TFB-Ex.9, pg.24). He asserted the same sentiment at the contempt hearing, and he again promised to continue acting as he pleases, stating that "like Batman, he would never stop." (ROR:12).

The referee found that the joint filings on behalf of Mr. Beem and Mr. Norkin, the use of the norkinlaw.com e-mail address in pleadings, and Mr.

Norkin's advocacy and negotiations on Mr. Beem's behalf constituted the unlicensed practice of law in violation of this Court's disbarment order. (ROR:13). The referee additionally found that Mr. Norkin's repeated violations of the disbarment order were intentional and in bad faith. Specifically, adverse rulings in the civil case, the appeal, and the bankruptcy case gave Mr. Norkin "ample notice that his financial interest alone did not give him permission to file pleadings when he was not a named party." (ROR:14). His continued use of the norkinlaw.com e-mail address maintained the appearance that Mr. Norkin was a practicing attorney, which the referee found was a willful violation of the disbarment order. (ROR:14-15).

The referee also found that Mr. Norkin otherwise maintained the appearance that he was a practicing attorney. The most recurrent example of this was his continued use of the norkinlaw.com e-mail address on pleadings. But an equally blatant example was Mr. Norkin's website for his company, Assurance Client Support. On this website, Mr. Norkin marketed himself as a "veteran, retired attorney" who could assist with problems involving overbilling and ineffective representation, which "can only be analyzed by attorneys!" (ROR:17) (citing TFB-Ex.7). Assurance Client Support was also marketed on Mr. Norkin's Facebook page as providing

"[i]n-house counsel for everyone!" by "attorneys or former attorneys who litigated civil cases for over 20 years." (ROR:18) (citing TFB-Ex.7, pg. 20, 27). The referee found Mr. Norkin's description of himself as a retired attorney who performed work unique to attorneys did not dispel the impression he practices law, notwithstanding Mr. Norkin's claims that the website stated elsewhere that he was disbarred. (ROR:17). Consequently, the referee found Mr. Norkin held himself out as a practicing attorney in willful violation of the disbarment order. (ROR:19).

II. During the sentencing hearing, Mr. Norkin maintained that he has never committed any wrongdoing in his entire legal career and deflected from his criminal conduct by implying the bar and this Court are participating in a criminal conspiracy against him.

Following the findings of guilt for indirect criminal contempt, the referee conducted a sentencing hearing in which Mr. Norkin's treating psychiatrist testified regarding Mr. Norkin's emotional problems while his friends and family testified on his behalf as character witnesses. (ROR:25). This brief does not summarize the testimony of character witnesses, as the bar is not challenging the referee's finding that Mr. Norkin "appears to be a loving father and a caring friend" who acts altruistically to help others. (ROR:30). Though the referee found that Mr. Norkin was disingenuous at times during his testimony and actions in the contempt proceeding, the

referee noted that the witnesses described Mr. Norkin as fair, just, and honest. (ROR:31).

As noted by the referee, Mr. Norkin's actions at the sentencing hearing and in his filings in the contempt proceeding are, at first, difficult to reconcile with the character testimony. Almost as soon as the hearing commenced, Mr. Norkin reargued the findings of guilt with the referee. He claimed the referee's conclusion that Mr. Norkin was not a party representing himself in the *Beem* litigation was "just clearly untrue," he was "arguing against smoke and mirrors," and the referee only made the adverse finding because of outside pressure. (T:5-13, 22, 109). This relentless refusal to accept the finality of an adverse ruling without accusing others of collusion, criminal conduct, or otherwise being coerced by outside forces was best summarized by the referee as follows:

> Respondent accused counsel for The Florida Bar of being unethical, committing a fraud upon the court, and engaging in criminal activity, accused the Referee of being influenced or coerced by outside entities, and insinuated that he would harm himself if the Referee were to assess costs in favor of the bar or recommend a sentence of incarceration. Respondent also appears to have long-standing issues with authority figures, a pattern he continued during the proceedings before the Referee when the Referee had to admonish him to exhibit appropriate courtroom behavior on numerous occasions.

(ROR:28-29).

Mr. Norkin's vitriol was not limited to the bar or the referee, as he stated at the sentencing hearing that the evidence and the referee's recommendation do not matter, because this Court will probably recommend a jail sentence regardless because of an alleged personal vendetta against him. (T:21). He also previously sought to disqualify this entire Court as the presiding authority and the bar as the prosecuting authority. This not only further attested to his contempt for the bar and this Court; it also further demonstrated Mr. Norkin's refusal to accept an adverse ruling. Specifically, in late 2021, this Court entered a series of orders denying Mr. Norkin's motion to disqualify the Court and the bar in this matter. He later filed another unsuccessful motion to disqualify this entire Court on March 20, 2023, which asserted the exact same legal basis as his previous unsuccessful motion.

The referee considered Mr. Norkin's behavior—particularly his continued engagement in the practice of law coupled with his refusal to acknowledge adverse rulings—in the context provided in testimony from Mr. Norkin's psychiatrist, Dr. Gil Lichtshein. (ROR:31). The weight the referee afforded this testimony was somewhat limited for two reasons: (1) Dr. Lichtshein's professional assessment was based on Mr. Norkin's self-reporting of his version of facts; and (2) he only sees Mr. Norkin every three

months for medication management, rather than more intensive cognitive and behavioral therapy. (ROR:31). His primary purpose was to meet with Mr. Norkin and do medication checks. (T:42).

However, he explained that Mr. Norkin was referred to him for treatment of major depressive disorder and long-standing attention deficit hyperactivity disorder (ADHD). (T:35-36, 40). He explained that certain individuals with ADHD, including Mr. Norkin, exhibit executive dysfunction, in which the person lacks a filter and speaks his or her mind. (T:37-41). In Mr. Norkin's case, he has a need to right perceived wrongs to the point that it will hurt him. (T:38, 41). This was largely confirmed by some of the character witnesses. Mr. Norkin's ex-wife testified that he is quick to react when upset about being treated unfairly and does not rationally think things through. (T:54-55). Mr. Norkin's good friend, Pablo Prieto, explained that Mr. Norkin talks to him on the phone constantly about injustices against him, and he is never going to stop arguing because the injustice is "just insurmountable." (T:62-64). Mr. Norkin's 19-year-old son explained that his father is consumed by rage, "especially when you're thinking or focusing on the – the court and stuff like that, yeah." (T:73).

During his own testimony, Mr. Norkin explained he has a hatred of authority figures who abuse their authority, and "[t]here's something about

me that causes authoritarian figures to falsely accuse me." (T:101, 132). He also explained that when he was a civil rights lawyer, he would speak on the telephone with prospective clients and advise some of them to move on with their lives, because they would never get anywhere in a lawsuit. (T:100). This measured approach did not apply to perceived injustices perpetrated on him, as he explained:

> I am a great person. I am a superior person in my moral character, in my sense of human decency and my actions toward that, and in my intense, almost obsessive need to be honest and – requiring honesty of other people.

(T:103). But his version of the truth that he 'almost obsessively requires' from others is acknowledgement that (1) the referee is being forced to rule against him (T:110); (2) the bar is comprised of "monsters" who have taken away nine years of his life (T:110); (3) the opposing counsel in the *Beem* litigation who filed a bar complaint against Mr. Norkin "is an absolutely abominable human being," (T:106); and (4) this Court is predisposed to incarcerate him based on a personal vendetta, regardless of the evidence (T:21, 29).

Conversely, Mr. Norkin's opinion of his own course of conduct is best summarized by his closing statement, when he stated without equivocation, "Your Honor, I've never done a single thing wrong in my entire legal career. Never." (T:142). This particular brand of honesty Mr. Norkin 'obsessively'

requires of others appears to be founded on the unshakeable tenet that Mr. Norkin is a blameless victim, and any authority figure holding otherwise is abusing power and therefore deserving of his hatred.

III. Based on the presence of mitigating factors, particularly Mr. Norkin's mental health and behavioral issues, his lack of a selfish and dishonest motive, and the absence of harm to a client, the referee recommends a 10-day period of incarceration followed by five months' probation.

The referee recommends a ten-day sentence in the Broward County jail followed by five months of probation, with a special condition that Mr. Norkin obtain a psychological evaluation within thirty days of his release and begin any recommended treatment thereafter. (ROR:32). The referee explained that Mr. Norkin's contumacious conduct did not rise to the level of egregiousness shown in other cases, because he lacked a selfish or dishonest motive and he did not harm a client or individual. (ROR:36-37). Further, the referee found that Mr. Norkin's "significant mental health and behavioral issues contributed to his misconduct," and a jail sentence alone would be an insufficient deterrent. (ROR:37). The bar seeks review of the recommended sentence only.

SUMMARY OF ARGUMENT

The Florida Bar challenges the referee's recommended sentencing based on uncontested findings of guilt. Mr. Norkin has continued to

practice law after his disbarment in 2015. This was not a lone instance of indirect criminal contempt. Mr. Norkin engaged in a slew of filings and held himself out as a lawyer in each. He is also unrepentant. As noted in the report of referee, he testified that he will never stop. (ROR:12). Mr. Norkin is pursuing this personal crusade because he claims a grave injustice has been inflicted upon him. His defense to this contempt proceeding is like the conduct resulting in his disbarment; he continues to maintain he is a blameless victim of a conspiracy in which the bar and this Court have engaged in criminal conduct due to a personal vendetta against him. To this end, he will ignore adverse orders and continue acting as he pleases in pursuit of his subjective and rigid version of justice. This mindset cannot be changed with five months' probation. A 10-day jail sentence is an insufficient deterrent, and according to Mr. Norkin, the chances of his recidivism are substantially likely given that he will never stop.

The repeated pattern of misconduct coupled with Mr. Norkin's inability or refusal to accept culpability are aggravating circumstances that significantly outweigh the presence of some mitigating factors. The bar does not dispute the referee's findings that Mr. Norkin suffers emotional problems, that he has been subject to other sanctions, and that he had character witnesses testify to his positive qualities as a friend and as a

father. But the fact of the matter remains that Mr. Norkin cannot be deterred via a sentence comprised mostly of probation. He was disbarred from the practice of law because he refused to acknowledge the lawfulness of this Court's suspension order, and instead continued to practice law. Eight years after he was disbarred, he still refuses to acknowledge this Court's authority and continues to practice law. He offered no valid legal basis enabling him to ignore this Court's disbarment order as well as the multiple adverse orders denying him party status in the *Beem* litigation. This inability to comply with adverse orders resulted in his disbarment, his plea of no contest to a felony for engaging in the unlicensed practice of law, and it has now resulted in the indirect criminal contempt at issue in this case.

While the referee's findings of guilt are accurate and not subject to contention, the referee's recommended sentence is too lenient. It does not adequately redress Mr. Norkin's repeated and intentional violations of this Court's disbarment order, it attributes too much weight to Mr. Norkin's mental disability or impairment in finding substantial mitigation, and it incorrectly found that Mr. Norkin lacked a dishonest or selfish motive. Given Mr. Norkin's steadfast refusal to acknowledge any wrongdoing and his vow to "never stop," the only means of compelling his future compliance

with this Court's disbarment order is with a meaningful period of incarceration of 60 days.

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

This Court has exclusive jurisdiction "to regulate the admission of persons to the practice of law and the discipline of persons admitted." Art. V, § 15, Fla. Const. As a result of his disbarment, Mr. Norkin is no longer a member of The Florida Bar. R. Regulating Fla. Bar 3-5.1(f). Unlike a suspended lawyer, Mr. Norkin is not subject to the standards of ethical and professional conduct prescribed by this Court. See *The Florida Bar v. Ross*, 732 So. 2d 1037, 1040 (Fla. 1998). Though a disbarred lawyer is not a member of the bar, he or she is nevertheless subject to the continuing jurisdiction of this Court based on its authority to prohibit the unlicensed practice of law. *The Florida Bar v. Hale*, 762 So. 2d 515, 517 (Fla. 2000) (quoting *Ross*, 732 So. 2d at 1041). A disbarred lawyer may be held in contempt of court for engaging in the unlicensed practice of law. R. Regulating Fla. Bar. 3-5.1(f); see also *The Florida Bar v. Riccardi*, 304 So. 2d 444 (Fla. 1974).

This Court's authority over this matter is derived from both its inherent contempt powers and Rules 3-7.7(g) and 3-7.11(f). Under Rule 3-

7.11(f)(1)(F), this Court may direct appointment of a referee to hold proceedings for contempt, make findings of fact, and make a recommendation regarding discipline. The proceeding is conducted "in the same manner as disciplinary proceedings under these rules." *Id*. Thereafter, any party to the contempt proceedings may seek review of the report in the manner provided for appellate review of disciplinary proceedings. Rule 3-7.11(f)(1)(H).

1. Findings of Fact

The same as a more typical disciplinary proceeding, in a contempt proceeding, this Court's review of a referee's factual findings is limited. *The Florida Bar v. Lobasz*, 64 So. 3d 1167, 1172 (Fla. 2011). "[I]f a referee's finding of fact is supported by competent, substantial evidence in the record, the Court will not reweigh the evidence and substitute its judgment for that of the referee." *Id*. The standard of review for challenges to findings of fact is irrelevant to the referee's findings of guilt in this case because they are no longer subject to appeal by either party. However, this standard of review is relevant with regards to the bar's challenges to certain mitigating factors found by the referee in this case.

2. Recommendation of Sanction

This Court's scope of review of a referee's legal conclusions is broader than it is for findings of fact because this Court has the ultimate responsibility to determine the appropriate sanction. *The Florida Bar v. Rosenberg*, 169 So. 3d 1155, 1161 (Fla. 2015). Generally, 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." *The Florida Bar v. Cohen*, 157 So. 3d 283, 287 (Fla. 2015).

It is also important to consider that this Court has given notice to the members of the bar that it is moving toward stronger sanctions than in the past. *See Rosenberg*, 169 So. 3d at 1162. As a result, older 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. The referee in this matter expressed uncertainty whether this trend of imposing stronger sanctions is limited to members of the bar or if it also applies to nonlawyers who engage in the unlicensed practice of law. (ROR:36).

3. Consideration of Mitigating and Aggravating Factors

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).

Once the factors of mitigation and aggravation are found to exist, they are applied to "justify" an increase or a reduction in the "degree of discipline to be imposed." Fla. Stds. Imposing Law. Sancs. 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.

Much like the referee's uncertainty regarding whether this Court's trend of imposing stronger sanctions applies in this case, the referee noted

that the applicability of these standards to a non-lawyer was unclear, but helpful to determine an appropriate sentence. (ROR:28).

ARGUMENT

I. Mr. Norkin's repeated and intentional violations of this Court's disbarment order, his refusal to acknowledge wrongdoing, his vow to continue practicing law, and his steadfast disrespect for the law and this Court's authority warrant a meaningful period of incarceration.

Before considering Mr. Norkin's repeated admissions that he will not stop acting as he pleases irrespective of this Court's disbarment order, his actions alone establish this fact. Mr. Norkin was suspended from practicing law, but he continued doing so. He was then disbarred for practicing law while suspended, and he continued doing so. He was then charged criminally in 2016 for the unlicensed practice of law, but he continued doing so. Even after the bar filed its petition for contempt in July 2021 asserting Mr. Norkin was engaged in the practice of law and holding himself out as an attorney, Mr. Norkin continued using his attorney e-portal account to file documents and using his norkinlaw.com e-mail address. (ROR:16, 28) (citing TFB-Ex.11-12).

Mr. Norkin is ungovernable. This was first established by the disbarment order, in which this Court found that he was not amenable to rehabilitation, and it has been repeatedly proven in the years since. The

referee in this case found that Mr. Norkin holds the unwavering belief he is the victim of a conspiracy against him, and on this basis, he will disregard adverse orders because he is "fixated on vindication and his version of justice." (ROR:30). Conversely, a referee in a prior disciplinary proceeding believed Mr. Norkin's conduct was calculated, in which he only became belligerent as an intimidation tactic when losing, but he was perfectly capable of composing himself otherwise. See *The Florida Bar v. Norkin*, 132 So. 3d 77, 84 (Fla. 2013). But regardless of the conviction of his beliefs, Mr. Norkin cannot practice law. As a disbarred former lawyer, he can express the depths of his disdain for the bar or this Court without fear of further licensure action, but he repeatedly crosses the line into criminal conduct by holding himself out as an attorney.

Mr. Norkin tried to devise a way in which even after his disbarment, he could lawfully continue his relentless pursuit of the *Beem* litigation on behalf of his former client by simply aligning his financial interests with Mr. Beem. Every court that has addressed this issue has held that Mr. Norkin's financial interest did not confer standing for him to litigate the matter *pro se*. The referee in this matter reached the same conclusion on this issue as every other court. (ROR:14). *See EHQF Tr. v. S & A Capital Partners, Inc.*, 947 So. 2d 606, 606 (Fla. 4th DCA 2007) (a trustee cannot appear *pro*

se on behalf of the trust, because the trustee represents the interests of others and would therefore be engaged in the unlicensed practice of law). Mr. Norkin cannot circumvent the effect of his disbarment order through filings asserting Mr. Beem's interests under the pretense he is asserting his own, conveniently aligned, interests.

But Mr. Norkin does not accept these repeated adverse rulings. He asserted throughout the disciplinary proceeding the same rejected argument that he can tack on the words "*pro se*" in the signature block and then act as Mr. Beem's lawyer in all material respects. The referee noted that Mr. Norkin "still does not grasp the difference between having a financial interest and having party status." (ROR:30). The report also concluded that Mr. Norkin could not offer as an excuse or defense that he held a mistaken belief, because ignorance of the law is no excuse. (ROR:14) (citing *Davis v. State*, 928 So. 2d 442, 448 (Fla. 5th DCA 2006)).

Further, even if ignorance of the law could be deemed a mitigating factor, it would not apply here because Mr. Norkin unlawfully continued with his unauthorized filings in blatant disregard of adverse court orders. *See Schroll v. Schroll*, 262 So. 3d 832, 834 (Fla. 1st DCA 2018) ("[A]n aggrieved party's failure to abide by [an] order may be punished by contempt even if the order is ultimately found to be erroneous."); *Johnson*

v. Allstate Ins. Co., 410 So. 2d 978, 980 (Fla. 5th DCA 1982) ("A party may not ignore a valid order of court except at its peril.").

Mr. Norkin first engaged in the unlicensed practice of law shortly after his suspension in 2013, which he attempted to excuse based on his meritless, bad faith assertion that his motion for rehearing tolled the effective date of this Court's suspension order. *Norkin*, 183 So. 3d at 1021-22 (Fla. 2015). Before Mr. Norkin's disbarment, this Court had already begun its trend of imposing stronger sanctions for unethical and unprofessional conduct. See *The Florida Bar v. Adler*, 126 So. 3d 244, 247 (Fla. 2013). The referee also noted that in recent cases, this Court "has not suspended all or part of contemnors' jail sentences, even though it had done so in the past for similar violations." (ROR:36). At all times material, Mr. Norkin has been on notice of this Court's trend toward stronger sanctions, but he nevertheless repeatedly and intentionally engaged in the prohibited practice of law.

The referee found several aggravating circumstances under Standard 3.2(b), which collectively support an upward adjustment in the sanction to be imposed by this Court:

- Mr. Norkin has prior disciplinary offenses under Standard 3.2(b)(1), which are not restated in this brief but are summarized by the referee.
- Mr. Norkin engaged in a pattern of misconduct under Standard 3.2(b)(3) by ignoring adverse orders and continuing to practice law in the *Beem* litigation.
- Mr. Norkin refused to acknowledge the wrongful nature of his conduct under Standard 3.2(b)(7), even though similar conduct resulted in his disbarment and his plea of no contest to a felony.

(ROR:25-27).

Additionally, the referee found several aggravating factors not specifically enumerated in Florida's Standards for Imposing Lawyer Sanctions. Standard 3.2(b) states in part, "Factors which may be considered in aggravation include. . . ." The word 'include' is generally interpreted to mean the list is non-exhaustive. *White v. Mederi Caretenders Visiting Services of Southeast Florida, LLC*, 226 So. 3d 774, 783 (Fla. 2017). Therefore, the referee validly considered the following additional aggravating factors:

- Mr. Norkin accused bar counsel of engaging in criminal activity, fraud upon the court, and unethical behavior, and accused the

referee of being influenced or coerced by outside entities. He also had to be admonished several times due to his inappropriate courtroom behavior, and he threatened to harm himself if the referee recommended his incarceration.

- Mr. Norkin lacks respect for the law, because his actions diminish the authority of this Court by intentionally violating the disbarment order. Mr. Norkin also disparaged justices of this Court by insinuating that they held a personal vendetta against him.

(ROR:28-29).

Mr. Norkin's continued practice of law—despite the loss of his license and a one-year period of probation following his no contest plea to a felony—demonstrates that lesser forms of punishment are ineffective. He stated at hearing that he would never stop. (ROR:12). No briefs or adverse orders to date have convinced Mr. Norkin that he has committed any wrongdoing. The goal of prosecuting this action is not to succeed in accomplishing what everyone else has not. At this point, the bar's only goal is to convey to Mr. Norkin that he will face significant criminal consequences when he violates this Court's disbarment order.

On this issue, anything less than a meaningful period of incarceration is unlikely to act as a sufficient deterrent. A criminal contempt proceeding is "'instituted solely and simply to vindicate the authority of the court [or] otherwise punish for conduct offensive to the public in violation of an order of the court.'" *Plank v. State*, 190 So. 3d 594, 606 (Fla. 2016) (quoting *Demetree v. State ex rel. Marsh*, 89 So. 2d 498, 502 (Fla. 1956)); see also *The Florida Bar v. Forrester*, 916 So. 2d 647, 651 (Fla. 2005). Mr. Norkin's conduct did not consist of some isolated outburst at a hearing when emotions are high. For years, he has engaged in the ongoing, intentional, and flagrant disregard of this Court's authority. This Court has recognized that "cumulative misconduct of a similar nature warrants an even more severe discipline than might dissimilar conduct." *The Florida Bar v. Parrish*, 241 So. 3d 66, 79 (Fla. 2018).

The 10-day jail sentence recommended by the referee is simply not sufficient due to the breadth and depth of the misconduct, especially given Mr. Norkin's repeated promises—if not outright threats—that he will not stop. Mr. Norkin did not cease his criminal contempt of court even while facing felony charges. Therefore, this Court should not suspend any portion of Mr. Norkin's sentence contingent upon his full compliance with an injunction, as it has done for other nonlawyers who practiced law. See

generally *The Florida Bar v. Valdez*, 507 So. 2d 609 (Fla. 1987); *The Florida Bar v. Hughes*, 824 So. 2d 154 (Fla. 2002).

II. In recommending a more lenient sentence, the referee afforded more weight to the testimony of Mr. Norkin's psychiatrist than it deserved by finding that Mr. Norkin would not have continued to defy this Court but for his mental health issues.

The referee recommends leniency and another period of probation in lieu of a lengthier jail sentence. This inclination toward leniency despite Mr. Norkin's recidivism was apparently based on the presence of two mitigating factors: (1) mental disability or impairment; and (2) the absence of a selfish or dishonest motive. (ROR:29-32). While other mitigating factors were present, it does not appear the referee afforded them comparable weight, and this brief does not challenge the referee's findings on these other mitigating factors.

Regarding the presence of mental disability or impairment, this Court has not withheld imposing disbarment when an attorney practiced law while suspended despite the presence of significant mental problems. See *The Florida Bar v. Lobasz*, 64 So. 3d 1167, 1173 (Fla. 2011) (disbarring attorney for practicing law while suspended, even though the attorney suffered from post-traumatic stress disorder, anxiety, and depression). Similarly, this Court should not withhold imposing a longer jail sentence

simply because Mr. Norkin has long-standing issues with depression and ADHD. Mr. Norkin's psychiatrist only testified that these conditions cause Mr. Norkin to speak unfiltered and to pursue justice to a fault. But the referee concluded, "Dr. Lichtshein believes that a person without Respondent's mental health illnesses would not have continued to defy the Florida Supreme Court." (ROR:31).

Respectfully, the bar asserts this is an overstatement of Dr. Lichtshein's testimony not supported by competent substantial evidence. The testimony supports the finding that Mr. Norkin's executive dysfunction consistent with ADHD causes him to speak his mind and to doggedly pursue righting perceived wrongs. But Dr. Lichtshein did not provide intensive cognitive and behavioral therapy to Mr. Norkin. He also lacked any personal knowledge of Mr. Norkin's alleged violations of this Court's disbarment order, as he only knew what his patient had told him. Without personal knowledge of the criminal conduct at issue or sufficient therapy sessions with the patient, Dr. Lichtshein could not and did not offer an opinion that either depression or ADHD constituted the but-for causation for Mr. Norkin's indirect criminal contempt. At best, the testimony established that Mr. Norkin's depression and ADHD could be contributing factors causing him to react without thinking. But the sheer number of legal filings

by Mr. Norkin, which were unknown to Dr. Lichtshein, cannot be categorically disregarded as impulsive reactions triggered by executive dysfunction. Therefore, the referee erred in giving more weight to this mitigating factor than it deserved.

III. The referee incorrectly found the absence of a dishonest or selfish motive and harm to a client, because Mr. Norkin's selfish conduct in pursuit of a financial incentive was harmful to the legal system itself, and he acted dishonestly in filing documents in a *pro se* capacity despite adverse orders denying him party status.

The referee's recommendation of a lighter jail sentence was also partially driven by the referee's conclusion that Mr. Norkin lacked a selfish or dishonest motive, and he did not cause injury to others by practicing law. (ROR:29-30, 32). But his continued unlicensed practice of law, which was willful and intentional, is harmful to the legal system itself. See *The Florida Bar v. Ratiner*, 46 So. 3d 35, 41 (Fla. 2010) ("Here, respondent's misconduct caused injury to the legal system, itself."). In *Ratiner*, this conclusion was driven by the respondent's unprofessional behavior in the presence of others, which was belligerent and an embarrassment to all members of the bar. *Id*. Similarly in this case, the referee found that Mr. Norkin's conduct "diminished the authority of the Florida Supreme Court not only by repeatedly and intentionally violating the disbarment order, but also

by disparaging the Florida Supreme Court justices and insinuating that they were engaging in unethical and unlawful conduct due to a personal vendetta against him." (ROR:29).

The referee erred in finding Mr. Norkin lacked a selfish and dishonest motive. (See ROR:29). Mr. Norkin's misconduct in the litigation led to a substantial award of sanctions against him and his client. His motive in continuing to litigate the matter while suspended and again after his permanent disbarment was to vindicate himself. His acquisition of an interest in Mr. Beem's civil judgment is additional evidence that Mr. Norkin sought to benefit himself; in fact, his own version of events is that these "*pro se* filings" by him were in pursuit of his own interests. His motive was unquestionably a selfish one. Further, by continuing to file pleadings in a *pro se* capacity despite adverse orders denying him party status, Mr. Norkin acted dishonestly.

The referee made the findings of fact supporting a holding that Mr. Norkin acted selfishly and dishonestly, but found that he lacked such a motive because his actions were "a result of his mistaken belief that he was a party to the proceedings." (ROR:30). While the referee found that this belief was unreasonable and based on willful ignorance, the finding that Mr. Norkin lacked a selfish or dishonest motive because he acted on a

"mistaken belief" is not supported by the evidence. First, the referee's findings on this mitigating factor conflict with the legal conclusion that Mr. Norkin's mistaken belief "is not an excuse or defense" and that Mr. Norkin "repeatedly and intentionally violat[ed] the disbarment order." (ROR:14, 29). Second, Mr. Norkin engaged in the ongoing practice of law *after* multiple adverse rulings denied him party status. The courts placed Mr. Norkin on notice that he was not recognized as a named party in the *Beem* litigation both at trial and on appeal. His continued filings after the rendition of adverse orders were not predicated on any mistaken belief. At that point, Mr. Norkin's subsequent actions were based on his belief that the orders were wrongly decided. His only recourse was to seek legal counsel and appeal, not to disregard court orders by filing pleadings under the fiction that he was acting in a *pro se* capacity. By intentionally disregarding adverse orders and continuing to practice law, Mr. Norkin acted both selfishly and dishonestly.

IV. The referee's recommendation of a 10-day jail sentence followed by probation is too lenient based on case law imposing longer sentences against permanently disbarred lawyers incarcerated for the unlicensed practice of law.

Case law addressing the appropriate sentence to be imposed for indirect criminal contempt is fact specific. No single case is on all fours with the facts of this case, but based on the spectrum of case law involving

indirect criminal contempt, the 60-day jail sentence requested by the bar is appropriate. In *The Florida Bar v. Daley*, 2016 WL 3763406, SC15-2012 (Fla. July 14, 2016), this Court approved an uncontested report of referee finding the respondent guilty of indirect criminal contempt for violating a previous order of this Court imposing a disciplinary revocation, which is tantamount to disbarment. See *Hale*, 762 So. 2d 515 (Fla. 2000). The uncontested report in *Daley* recommended incarceration for a period of 30 days in the county jail for the respondent's failure to abide by this Court's order requiring him to give notice of his disciplinary revocation to clients, opposing counsel, and all relevant tribunals. Mr. Daley's failure to notify clients and the courts led to multiple failures to appear at hearings. He also attempted to negotiate a settlement of a criminal case after his disciplinary revocation and he continued to hold himself out as an attorney by using his law firm e-mail address. Further, Mr. Daley registered a new entity called "Florida Post Sentencing" and provided paid legal services to clients after his disciplinary revocation under the guise that he was a legal assistant.

While Mr. Norkin was not compensated for his unlicensed practice of law in the same way as *Daley*, this was not for lack of trying. Mr. Norkin aggressively pursued post-trial litigation to collect on his assigned interest in a civil judgment. He also marketed himself as a practicing attorney

regarding his new business venture after his disbarment, Assurance Client Support. By referring to himself as a retired attorney, he did not dispel the notion that he was authorized to practice law. See *The Florida Bar v. Palmer*, 149 So. 3d 1118, 1119 (Fla. 2013) ("[I]n identifying himself as a "retired" lawyer, Palmer held himself out as an attorney, both expressly and impliedly.").

The respondent in *Palmer*, much like Mr. Norkin, engaged in a pattern of practicing law repeatedly in blatant disregard of this Court's orders. He was disbarred in 1991 and, following a petition for contempt alleging his continued engagement in the practice of law, this Court "permanently and perpetually restrained [Mr. Palmer] from engaging in the practice of law in the State of Florida." *Id*. at 1118 (quoting *The Florida Bar v. Palmer*, 666 So. 2d 145 (Fla. Nov. 30, 1995)). Even after this second order, Mr. Palmer continued to practice law, resulting in an order sentencing him to 60 days incarceration, but suspending 50 days of the sentence for a total period of incarceration of 10 days. *Id*. at 1118-19. He later engaged in the same criminal conduct by accepting $550.00 to assist a client with a guardianship matter on behalf of his business, All Florida Legal Clinic. This Court entered an order sentencing Mr. Palmer to 60 days in jail for his repeated engagement in the practice of law.

The referee found that "Respondent's contumacious misconduct does not rise to the level of egregiousness as shown in the cases cited above, particularly *Palmer* and *Daley*." (ROR:36). The sole distinction offered by the referee is that Mr. Norkin did not harm or dupe a client or individual through his conduct, unlike the respondents in those cases. But this single mitigating factor should not overcome the overwhelming aggravating circumstances, particularly the sheer number of legal filings by Mr. Norkin and his steadfast refusal to discontinue his contemptuous conduct. The fact that Mr. Beem did not pay him attorney fees but instead assigned an interest in the civil judgment to Mr. Norkin should not result in such a substantial downward adjustment in the sanction to be imposed.

The 10-day jail sentence recommended in this matter does not comport with this Court's case law sentencing nonlawyers who engage in the unauthorized practice of law. These cases regularly involve longer periods of incarceration. See *The Florida Bar v. Heller*, 298 So. 2d 357 (Fla. 1974) (sentencing a nonlawyer to 30 days incarceration for filing documents representing himself as an "attorney in fact," sending letters to the clerk of courts on behalf of clients, and communicating with the assistant county attorney); *The Florida Bar v. Furman*, 451 So. 2d 808 (Fla. 1984) (sentencing a nonlawyer to 120 days incarceration, with 90 days

suspended, for advising clients to falsify and conceal information in marriage dissolution proceedings); *The Florida Bar v. Mickens*, 505 So. 2d 1319 (Fla. 1987) (sentencing a nonlawyer to 20 days incarceration for filing eviction proceedings on behalf of a landlord, showing no remorse, and vowing to continue engaging in the unlicensed practice of law); *The Florida Bar v. Schramek*, 670 So. 2d 59 (Fla. 1996) (sentencing a nonlawyer to 90 days incarceration, with 60 days suspended, for entering a notice of appearance on behalf of a client and corresponding with the court as the legal representative of the client).

CONCLUSION

For all the foregoing reasons, this Court should approve the referee's findings on guilt and adjudicate Mr. Norkin guilty of indirect criminal contempt for intentionally violating this Court's disbarment order. However, this Court should disapprove the referee's recommendation of an order sentencing Mr. Norkin to ten days in the Broward County Jail followed by five months of probation with special conditions. Instead, this Court should enter an order sentencing Mr. Norkin to 60 days in the Broward County Jail. The bar also asks this Court to impose the $23,915.39 costs recommended by the referee.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the original hereof has been e-filed with the Clerk of the Supreme Court of Florida, on this 13th day of June, 2023, and a true and correct copy of the foregoing has been furnished via e-service to Jeffrey Alan Norkin, 1631 S. Federal Highway, Apt. 103, Pompano Beach, FL 33062 at jnork68@gmail.com.

Mark Lugo Mason, Bar Counsel

CERTIFICATE OF TYPE SIZE & STYLE

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Mark Lugo Mason, Bar Counsel