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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MIGUEL FERNANDO MIRABAL,

Respondent.

_____/

Supreme Court Case No. SC21-1469

The Florida Bar File No. 2018-70,593 (11D)

ANSWER BRIEF

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PRELIMINARY STATEMENT

Complainant is referred to as The Florida Bar or the bar. Miguel Fernando Mirabal is referred to as Mr. Mirabal.

The trial exhibits entered into evidence at the two-day final hearing are referred to by TFB-Ex. or R-Ex. followed by the exhibit number (e.g., TFB-Ex.1). The sanction hearing exhibits entered into evidence during the sanction hearing following the two-day final hearing are referred to by Sanc-Ex. followed by the exhibit number (e.g., Sanc-Ex.1).

The two final hearing transcripts and sanction hearing transcript previously filed by Mr. Mirabal are referred to as T1:, T2:, and T3:, respectively, followed by the applicable page number(s). 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: and the initial brief as IB:, each followed by the applicable page number(s).

NATURE OF THE CASE

This disciplinary case against Mr. Mirabal arises out of his misconduct while seeking judgeship on three occasions. After two failed bids in 2018 and 2019, Mr. Mirabal was successfully elected as a county court judge in 2020. His opponent in the unsuccessful 2018 judicial

campaign—then-candidate and current county judge Milena Abreu—filed a grievance against Mr. Mirabal regarding his conduct during the 2018 campaign. This involved a pattern of claimed "errors" by him that repeatedly overstated the amount of money raised by his campaign at politically advantageous times. The bar investigation was stayed once Mr. Mirabal assumed the bench in 2020. As a result of a subsequent Judicial Qualifications Commission investigation, Mr. Mirabal voluntarily resigned from his elected position, the bar resumed jurisdiction over Mr. Mirabal and later filed a bar complaint against him.

The complaint addresses misconduct before Mr. Mirabal became a judge. The bar alleged that in each of his three attempts to join the judiciary, Mr. Mirabal knowingly and repeatedly misrepresented facts, either expressly or by omission. Regarding the 2018 judicial campaign, the referee found that Mr. Mirabal overstated the amount of money his campaign raised to dissuade others from running and threatened retaliation against his opponent for filing a bar grievance against him. Regarding Mr. Mirabal's 2019 Judicial Nominating Commission ("JNC") application seeking appointment to a judicial vacancy, the referee found that Mr. Mirabal knowingly withheld disclosure of multiple lawsuits that would have adversely impacted his prospects. However, regarding the 2020 judicial

campaign, the referee did not find clear and convincing evidence that Mr. Mirabal was aware of various omissions on a financial disclosure form.

Based on Mr. Mirabal's misrepresentations in seeking judgeship in 2018 and 2019, the referee found him guilty of violating multiple Rules Regulating The Florida Bar which warranted Mr. Mirabal's disbarment. On appeal, Mr. Mirabal argues that his misstatements to the public and the Judicial Nominating Commission were not knowing and intentional and he did not threaten retaliation against Judge Abreu. The initial brief argues that this Court should reject the referee's contrary findings, instead find his multiple misstatements and errors were merely negligent, and impose a one-year suspension from the practice of law. This answer brief will assert that the referee's findings of intentional and knowing violations of multiple bar rules are supported by competent substantial evidence and warrant Mr. Mirabal's disbarment from the practice of law.

STATEMENT OF THE CASE AND FACTS

The report of referee's factual findings and legal conclusions are divided into three sections for each of Mr. Mirabal's attempts to become a member of the judiciary. (See generally ROR:4-37). This brief utilizes a similar approach in summarizing the facts but omits discussion of the 2020 judicial campaign given the referee's findings of not guilty. Instead, the

third and final section of this statement of the case and facts will address the referee's findings that Mr. Mirabal threatened to retaliate against Judge Abreu for filing a bar grievance against him.

I. The 2018 judicial campaign:

A. In campaigning for a judgeship in 2018, Mr. Mirabal was responsible for certifying the accuracy of monthly campaign treasurer's reports disclosing contributions and expenditures.

Mr. Mirabal's first attempt to become a member of the judiciary involved a 2018 judicial campaign for county court judge in Group 43. Initially, Mr. Mirabal designated himself treasurer of his campaign. (T1:117; TFB-Ex.23). In this capacity, he reviewed and certified to the truth and accuracy of monthly campaign finance reports. (ROR:5). In his dual capacity as a candidate, Mr. Mirabal signed two forms affirming that he received, read, and understood the requirements of the Florida Code of Judicial Conduct set forth in Chapters 106 and 107, Florida Statutes. (TFB-Ex.23).

Mr. Mirabal was the sole signatory on his campaign banking account opened in March 2018. (TFB-Ex.24; T2:174). Shortly before the account was opened, he designated Jhanet Garcia, his family accountant, as campaign treasurer and himself as deputy treasurer. (TFB-Ex.59; T2:10; T2:25). Ms. Garcia was a certified public accountant but unfamiliar with

campaign accounting and reporting requirements. (T2:8-9). Prior to Ms. Garcia's designation as treasurer, Mr. Mirabal used a unique personal identification number (PIN) signature as treasurer to file the monthly reports, and he approved the monthly reports using another unique PIN signature in his dual role as candidate. (ROR:6). After Ms. Garcia became treasurer and Mr. Mirabal became deputy treasurer, Ms. Garcia used her unique PIN signature as treasurer to file all monthly reports from March 2018 onward. (T2:122-24). She relied on documents and information submitted by Mr. Mirabal in drafting these reports, because she did not have access to bank records. (T2:125-27). Ms. Garcia could not explain the litany of discrepancies in the reports; instead, she repeatedly stated that she was relying on information provided by Mr. Mirabal. (See generally T2:134-62). She admitted that she did not always review bank records before filing her treasurer's reports. (T2:165). Mr. Mirabal continued to use his unique PIN signature as candidate to certify to the correctness of each report and acknowledge his responsibility for the accuracy and veracity of each report. (T2:177). The referee found that Mr. Mirabal was responsible for the accuracy of the monthly reports both before and after Ms. Garcia became treasurer. (ROR:14). The initial brief does not challenge this legal conclusion.

B. Mr. Mirabal intentionally overstated the cumulative total of campaign contributions as a strategy to dissuade others from entering the race.

The referee found that the monthly campaign reports contained errors that were "frequent, significant, and material." (ROR:7). This was based on a comparison of the campaign account's bank statements to the corresponding monthly treasurer's reports. (See generally TFB-Ex.25-52). Mr. Mirabal claimed that the litany of errors in these reports—as more thoroughly explained in Judge Abreu's testimony—was the result of sloppy work by a friend who was helping him at the beginning of his campaign. (T2:22-23). The referee found the timing of many of these errors appeared to be tactical; Mr. Mirabal's filings overstated campaign account balances at critical moments when it was politically beneficial to do so, then amended filings decreased the reported balance when it was less politically detrimental. *Id*.

One such critical moment in the campaign was March 9, 2018, when Mr. Mirabal switched races from Miami-Dade County Court group 18 to group 43. (ROR:8). The evening of March 8, 2018—one day before the switch—Mr. Mirabal filed three amendments to previous campaign treasurer reports. (TFB-Ex.2F, 2G, & 2H). The first filing amended a January 2018 report, the second amended a November 2017 report, and

the third amended a February 2018 report. *Id*. In all three amendments, Mr. Mirabal reported inflated campaign account balances.

The most significant errors were contained in amendments to the November 2017 and February 2018 treasurer's reports. (See TFB-Ex.2G & 2H). Specifically, in the amendment to the November 2017 treasurer's report, the referee found that (1) it reported a cash and check totaling $1,000.00 less than what was originally reported, due to a duplicate contribution from IMARK Consulting which had already been reported in the October 2017 report (Compare TFB-Ex.32 & 33); (2) it re-reported cash, check, and loan amounts, which had the effect of incorrectly doubling the reported amount; and (3) it reported a campaign cumulative total which did not match the actual amount in Mr. Mirabal's campaign bank account. (ROR:8). (Compare TFB-Ex.2G & 33).

In the amendment to the February 2018 treasurer's report (TFB-Ex.2H), the referee found that (1) it added $3,000.00 as in-kind contributions; (2) it re-reported a $20,000.00 loan Mr. Mirabal made to himself, which incorrectly doubled the reported amount; and (3) it reported a cumulative campaign total which did not match the actual amount in Mr. Mirabal's campaign bank account. (ROR:8-9). Specifically, two deposits totaling $20,000.00 made by Mr. Mirabal in late February 2018 raised the

campaign account balance to $33,039.01. (TFB-Ex.37). Notably, Mr. Mirabal claimed the second deposit was in error and he only intended a single loan of $10,000.00. (T2:207). Both loans were already reflected in the original February 2018 treasurer's report, which had previously overstated the bank balance by over $10,000.00. Then the amendment to the report filed when Mr. Mirabal entered the race against Judge Abreu exacerbated this error; the total amount of contributions and expenditures claimed in the amendment should have reflected a bank balance of $69,967.55. (TFB-Ex.2H). This error overstated the actual bank balance by $36,928.54. (Compare TFB-Ex.2H & 37).

The three amended filings collectively overstated the total contributions even more than the already overstated balance stated in the original treasurer's reports. (T1:184-86). The referee found that these errors created the false appearance that Mr. Mirabal was much better funded than he was when he entered the race against then-candidate Milena Abreu the following day. (ROR:9).

C. Mr. Mirabal intentionally withheld amending the inaccurate campaign treasurer's reports until immediately after the deadline to enter the race had lapsed.

Another critical moment in the campaign was 12:00 p.m. on May 3, 2018, which was the deadline for candidates to enter the race. (T1:162).

In three filings on that date submitted after the noon deadline, Mr. Mirabal again amended the same monthly reports summarized *supra*. (T1:186-88). But this time, each amendment lowered the cumulative totals of the campaign account. *Id*. In the first filing on that date, Ms. Garcia and Mr. Mirabal submitted a second amendment to the November 2017 treasurer's report which deleted entries that incorrectly doubled amounts of cash, checks, and a loan from Mr. Mirabal to the campaign account. (Compare TFB-Ex.2K & 33). In the second filing, Ms. Garcia and Mr. Mirabal submitted a second amendment to the January 2018 treasurer's report which deleted a $10,000.00 purported loan from Mr. Mirabal. (Compare TFB-Ex.2L & 35). In the third filing, Ms. Garcia and Mr. Mirabal submitted a second amendment to the February 2018 treasurer's report which completely deleted the doubled $20,000.00 purported loan from Mr. Mirabal. (Compare TFB-Ex.2M & 36).

As a result of the litany of incorrect filings by Mr. Mirabal, Judge Abreu filed a bar complaint and a corresponding Florida Elections Commission (FEC) complaint. (T1:189-90). As a result of the FEC complaint, Mr. Mirabal entered into a consent order with the FEC in which he stipulated to a $2,000.00 fine based on his violation of section 106.07(5), Florida Statutes. (TFB-Ex.3).

Nevertheless, at the disciplinary hearing Mr. Mirabal claimed that these were merely errors and omissions in filling out forms caused by his inexperience. (T2:189-90, 196). The referee found these claims to be untruthful, instead holding that Mr. Mirabal acted deliberately and had extensive experience in accurately reporting finances as a closing agent on thousands of real estate transactions. (ROR:12, 14-15).

In finding that Mr. Mirabal knowingly and intentionally misrepresented his campaign's finances, the referee dedicated significant focus to the $10,000.00 purported loan deleted from the January 2018 report. (ROR:10, 12-13). The relevant bank statement demonstrated there was no such loan made by Mr. Mirabal in January 2018. (TFB-Ex.36). The referee also noted that Mr. Mirabal did not amend the amount of the loan or the date of the loan; instead, he simply deleted the entry. (ROR:10). The referee rejected Mr. Mirabal's explanation that he deposited $10,000.00 in February 2018, but mistakenly reported the date of deposit for the month before. (ROR:13; see also T2:205-06). There were two $10,000.00 deposits in February 2018 from Mr. Mirabal into his campaign account, and they were already accounted for in the February 2018 treasurer's report. (TFB-Ex.36). Given this documentary evidence and the unusually high transaction amount, the referee concluded that the evidence collectively

demonstrated that Mr. Mirabal "had to know the statement [identifying a non-existent $10,000.00 loan in January 2018] was not true when he certified it." (ROR:10, 12-13).

Further, given the sheer number of errors in the treasurer's reports, the politically advantageous timing of such errors, and the amendments correcting these errors made literal minutes after a deadline to enter the race had lapsed, the referee found this was a deliberate strategy by Mr. Mirabal. (ROR:15-16). The referee concluded that Mr. Mirabal's conduct during his 2018 campaign violated Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). (ROR:16-17).

II. 2019 Judicial Nominating Commission application:

At trial, Mr. Mirabal characterized his conduct during the 2018 judicial campaign as a "major mess up" that he immediately learned from after Judge Abreu filed complaints against him. (T3:96-97). Therefore, this brief will next address the referee's findings that Mr. Mirabal misrepresented facts either expressly or by omission during his second effort to fill a judicial vacancy in 2019.

In April 2019, Mr. Mirabal sought appointment to a judicial vacancy in Miami-Dade County through his filing of a JNC application. (TFB-Ex.1). The application contains a list of 54 questions/directives to be completed by

the applicant. *Id*. Mr. Mirabal certified that he "read the foregoing questions carefully and have answered them truthfully, fully and completely." *Id*. The bar alleged in its complaint that Mr. Mirabal's answers to items 38, 39, 50, 51, and 53 were either express misrepresentations or misrepresentations by omission. (Tab#1). The referee found that some, but not all of Mr. Mirabal's responses to these items constituted violations of Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). This brief limits itself to the two responses by Mr. Mirabal that the referee determined to be dishonest in violation of the rule.

A. Question 38 of the JNC application:

Question 38 of the JNC application sought disclosure of every lawsuit in which the applicant was either a plaintiff or a defendant. (TFB-Ex.1). Mr. Mirabal disclosed nine cases involving various real property disputes, a lawsuit for unpaid legal fees, and legal disputes with former business partners. *Id*. However, there were six other lawsuits that Mr. Mirabal failed to disclose. (See generally TFB-Ex.4-6, 15, 18-19).

Like his explanation for his errors in the 2018 judicial campaign, Mr. Mirabal explained that his paperwork was sloppy and negligent. (T2:115-16). But the referee found that this explanation was not credible. (ROR:22). Specifically, the referee determined that some of these lawsuits

resulted in significantly adverse findings against Mr. Mirabal that would negatively affect his prospects at filling the judicial vacancy. *Id*. In one case, the Federal Deposit Insurance Corporation, in its capacity as receiver, alleged that Mr. Mirabal—who acted as the closing agent—engaged in mortgage fraud. (TFB-Ex.18). Though the matter was settled with no admission of personal liability, this agreed resolution was based on Mr. Mirabal's agreement to cooperate and testify against others involved in the fraud. *Id*. Mr. Mirabal claimed that he could not recall the particular closing at issue, his lawyer told him that he had done nothing wrong, but the cost of litigation led to him settling the matter. (T2:60-64). He claimed he did not disclose this case on his JNC application because he conflated it with another matter that was disclosed on his application. (T2:66-67). The referee concluded that it was "impossible to believe" Mr. Mirabal had simply forgotten about this lawsuit. (ROR:23).

The referee additionally found that one of the lawsuits Mr. Mirabal disclosed on his JNC application "seriously misrepresented the disposition of the case." (ROR:23-24). Mr. Mirabal's application identified a lawsuit he initiated against a bank in state court, and he described the disposition of the case as follows:

> This was my lawsuit as Plaintiff for a property/mortgage against Bank of America and Countrywide Home Loans, after I

> detected irregularities with the loan. After several years of litigation, we finally settled in June 2016 with a short sale of the property.

(TFB-Ex.1). But the state court action was not settled; it was removed to federal court, where Mr. Mirabal's claims were dismissed with prejudice, and the stayed action in state court was also dismissed three months later for failure to prosecute. (TFB-Ex.10, 13; T1:60). The JNC application did not disclose the federal action or its disposition. (See TFB-Ex.1; T1:61).

The federal court order dismissing Mr. Mirabal's complaint demonstrates that the lawsuit was not based on "irregularities with the loan." (TFB-Ex.10). According to the order, Mr. Mirabal's complaint asserted that the bank had reneged on a prior agreement to execute a deed in lieu of foreclosure and waive any deficiency amount due on the note and mortgage. *Id*. The court dismissed the case because the alleged agreement was not in writing. *Id*. At the disciplinary hearing, Mr. Mirabal nevertheless characterized his lawsuit as predicated on falsified and fraudulent bank documents. (T2:75). He also suggested that he did not misrepresent the disposition of the case because the bank eventually approved a short sale after the dismissal of the removed federal action. (T2:82-83).

The order of dismissal is highly critical of the allegations in Mr. Mirabal's complaints, which "varied significantly regarding what actions were taken by whom and when." (TFB-Ex.10). The order found that several exhibits attached to Mr. Mirabal's pleadings "directly contradict the allegations." *Id*.

Specifically, Mr. Mirabal's complaint alleged that the verbal agreement between the parties was reduced to writing in a recorded deed in lieu of foreclosure. *Id*.; (see also TFB-Ex.16). The federal court order found that this claim was unfounded for four reasons. (TFB-Ex.10). First, the deed was not signed by Bank of America or any of its representatives. *Id*. In fact, the deed did not mention Bank of America at all; it purported to transfer the real property to Washington Mutual Bank as the then-holder of the note and mortgage. (TFB-Ex.16). Shortly after the deed was recorded and years before Mr. Mirabal sued Bank of America based on this "agreement," Washington Mutual recorded an affidavit stating that it did not agree to the transfer of title, though Mr. Mirabal denied knowledge of this affidavit. (TFB-Ex.17; T2:59-60). Second, the deed did not waive the bank's right to a deficiency judgment even if it had been signed. (TFB-Ex.10, 16). Third, a letter and fax sent by Mr. Mirabal to the bank indicated that the bank had not agreed to accept his offered deed in lieu of

foreclosure. (TFB-Ex.10). Fourth, another letter from Mr. Mirabal to the bank explained that he unilaterally recorded his offered deed in lieu without the bank's consent "in order to avoid a foreclosure judgment." *Id*. Following entry of the order, Mr. Mirabal executed a Seller's Closing Affidavit acknowledging that the quit claim deed was erroneous and of no legal import. (TFB-Ex.11).

Mr. Mirabal claimed that the omission of the federal court action from his JNC application was accidental. (T2:84). The referee determined that it was not credible that Mr. Mirabal could have forgotten about this "scathing order" containing "exceedingly negative findings" entered three years prior to the JNC application. (ROR:25-26). The referee found that this was another example—in addition to the undisclosed FDIC lawsuit—of Mr. Mirabal's efforts to conceal adverse written findings that would negatively impact his prospects of appointment to the bench. (ROR:26-27). The report deemed these misrepresentations on Question 38 of the JNC application a violation of Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). *Id*.

B. <u>Question 39 of the JNC application:</u>

Question 39 of the JNC application sought disclosure of any finding of probable cause, citation, or ongoing investigation for a breach of ethics or

unprofessional conduct by any court, administrative, agency, bar association, or other professional group. (TFB-Ex.1). Mr. Mirabal categorically denied the existence of any such finding or pending investigation. *Id*. The referee found this blanket denial was an "intentional misrepresentation" for two reasons. (ROR:28). First, this answer omits the bar investigation which led to this disciplinary proceeding; the May 2018 bar grievance filed against Mr. Mirabal by Judge Abreu was pending at the time he submitted his JNC application in April 2019. (TFB-Ex.1-2; T1:33). Second, this answer omits the FEC consent order in which Mr. Mirabal stipulated to a violation of section 106.07(5), Florida Statutes and was fined $2,000.00. (See TFB-Ex.3).

Mr. Mirabal claimed that he had probably made a mistake copying and pasting his answers from a prior application, and that he "absolutely" should have disclosed the bar complaint. (T2:43, 48-49, 115). The referee found the omission was intentional, because the bar investigation was "simply too profound a life event to have been accidentally omitted," and the FEC consent order was rendered only six weeks prior to the JNC application. (ROR:28-29; T1:40). The report deemed the misrepresentation on Question 39 of the JNC application a violation of Rule

4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). *Id*.

III. Mr. Mirabal leveled a false accusation disparaging Judge Abreu when responding to her bar grievance against him, and he baselessly threatened to "expose" and "escalate" matters to silence and intimidate her.

Judge Abreu filed a bar grievance against Mr. Mirabal due to his misconduct in the 2018 judicial campaign. (T1:189-90; TFB-Ex.2). In October 2019, Mr. Mirabal filed a supplemental response to the grievance accusing Judge Abreu of resorting to "great extremes" to dissuade him from entering the race against her, and further accusing her of having filed a frivolous lawsuit against her former opponent in a 2016 election. (TFB-Ex.57). Following these allegations, the letter states, "We do not want to escalate this matter any further and would hope that the resolution of the FEC complaint . . . would be the appropriate remedy and resolution." *Id*. Though this supplemental response was signed by counsel, Mr. Mirabal testified that he reviewed, edited, and approved the letter. (T2:101).

At trial, Mr. Mirabal admitted he had no personal knowledge of any frivolous lawsuit filed by Judge Abreu against her former opponent, and his assertion in the letter was entirely based conversations with unnamed judges. (T2:102). He claimed that the rumor he heard might have been

regarding a frivolous Judicial Qualifications Commission complaint rather than a frivolous lawsuit. *Id*. Judge Abreu testified that she neither filed a lawsuit nor any other complaint against her opponent in the 2016 election. (T1:197-200; T3:40). She also testified that she did not engage in any effort to dissuade Mr. Mirabal from entering the race. (T1:233).

The referee found that Mr. Mirabal's false claim in the October 2019 supplemental response was made "intentionally or with reckless disregard for its truth" and "the only purpose of the statement was to disparage Judge Abreu." (ROR:40). The statement was made against a sitting judge. (T1:197). Therefore, the referee found that the disparaging statement violated Rules 4-8.1(c) (maintaining the integrity of the profession), 4-8.2(a) (Judicial and Legal Officials); and 4-8.2(b) (Judicial and Legal Officials). (ROR:40).

The referee separately considered whether the supplemental response's statement that Mr. Mirabal could "relay a series of troubling events" but he did not want to "escalate this matter any further" was intended as an implicit threat against Judge Abreu for filing the bar grievance. (See ROR:41). Judge Abreu interpreted this language as an intimidation tactic. (T1:201). Mr. Mirabal claimed that this was not his intent. (T2:112). The referee held otherwise in finding that "this statement

was designed specifically to impugn Judge Abreu's integrity and to silence and intimidate Judge Abreu and/or the Bar from proceeding further with her complaint." (ROR:42). The referee found that this violated Rules 4-8.1(c) (maintaining the integrity of the profession), 4-8.2(a) (judicial and legal officials), 4-8.2(b) (judicial and legal officials, Code of Judicial Conduct Canon 7), and 4-8.4(d) (conduct prejudicial to the administration of justice).

Based on the violations at issue, the aggravating and mitigating factors, and relevant case law, the referee recommends Mr. Mirabal's disbarment from the practice of law. (ROR:49). On appeal, Mr. Mirabal argues that this Court should instead impose a one-year suspension for the reasons set forth in the initial brief.

SUMMARY OF THE ARGUMENT

Every argument in the initial brief regarding the rule violations at issue hinge on Mr. Mirabal's claimed lack of intent. He repeatedly asks this Court to forgive his continued pattern of express misrepresentations and misrepresentations by omission as mere negligence. According to the initial brief, Mr. Mirabal was simultaneously (1) in over his head as a "political neophyte" making several unintended errors in reporting during his first campaign; (2) careless in mistakenly copying and pasting information from a prior JNC application; (3) technically accurate in his description of a

lawsuit in the JNC application even though he should have disclosed more; (4) a victim of relying on the word of a trusted source when he leveled a disparaging and false statement against a sitting judge without verifying its accuracy; and (5) imprecise in his language referring to a potential escalation of the matter following a paragraph disparaging Judge Abreu, which he maintains was not an implicit threat. At some point in making findings of fact, the referee apparently decided that Mr. Mirabal lost the benefit of the doubt. His arguments on appeal repeatedly assert that the referee's findings of intent are clearly erroneous and therefore insufficient to warrant disbarment. But a referee's findings of fact supported by competent substantial evidence cannot be overturned by merely identifying contrary evidence in the record. See *The Florida Bar v. Committe*, 916 So. 2d 741, 746 (Fla. 2005).

Given the competent substantial evidence finding that Mr. Mirabal intentionally violated multiple Rules Regulating The Florida Bar, the referee recommends disbarment from the practice of law. This sanction was largely based on the pattern of dishonest conduct by Mr. Mirabal spanning two efforts to become a judge and continuing into the bar investigation. The applicable Standards for Imposing Lawyer Sanctions and the case law support the referee's recommendation of disbarment. Since the initial brief

does not demonstrate that the level of discipline was either clearly erroneous or unsupported by the record, this Court should approve the report of referee in full and disbar Mr. Mirabal from the practice of law.

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

This is an original proceeding filed under this Court's exclusive jurisdiction "to regulate the admission of persons to the practice of law and the discipline of persons admitted." Art. V, §15, Fla. Const. Standards of review used to evaluate a trial court's final judgment do not apply here.

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). In reaching 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)).

2. 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 stronger sanctions than in the past. *See The Florida Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla.

2015). 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.

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." *Florida Standards 3.2(a), 3.3(a)*. This process of balancing the positive and negative factors is a mixed question of fact and law. It is part of the ultimate decision to impose a sanction.

ARGUMENT

I. Mr. Mirabal knowingly violated Rule 4-8.4(c) while campaigning for judicial office in 2018.

While stipulating that Mr. Mirabal engaged in misconduct warranting a substantial period of suspension from the practice of law, the initial brief argues that the referee's recommendation of disbarment is excessive because Mr. Mirabal did not knowingly mislead the public or the JNC. But the referee held otherwise, repeatedly noting that campaign treasurer's reports filed in 2018 and his 2019 JNC application contained misstatements Mr. Mirabal knew to be false or material omissions that could not be simply disregarded as mere oversights.

This Court has stated that a referee's factual finding regarding whether the bar proved intent will only be rejected when it is clearly erroneous. *Alters*, 260 So. 3d at 79 (Fla. 2018) (citing *The Florida Bar v. Sweeney*, 730 So. 2d 1269, 1271 (Fla. 1998)). Mr. Mirabal simply cannot meet this burden. Repeating testimony and arguments the referee heard

and rejected is insufficient to overcome a referee's findings of fact and conclusions as to guilt. *Frederick*, 756 So. 2d at 86 (Fla. 2000).

Regarding the 2018 judicial campaign, the initial brief merely argues that Mr. Mirabal and his campaign treasurer, Ms. Garcia, made mistakes and attempted to promptly correct issues upon their discovery of these mistakes. (IB:19). This assertion is based on e-mail exchanges in which Mr. Mirabal asked Ms. Garcia "was the accounting ever corrected" and an earlier e-mail in which Mr. Mirabal claimed he made a mistake in filing an amended report. (See R-Ex.B). It is further based on a written letter by Jhanet Garcia offered during the FEC investigation that largely offers a summary of the content of the e-mail thread. (See R-Ex.A).

This lone e-mail thread is not the exonerating piece of evidence it is portrayed as in the initial brief or in Ms. Garcia's FEC letter. At best, it demonstrates Mr. Mirabal's knowledge that an amendment to a campaign report he filed the day before he switched races contained a significant error overstating total campaign contributions. The e-mail only proves that Mr. Mirabal was aware of the claimed error. Whether his "errors" and delayed corrections of such were intentional or mistakes remained a factual dispute. The e-mail did not require the fact finder to resolve the factual dispute in Mr. Mirabal's favor. The exchange contains an e-mail from Mr.

Mirabal claiming he made a mistake in filing an amendment to his campaign treasurer report, in the same way that he did so in his testimony and Ms. Garcia did so in her FEC letter and her testimony. The referee found that their version of events is simply not credible.

The e-mail thread was offered by Mr. Mirabal to show that he previously claimed he made a mistake back in March 2018. The initial brief essentially argues that if Mr. Mirabal previously claimed it, then it must be so. But the referee had valid reasons for finding Mr. Mirabal's claim of mistake—in both the e-mail and in his testimony—lacked credibility. Circumstantial evidence is often used to prove intent as the only available evidence of a person's mental state. *The Florida Bar v. Marable*, 645 So. 2d 438, 442-43 (Fla. 1994). The sheer volume of errors alone suggests something beyond mere negligence. The referee also considered the nature and timing of errors that made it appear as though Mr. Mirabal's coffers were substantially larger than they actually were at critical moments in the campaign. The referee further considered the amendments correcting the errors minutes after the deadline to enter the race had lapsed. This pattern constituted strong circumstantial evidence showing that the "errors" in campaign treasurer's reports were deliberate and the corrections deliberately delayed.

The documentary evidence and testimony established the politically convenient timing of Mr. Mirabal's pattern of overstating his campaign donations through treasurer's reports. Mr. Mirabal's intent was to give potential candidates for judicial office the false impression that entering this race would be hotly contested based on the coffers that were immediately at his disposal from the outset. Then he intended to later bring the campaign treasurer's reports into compliance through amended filings, based on the legal assertion that "[t]here does not appear to be a statutory deadline for making an amendment during a political campaign." (See IB:21). The record amply supports the referee's findings regarding Mr. Mirabal's deliberate campaign strategy. The e-mail thread offered by Mr. Mirabal does not demonstrate that the referee's findings on this issue are clearly erroneous. Therefore, this Court should approve the referee's finding that Mr. Mirabal's conduct in the 2018 judicial campaign violated Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

II. Mr. Mirabal knowingly violated Rule 4-8.4(c) while seeking appointment to a judicial vacancy in 2019.

The initial brief similarly argues that "it is clear that these omissions [in the 2019 JNC application] were unintentional." (IB:22). This argument

is insufficient to demonstrate that the referee's contrary findings were clearly erroneous. It is entirely based on the credibility of Mr. Mirabal's testimony, in which he claimed that he copied and pasted an old application without completely updating his previous answers. (IB:22-23). The referee repeatedly found this testimony lacked credibility. The finder of fact is not required to believe the testimony of any witness, even if unrebutted. *City of Orlando Police Dept. v. Rose*, 974 So. 2d 554, 555 (Fla. 5th DCA 2008). The referee found that (1) the bar investigation was too profound a life event to simply be forgotten before it had been resolved (ROR:28-29); (2) it was "impossible to believe" that Mr. Mirabal had forgotten about the FDIC complaint accusing him of fraud (ROR:23), and (3) Mr. Mirabal completely misrepresented the disposition of the state court action he filed against Bank of America (ROR:24).

The initial brief merely disputes these findings based on Mr. Mirabal's testimony. It asserts that Mr. Mirabal was uncertain whether the bar investigation was still active. (IB:23-24). It asserts that Mr. Mirabal's "lack of memory" resulted in his failure to accurately disclose and describe six different legal proceedings in which he was a party. (IB:25). But the finder of fact was not required to believe this testimony. Much like the claimed errors in the 2018 judicial campaign, the referee found that these omissions

from the 2019 JNC application were deliberate. Each omission benefited Mr. Mirabal by withholding information that would have portrayed him in a less favorable light. He was under investigation by the bar, he settled a complaint by the FDIC accusing him of fraud in exchange for his cooperation and testimony against others, and his case against Bank of America was dismissed because Mr. Mirabal's unilateral filing of a deed in lieu of foreclosure was recorded in bad faith without any acceptance by the holder of the note and mortgage.

These were significant events that, if disclosed, would negatively impact Mr. Mirabal's chances of success in his JNC application. But the initial brief nevertheless maintains that the referee's finding that the omissions were intentional was clearly erroneous, while also repeatedly stating that Mr. Mirabal "accepts responsibility" for his multiple omissions. (IB:23-34). First, the referee was not required to believe Mr. Mirabal's claims that he continuously forgot about this significant litigation and other cases as well. Second, the litigation against Bank of America in particular was not a matter of misrepresentation by omission like the others. The referee found that the Mr. Mirabal completely misrepresented the disposition of the case.

Even in the initial brief, Mr. Mirabal maintains "there was no misrepresentation, and the statement was fully accurate." (IB:34). Question 38 asked Mr. Mirabal to disclose the nature of every lawsuit in which he has been a party and its disposition. (TFB-Ex.1). His answer that he filed suit in state court based on "irregularities with the loan" and finally settled the lawsuit with a short sale was not a "fully accurate statement" for two reasons.

First, Mr. Mirabal's lawsuit was based on his failed legal theory that he could force Bank of America to accept a deed in lieu of foreclosure he offered to the previous holder of the note and mortgage. This had nothing to do with "irregularities with the loan;" Mr. Mirabal wanted to force the bank to accept the secured property and waive any right to a deficiency judgment. The only "irregularity" was Mr. Mirabal's own doing; he prepared and recorded a deed in lieu purporting to transfer ownership of the property because he was unhappy with the lack of response from the lender regarding his offered deed in lieu. This was the finding made by the federal court. (TFB-Ex.10). This Court has held that a referee may rely on court orders in support of findings of fact. *The Florida Bar v. Gwynn*, 94 So. 3d 425, 428-29 (Fla. 2012).

Second, the disposition of the state and federal court actions was not a voluntary settlement involving a short sale in June 2016. The initial brief admits that the state action was "really a nullity" when the matter was removed to federal court. (IB:34). The subsequent disposition of the removed federal action was a scathing dismissal with prejudice, not a settlement. (TFB-Ex.10). The dismissal with prejudice occurred in March 2016. *Id*. The short sale in June 2016—three months later—was not a settlement of either the state or federal lawsuit. The former was a nullity and the latter was dismissed with prejudice, leaving nothing to "settle" regarding either lawsuit at the time of the short sale. This short sale was simply the product of a borrower defaulting on a secured loan; it had nothing to do with the disposition of Mr. Mirabal's failed lawsuit against Bank of America.

Mr. Mirabal's answer in his JNC application and in his initial brief attempts to gloss over both the nature of his lawsuit and its actual disposition—which is what Question 38 requested—and instead simply state that since there eventually was a short sale of the property, he did not misrepresent anything. (See IB:34-35). This is immediately disproven by a comparison of the JNC application (TFB-Ex.1) to the order of dismissal (TFB-Ex.10). Equally important, on appeal the bar is not tasked with

disproving Mr. Mirabal's assertions. On appeal, Mr. Mirabal must demonstrate the referee's findings of fact on this issue are clearly erroneous. The initial brief's arguments on this issue are woefully insufficient in meeting this high standard. Therefore, this Court should approve the referee's findings that Mr. Mirabal's answers to Questions 38 and 39 on the JNC application both violated Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

III. Mr. Mirabal knowingly, or with reckless disregard for the truth, violated Rules 4-8.1(a), 4-8.2(a), 4-8.2(b), and 4-8.4(d) during the bar investigation by leveling a false and disparaging allegation against Judge Abreu to silence and intimidate her.

In a letter to the bar, Mr. Mirabal questioned Judge Abreu's motives in filing a bar complaint, leveled a baseless and disparaging assertion that she had filed a frivolous lawsuit against her former opponent in a prior election, and implied a potential escalation of the matter in the event of a bar complaint against him. (TFB-Ex.57). Mr. Mirabal's testimony at trial demonstrated that he had no personal knowledge of—and had done no prior research to verify—his claim that Judge Abreu filed a frivolous lawsuit against her prior opponent. The initial brief can only reference a "trusted source" that gave Mr. Mirabal the incorrect information, in support of the argument that this was an "objectively reasonable factual basis for making

the [false] statement." (IB:36, 42 (quoting *The Florida Bar v. Patterson*, 257 So. 3d 56 (Fla. 2018)). It also vaguely alludes to additional evidence that Mr. Mirabal was not allowed to present, though since the initial brief does not challenge the referee's ruling on the issue, this Court should disregard these vague claims of additional evidence. (See IB:37, 40).

On the strength of this claimed trusted source, Mr. Mirabal essentially asks this Court to afford him the wide latitude of leveling disparaging and false statements against a sitting judge with impunity. This Court should reject Mr. Mirabal's effort to level a baseless accusation and then escape any attendant consequences by claiming that someone else gave him bad information. Mr. Mirabal did not merely express concern over a potential ulterior motive by the complainant, who happened to now be a sitting judge. He leveled a very specific, patently false, and disparaging allegation either intentionally or with reckless disregard for the truth. His slippery slope concern that the bar's position impinges on a lawyer's rights to challenge a grievant's motivations in filing a bar complaint should be rejected. (See IB:37). This is not an accurate description of the letter's allegations.

Further, the initial brief mischaracterizes testimony by Judge Abreu for the sole purpose of casting more aspersions on Judge Abreu's motivation in filing a grievance. The initial brief claims that at trial, Judge

Abreu's testimony "seemed to admit that the primary reason she filed the instant grievance was because the Respondent stayed in "her" race." (IB:43). This is not an accurate summary of her testimony, which was the exact opposite. Judge Abreu was asked a leading question in an apparent attempt to elicit this type of response, but she specifically rejected the premise of the question as follows:

Q. When Mr. Mirabal entered your race –

A. It's not my race, sir.

Q. Well, the one you were running in.

A. Sure.

Q. Okay. And I didn't mean – because I made that argument –

A. Anybody can file in any seat that they want.

(T1:232). The initial brief cites to the following two pages after this exchange in support of the contention that Judge Abreu "seemed to admit" she filed a grievance "because the Respondent stayed in "her" race." (IB:43). Neither page contains any such statement or implication. She did not "seem to admit" anything of the sort, nor did she characterize the Group 43 race as belonging to her. Judge Abreu was the one individual facing the most potential injury caused by Mr. Mirabal's misconduct in 2018. The bar is not asserting that a lawyer is prohibited from questioning the actual

motives of a grievant, but this is not a free pass to disparage a sitting judge by leveling baseless accusations and twisting her words to suit a theory of defense.

Rule 4-8.2(a) prohibits a lawyer from making a statement "the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge." Even according to Mr. Mirabal's own version of events, he leveled a disparaging accusation with reckless disregard as to its truth or falsity. He made no effort to verify the information he allegedly received from his "source" before leveling the accusation in writing. He lacked an objectively reasonable factual basis for making the statement. Instead, his basis for the statement was purely subjective; he asks this Court to simply take him at his word that he had a source he trusted so implicitly that he wrongly believed independent research on his part was unnecessary. This is not a sufficient basis to avoid discipline for disparaging a sitting judge.

Additionally, immediately after the paragraph disparaging Judge Abreu, Mr. Mirabal's response states, "We do not want to escalate this matter any further and would hope that the resolution of the FEC complaint . . . would be the appropriate remedy and resolution." (TFB-Ex.57). The initial brief asserts that this was not an improper threat, but intended to

mean that the bar proceedings could be escalated through a contested grievance process. (IB:38). The plain reading of that statement—which immediately follows an entire paragraph accusing Judge Abreu of various forms of misconduct and offers to provide additional evidence proving such—does not lend itself to a more innocent interpretation. The initial brief even admits that the language "could be interpreted that the Respondent was considering some form of litigation," though it asserts the language could also be read otherwise. (IB:38). The referee's finding regarding the letter's intent to silence and intimidate Judge Abreu was supported by competent substantial evidence based on a plain reading. The initial brief's advocacy for a more charitable reading of this implied threat does not demonstrate that the referee's interpretation of the letter was clearly erroneous.

The initial brief also argues that the bar violated due process by not identifying different subparts to rule violations or referencing specific judicial canons violated by Mr. Mirabal. (IB:39). This perfunctory argument is mostly limited to a footnote and without citation to case law. But to the extent the argument is further considered, a referee is entitled to find additional rule violations if the bar complaint alleged the actual conduct which formed the basis for the violation. *The Florida Bar v. Fredericks*, 731

So. 2d 1249, 1253 (Fla. 1999). The initial brief makes no allegation that Mr. Mirabal was not on notice of the specific misconduct placed at issue in the bar complaint.

Therefore, this Court should approve the referee's findings that Mr. Mirabal's response letter sent during the bar investigation violated Rules 4-8.1(a) (maintaining the integrity of the profession)[1], 4-8.2(a) (judicial and legal officials), 4-8.2(b) (judicial and legal officials, Code of Judicial Conduct Canon 7), and 4-8.4(d) (conduct prejudicial to the administration of justice).

IV. Based on the violations at issue, the pattern of misconduct, and the actual or potential injury caused by the violations, disbarment is the appropriate sanction.

A. The applicable standards:

The Standards for Imposing Lawyer Sanctions provide a baseline for determining the appropriate sanction for a lawyer's misconduct before consideration of aggravating or mitigating circumstances. The referee found that two standards warranted Mr. Mirabal's disbarment. (ROR:51-52). Under Standard 5.1(a) (failure to maintain personal integrity),

[1] The initial brief correctly points out that the report of referee mistakenly cites Rule 4-8.1(c), which only applies to applicants to the bar. (See IB:39-40). Given the referee's findings that Mr. Mirabal disparaged Judge Abreu during the bar investigation either intentionally or with reckless disregard for the truth, it is clear that the referee intended to cite to Rule 4-8.1(a), which prohibits such conduct during a bar proceeding.

disbarment is appropriate when a lawyer engages in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice. Under Standard 7.1(a) (deceptive conduct or statements and unreasonable or improper fees), 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. The aggravating and mitigating circumstances:

Based on the misconduct at issue and the applicable sanctions, the aggravating and mitigating circumstances are next considered in determining whether an upward or downward adjustment in discipline to be imposed is warranted. Under Standard 3.2(b) of the Florida Standards for Imposing Lawyer Sanctions, the referee found the following aggravating circumstances applied:

- Dishonest and selfish motive under Standard 3.2(b)(2);
- Pattern of misconduct under Standard 3.2(b)(3);
- Multiple offenses under Standard 3.2(b)(4);

- Bad faith obstruction of the disciplinary process under Standard 3.2(b)(5);
- Submission of a false statement during the disciplinary process under Standard 3.2(b)(6);
- Substantial experience in the practice of law under Standard 3.2(b)(9).

(ROR:44-45).

In mitigation under Standard 3.3(b), the referee found that Mr. Mirabal had no prior discipline in his 18 years as a member of the bar, he presented five witnesses who testified favorably regarding Mr. Mirabal's character and reputation, and he has been subject to two other penalties and sanctions (his voluntary resignation as a judge and the FEC order imposing a $2,000.00 fine). (ROR:45-45).

Based on the report, it is apparent that the referee afforded much greater weight to the aggravating circumstances than the mitigating circumstances. The referee held that the misconduct proven by the bar evidenced such "a serious and continuous pattern of dishonesty, deceit, and either misrepresentation or a callous disregard for finding the truth, that disbarment is appropriate." (ROR:50). Specifically, the conduct spanned three separate time periods: (1) the 2018 campaign; (2) the 2019 JNC

application; and (3) the bar investigation. Throughout these periods, Mr. Mirabal maintained a consistent pattern of disregarding honesty and integrity for his own benefit. Notably, the misconduct occurred when honesty and integrity were of paramount importance. But when applying for a judgeship and later defending himself in a professional ethics investigation, Mr. Mirabal instead chose to act dishonestly in pursuit of his own self-interest. (ROR:50).

This pattern of dishonesty found by the referee was also preceded by other dishonest acts, such as Mr. Mirabal's unilateral recording of a deed in lieu of foreclosure in 2008 that he knew the holder of the note and mortgage had not approved, and his filing of a frivolous lawsuit against a bank based on the false premise that the bank had accepted the deed in lieu and waived its right to a deficiency judgment. During the sanction hearing conducted after the two-day hearing on guilt, the bar also showed that Mr. Mirabal acted dishonestly in his own divorce case in 2020 by filing a false financial affidavit stating that he was unemployed and had no income, assets, or liabilities. (Sanc-Ex.75). During the same time period he filed this affidavit, he also filed a financial disclosure form while campaigning for judicial office in 2020 claiming a $95,000.00. annual

income from his law firm along with thousands of dollars in assets. (TFB-Ex.54; see also T3:107-09).

C. Case Law

This Court has held that basic, fundamental dishonesty is a serious flaw which "cannot be tolerated by a profession that relies upon the truthfulness of its members." *The Florida Bar v. Berthiaume*, 78 So. 3d 503, 510 (Fla. 2011) (quoting *The Florida Bar v. Rotstein*, 835 So. 2d 241, 246 (Fla. 2002)). This Court treats each individual instance of dishonesty as separate offenses. *The Florida Bar v. Orta*, 689 So. 2d 270 (Fla. 1997) (disbarring an attorney for multiple instances of dishonesty). Cumulative misconduct is treated more severely than isolated acts. *Id*. Mr. Mirabal is guilty of making misrepresentations in certified monthly campaign reports submitted in his 2018 campaign, making multiple misrepresentations in his sworn judicial application seeking appointment to the bench in 2019, and he made a misrepresentation to the bar by falsely accusing Judge Abreu of filing a frivolous lawsuit. This conduct spanned for several years. Therefore, although the lack of a prior disciplinary history would normally constitute a significant mitigating factor, in this case the multiple offenses and pattern of misconduct spanning years renders this mitigation less significant.

Members of the bar are required "to conduct their personal business affairs with honesty and in accordance with the law." *The Florida Bar v. Baker*, 810 So. 2d 876, 882 (Fla. 2002); see also *The Florida Bar v. Hosner*, 520 So. 2d 567, 568 (Fla. 1988) ("[L]awyers are necessarily held to a higher standard of conduct in business dealings than are nonlawyers."). "[A]n officer of the court who knowingly seeks to corrupt the legal process can expect to be excluded from that process." *The Florida Bar v. St. Louis*, 967 So. 2d 108, 122-23 (Fla. 2007).

This Court should reject argument by Mr. Mirabal that the discipline imposed should be less severe since he did not commit rule violations in the capacity of an attorney representing a client. This Court has held that lawyers cannot check their professional responsibilities at the door and commit misconduct with impunity if it does not directly involve the practice of law. See *The Florida Bar v. Marcellus*, 249 So. 3d 538 (Fla. 2018). Additionally, Mr. Mirabal's misconduct was closely related to the practice of law; he sought judgeships and he was defending himself in a bar disciplinary proceeding when he committed the misconduct at issue. The fact that he was not in a courtroom when he acted dishonestly is immaterial. The fact that his pattern of dishonesty was in service of his own self-interest rather than the interests of a client is similarly immaterial.

In *The Florida Bar v. Koepke*, 327 So. 3d 788, 793 (Fla. 2021), this Court held that disbarment is the presumptive sanction for an attorney knowingly presenting false testimony in a judicial proceeding. In *The Florida Bar v. Hall*, 49 So. 3d 1254 (Fla. 2010), this Court similarly held that disbarment is appropriate due to a lawyer's fraudulent conduct in her personal affairs by filing a forged document. Mr. Mirabal's pattern of either express misrepresentations or misrepresentations by omission while seeking judicial office warrants his disbarment based on this case law.

In arguing otherwise, the initial brief claims that character witnesses established that Mr. Mirabal is capable of rehabilitation, making the recommendation of disbarment too severe a sanction. But the referee properly weighed the character testimony against the misconduct at issue and specifically held that disbarment was necessary to protect the public and the administration of justice from a lawyer who has not discharged, will not discharge, or is unlikely to discharge his professional duties to clients, the public, and the legal system. (ROR:51-52). The referee heard significant testimony from Mr. Mirabal and had a superior vantage point as the finder of fact to determine whether Mr. Mirabal knowingly violated bar rules and whether Mr. Mirabal is amenable to rehabilitation. The referee's

factual finding on this issue is supported by competent substantial evidence, and therefore should not be overturned as clearly erroneous.

It is unusual for a lawyer to have a clean disciplinary history for years and then become subject to a disbarment recommendation based on a litany of misconduct. The initial brief notes the factual distinction between the present matter and *Orta*, which involved a pattern of dishonesty by a lawyer who withheld disclosure of a bank account to various entities, including the bar and the Internal Revenue Service, and he later submitted contradictory statements explaining his misconduct. The respondent in *Orta*, 689 So. 2d 270 (Fla. 1997) also had prior discipline and committed misconduct while under suspension. The bar does not dispute this is a factual distinction, but Mr. Mirabal's conduct demonstrates a level of self-interest and a disregard for the truth that was ongoing even into the bar proceeding. He repeatedly asks this Court to forgive his continued pattern of express misrepresentations and misrepresentations by omission as mere negligence. But his misconduct was both ongoing and intentional.

This is not the type of conduct properly redressed by a lengthy suspension given this Court's more recent trend of imposing stronger sanctions for attorney misconduct. A referee's recommendation on discipline is afforded a presumption of correctness. *Id*. at 273. The

referee's recommendation of disbarment is well supported by the applicable Standards and case law. Since the initial brief fails to demonstrate that the recommendation is either clearly erroneous or unsupported by record evidence, this Court should approve the referee's recommendation of disbarment.

CONCLUSION

For the above stated reasons, The Florida Bar asks this Court to enter an order approving the referee's findings of guilt and recommended sanction of disbarment. The bar also asks this Court to impose the 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 7th day of August, 2023, and a true and correct copy of the foregoing has been furnished via e-service to Kevin P. Tynan, Co-counsel for Respondent, at ktynan@rtlawoffice.com and paralegal@rtlawoffice.com and Herman J. Russomanno, Co-counsel for Respondent, at hrussomanno@russomanno.com and herman2@russomanno.com.

Mark Lugo Mason, Bar Counsel

CERTIFICATE OF TYPE SIZE & STYLE

I certify that this document complies with the applicable font and word count limit requirements of Florida Rule of Appellate Procedure 9.045 and 9.210(a)(2)(B). The font is 14-point Arial. The word count is 9,701 words. It has been calculated by the word-processing system, and it excludes the content authorized to be excluded under the rule, but it includes any footnote.

Mark Lugo Mason, Bar Counsel