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**IN THE SUPREME COURT OF FLORIDA**

THE FLORIDA BAR,

Complainant,

v.

DANIELLE RENEE WATSON,

Respondent.

_____/

Supreme Court Case
No. SC23-0416

The Florida Bar File
No. 2018-50,287 (15F)

# INITIAL BRIEF

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## PRELIMINARY STATEMENT

Complainant is referred to as The Florida Bar or the bar. The respondent, Danielle Renee Watson, is referred to as Ms. Watson.

The bar's trial exhibits are referred to as "TFB-Ex." followed by the applicable exhibit number. The respondent's exhibits are referred to as "R-Ex." followed by the applicable exhibit letter. For the more voluminous exhibits, some citations also include the relevant bates stamp numbers indicated by "B.S." followed by the applicable page number(s).

The bar has previously filed six transcripts, consisting of the final hearing conducted August 14, 2023 through August 16, 2023, August 21, 2023, and August 23, 2023 through August 24, 2023. This brief cites the final hearing transcript as "T:" followed by the applicable page number(s).

Citations to the index of record are referred to by "Tab#" followed by the applicable tab number corresponding to the index. The report of referee is referred to as "ROR:" followed by the applicable page number.

## NATURE OF THE CASE

This bar disciplinary case arises out of misconduct by Ms. Watson and her law partner, Malik Leigh. Mr. Leigh's more egregious misconduct spanned multiple cases and resulted in a six-count bar complaint in *The Florida Bar v. Leigh*, SC23-0518 (Fla. 2023). Conversely, Ms. Watson's

bar complaint involves a single count, addressing her conduct as co-counsel in an employment discrimination lawsuit in federal court. Specifically, the bar's complaint alleged that Ms. Watson violated Rules 4-8.4(a) and 4-8.4(d) by falsely accusing opposing counsel of illegally forging her electronic signature on a pretrial stipulation. These same rule violations are also at issue in Count II of the bar complaint against Mr. Leigh in his related disciplinary proceeding, as he was the lead attorney on the case.

The referee's report found Ms. Watson guilty of the rule violations and recommends admonishment as a sanction. In recommending this sanction, the referee found that Mr. Leigh was more culpable for the misconduct at issue, though the referee also found that Mr. Leigh did *not* violate Rules 4-8.4(a) and 4-8.4(d). In this appeal, the bar seeks an order approving the referee's findings of guilt as to Ms. Watson and rejecting the recommended sanction. The bar asserts that this Court should impose a 91-day suspension from the practice of law.

## STATEMENT OF THE CASE AND FACTS

### I. Ms. Watson violated Rules 4-8.4(a) and 4-8.4(d) by actively participating in her co-counsel's false allegations of criminal conduct by opposing counsel regarding the filing of a joint pretrial stipulation.

Ms. Watson and her law partner, Mr. Leigh, represented plaintiff Loretta Parish-Carter in an employment discrimination case against the Palm Beach County School District and various individual defendants associated with the school district. Mr. Leigh was lead attorney in the federal litigation while Ms. Watson was co-counsel. (ROR:5). Her name was affixed to all pleadings, and she was copied on all relevant e-mails. *Id*.

Attorney Lisa Kohring represented the school district. She and her paralegal, Ana Jordan, engaged in back-and-forth e-mails with Mr. Leigh and Ms. Watson regarding the filing of a joint pretrial stipulation. (See generally TFB-Ex.3). On August 24, 2017, Ms. Jordan enclosed a draft stipulation and, six days later, Ms. Kohring asked Mr. Leigh and Ms. Watson to review and provide comments because "all sides may need to confer on Friday before submission to the Court on Tuesday." (TFB-Ex.3, pg.7-9).

On September 5, 2017, Ms. Kohring sent Mr. Leigh and Ms. Watson an e-mail stating that she had not received comments to the draft pretrial stipulation. (TFB-Ex.3, pg.11). After receiving a draft from Mr. Leigh later

that morning, Ms. Kohring noted that this was not a working draft from the revised draft previously sent by her, many portions of the stipulation remained incomplete, some of the stipulation contained inappropriate content, and she tried calling Mr. Leigh and Ms. Watson twice that morning to resolve the matter but could not reach either of them. (TFB-Ex.3, pg.15). Mr. Leigh disagreed with these claims in an e-mail response, so Ms. Kohring asked that Ms. Watson call her to clear up any confusion. (TFB-Ex.3, pg.17).

At 5:13 p.m., Ms. Kohring sent an e-mail referencing her discussion on the telephone with Mr. Leigh, noted a few minor changes she added, and asked him to "[p]lease confirm [so] we can affix your signature and file now." (TFB-Ex.3, pg.18). Minutes later, she sent a correction e-mail explaining she attached the wrong version of the stipulation, and she later sent a follow-up e-mail to ensure Mr. Leigh reviewed the correct version. (TFB-Ex.3, pg.18-19). At 5:53 p.m., Mr. Leigh sent an e-mail with an attachment which stated, "Pre trial Stipulation to sign and file." (TFB-Ex.3, pg.21).

Due to the absence of any issues or concerns raised in this e-mail, Ms. Kohring and Ms. Jordan mistakenly believed Mr. Leigh had simply signed the pretrial stipulation without changes. (TFB-Ex.14, pg.25, 27-28).

At a hearing on competing motions regarding this issue, Ms. Kohring testified to her belief that she was authorized to file the pretrial stipulation and "at the most, I think it was a mistake on my part and/or a miscommunication on his part which could have easily been resolved if he would have simply just called me or emailed me and said you filed the wrong joint pretrial stipulation." *Id*. Ms. Jordan filed the version sent to Mr. Leigh at 5:20 p.m. and 5:35 p.m., adding Ms. Kohring's and Ms. Watson's electronic signatures. (TFB-Ex.1; TFB-Ex.14, pg.31). Ms. Kohring and Ms. Jordan later explained at a hearing that Ms. Watson's electronic signature was added simply because her name appeared first in the signature block before Mr. Leigh's name. (TFB-Ex.14, pg.16-17, 29-30).

The filing of this version of the pretrial stipulation prompted Mr. Leigh to contact Ms. Watson. (TFB-Ex.14, pg.42, 78-79). He asked Ms. Watson whether she had authorized the filing of the pretrial stipulation, and she stated that she had not. *Id*. This led to Mr. Leigh's filing of a Joint Pretrial Stipulation Addendum, which claimed that Ms. Kohring had not only filed the wrong stipulation, but she forged Ms. Watson's electronic signature and filed it. (TFB-Ex.2, pg.22). He filed this addendum with the "correct" Joint Pretrial Stipulation. (TFB-Ex.2, pg.1-21). Ms. Watson did not draft this addendum or review it before filing. (TFB-Ex.14, pg.46). Though she was

generally aware of some differences between the two pretrial stipulations, her main concern was that her signature was placed on a document without her knowledge. (TFB-Ex.14, pg.47-48).

The day after Mr. Leigh filed the addendum, Ms. Kohring sent an e-mail to both Mr. Leigh and Ms. Watson. It explains the drafts that went back and forth leading to her firm's filing of the stipulation, noted that the plaintiffs waited until the afternoon of the due date to offer any comments on the stipulation, and she stayed late despite a preplanned anniversary dinner because Mr. Leigh was still reviewing the pretrial stipulation at 5:15 p.m. (TFB-Ex.4, pg.67). She asked Mr. Leigh to immediately withdraw his defamatory pleading. *Id*. Later that afternoon, Ms. Kohring sent a follow-up e-mail explaining that she had called him twice without response to resolve the matter and would now be filing an appropriate motion to address his defamatory statements. (TFB-Ex.4, pg.68). Mr. Leigh finally responded that he called the U.S. Marshals Service to report her commission of a third-degree felony in forging a pleading. *Id*.

On September 7, 2017, Ms. Kohring filed a motion for sanctions. (TFB-Ex.3). In the motion, she recounts the back and forth e-mails, explains that at 5:40 p.m., she left the office to attend a pre-planned wedding anniversary celebration and asked Mr. Leigh to notify her

paralegal, Ms. Jordan, of his approval to file the stipulation. *Id*. She later received a call from Mr. Jordan confirming that the plaintiff had e-mailed the approval to file via an e-mail stating, "Pretrial Stipulation to be signed and filed." *Id*. The motion further alleged that it did not become apparent until later that Mr. Leigh made several changes to the draft stipulation without mentioning them or seeking Ms. Kohring's approval of the new changes. *Id*. It also alleged that Mr. Leigh made no effort to confer on the matter before accusing Ms. Kohring of intentional misconduct by her in a public filing. *Id*.

Mr. Leigh filed a competing motion to strike and motion for contempt on the same day. (TFB-Ex.4). The motion notes that the only changes made by Mr. Leigh were "a few objection language edits." (TFB-Ex.4, pg.2). The motion alleges that Ms. Kohring's actions were "an attempt to deny the Plaintiff's valid Objections" and that Ms. Watson has called the U.S. Marshals Service regarding "the felonious nature of fraud and forgery." (TFB-Ex.4, pg.4-5).

Due to a pending motion for summary judgment, the federal court initially denied Ms. Kohring's motion for sanctions and motion to strike without prejudice. (See TFB-Ex.5). Ms. Kohring later prevailed on her motion for summary judgment and thereafter filed a renewed motion to

strike. *Id*. The renewed motion notes that the only substantive discrepancy between the stipulation filed by Ms. Kohring and the stipulation filed by Mr. Leigh is that the latter includes the basis of the plaintiff's objections to some of the defendant's exhibits. (TFB-Ex.5, pg.3). The motion further argues that this minor discrepancy should have been resolved with a conferral rather than through defamatory filings. *Id*. (TFB-Ex.5, pg.3).

Mr. Leigh filed a renewed motion to strike and motion for contempt, as well as a response to Ms. Kohring's motion. (TFB-Ex.6; TFB-Ex.8). The response asked the court to refer the matter to The Florida Bar and stated that Ms. Watson had already submitted a bar grievance against Ms. Kohring. (TFB-Ex.8, pg.10). Attached to the response is an affidavit by Ms. Watson explaining that she never authorized Ms. Kohring to include her electronic signature on the stipulation. (TFB-Ex.8, pg.73-74).

On September 25, 2017, Ms. Watson filed a supplemental response accusing Ms. Kohring of engaging in an "attempt to promote bias from the Court, to silence Plaintiff's attorneys, and hamstring their prosecution and advocacy for their client in this case." (TFB-Ex.9, pg.1-2). This supplemental response was required by the federal court, in addition to Ms. Watson's personal appearance at a later hearing on the competing motions. (TFB-Ex.15, pg.6-7). Its content deserves scrutiny given the

referee's findings that Ms. Watson was a passive participant in the litigation. The response claimed that Ms. Kohring "has failed to address how Plaintiff's Counsel Watson's electronic signature became forged upon a document and filed in federal court by Defense." (TFB-Ex.9, pg.3). Ms. Watson stated that she spoke with three current and former state attorneys regarding the "forgery," all of whom were adamant that she and Mr. Leigh should file a bar complaint, a motion for sanctions, and contact local authorities. *Id*. She alternatively argued that if Ms. Kohring had instead placed her paralegal in charge of affixing e-signatures to the joint stipulation, then Ms. Kohring violated the Florida Rules of Professional Conduct and the Rules of Judicial Administration. (TFB-Ex.9, pg.3-4). The response further states that Mr. Leigh and Ms. Watson discussed the matter after the stipulation was filed and felt that filing their version of the stipulation with an addendum—which accused Ms. Kohring of criminal conduct—was "the best option in making sure it was filed before the filing deadline." (TFB-Ex.9, pg.5). The response requests that the Court strike the defendants' pleadings and sanction both defendants and their counsels. (TFB-Ex.9, pg.6).

At a two and a half hour hearing on the competing motions, the court heard testimony from the lawyers. Ms. Watson testified that she reviewed

one of the early drafts of the pretrial stipulation but was otherwise uninvolved in the drafting and filing of the document. (TFB-Ex.14, pg.41). Mr. Leigh admitted in his testimony that the differences between the competing stipulations were "relatively benign." (TFB-Ex.14, pg.78). Ms. Watson offered similar testimony that she only noticed differences regarding some objections, as well as the electronic signature. (TFB-Ex.14, pg.62).

Ms. Watson stated that she did not immediately reach out to Ms. Kohring to learn the reason there were differences between the stipulation signed by Mr. Leigh and the stipulation filed by Ms. Kohring. (TFB-Ex.14, pg.49-50). Mr. Leigh did not do so either. (TFB-Ex.14, pg.90). Instead, the day after Mr. Leigh filed the addendum accusing Ms. Kohring of criminal forgery, Ms. Watson spoke with a former state attorney she could not identify, who purportedly told her to file a bar complaint and pursue sanctions. (TFB-Ex.14, pg.50). Mr. Leigh and Ms. Watson contacted the Palm Beach County Sheriff's Office and the U.S. Marshals Service. (TFB-Ex.14, pg.54; see also T:1033-34). Ms. Watson confirmed that contacting law enforcement was a joint decision by herself and Mr. Leigh. (TFB-Ex.14, pg.56-57). Mr. Leigh similarly testified that he and Ms. Watson were separated by distance but jointly decided to contact law enforcement.

(TFB-Ex.14, pg.91-92). They also jointly filed a bar complaint against Ms. Kohring. (TFB-Ex.14, pg.67, 91-92; see also T:1035).

Ms. Watson stated that she did not speak with Ms. Kohring before pursuing these measures, she should have done so if she felt so strongly that a forgery had happened, and she did not have a good answer as to why she did not call Ms. Kohring first, or at any point for that matter. (TFB-Ex.14, pg.56-57). She also confirmed that she received telephone calls and voicemails from Ms. Kohring but she did not respond to them. (TFB-Ex.14, pg.68). Instead, Ms. Watson testified that "[i]t didn't seem as if [Ms. Kohring was] interested in speaking to us about filing anything different regarding the pretrial stipulation." *Id*. Based on this assumption, Ms. Watson did not bother returning telephone calls or e-mails. *Id*. This testimony was a departure from Ms. Watson's allegations in her supplemental response, in which she claimed that "At no time after the signed PDF was sent via email at 5:53pm by Plaintiff's Counsel Leigh did anyone from Defense Counsel's office contact Plaintiff's Counsels in any way." (TFB-Ex.9, pg.5).

On October 2, 2017, the federal court entered a lengthy order granting Ms. Kohring's renewed motion to strike. (TFB-Ex.12). The court accurately described the dispute as follows:

> Defendants requested Plaintiff's authorization to file the stipulation. While Defendants were awaiting authorization, Plaintiff's counsel, Mr. Malik Leigh, sent an e-mail to Defendants' counsel, Ms. Lisa Kohring. That e-mail is the root of the dispute before the Court and simply read "Pre trial Stipulation to sign and file." Ms. Kohring and her staff interpreted Mr. Leigh's e-mail to mean that they had permission to file the pretrial stipulation that she believed Mr. Leigh had approved. Mr. Leigh's e-mail was intended by him, however, to proffer a new draft of the pretrial stipulation not previously seen by Ms. Kohring. Mr. Leigh therefore did not agree to the joint pretrial stipulation that was ultimately filed by Defendants.

(TFB-Ex.12, pg.2). The federal court found that Mr. Leigh and Ms. Watson acted in concert in in their decision to escalate their false claims against Ms. Kohring by pursuing criminal charges and filing a bar complaint. (TFB-Ex.12, pg.2-3). The court found that neither Mr. Leigh nor Ms. Watson ever called Ms. Kohring, who "acted honestly, professionally, and fairly" in attempting to resolve the matter. *Id*. The differences between the two stipulations were "miniscule," "trivial at best," "amounted to no real prejudice to Plaintiff," and should have been resolved with a telephone call or a motion for extension of time. (TFB-Ex.12, pg.4). The court rejected assertions by Mr. Leigh and Ms. Watson that the affixing of Ms. Watson's signature was tantamount to fraud. Instead, the order found that affixing an electronic signature to a joint filing was "a commonplace, everyday matter" and "without any significance." (TFB-Ex.12, pg.4-5). Mr. Leigh and Ms.

Watson were held jointly responsible for attorney's fees as a sanction and the court referred the matter to The Florida Bar. (TFB-Ex.12, pg.7-8).

Ms. Watson and Mr. Leigh jointly drafted an initial brief appealing this ruling. (See TFB-Ex.15, T:987). The brief asserted that "the Defendants filed a false pre-trial stipulation, filed false statements in pleadings about their actions once caught, then only to admit that the Plaintiffs had been correct all along in open court." (TFB-Ex.15, pg.56). It asserted that "the Court viewed Plaintiff's Counsel Leigh as a stereotypical violent man of colour" and the court's "line of reasoning is full of racial dog whistles that men of colour have dealt with for decades." (TFB-Ex.15, pg.53). The Eleventh Circuit Court of Appeals affirmed the trial court's order. (TFB-Ex.17).

The bar charged Ms. Watson with violating Rules 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct); and 4-8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice). (Tab#1, pg.19). Ms. Watson's disciplinary proceeding and Mr. Leigh's disciplinary proceeding were tried together, resulting in a six-day trial. (ROR:2-3). The referee found Ms. Watson guilty of both rule violations. (ROR:17). However, since Mr. Leigh was more culpable for the misconduct than Ms. Watson, and based on some

mitigating factors, the referee recommended admonishment as the appropriate sanction. (ROR:30-33).

## SUMMARY OF THE ARGUMENT

This Court should reject the report of referee's recommendation of admonishment for minor misconduct and impose a 91-day suspension. The lighter sanction recommended by the referee does not properly address the egregious misconduct at issue. The injury caused to Ms. Kohring and the waste of judicial resources caused by Ms. Watson's false allegations of criminal conduct should have precluded the referee's finding of minor misconduct. In recommending admonishment based on a finding of minor misconduct, the referee erred in focusing on Mr. Leigh's culpability rather than uniquely focusing on Ms. Watson's active participation in the misconduct at issue. This is not a case in which Ms. Watson was merely inattentive to misconduct by her co-counsel; she actively participated in Mr. Leigh's smear campaign against Ms. Kohring. She sought to both strike the defendants' pleadings and to pursue baseless criminal charges against opposing counsel. Ms. Watson pursued this relief despite her personal knowledge of Mr. Leigh's ongoing pattern of misconduct in the litigation. The significant aggravating factors in this case warrant a rehabilitative suspension of at least 91 days.

## 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. The referee erred in finding that Ms. Watson only committed minor misconduct because her co-counsel was primarily responsible.

This Court should approve the referee's findings that Ms. Watson violated Rules 4-8.4(a) and 4-8.4(d). (See ROR:17). Though the bar is not challenging this recommendation, the report of referee found that the rule violations at issue only constitute minor misconduct because Mr. Leigh was primarily responsible. Consequently, the bar will address the conduct by Ms. Watson that violated the above rules.

Ms. Watson falsely accused Ms. Kohring of committing a felony by forging her signature on a pretrial stipulation. The supplemental response drafted and signed by her stated that Ms. Kohring committed forgery to gain an advantage in litigation, and it falsely asserted that Ms. Kohring did not try to communicate with the plaintiff's counsel after the filing of the fraudulent stipulation. (See TFB-Ex.9). As relief, the supplemental

response sought the striking of defendants' pleadings and a sanction order against the defendants and their counsels. Though Mr. Leigh filed the addendum which first leveled this false accusation, Ms. Watson was an active participant in furthering this narrative she either knew or should have known was false.

The referee's report stated that "Leigh and Watson overreacted to opposing counsel's actions." (ROR:15). This is a substantial understatement given their joint campaign to intentionally humiliate, disparage, and intimidate Ms. Kohring. Ms. Watson did not merely level bad faith accusations in the litigation; she also personally contacted various law enforcement agencies to pursue criminal charges against Ms. Kohring and filed a bar complaint. These were *joint* decisions by Mr. Leigh and Ms. Watson.

The referee found that Ms. Watson "was reactive to events that occurred." (ROR:15). When an attorney files a pretrial stipulation containing minor, insubstantial differences, it is not merely "reactive" to immediately respond by contacting law enforcement and publicly labeling the attorney a criminal. Further, Ms. Watson's supplemental response was filed 20 days after the filing of the competing pretrial stipulations. (Compare TFB-Ex.1 & TFB-Ex.9). This was not a heat of the moment

outburst by Ms. Watson. She had nearly three weeks to investigate the matter before filing her response.

Mr. Leigh was the lead attorney and Ms. Watson was co-counsel. (ROR:5). The referee found that Ms. Watson "relied upon her partner, who did the bulk of the drafting in the case, who interacted with opposing counsel and was the primary counsel that appeared at hearings and depositions." (ROR:15). The extent of Ms. Watson's involvement in the litigation—particularly regarding her role in leveling accusations of criminal conduct—was initially unknown. Ms. Watson's name and her firm's name were on the filings by Mr. Leigh, but they were signed by him. This is presumably the reason the federal court required Ms. Watson's written response and subsequent testimony at a hearing. Her limited role as co-counsel might partially explain her initial inattention to the dispute, but the September 25, 2017 supplemental response was drafted by her, not her partner.

The referee correctly found that Ms. Watson had a duty to "either fully investigate the claim or withdraw it." (ROR:16). This investigation would reasonably include communicating with Ms. Kohring regarding the issue. But even without this communication, a cursory review of the e-mails between Mr. Leigh and Ms. Kohring coupled with a comparison of the two

pretrial stipulations immediately demonstrate there was no criminal or unethical conduct by Ms. Kohring or anyone in her firm. The differences on the two documents were insubstantial, and Ms. Kohring fully explained in an e-mail sent to Mr. Leigh and Ms. Watson the reasons her firm filed the joint stipulation. In the 20-day period between the filing of Mr. Leigh's addendum and the filing of Ms. Watson's supplemental response, she had ample opportunity to become informed and disassociate herself from Mr. Leigh's bad faith allegations. Instead, she filed a response parroting the same allegations and seeking the same advantage in litigation as Mr. Leigh: namely, a sanction order and the striking of defendants' pleadings. It was patently disingenuous of Ms. Watson to assert that Ms. Kohring intentionally committed a felony to gain an advantage in the litigation. At most, the filing of the "incorrect" stipulation was the result of a typical miscommunication that should have been immediately resolved with an amended filing. Ms. Watson should not escape a meaningful sanction by merely passing blame to Mr. Leigh, because she was a willing and active participant in Mr. Leigh's smear campaign against Ms. Kohring.

The referee found that Ms. Watson was inattentive to the case because she had full time employment elsewhere. (See ROR:15). But Ms. Watson was not merely struggling to meet deadlines because she was

stretched too thin working multiple jobs; she and her law partner accused another lawyer of committing a felony. If Ms. Watson lacked a basic understanding of the facts due to her joint employment, then she should have refrained from contacting law enforcement or disparaging Ms. Kohring in a public filing. In her answer to the bar's complaint, Ms. Watson maintained that she was duty bound under Rule 4-8.3 to report unethical conduct by Ms. Kohring, and that she and Mr. Leigh initially "had a good faith belief to report the unauthorized use of the Respondent's signature to the appropriate authorities, who declined to take action." (Tab#8, ¶¶16-17). To be clear, since Ms. Watson never investigated the matter, there was never a moment in time when she could have held such a good faith belief.

The referee's report should not have partially excused Ms. Watson's conduct on the basis that she was "upset and shocked" by Ms. Kohring's use of her electronic signature. (ROR:10). Her feelings did not remotely justify her actions. Her claimed concern warranted a telephone call or e-mail at most, which is stated throughout the report of referee. But Ms. Watson testified in federal court that she did not do so because Ms. Kohring's e-mails demanding withdrawal of the addendum were forceful, and she did not think communications would have been productive. This is a weak excuse. Contentious litigation will sometimes lead to contentious

communications between lawyers. This is an unavoidable aspect of litigation that should already be understood by Ms. Watson; she had six years' experience at the time of the misconduct and had obtained a family court certification as a Florida Supreme Court certified mediator. (See ROR:25; T:966). Accusing opposing counsel of forgery in a public filing without prior notice is likely to lead to such a contentious communication. Ms. Kohring's e-mail was not a "threat" to make others "bend to her will," which was Ms. Watson's initial characterization of Ms. Kohring's e-mail when she first responded to the bar complaint. (TFB-Ex.19, pg.2). The tone of Ms. Kohring's e-mails sent after Mr. Leigh's filing of the addendum only demonstrates that she was upset and shocked at being labeled a criminal in a public filing.

Further, Ms. Kohring's "very defensive testimony on cross examination" only demonstrates that she was similarly upset and shocked by lines of questioning suggesting her partial responsibility for Mr. Leigh's and Ms. Watson's misconduct. (See ROR:4). According to the referee, Ms. Kohring's reaction was to "aggressively attempt[] to volunteer information outside the questions that were posed to her." (ROR:4). Ms. Watson's reaction to being "upset and shocked" was the opposite; she ignored the information in front of her, refused to communicate, and then

sought an advantage in the litigation by perpetuating Mr. Leigh's false narrative. In federal court, Ms. Watson begrudgingly admitted—after she was repeatedly pressed by the judge—that she should have contacted Ms. Kohring before leveling accusations to the court and to law enforcement. Ms. Kohring's tone in her e-mails did not excuse Ms. Watson's duty to investigate, and Ms. Kohring's demeanor at trial has no bearing on Ms. Watson's misconduct.

Ms. Watson acted intentionally or in reckless disregard of the truth when she joined Mr. Leigh's campaign of disparagement, which spanned not only public filings but also included pursuit of criminal charges. This conduct was prejudicial to the administration of justice and objectively disparaging and humiliating toward Ms. Kohring in violation of Rule 4-8.4(d). Ms. Watson also violated Rule 4-8.4(a), which prohibits a lawyer from violating or attempting to violate the Rules of Professional Conduct.

## II. Based on the violations at issue, the Standards for Imposing Lawyer Sanctions, and relevant case law, this Court should reject the referee's recommendation and sanction Ms. Watson with a 91-day suspension from the practice of law.

### 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 that may justify an

upward or downward departure from the sanction to be imposed. The bar's argument seeking Ms. Watson's suspension from the practice of law addresses standards focusing on the injury or potential injury caused by the respondent's misconduct. The referee's report concluded that she was "not persuaded" by the bar's argument that Ms. Watson's conduct caused great harm, because Mr. Leigh was the instigator. (ROR:30-31). Therefore, the bar will address the applicable standards and the injury or potential injury caused by Ms. Watson in this matter.

Under Standard 6.3(b), "[s]uspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld and takes no remedial action." Twenty days after the filing of the addendum, Ms. Watson filed her supplemental response. At this point, she had the benefit of Ms. Kohring's explanation that she believed she had permission to file the stipulation she sent to Mr. Leigh. Still, Ms. Watson did not contact Ms. Kohring to obtain an explanation as to why her signature, instead of Mr. Leigh's, had been placed on the stipulation. She also continued to make the same false accusations against Ms. Kohring in these disciplinary proceedings. In her responses to the bar, she stated in pertinent part, "I firmly believe that the actions of opposing counsel's office violated the

Florida Bar Rules when two attorneys and one paralegal ignored a signed document that was sent to their attention and then signed an opposing counsel's signature to a different document without express consent of that attorney." (TFB-Ex.19, pg.4).

Under Standard 7.1(b), "[s]uspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system." Regarding this standard, the referee acknowledged the stress caused to Ms. Kohring when she was accused of forgery in a public filing, when she was told that Ms. Watson was contacting law enforcement, and neither Mr. Leigh nor Ms. Watson responded to her telephone calls. (T:1088-89). In addition to the acknowledged injury this caused to Ms. Kohring, Ms. Watson's misconduct also injured the legal system. The court used judicial resources in a lengthy evidentiary hearing to address a contentious dispute that should have been a non-issue from the outset. The defendants also incurred fees and costs defending against Mr. Leigh's and Ms. Watson's accusations.

Mr. Leigh's and Ms. Watson's misconduct also caused potential injury to their client. The bulk of the appellate brief co-drafted and signed by Ms. Watson addressed the sanctions entered against Mr. Leigh and their law

firm and dedicates significantly less focus to seeking reversal of the summary judgment order which uniquely affected the *client*. (See TFB-Ex.15). Specifically, at the conclusion of Ms. Watson's brief, it stated "[d]ue to word limitations in this appeal, the Plaintiff cannot reasonably list every deficiency in the district court's reasoning for the granting of the Defendants' Motion for Summary Judgment." (TFB-Ex.15, pg.60-61). In affirming the summary judgment order, the Eleventh Circuit Court of Appeals found that complaining about a word limit was insufficient to preserve those matters for review and resulted in waiver. (TFB-Ex.17, pg.7). The misconduct by Mr. Leigh and Ms. Watson became the primary focus of their brief, and it resulted in waiver of legal challenges to the unexplained deficiencies. At the least, this caused potential injury to the client.

Given the actual and potential injury caused by Ms. Watson's misconduct, admonishment is not an appropriate sanction. Specifically, under Rule 3-5.1(b), minor misconduct is the only type of misconduct for which an admonishment is an appropriate disciplinary sanction. Under Rule 3-5.1(b)(1)(C), in the absence of unusual circumstances, misconduct will not be regarded as minor if it resulted in or is likely to result in actual or potential injury to the public or the legal system.

B. The aggravating and mitigating circumstances:

The appropriate sanction may be increased or decreased based on the presence of either aggravating or mitigating factors. Though the bar charged Ms. Watson in a one-count complaint, her role in contributing to misconduct by Mr. Leigh in other matters were offered as aggravating circumstances warranting a stronger sanction. See (ROR:2-3). Specifically, as a potential aggravating circumstance, the referee's report addressed the "School Board Cases." (ROR:18-19). These cases included the federal case at issue in Ms. Watson's disciplinary proceeding as well as two other federal cases against many of the same defendants in which Mr. Leigh and Ms. Watson served as plaintiff's counsel. (See ROR:18-19). Mr. Leigh's social media postings directed at defendants, witnesses, or attorneys both before and during this litigation were disparaging, humiliating, and unprofessional. *Id*. (quoting TFB-Ex.24). Some of the postings were reasonably interpreted as veiled threats. *Id*. The content of these postings is a larger focus in Mr. Leigh's disciplinary proceeding. (See generally TFB-Ex.20).

Ms. Watson did not author these postings, but she was aware that her co-counsel and law partner was engaging in this behavior. Specifically, she was present and occasionally argued at a June 5, 2017 hearing during

which the defendants sought a protective order based on Mr. Leigh's social media activity. (T:1016-17, 1039; see generally TFB-Ex.23). Though many of the disparaging postings were discussed at hearing, the primary focus of the hearing was a posting by Mr. Leigh stating that he "would love to start a shooting campaign" after his next round of depositions. (*Id*.; TFB-Ex.20, pg.3). This hearing resulted in a 22-page order requiring depositions to be held in a secure location with a police officer present, awarding attorneys' fees to the plaintiffs, and referring the matter to both The Florida Bar and the Southern District of Florida Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance. (TFB-Ex.25).

The referee found that Ms. Watson was not responsible for Mr. Leigh's misconduct since she lacked managerial authority over him. (ROR:19-20). But it is her *awareness* of Mr. Leigh's ongoing behavioral issues—not her ability to stop this behavior—that is an aggravating factor. Further, Rule 4-5.1(a) states that a partner in a law firm shall make reasonable efforts to ensure that "the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct." Ms. Watson knew of these prior issues at the time Mr. Leigh first accused Ms. Kohring of forgery. (T:1019-20, 1039-40). Ms. Watson also knew that opposing counsel terminated a deposition due to

Mr. Leigh's posting that he wished to go on a "shooting campaign." (T:1045). Mr. Leigh's disparaging and threatening social media activity eventually led to the pursuit of baseless criminal charges against opposing counsel due to a miscommunication. Ms. Watson was aware of the former when she became an active participant in the latter. She may not have had a duty or ability to curb Mr. Leigh's misconduct, but she had a duty not to join in on it, especially given her awareness of his ongoing misconduct in the case. Her awareness was an aggravating factor, because any reasonable attorney would have conducted an independent inquiry into Mr. Leigh's claims before leveling accusations of criminal conduct at opposing counsel.

The referee's report next addressed "The Stonybrook litigation" at issue in Counts III, IV, V, and VI of Mr. Leigh's bar complaint as a potential aggravating circumstance. (ROR:20). The misconduct at issue in those proceedings mostly involved Mr. Leigh's lack of competence in filing a toxic tort class action lawsuit against owners and property managers of an apartment complex. The referee noted that Mr. Leigh's unethical activity in this litigation was repeatedly addressed in various sanction motions and orders entered into evidence. (ROR:20). Ms. Watson's electronic signature appears on three motions in the Stonybrook case, and she stated

that she gave Mr. Leigh permission to put her electronic signature on these filings. (T:1021-22). But she was not opening pleadings and orders on the case as they were served. (T:1023). The referee found that although Ms. Watson was on the service list and her name was attached as counsel in various pleadings, she did not participate in the litigation. (ROR:20-21).

Nevertheless, in her role as record co-counsel for the plaintiffs, Ms. Watson was bound by a gag order entered in the case due to Mr. Leigh's behavior. (ROR:21). The gag order was entered in October 2019, and Ms. Watson personally violated it the following month. *Id*. Specifically, the gag order prohibited the litigants and their counsel from speaking to the media or otherwise publishing material related to the ongoing litigation. *Id*. From November 1, 2019 through November 10, 2019, Ms. Watson re-tweeted five tweets or articles regarding Stonybrook, all of which violated the gag order. *Id*. (citing TFB-Ex.64, pg.70-72, 74, 85). Ms. Watson testified before the referee that she was generally aware of the gag order, but she had not read it and assumed it only addressed the court proceedings rather than the underlying dispute. (T:994-95, 1052; ROR:22). The referee's report expressed surprise by Ms. Watson's lack of attention but noted that Ms. Watson immediately took down the offending re-tweets when Mr. Leigh told her that they violated the gag order. *Id*.

Ms. Watson also failed to attend a hearing in the Stonybrook litigation despite a court order requiring her to appear. Specifically, in a lengthy order sanctioning Mr. Leigh and one of his clients for violating the gag order, the court ordered Ms. Watson to either obtain an order permitting her withdrawal as counsel or personally appear at an upcoming Case Management Conference. (TFB-Ex.70, pg.25). She did neither, and she again explained to the referee that she had not read the order. (T:996-97, 1051; ROR:22-23). She also did not pay attorneys' fees awards of just under $40,000.00. (See TFB-Ex.73). Her failure to do so was based on both her inability to pay anything on the award in the last six years, and her failure to read the order stating that both Mr. Leigh and the Watson Leigh firm were jointly and severally liable. (T:996-97, 1051). At the time of trial, Ms. Watson had not paid anything on those matters. (T:1004). The referee held that these constituted other instances in which Ms. Watson did not review filings despite her role as counsel of record, and instead trusted her partner to advise her. (ROR:23).

Under Standard 3.2(b), the referee found three aggravating factors. The referee found a pattern of misconduct under Standard 3.2(b)(3), multiple violations under Standard 3.2(b)(4), and indifference to making restitution under Standard 3.2(b)(10). The report expressly afforded the

first two aggravating factors little weight because Mr. Leigh was the individual drafting the pleadings at issue with Ms. Watson's name attached, while her misconduct was "one core action." (ROR:24). Ms. Watson's pattern of ignoring Mr. Leigh's filings is not a reason to afford these aggravating factors less weight. After she was aware of her partner's ongoing misconduct, Ms. Watson still failed to investigate matters. She personally filed a supplemental response accusing Ms. Kohring of fraud. She called local police and the U.S. Marshalls Office to seek criminal charges against Ms. Kohring. She filed a bar complaint. She failed to pay court ordered sanctions. She co-wrote an appellate brief premised on bad faith assertions that various orders should be overturned because the magistrate exhibited racial bias. She violated a gag order repeatedly. The referee's finding that Ms. Watson's misconduct was "one core action" is not supported by the record evidence.

The referee also found that Ms. Watson's failure to pay an attorney's fee award owed since 2017 constituted an indifference to making restitution under Standard 3.2(b)(10). (ROR:25). But the referee declined to find any other aggravating factors under Standard 3.2(b) argued by the bar. The bar will address each aggravating factor established in the record evidence.

The referee found that Ms. Watson lacked a dishonest or selfish motive under Standard 3.2(b)(2). (ROR:24). This factor was recently addressed by this Court in *The Florida Bar v. Schwartz*, SC2019-0983 & SC2021-01484 (Fla. Jan. 18, 2024). Mr. Schwartz represented a criminal defendant and personally met with a co-defendant who was charged in a separate case and represented by the public defender's office. The *Schwartz* opinion held that this meeting and Mr. Schwartz's subsequent efforts to use a confession provided by the co-defendant during this meeting for the benefit of his client violated multiple bar rules. In rejecting the referee's finding that Mr. Schwartz lacked a dishonest or selfish motive, this Court stated as follows:

> Standard 3.3(b)(2) (absence of a dishonest or selfish motive) is not applicable here because, while Schwartz's motive was not financial, the type of motive usually contemplated under this factor, his overzealous representation was intended to benefit his professional reputation of a "private public defender office."

*Id*. at *22. Ms. Watson's and Mr. Leigh's efforts to amplify an unremarkable miscommunication into intentional criminal conduct by Ms. Kohring to gain an advantage in the litigation exhibited a similarly selfish motive, if not an outright dishonest one given the lack of any reasonable factual basis supporting the accusation. The referee erred in failing to find that Ms. Watson acted with a dishonest or selfish motive under Standard 3.2(b)(2).

The referee found that Ms. Watson was neither experienced nor inexperienced in the practice of law, so her tenure as a member of the bar would not be considered an aggravating or mitigating factor. (ROR:25). Ms. Watson had been a lawyer for six years before the federal litigation at issue. (ROR:25). In *The Florida Bar v. Shankman*, 41 So. 3d 166, 170-71 (Fla. 2010), this Court found that a lawyer inexperienced in federal court but admitted to the bar three years before the misconduct at issue was substantially experienced in the practice of law, and the referee's contrary conclusion was clearly contradicted by the record evidence. See also *The Florida Bar v. Abrams*, 919 So. 2d 425 (Fla. 2006) (a lawyer admitted to the bar in 1997 was substantially experienced in the practice of law at the time of the misconduct in 2000).

Ms. Watson's experience in the practice of law is sufficient for this aggravating factor to apply. In concluding otherwise, the referee found that the employment discrimination suit was Ms. Watson's first foray into federal district court. (ROR:25). This Court recently explained that "the substantial experience factor is not parsed by expertise in specific areas of the law, but instead applies to experience related to the capability of determining whether conduct is violative of the rules." *The Florida Bar v. Bander*, 361 So. 3d 808, 817 (Fla. 2023).

The referee found the following mitigating factors:

- Absence of a disciplinary record under Standard 3.3(b)(1);
- Absence of a dishonest or selfish motive under Standard 3.3(b)(2);
- Character or reputation under Standard 3.3(b)(7);
- Unreasonable delay in the disciplinary process under Standard 3.3(b)(9);
- Interim rehabilitation under Standard 3.3(b)(10); and
- Remorse under Standard 3.3(b)(12).

(ROR:25-30).

Ms. Watson's clean disciplinary history and her character or reputation attested to by character witnesses are not disputed, and the bar will defer to its argument *supra* regarding whether Ms. Watson had a dishonest or selfish motive. The referee's report dedicated significant discussion to an unreasonable delay in the disciplinary process. On this issue, to promote efficiency rather than file several formal complaints for each judicial referral sent to the bar, the bar investigated several judicial referrals contemporaneously. Most involved misconduct by Mr. Leigh, though Ms. Watson was also co-counsel on these cases. This ultimately resulted in a six-count formal complaint against Mr. Leigh and a one-count

formal complaint against Ms. Watson. (See Tab#1). When grievances are filed against multiple lawyers regarding some of the same misconduct, "it understandably [takes] the Bar additional time to complete its investigation." See *The Florida Bar v. Varner*, 992 So. 2d 224, 230 (Fla. 2008).

The bar's lengthy investigation insured there was no extensive delay once the formal complaint had been filed, which is reflected by the fact that discovery, a six-day trial, and the report of referee were completed in seven months after the bar's formal complaint. This case did not involve an extensive delay, it involved due diligence by the bar before filing a comprehensive six-count formal complaint against one attorney (Mr. Leigh) and a single count formal complaint against another (Ms. Watson) arising out of shared facts. The bar sought to try these matters together rather than in bifurcated proceedings to avoid conflicting reports of referee with inconsistent findings. Further, unreasonable delay is only deemed a mitigating factor if the respondent demonstrates specific prejudice resulting from the delay. *The Florida Bar v. Senton*, 882 So. 2d 997, 1002 (Fla. 2004). The referee expressly found no prejudice, stating that "no witness was unavailable due to the delay but having this matter open for six years is unconscionable and not a diligent prosecution by the Bar." (ROR:29).

There is no unconscionability exception that allows for the mitigating factor to apply notwithstanding the absence of prejudice to the respondent. The referee erred as a matter of law in finding this mitigating factor.

The referee found that Ms. Watson established interim rehabilitation under Standard 3.3(b)(10). Specifically, the report of referee found that Ms. Watson is no longer a partner in Watson Leigh and instead a managing partner in the current version of her law firm, which was a substantial change. (ROR:29). But Ms. Watson is still Mr. Leigh's partner in the newly established law firm of RCWL, PLLC. (T:968). At the disciplinary hearing, the referee noted her concern with this ongoing arrangement as follows:

> My concern is you're still with him romantically. You're still partners with him in that law firm. So nothing has changed for you. If you were sitting here and the two of you weren't together and you were working, blah-blah-blah, I would not be asking you these questions. I feel that he's going—that you—I don't want to say you don't stick up for yourself or you're not thinking of the consequences of things. He does what he does and your name is on his firm and nothing has changed.

(T:1046).

Ms. Watson stated that Mr. Leigh has toned down, and in her insurance defense work "there is really no need to be passionate." (T:1057). Even after Ms. Watson provided these assurances, the referee repeatedly stated during the sanction hearing that she did not believe Mr. Leigh and Ms. Watson should remain partners, either professionally or

romantically. (T:1091, 1104-05, 1166). The bar does not offer comment on that, except to note that beginning a new firm with the same lawyer who instigated Ms. Watson's misconduct is not interim rehabilitation. It is a new label on the existing partnership that resulted in these disciplinary proceedings.

The referee finally found that Ms. Watson showed remorse during her testimony sufficient for Standard 3.3(b)(12) to apply as a mitigating factor. (ROR:30). The bar does not dispute that Ms. Watson offered this testimony. (See T:1015-16). But the weight afforded this mitigating factor should be minimal, because this testimony was only given at the disciplinary hearing, which was approximately six years after the misconduct at issue. In *The Florida Bar v. Germain*, 957 So. 2d 613, 622 (Fla. 2007), this Court stated as follows:

> With a minimum of legal research, [respondent] could have discovered that his conduct did constitute unethical conduct and either curtailed his activities or avoided them altogether. Where the issue rests on a legal question, the aggravating factor of failing to acknowledge the wrongfulness of the conduct clearly applies.

In this case, Ms. Watson tacitly admitted at a hearing in the federal case that she did not communicate with Ms. Kohring before accusing her of forgery, and she should have done so before leveling the accusation, either

to the authorities or in a public filing. (TFB-Ex.14, pg.56-57). Despite this admission, in Ms. Watson's answer to the bar complaint, she continued to deny committing any rule violations. (Tab#8, ¶30). Her subsequent remorse at the disciplinary hearing should be afforded little weight.

Though not explicitly stated in the referee's report, the recommendation of admonishment—as opposed to suspension—may be partially based on Ms. Watson's testimony that she would lose a Citizen's Property Insurance contract if both she and Mr. Leigh are suspended. (T:1049). By its very nature, a suspension inevitably causes a loss in income for legal practitioners; it would apply to almost every respondent, and as such cannot be considered as mitigation warranting a lesser sanction.

C. The case law:

Based on the misconduct at issue, the bar seeks a 91-day suspension from the practice of law. This Court has repeatedly stated its intent to impose stronger sanctions for lawyer misconduct than it has in the past. In a very recent opinion, this Court rejected a referee's recommended sanction, in part, because "the referee here neither cited nor applied our recent case law imposing more severe sanctions for lawyer misconduct." *Schwartz*, SC2019-0983 & SC2021-01484 at *25 (Fla. Jan.

18, 2024). In this case, the referee recommended admonishment, at least in part, because "[t]he Respondent's case law was older but was more focused on the conduct at issue herein – an allegation against opposing counsel regarding a claim of forgery." (ROR:31). The referee's report does not cite to nor apply recent case law imposing more severe sanctions, and the referee erred as a matter of law in relying on sanctions issued in older case law as support for her sanction recommendation.

The referee's report distinguished three pieces of case law submitted by the bar on the grounds that "the conduct therein is much more egregious than that found herein," in addition to these cases involving serious aggravating factors not present in Ms. Watson's case. (ROR:31). But as addressed *supra*, Ms. Watson's case involves substantial aggravating factors. More importantly, the conduct in these cases is not "much more egregious" than Ms. Watson's false accusations of forgery against Ms. Kohring. In *The Florida Bar v. Adams*, 641 So. 2d 399 (Fla. 1994), the respondent accused an opposing counsel of suborning perjury and accused two other opposing counsels of participating in creating perjured testimony. Mr. Adams represented a father in a civil suit against a hospital and an obstetrician alleging that the defendants had placed the plaintiff's child up for adoption without the plaintiff's consent. The mother of the child

told Mr. Adams that another lawyer tried to coerce her into signing an affidavit stating that the plaintiff was not the father of the child. Mr. Adams thereafter sent a letter to the lawyer accusing her and defendants' counsel of attempting to suborn perjury. Mr. Adams later repeated the same allegations in court. This Court suspended the respondent from the practice of law for 90 days, finding that he had no basis to accuse defendants' counsel of attempting to suborn perjury.

Similarly in this case, Ms. Watson had no reasonable factual basis to accuse Ms. Kohring of forgery. She was uninvolved in the drafting of the pretrial stipulation and conducted no investigation into the matter when she saw her electronic signature on the document. She refused to return Ms. Kohring's telephone calls, but she still filed a supplemental response doubling down on her false accusation even after Ms. Kohring sent an e-mail to both Ms. Watson and her co-counsel explaining the matter. Ms. Watson's conduct was also more egregious than the respondent's in *Adams* because she contacted law enforcement in efforts to have Ms. Kohring criminally charged. Ms. Watson knew or should have known that her allegations of criminal conduct were baseless, and it is no defense to constantly pass all blame to Mr. Leigh. His conduct was worse at every stage of the proceeding, but Ms. Watson does not substantially diminish

her culpability to mere minor misconduct simply because her co-counsel's behavior was more egregious.

In *The Florida Bar v. Committe*, 136 So. 3d 1111 (Fla. 2014), this Court imposed a three-year suspension on a lawyer who filed a frivolous tort action, failed to pay a $13,000.00 monetary sanction, and contacted the United States Attorney's office accusing the defendant of extortion based on his receipt of letters requesting payment of the sanction. The bar does not seek as harsh a sanction in this case because the respondent in *Committe* had prior disciplinary history, and Ms. Watson does not. But this Court also stated that "[o]ur prior decisions suggest that each of Committe's ethical violations, standing alone, would warrant a rehabilitative suspension." *Id*. at 1117 (citing *The Florida Bar v. Gwynn*, 94 So. 3d 425 (Fla. 2012) (suspending an attorney for 91-days for filing frivolous motions for sanctions and delaying proceedings); *The Florida Bar v. Hagendorf*, 921 So. 2d 611 (Fla. 2006) (suspending an attorney for two years for filing a meritless quiet title action in Nevada which misrepresented facts and filing frivolous litigation against the Nevada State Bar); *The Florida Bar v. Gersten*, 707 So. 2d 711 (Fla. 1998) (suspending an attorney until he complied with a contempt order and for one year thereafter due to his failure to comply with a subpoena)). A 91-day suspension is the shortest

period of suspension constituting a rehabilitative suspension. See Rule 3-5.1(e). Since this is Ms. Watson's first disciplinary proceeding, a 91-day suspension is amply supported by this case law.

## CONCLUSION

For the above stated reasons, The Florida Bar asks this Court to approve the referee's findings that Ms. Watson violated Rules 4-8.4(a) and 4-8.4(d) but reject the referee's recommendation of admonishment for minor misconduct. The bar requests this Court impose a 91-day rehabilitative suspension from the practice of law and further 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 8th day of February, 2024, and a true and correct copy of the foregoing has been furnished via e-service to Scott K. Tozian, Esq., co-counsel for respondent, 109 Brush Street, Suite 200, Tampa, FL 33602, at stozian@smithtozian.com and email@smithtozian.com, and Gwendolyn H. Daniel, Esq., co-counsel for respondent, 109 Brush Street, Suite 200, Tampa, FL 33602, at gdaniel@smithtozian.com and mrenke@smithtozian.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 Rules of Appellate Procedure 9.045 and 9.210(a)(2)(B). The font is 14-point Arial. The word count is 9,480 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