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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)

REPLY BRIEF

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REPLY ARGUMENT

I. The answer brief's deflection to Lisa Kohring:

It is clear from a review of the answer brief that Ms. Watson wishes to deflect from her misconduct by focusing on an alleged mistake by Ms. Kohring. (See AB:34-35). The answer brief prefaces the deflection with the disclaimer that it "is intended not to excuse any misconduct but rather to respond to the bar's broad characterizations which hinder thoughtful consideration of an appropriate sanction." (AB:4-5). The disclaimer is difficult to reconcile with the brief's implication that Ms. Kohring should be disciplined for using Ms. Watson's electronic signature without permission. (AB:36).

Ms. Watson can write a case study of what she learned after the fact regarding the filing of the joint pretrial stipulation, but it does not help explain her actions. According to Ms. Watson, her entire understanding was limited to personal knowledge that (1) Mr. Leigh called her to ask if she authorized the use of her electronic signature on a pretrial stipulation, which she had not; and (2) her signature appeared on a pretrial stipulation filed by opposing counsel. (TFB-Ex.14, pg.42, 78-79; TFB.Ex.8). She repeatedly pleads ignorance because she was working at a different law firm and was not reviewing e-mails regarding the pretrial stipulation.

Nonetheless, she was co-counsel of record from the outset of the case. It is unclear whether Ms. Watson knew that Mr. Leigh considered the differences between the stipulations to be "relatively benign," though this is apparent by comparing the two documents. (See TFB-Ex.14, pg.78-79). No matter how much "context" Ms. Watson offers now, she performed no factual research before joining in her law partner's smear campaign to label Ms. Kohring a felon. Ms. Watson is merely providing post hoc justifications to excuse or mitigate her misconduct.

II. Ms. Watson's active role in accusing Ms. Kohring of a felony to seek sanctions, licensure action, and criminal charges:

Ms. Watson actively participated in baselessly accusing Ms. Kohring of a felony in court, filing a meritless bar complaint, and contacting law enforcement agencies. The answer brief strives to distance Ms. Watson from all three of these efforts, even though she already testified in federal court to her active role. First, the answer brief asserts as fact that Ms. Watson did not draft, review, or approve the addendum accusing Ms. Kohring of forgery. (AB:12). Ms. Watson testified in federal court as follows:

> And that is when ***we decided to file*** the signed [pretrial stipulation] document that [Mr. Leigh] had sent out to everybody at 5:53 p.m. with ***the addendum*** so the Could would know that we didn't – you know, that there was something different that we had thought was the final.

(TFB-Ex.14, pg.45-46) (emphasis added).

Second, the answer brief downplays Ms. Watson's role in filing a meritless bar complaint by citing to Ms. Watson's testimony that she did not recall drafting a bar complaint. (AB:17). In federal court, Ms. Watson admitted that both her name and Mr. Leigh's name were on a bar complaint filed against Ms. Kohring. (TFB-Ex.14, pg.67).

Third, the answer brief claims that, "Ms. Watson did not speak with anyone at the Palm Beach State Attorney's Office." (AB:16). The materiality of this assertion is unclear, as she testified that she directly contacted two law enforcement agencies:

> Mr. Leigh and I contacted PBSO just to ask them some questions. They referred us to the U.S. Marshals because it was a Federal Court issue. We tried calling the Marshals, but this was the week right before the hurricane. . . .

(TFB-Ex.14, pg.54). To downplay her attempt to seek criminal charges, Ms. Watson asserts that neither she nor Mr. Leigh filed a report or otherwise sought prosecution. (AB:16). Though Ms. Watson claims they were just asking questions, they disclosed their actual agenda in an e-mail to Ms. Kohring. Specifically, Mr. Leigh told Ms. Kohring that both he and Ms. Watson contacted the U.S. Marshals because Ms. Kohring had committed a third-degree felony. (TFB-Ex.4, pg.68). This was an

assertion, not an inquiry. In fact, Mr. Leigh made it clear he was uninterested in Ms. Kohring's explanation:

> We have ALREADY called the Court. We have also called the Federal Marshalls Service because you cannot falsify a document and then forge a signature and file it in federal court. You can file WHATEVER YOU LIKE. You can call WHOMEVER YOU LIKE. We cannot prevent you from doing anything nor are we going to try to. There is NOTHING in my subsequent filing that was incorrect.

Id.

He copied Ms. Watson on this e-mail; at no point did she clarify to Ms. Kohring that they were merely asking questions to determine whether their public accusation of criminal forgery had any merit. Both Mr. Leigh and Ms. Watson later downplayed their misconduct as mere inquiries when it became clear their smear campaign in federal court had completely backfired. (See generally TFB-Ex.14). Fortunately, Mr. Leigh's e-mail memorialized the actual purpose of their telephone calls, which was not a good faith inquiry, but an effort to report the commission of a third-degree felony. The fact that they gained no traction in launching a criminal investigation does not demonstrate that they were innocently asking questions of law enforcement for information gathering purposes only.

The federal court found that "Ms. Watson also initiated the process of investigating possible criminal forgery charges against Ms. Kohring by

calling the Palm Beach County Sheriff's Office and the United States Marshals." (TFB-Ex.12, pg.2-3). The federal court also stated its belief that Mr. Leigh and Ms. Watson "acted in concert in their decision to escalate the simple miscommunication in this case to the level of phone calls to law enforcement, together with their joint allegations of criminal forgery." (TFB-Ex.12, pg.8-9). The referee's finding to the contrary was clearly erroneous. See *The Florida Bar v. Committe*, 136 So. 3d 1111, 1114 (Fla. 2014) (finding that the referee's rejection of a circuit court's finding that a complaint was frivolous was unsupported when the order was upheld on appeal).

The answer brief continues its ongoing pattern of victim blaming by arguing that Ms. Kohring's reasonable misunderstanding—caused by Mr. Leigh sending a signed PDF for filing without any indication that he had altered content—constituted "significant mistakes" and Ms. Kohring failed to "provid[e] the basis for this belief." (AB:34-35). The "mistake" was not significant, as determined by the federal court order holding that Ms. Kohring's actions were an "everyday matter" and "without any significance." (TFB-Ex.12, pg.4-5). At first, the answer brief accepts that finding and excuses Ms. Watson's false claim because she was inexperienced. (AB:35-36). Then the brief argues that the differences between the

stipulations were substantive and potentially prejudicial. (AB:37-38). This is both a meritless challenge to the federal court order rejecting that argument, Mr. Leigh's stipulations at hearing, and an insufficient justification for their disproportionate reaction. (See TFB-Ex.12).

The answer brief asserts various matters that Ms. Kohring failed to disclose before Ms. Watson filed her supplemental response. (AB:44). Given Ms. Watson's continued effort to blame Ms. Kohring for failing to adequately explain matters for which Ms. Watson never sought clarification, this Court should review Ms. Kohring's e-mail, and the response she received. (TFB-Ex.4, pg.67-68). Ms. Kohring adequately explained why her office believed that Mr. Leigh approved the filing of the pretrial stipulation, though apparently without the level of specificity Ms. Watson demands after the fact. Mr. Leigh responded by telling Ms. Kohring to file whatever she wanted in court, but it would not change the fact that she committed a felony.

Ms. Watson actively participated in pushing that narrative in her joint filings with Mr. Leigh and in her supplemental response. At the outset of a hearing on the matter, Ms. Kohring stated that "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." (TFB-Ex.14, pg.25, 27-28). Ms. Watson complains that Ms. Kohring did not offer this reasoning sooner (see AB:21), and in doing so fails to acknowledge that she and Mr. Leigh explicitly refused to meaningfully communicate with Ms. Kohring at any point after they decided to accuse her of a crime.

This is not a case in which Ms. Watson and Mr. Leigh acted brashly after Ms. Kohring obstinately refused to admit to a mistake, no matter how many times Ms. Watson implies otherwise. Ms. Watson and Mr. Leigh acted brashly immediately after the filing of the pretrial stipulation without ever bothering to investigate the matter. In fact, the federal judge noted that Ms. Watson's characterization of the issue as "a breakdown in communication" was inaccurate, because "apparently there wasn't a breakdown of communications leading up to the filing of [the pretrial stipulation]." (TFB-Ex.14, pg.57). The answer brief nevertheless asserts that Ms. Watson "recognized the communication had fully broken down and added to the problem." (AB:39). The answer brief's strategic use of the phrase "communication had fully broken down" hides the plain fact that Mr. Leigh and Ms. Watson were solely responsible for this breakdown. Ms. Watson's actions did not merely 'add to the problem,' she and her law

partner *were* the problem. The answer brief's effort to paint Ms. Kohring as obstinate is blatant projection.

The answer brief asserts that Ms. Watson is being held to a double standard, stating that Ms. Kohring's "heated or forceful disagreement is inconsistent with constructive and civil conversation that was appropriately expected of Ms. Watson." (AB:35). But the answer brief later acknowledges that "Ms. Kohring was understandably offended." (AB:45). It is no defense to point to Ms. Kohring's indignation at being falsely accused of a crime as though Ms. Watson's intent was anything other than to provoke this reasonable reaction. Nevertheless, the answer brief complains that the *victim* of this slander was too forceful in her communications to the perpetrators. The answer brief can only speak in generalities about Ms. Kohring's "forceful" tone and unpleasant conversations earlier in the case because Ms. Watson never returned telephone calls from Ms. Kohring. (See T5:1015-16). More importantly, Ms. Kohring did not falsely disparage Mr. Leigh or Ms. Watson; she reasonably demanded they withdraw the disparaging addendum. (See TFB-Ex.4, pg.67). Any attempt to draw an equivalence between Mr. Leigh's and Ms. Watson's public smear campaign and Ms. Kohring's reasonable response in private correspondence is patently disingenuous.

Even with the benefit of hindsight—having received an e-mail from Ms. Kohring and having heard her testimony at hearing—Ms. Watson later filed a brief in the Eleventh Circuit Court of Appeals asserting as follows:

> [T]he Defendants filed a false pre-trial stipulation, filed false statements in pleadings about their actions once caught, then only to admit that Plaintiffs had been correct all along in open court.

(TFB-Ex.15, pg.56). Nevertheless, the answer brief criticizes the bar for "[d]iscount[ing] Ms. Watson's immediate acknowledgment to the trial court that she should have called Ms. Kohring first and her continuing acceptance of responsibility to the Referee six (6) years later." (AB:41). Ms. Watson's false characterization in her brief—offered months after the hearing in federal court—undermines her self-serving conjecture that a more detailed explanation by Ms. Kohring would have obviated her misconduct. (See AB:44). Ms. Watson was no more interested in considering Ms. Kohring's reasonable explanation than Mr. Leigh.

The answer brief relies on the referee's conclusion that Ms. Watson was "reactive" to events and relying on her law partner to draft pleadings. (AB:18). Ms. Watson's own filing accused 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). She disingenuously claimed that she and Mr. Leigh had "been

nothing but cordial and friendly to everyone involved." She asserted that she had no duty to respond to Ms. Kohring's calls and e-mails. *Id*. She blamed Ms. Kohring for her refusal to admit to a felony immediately, stating "[a]t no time after filing did Defense Counsel contact Plaintiff's Counsel to admit their error, forgery, to apologize, or to withdraw their wrongly filed stipulation." *Id*. The answer brief relies on Ms. Kohring's testimony at the disciplinary hearing that she never apologized, as though this was either a reasonable expectation or that it somehow justifies misleading statements in Ms. Watson's supplemental response filed years earlier. (AB:20).

III. Aggravating and mitigating factors:

The answer brief argues that the bar is contending that Ms. Watson's misconduct was inappropriately mitigated based on Mr. Leigh's more extensive misconduct. (AB:32). To be clear, the bar has consistently asserted that Mr. Leigh deserves a stronger sanction than Ms. Watson. The bar appealed both disciplinary recommendations by the referee and seeks disbarment of Mr. Leigh and a 91-day suspension for Ms. Watson. It is unclear why Ms. Watson asserts that the bar is not considering the relative culpability of the two lawyers.

The answer brief next argues that Ms. Watson's conduct was not dishonest because the bar did not charge Ms. Watson with a rule violation

involving dishonesty. (AB:32). The brief cites to no case law in support of the proposition that a respondent cannot harbor a selfish or dishonest motive under Standard 3.2(b)(2) unless specifically charged with a rule violation in which dishonesty is an element of the offense. No such case law exists. The answer brief stipulates that "Respondent used the term "forgery" to describe the unauthorized signature." (AB:34). But the brief excuses the false accusation of criminal conduct by noting that Ms. Watson's rhetoric in pleadings was more measured than Mr. Leigh's. (AB:33-34). Ms. Watson met the exceedingly low bar of drafting a response that was not as histrionic and deceitful as filings by her law partner, but she still falsely accused another lawyer of engaging in forgery. She personally filed a supplemental response asking the court to strike pleadings, sanction defendants, and award relief based on the false accusation. (TFB-Ex.9). Yet the answer brief claims that this response "was not filed to gain an advantage in the case." (AB:39). Regardless of the rule violations at issue, Ms. Watson engaged in a dishonest act performed with a selfish motive.

In a further effort to distance Ms. Watson's misconduct from Mr. Leigh, the answer brief asserts:

> Other than preparing a factual affidavit, the bar acknowledges that Ms. Watson did not engage in the dueling motions between

> Ms. Kohring and Mr. Leigh until the trial court required her to file a response.

(AB:33). To be clear, she was co-counsel on the filings purportedly drafted and filed by Mr. Leigh. She did not distance herself from those filings, and when she eventually filed a supplemental response of her own, she further pushed a false narrative she and Mr. Leigh had created to disparage Ms. Kohring. (TFB-Ex.9).

"[T]o conclude that [co-]counsel has no responsibility, because [co-]counsel did not physically sign any of the pertinent pleadings would be a hypertechnical and nonsensical reading of Rule 11." *Ideal Instruments, Inc. v. Rivard Instruments, Inc.*, 243 F.R.D. 322, 348 n.6 (N.D. Iowa 2007). Further, "each attorney of record is responsible for the content of the entire document when his or her name appears on the document" and "each attorney who appears in a proceeding and authorizes his or her name to be affixed to an appellate brief or other pleading cannot avoid responsibility for the content of the brief by later claiming limited or no involvement in its preparation." *Hagood v. Wells Fargo N.A.*, 125 So. 3d 1012 (Fla. 5th DCA 2013). Even when a lawyer does not sign a complaint, by continuing the suit, the lawyer unquestionably later advocated it. See *Vehicle Operation Techs. LLC v. Am. Honda Motor Co. Inc.*, 67 F. Supp. 3d 637, 653 (D. Del. 2014); see also *King v. Whitmer*, 71 F.4th 511, 531-32 (6th Cir. 2023).

This legal authority undermines Ms. Watson's claims that "[t]he misconduct charged against Ms. Watson was also isolated to one (1) pleading" and that "[t]he record does not support the bar's attempt to expand Ms. Watson's involvement beyond her supplemental response." (AB:43-44). She does not escape consequences for her misconduct by simply distancing herself from filings by her law partner and co-counsel after the fact. As stated by one court, if co-counsel signs a complaint relying on the representations of another lawyer, "so much the worse for them." *Val-Land Farms, Inc. v. Third Nat'l Bank in Knoxville*, 937 F.2d 1110, 1118 (6th Cir. 1991). The federal court all but offered Ms. Watson an exit from the litigation unscathed when it ordered her to file a supplemental response; she knew or should have known to either (a) join in on her law partner's accusations or (b) distance herself from them. She chose the former.

Ms. Watson next argues that her inaction after learning of her law partner's objectively threatening social media postings should not be an aggravating factor. In support, Ms. Watson disputes the bar's assertion that she was aware her law partner was engaging in this behavior. (AB:45-46). Ms. Watson misunderstands the bar's argument. The bar did not assert that she had knowledge of these postings as soon as they were

published. The bar argued that Ms. Watson was aware of the conduct on or before June 5, 2017, because she was present at a hearing on a motion for a protective order based on these postings. (IB:28-29; T5:1019-20). Since she already knew that Mr. Leigh had engaged in threatening behavior resulting in a protective order, she had even more reason to investigate before actively participating in a smear campaign with Mr. Leigh against opposing counsel in the same litigation. But she did not do so. Her failure to investigate the matter independently constituted willful blindness, not mere neglect or reasonable deference to her co-counsel.

Ms. Watson next argues that the referee did not err in failing to find as an aggravating factor that she violated a gag order in the *Stonybrook* litigation and failed to appear at a hearing or file a motion to withdraw pursuant to a court order. (AB:46-47). The argument is predicated on the argument that Ms. Watson did not carefully review the gag order or the order requiring her appearance at a hearing even though she was co-counsel on the case. Instead, the brief argues that she deferred to Mr. Leigh as primary counsel to handle the litigation, and she removed offending posts when she learned that she violated the gag order. *Id*. Ms. Watson's continued deference to a lawyer whose misconduct led to a gag order and a sanctions hearing was patently unreasonable. Her argument

that she lacked intent in violating these orders is based on the assertion that she willfully blinded herself to the litigation. Her role as co-counsel does not absolve her of all responsibility simply because she did not take her responsibilities seriously.

Ms. Watson argues that she expressed remorse by tendering an admission for minor misconduct. (AB:53). Under Rule 3-5.1(b)(5), this admission may not be considered in subsequent proceedings. She did not offer testimony claiming that she ever apologized to the victim of her misconduct, Ms. Kohring, and she continues to deflect to Ms. Kohring as a partial excuse for her misconduct. Her remorse was limited to acknowledging that she worded things poorly, not that she took active steps to ruin the reputation of another lawyer. (See T5:1015-16). To the extent the mitigating factor was established, it should be afforded little weight.

Ms. Watson argues that the delay in her disciplinary matter is a significant mitigating factor. The bar argued that the factor did not apply in the absence of prejudice caused by the delay. The referee failed to find Ms. Watson was prejudiced, and in fact found that she "understand[s] the Bar's argument about demonstrable harm (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). This was an explicit finding that there was no prejudice, and the answer brief does not establish any demonstrable harm caused by the delay. Instead, Ms. Watson simply deems the bar's explanation for the delay to be insufficient, as though the multiple judicial referrals caused by joint misconduct by Mr. Leigh and Ms. Watson should have been instantly parsed out and charged. (AB:48-49).

Ms. Watson also argues that the bar should not seek to enhance the discipline against her by referencing uncharged conduct. *Id*. This has nothing to do with the delay; Ms. Watson's argument is a separate due process issue that in no way impacts the lack of prejudice caused by a delay. Further, the due process argument is misplaced, as one of the aggravating factors this Court must consider is whether there was a pattern of misconduct. Standard 3.2(b)(3). Her role as co-counsel on frivolous filings by Mr. Leigh is a central issue in this case. In *The Florida Bar v. Nowacki*, 697 So. 2d 828 (Fla. 1997), this Court held that evidence of unethical conduct is admissible if established by clear and convincing evidence even if it is not squarely within the scope of the bar's accusations.

IV. Case law:

Ms. Watson finally argues decisions by this Court that did not garner a written opinion in support of her assertion that an admonishment is a

sufficient sanction. But these cases are readily distinguishable. In *The Florida Bar v. Alvarez*, Case No. SC2015-872 (Fla. 2015), the respondent was admonished for sending rude and aggressive e-mails to opposing counsel and falsely accused opposing counsel of lying during a deposition. In *The Florida Bar v. Lafrance*, Case No. SC2021-868 (Fla. 2021), the respondent was admonished for stating in a courtroom hallway that he was tired of "this racist f****** town" after losing a trial. In *The Florida Bar v. Allen*, Case No. SC2020-1470 (Fla. 2021), the respondent was publicly reprimanded for a pattern of rude and aggressive conduct toward a plaintiff or plaintiff's counsel during hearings, e-mails, and depositions.

Ms. Watson's conduct was not limited to rude and aggressive statements in private correspondence, in a deposition, or in a courtroom hallway. She did not limit herself to baselessly calling Ms. Kohring a liar. She leveled false accusations of criminal conduct in a public filing, in a bar complaint, and to law enforcement agencies to gain an advantage in litigation. Yet despite her very *public* disparagement of Ms. Kohring, Ms. Watson asserts that her misconduct is minor and should result in admonishment. Her misconduct wasted court resources and it publicly disparaged the victim, neither of which was at issue in *Alvarez*, *Lafrance*, or *Allen*.

The answer brief cites to *The Florida Bar v. Doran*, Case No. SC2023-870 (Fla. 2023), in which a respondent threatened to pursue criminal charges based on an alleged fraud unless the opposing party agreed to a settlement agreement. Ms. Watson asserts that this was more serious misconduct than her *actual* efforts to pursue criminal charges, sanctions, and licensure action against Ms. Kohring after publicly labeling her a criminal. (AB:60). The bar does not agree. Ms. Watson did not level threats; she skipped right past that step and argued in federal court that Ms. Kohring should be sanctioned for engaging in forgery.

Ms. Watson's attempt to distinguish *The Florida Bar v. Adams*, 541 So. 2d 399 (Fla. 2007) should be rejected. In that case, a lawyer falsely accused another attorney of suborning perjury, and this Court held that the conduct warranted a 90-day suspension. As this Court has moved toward imposing stronger sanctions for misconduct since *Adams*, this case law supports imposition of a 91-day suspension for the misconduct at issue.

CONCLUSION

For the above stated reasons, The Florida Bar asks this Court to approve the referee's findings of guilt, impose a 91-day rehabilitative suspension from the practice of law, and further impose the costs recommended by the referee.

Respectfully submitted,

Mark Lugo Mason, Bar Counsel

CERTIFICATE OF SERVICE

I certify that the original hereof has been e-filed with the Clerk of the Supreme Court of Florida, on this 22nd day of April, 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

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Mark Lugo Mason, Bar Counsel