IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ALEXA MARTINEZ,

Respondent.

_____/

Supreme Court Case No. SC23-0421

The Florida Bar File No. 2018-70,056 (11D)

RESPONDENT'S ANSWER BRIEF AND INITIAL BRIEF ON CROSS-APPEAL

Alexa Martinez, Esquire
Florida Bar No. 126341
11945 SW 81st Street
Miami, Florida 33183
786-606-6991
alexamartinezlaw@gmail.com
Respondent

TABLE OF CONTENTS

TABLE OF CITATIONS iv

PRELIMINARY STATEMENT 1

NATURE OF THE CASE 1

STATEMENT OF THE CASE AND FACTS 2

I. Statement of the Case and Background 2

II. Facts Underlying The Bar Complaint 7
A. USB Drive 7
B. Joint Letter. 12
C. Client History and Firm Billing. 17
D. Notices of Appearance. 27
E. Notices of Unavailability. 29

SUMMARY OF ARGUMENT 34

STANDARD OF REVIEW 35

ARGUMENT 36

I. The referee erred in concluding Ms. Martinez's deleted documents from the USB and that such actions constituted the destruction of potential evidence, in violation of rules 4-3.4(a), 4-8.4(c) and 4-8.4(d). 36

II. The referee's findings and recommendation of not guilty as to rule 4-5.8 in relation to contacting clients is supported by the record and should be accepted. 53

III. The referee's findings and recommendation of not guilty as to rule 4-4.1 in relation to contacting clients are supported by the record and should be accepted. 61

IV. The referee's findings and recommendation of not guilty as to rules 4-3.1, 4-3.3 and 4-3.4, in relation to the notices of appearance and notices of unavailability, are supported by the record and should be accepted. 64

V. The referee's findings and recommendation of not guilty as to rules 4-3.1, 4-8.4(c), and 4-8.4(d) in relation to the Gershfeld case are supported by the record and should be accepted. 74

VI Based on the referee's findings of fact, the standards for imposing lawyer sanctions, and relevant case law, this courts should accept the referee's recommended sanction. 81

CONCLUSION 97

CERTIFICATE OF SERVICE 98

CERTIFICATE OF TYPE SIZE & STYLE 99

TABLE OF CITATIONS

Cases

Barone v. Rogers, 930 So.2d 761(Fla. 4th DCA 2006).....78
Builder's Square, Inc. *v. Shaw*, 755 So. 2d 721 (Fla. 4th DCA 1999).....44
Cont'l Ins. Co. v. Herman, 576 So. 2d 313 (Fla. 3d DCA 1990).....43
Gayer v. Fine Line Constr. & Elec., Inc., 970 So.2d 424 (Fla. 4th DCA 2007) 43
Kevlik v. Goldstein, 724 F.2d 844 (1st Cir. 1984).....65
Long Term Mgmt., Inc. v. Univ. Nursing Care Ctr., Inc., 704 So.2d 669, 673 (Fla. 1st DCA 1997).....78
Miller v. Allstate Ins. Co., 573 So. 2d 24 (Fla. 3d DCA 1990) 44
Ochoa v. Alie Bros., Inc., 2007 WL 2781192, *5 (M.D. Fla. 2007).....43
Pagidipati v. Vyas, 353 So. 3d 1204, 1214 (Fla. 2d DCA 2022), review denied, SC2023-0271, 2023 WL 3596454 (Fla. May 23, 2023) 65
People ex rel. Healy v. Hooper, 218 Ill. 313, 75 N.E. 896 (1905)…….51
Perlman, Bajandas, Yevoli & Albright, P.L. v. Atlas Holding Corp., 377 So. 3d 617 (Fla. 4th DCA 2023).....79
Public Health Trust of Dade County v. Valcin, 507 So. 2d 596, 69 A.L.R.4th 895 (Fla. 1987) 52
Rockwell Intern. Corp. v. Menzies, 561 So. 2d 677 (Fla. 3d DCA 1990) ...43
Rosenberg v. Levin, 409 So.2d 1016 (Fla.1982) 80
Shamrock-Shamrock, Inc. v. Remark, 271 So. 3d 1200 (Fla. 5th DCA 2019).....43
Smith v. Coalition to Reduce Class Size, 827 So.2d 959 (Fla.2002)…… 36
Strasser v. Yalamanchi, 783 So. 2d 1087 (Fla. 4th DCA 2001).....43
The Florida Bar v. Beach, 675 So.2d 106 (Fla.1996).....65
The Florida Bar v. Bischoff, 212 So. 3d 312 (Fla.2017)..... 89, 90, 94
The Florida Bar v. Davis, Supreme Court Case No. 2019-1447 93
The Florida Bar v. Della-Donna, 583 So. 2d 307 (Fla. 1989).....88
The Florida Bar v. Frederick, 756 So. 2d 79 (Fla. 2000).....35
The Florida Bar v. Gibson, Supreme Court Case No. 2021-1716.....93
The Florida Bar v. James, 329 So. 3d 108 (Fla. 2021) 91, 92, 94,
The Florida Bar v. Kane, 202 So. 3d 11, 19 (Fla. 2016) 88
The Florida Bar v. Kaufman, 347 So. 2d 430 (Fla. 1977) 87, 88
The Florida Bar v. Lipman, 497 So.2d 1165 (Fla.1986)…….51
The Florida Bar v. Llopiz, Supreme Court Case No. 2016-884.....94
The Florida Bar v. Marcellus, 249 So. 3d 538 (Fla. 2018) 90, 91, 94
The Florida Bar v. Marcus, 616 So. 2d 975 (Fla.1993).....87

The Florida Bar v. McCain, 361 So. 2d 700, 705 (Fla. 1978)……50, 51
The Florida Bar v. Micks, 628 So. 2d 1104 (Fla.1993).....87
The Florida Bar v. Patterson, 257 So. 3d 56 (Fla. 2019) 36
The Florida Bar v. Picon, 205 So. 3d 759 (Fla. 2016).....35, 92
The Florida Bar v. Rapoport, 845 So. 2d 874, 880 (Fla. 2003)……49
The Florida Bar v. Rosenberg, 169 So. 3rd 1155 (Fla. 2015) 89
The Florida Bar v. Rousso, 117 So. 3d 756 (Fla.2013).....96
The Florida Bar v. Rubin, 709 So.2d 1361 (Fla. 1998)……36
The Florida Bar v. Schwartz, 284 So. 3d 393 (Fla. 2019) 35
The Florida Bar v. Temmer, 753 So. 2d, 555 (Fla. 1999) 36, 92
The Florida Bar v. Thomas, 582 So. 2d 1177 (Fla. 1991).....36
The Florida Bar v. Tobkin, 944 So. 2d 219 (Fla. 2006).....36
The Florida Bar v. Walter, 784 So. 2d 1085, 1087……51
The Florida Bar v. Wolf, 930 So. 2d 574.....87

Other Authorities

Eleventh Judicial Circuit Administrative Order No. 14-01 A1 71
Fla. R. Civ. P. 1.420(b).....72
Florida Bar Ethics Opinion 93-4 54

Rules Regulating The Florida Bar

Rule 3-4.3 .....2, 3, 81
Rule 3-7.6(n)(1).....4
Rule 3-7.6(q)(3).....94
Rule 4-1.16 .....75, 77
Rule 4-1.5 66
Rule 4-1.5 (f) 76
Rule 4-3.1 .....2, 3, 4, 64, 73, 80
Rule 4-3.3 .....2, 3, 4, 64, 73
Rule 4-3.4 .....64, 73, 81
Rule 4-3.4(a) 36, 42
Rule 4-4.1 .....2, 3, 61, 63
Rule 4-5.6(a) 54
Rule 4-5.8 .....3, 4, 53, 55, 57, 58, 93
Rule 4-5.8(c)(1).....53

Constitutional Provisions

Art. V, §15, Fla. Const.....35

Florida Standards For Imposing Lawyer Sanctions

Standard 3.1 81
Standard 3.2(b)(2) 86
Standard 3.2(b)(3) 86
Standard 3.2(b)(4) 86
Standard 3.2(b)(6) 86
Standard 3.2(b)(7) 86
Standard 3.3(b)(1) 87, 87
Standard 3.3(b)(11) 87
Standard 3.3(b)(3) 87
Standard 3.3(b)(6) 87
Standard 3.3(b)(7) 87
Standard 3.3(b)(9) 87
Standard 4.4 82
Standard 4.4(d) 82
Standard 5.1 82
Standard 5.1(b) 83
Standard 5.1(c) 83, 85
Standard 6.1 ..... 82, 83, 84
Standard 6.1(b) 84
Standard 6.1(c) 84
Standard 6.2 83
Standard 6.2(b) 84
Standard 6.2(c) 84,85
Standard 7.1 84
Standard 7.1(c) 85

PRELIMINARY STATEMENT

Complainant is referred to as The Florida Bar or the Bar. The Respondent, Alexa Martinez, is referred to as Ms. Martinez/Martinez. Silverberg Brito, PLLC, is referred to as the Firm. The Firm partners, Gisel Brito and Steven Silverberg, are referred to as Ms. Brito/Brito and Mr. Silverberg/ Silverberg respectively.

The electronic record in this case contains all filings referenced in the Index of Record filed in this Court on November 30, 2023 including the transcript of the final hearing. Citations to the electronic record are referred to by "R:" followed by the applicable page number(s) of the 2,578-page electronic record.

The report of referee is referred to as "ROR:" followed by the applicable page number(s).

NATURE OF THE CASE

The referee properly determined that the Bar's case consisted solely of factual disputes. It was within the referee's discretion to require witnesses to testify in person so that he could evaluate their credibility. The referee determined one of Bar's witnesses lacked credibility due to personal animus

and deep-rooted biases against respondent. The Bar chose to rely on affidavits of former clients from the underlying civil case, in lieu of in-person testimony, contrary to the referee's ruling and which the referee found constituted bad faith. Ms. Martinez seeks a review of the referee's factual finding that respondent deleted a draft motion from the USB drive. Ms. Martinez seeks review of the referee's conclusion of law that respondent's deletion of the document on the USB drive constituted "spoliation of potential evidence" and therefore also seeks review of the associated recommended sanction of a 10-day suspension.

STATEMENT OF THE CASE AND FACTS

I. Statement of the Case and Background

Statement of the Case

On March 23, 2023, The Florida Bar filed its complaint against Ms. Martinez charging Respondent with violating Rules: 3-4.3, 4-3.1, 4-3.3, 4-4.1, 4-4.2, 4-5.8, 4-8.4(b), 4-8.4(c), and 4-8.4(d) Rules Regulating The Florida Bar. Respondent served her answer on June 12, 2023. On August 25, 2023, a telephonic case management conference was conducted. On September 7, 2023, another telephonic case management conference was conducted. The referee requested the parties prepare a joint stipulation of the issues to be

resolved prior to trial. A final hearing was conducted on September 22, 2023, in Miami, Florida. At the start of the hearing, the Bar noted they were declining to prosecute on Rule 4-8.4(b) relating to the USB. The Bar presented three witnesses at the final hearing: Steven Silverberg, Gisel Brito and Christopher Spuches. Respondent testified on her own behalf and presented one witness, Jay Smilowitz, a public adjuster who worked with Martinez and the Complainant's law firm. At the conclusion of the final hearing, the referee asked the Bar to submit a proposed report of the referee's findings. Bar counsel and Ms. Martinez's counsel each submitted proposed reports of referee to the referee for his consideration. A separate hearing for sanctions was held on September 26, 2023. The referee issued his Report of Referee on November 30, 2023, recommending that Respondent be found guilty of violating Rule 3-4.3, 4 4-8.4(d), and 4-8.4(c). The Referee did not find guilt on Rule 4-3.1, 4-3.3, 4-4.1, 4-4.2, 4-5.8, 4-8.4(b), and 4-8.4(d). On November 30, 2023, the Bar filed a Motion to Assess Costs. On the same day, the Bar filed an Amended Motion requesting $7,465.00 be assessed against Martinez. The attached statement included $4,153.50 for the transcript of the final hearing. In response to the Bar's filings, on November 30, 2023, Martinez filed her Objection to the Motion to Tax Costs and Amended Objection to Motion to Tax Costs, pursuant to Rule

3-7.6(n)(1), which the referee granted. The Bar filed their initial brief on February 29, 2024, seeking review of the referee's report as to the factual findings including aggravating and mitigating factors; recommendations that respondent was not guilty of violating Rules 4-3.1, 4-3.3, 4-4.1, 4-4.2, 4-5.8, and 4-8.4(b); recommendation as to sanction; and the referee's ruling denying, in part, the bar's motion for costs. Respondent now files her Answer Brief and Cross-Initial Brief.

Background

Alexa Martinez was admitted to the Florida Bar on December 18, 2016. (R:5). In February of 2017, she began her first job as an associate attorney at Silverberg Brito, PLLC, (the "Firm") whose partners were married lawyers, Steven Silverberg and Gisel Brito. (R:899, 6). The Firm conditioned Ms. Martinez's employment on signing a non-compete agreement. (R:2, 1288). Ms. Martinez was assigned approximately 150 of the Firm's 400 clients. (R:899). The Firm provided Ms. Martinez with no formal training. (R:899, 290). At the Firm's direction, Ms. Martinez sought guidance from another associate at the Firm, Lourdes Velez, who had less than one year of experience at the time, and who had also not been trained by the Firm. (R:900, 903). Ms. Velez personally created a binder with notes and documents which the Firm referred to as "the Bible." (R:905, 285-286). In lieu

of training, the firm directed Ms. Martinez to ask Ms. Velez or look at Ms. Velez's notes. (R:905). The Firm's partners were often absent from the office and the Firm's 500 cases were handled primarily by Ms. Martinez and Ms. Velez. (R:905, 906).

Ms. Martinez was diagnosed with Attention Deficit/Hyperactivity Disorder at a young age and was reevaluated in 2013, which testing confirmed the severity of her condition. (R:897). Throughout her educational career, she sought out and was granted disability accommodations based on substantial medical documentation. (R:895, 187). As she tried to settle into her new job, Ms. Martinez requested disability accommodations from the Firm but the Firm did not provide any. (R:937). On or about June 14, 2017, Ms. Martinez requested time off in July to undergo a medical procedure and the Firm approved the request. (R:298, 300). The next day, June 15, 2017, the Firm partners went on vacation and the Firm's receptionist gave Ms. Martinez a Performance Improvement Plan ("PIP"), along with a medical questionnaire, which Ms. Martinez was uncomfortable filling out. (R:1375, 297, 300). Ms. Martinez's failure to complete the medical questionnaire contributed to her being fired. (R:478). Mr. Silverberg testified the PIP was considered on June 14, 2017, the date Ms. Martinez asked for medical leave. (R:295, 437). Mr. Silverberg and Ms. Brito were not in the office to discuss

the document given to her by a staff member. (R:296). Ms. Martinez later discovered that on the same day she asked for medical leave, the Firm posted a job opening for an associate attorney on Simplicity, a university employment board. (R:910).

The PIP alleged Ms. Martinez failed to prepare a case for trial. (R:1375). Ms. Martinez wrote a question mark on the notation because she had not been directed to prepare any case for trial. (R:1375). Upon Mr. Silverberg's and Ms. Brito's return from their trip, the Firm terminated Ms. Martinez's employment. (R:438). Mr. Silverberg asked Ms. Martinez to sign a severance agreement that released the Firm from liability for wrongful termination due to a medical condition. (R:911, 481). Although the Firm offered severance agreements to other former employees, Ms. Martinez was the only employee whose agreement included the Firm's conduct related to her medical leave. (R:481). The Firm responded to Ms. Martinez's refusal to sign the agreement by serving a cease-and-desist letter and then filing a civil complaint against Ms. Martinez. (R:20). The Bar based its complaint against Ms. Martinez solely on the allegations contained in Firm's civil complaint and the documents provided by the Firm partners, stating specifically "our focus was primarily on the actions vis-a-vis the law firm. That's it." (R:648).

The Firm alleged and the Bar adopted the claims that Ms. Martinez schemed to steal all the Firm's clients; downloaded their information and the Firm's trade secrets onto a USB drive and stole the USB drive; refused to negotiate a joint departure letter and unilaterally contacted clients without notice and convinced clients to fire the Firm; deceived the Court about being retained by the clients by filing notices of appearance; intentionally delayed client's settlement for financial motives; and purposely delayed the proceedings in the civil case in filing notices on unavailability due to her medical condition.(R:20-41;5-12).

II. Facts Underlying the Bar Complaint

A. USB Drive

When Ms. Martinez was hired, the Firm provided her a USB drive to complete work at home. (R:469, 359). The USB was capable of holding only a few documents. (R:359, 1877). When Ms. Martinez was terminated, she did not have the USB drive at the office and told them Firm she would get it back to them. (R:352).

On July 19, 2017, the Firm sent a cease-and-desist letter to Ms. Martinez and demanding the return of "Firm property" and "destruction of any copies of these files, whether digital or hard copy." (R:1385). The Firm filed the civil complaint on July 24, 2027, and served Ms. Martinez on August 2,

2017. (R:2024, 2030). The Bar asserted and the civil complaint alleged “Ms. Martinez ignored the Firm's requests to return the Firm USB Drive.” (R:24). Ms. Martinez’s August 2, 2017 email to the Firm’s attorney, Christopher Spuches requested coordination for the USB delivery. (R:1878). Ms. Martinez had initially offered to return the USB drive by mail; however, on the advice of counsel and due to Ms. Martinez’s medical restrictions, of which the Firm had prior notice, she asked the Firm to send a courier to pick up the USB. (R:1878). The Firm did not pick up the USB. (R:1878, 1879). On Friday, August 4, 2017, Mr. Spuches unilaterally noticed a hearing regarding the USB issue, for August 8, 2017. (R:1871, 2008). Upon being called at home, Ms. Martinez advised the judge, she was unable to attend: “I’m not in my full mental capacity to do it because of the medication I’m taking as a result of recovery from my surgery.” (R:1875). Ms. Martinez said “this is a very small 4 USB that they’re claiming I have their entire files on it, which is completely untrue. It has like a motion that I was working on at the time they can come pick it up” (R:1877). When the language of the order was being discussed, Ms. Martinez disagreed with the proposed language stating she would “return all firm property” because she said, “I don’t have anything.” (R:1882). The Firm eventually sent a courier to pick up the USB drive. (R:823).

USB Contents

At the start of the final hearing Bar counsel stated the Bar had notified Martinez' counsel prior, that the Bar was "not going to elicit that testimony about the USB and whether it was returned or not. Part of what went into the Bar's thought process in that was that we could not establish by affirmative proof what was on the USB drive." (R:624).

The Firm had possession of the USB drive after Ms. Martinez returned it but did not preserve it for inspection in either the civil case or the Bar investigation. (R:88, 99). The Bar did not list the USB drive, the report of forensic evaluation, or any documents evidencing the contents of the USB as exhibits. (R:111-115). Ms. Martinez requested the production of "any and all documents or other material which the Bar contends evidence, support or refute any fact or circumstance in this action." (R:88). The Bar did not produce the physical USB drive or the forensic reports stating, "All responsive documents were previously provided."(R:99). When Ms. Martinez testified at the final hearing, neither the Bar nor the referee questioned Ms. Martinez about the USB drive. (R:935-938).

Prior Testimony Regarding USB Contents

The Firm's civil complaint alleged and the The Bar adopted the position that "[a]s part of her plan, Ms. Martinez downloaded onto a USB drive

confidential Firm information, such as client contact information, client files, and other proprietary Firm property such as forms created by and utilized by the Firm." (R:23) and that the USB drive "contained the firm's confidential client files, trade secrets, and firm work product." (R:6, 74). No factual findings regarding the contents of the USB were made in the underlying case. In her answer to the Bar's complaint, Ms. Martinez denied that she took the USB drive without authority or permission, denied it contained any files or information on it, and alleged the USB drive was empty. (R:74, 44, 79).

Public Motions

Ms. Brito and Mr. Silverberg claimed that Ms. Martinez used the USB to steal the Firm's publicly filed motions after Ms. Martinez's filed motions similar to those previously filed by the Firm. (R:353, 568, 467). Mr. Silverberg stated that Ms. Martinez must have stolen the Firm's motion to show cause because "The font is the same [as motions the Firm filed]" and "the paragraphs were justified instead of left or right justified" and "she used to separate her address from her telephone number, she used a bullet, and that's the same thing that we did." (R:578). Mr. Silverberg acknowledged the motions were public record. (R:467).

Retainer Agreement

The Firm alleged Ms. Martinez stole their retainer agreement because Ms. Martinez's contract was very similar the Firm's retainer. (R:59, 790). They alleged Ms. Martinez could not have gotten the retainer agreement anywhere except by taking it from the Firm. (R:59, 54, 354, 355, 467). Mr. Silverberg subsequently testified it was possible Ms. Martinez acquired the retainer agreement from a client or an adjuster. (R:475). The Firm gave Jay Smilowitz, a Public Adjuster, a copy of their retainer agreement during his first meeting with them. (R:790). Clients were also given copies of their retainer agreements. (R:355).

Client Contact Information

The civil complaint alleged "the only way Ms. Martinez could contact Firm clients would have been by accessing confidential client information she stole from the Firm and downloaded onto the Firm USB Drive." (R:23). At the final hearing, Ms. Martinez testified that several clients had her personal cell number and had called her when the Firm was nonresponsive. (R:912). Ms. Martinez testified, when the Firm would not provide the contact information, she was able to search for their contact information online because the clients had unique names. (R 891).

Contents Unknown

Ms. Brito was asked during her deposition on August 24, 2023, “do you have knowledge of what was actually on the USB?” she testified “Well, no, of course not.” (R:352). Ms. Brito also testified “no, I never actually saw the documents that she had on the USB.” (R:353). Ms. Brito stated the USB drive was blank when she provided it to Ms. Martinez. (R:354). Mr. Silverberg acknowledged in his deposition he did not have any access to the associates’ USB drives and did not know what was on them. (R:419). Mr. Silverberg initially testified “I know for a fact that […] there were documents on them when she left.” (R:468). He later testified he had no personal knowledge of whether anything was on the USB. (R: 470).

During the Bar’s closing statements, the referee raised the concern that the Bar had not presented evidence regarding the USB drive. (R:945). The Bar responded they had agreed with Ms. Martinez counsel not to pursue the USB allegations because there was insufficient evidence. (R:944-946).

B. Joint Letter.

Following Ms. Martinez’s departure from the Firm, she attempted to negotiate a joint letter to the clients she had represented to notify them of her departure and inform them of their right to choice of counsel. (ROR:3).

Mr. Silverberg testified that Martinez could have the cases she initiated, Leonel Garcia and Seymour Marksman. (R:440, 441, 911). On June 22, 2017, Ms. Martinez spoke with Garcia and Marksman regarding her departure and notified the Firm “I have reached out to Mr. Garcia and Mr. Marksman as per our agreement.” (R:1130, 911). The Firm stated “We gave her until the next day, June 20th, to contact the clients.” (R:1131, 679). Mr. Silverberg stated “On or about June 20, 2017, she sent Gisel a text asking for more time to contact [Marksman and Garcia], we gave her a couple of extra days and then we sent [our] letter” on June 22, 2017, without notice to Martinez. (R 1576).

When asked, “does Silverberg Brito inform clients that they have a choice to hire or fire Silverberg Brito at any point in time during Silverberg Brito's representation of the client?” Mr. Silverberg refused to answer. (R:464). When asked “Is Silverberg Brito aware that a client that is hired, or that is retained by the firm, has the option to fire Silverberg Brito at any time and hire another attorney?” Mr. Silverberg claimed his knowledge of the Bar rules was “privileged” and refused to answer. (R:464). After being asked again whether he understands that clients have the right to counsel of their choice, Mr. Silverberg responded “I'm confused.” (R 466).

The Firm's non-compete agreement in their employment contracts states "The Employee agrees that during the term of his/her employment and for two (2) years after the termination of his/her employment, the Employee shall be prohibited from competing with the Employer and working in the same or a substantially similar business within three hundred miles from Miami, Florida. During that time, the Employee agrees not to directly or indirectly, solicit, induce, or attempt to solicit, any of the *Employers customers*, suppliers or business contacts for any purpose." (R:1288, 464-466, 765). When asked whether the Firm's non-compete agreement is improper Ms. Brito testified, "No. I did not find that that [non-compete] conflicts in any way, shape or form with any of the rules." (R:765).

Joint Letter Negotiations

On Jun 22, 2017 Ms. Martinez emailed Ms. Brito and Mr. Silverberg requesting they negotiate a joint letter informing clients of her departure and proposed a draft letter. (R:1130). On June 23, 2017, upon receiving no response, Ms. Martinez sent another message, "I am interested in negotiating a mutually agreeable letter to notify the clients."(R:1130). Ms. Brito requested a week to review the email, but Ms. Martinez replied the matter was urgent. (R:1131). There was a July 10, 2017 deposition

scheduled in the Gershfeld case and the July 18, 2017 hearing in the Morelus case. (R:1435,615).

The Firm's attorney, Christopher Spuches responded approximately six days later on June 29, 2017. (R:1132). He proposed a letter which stated "On June 19,2017, Alexa Martinez, Esq. left our Firm to commence practice as a sole practitioner." (R:1132, 1749). Ms. Martinez' proposed letter included the same language which is also on the Bar's legal resource website, legalfuel.com. (R:342, 1749). Ms. Martinez stated that the letter needed to have her contact information and be sent in Spanish as well. (R:1133).

Mr. Spuches, stated "We will agree only to the letter as drafted and attached to my 5:15 pm email without any additional modifications." (R:1135). When asked in the final hearing "Did you ever indicate that you would not continue negotiating?" Mr. Spuches testified "Not that I recall." (R:841). Ms. Martinez told Mr. Spuches "you did not get back to me about the contact information. It says for them to contact me but there's no contact information. […] please advise as to what contact information you are okay with putting." (R:1133). Ms. Martinez also stated, "please send in English and Spanish" and "if you agree please send to the clients I represented." (R:1135). Ms. Martinez also informed "there is a list of all my clients at every

desk in the office." (R:1135). Mr. Silverberg later testified that Ms. Martinez emails stated otherwise, "I recall that [Ms. Martinez] said, 'I understand that […] you're willing to send those two clients' information, but I want you to send to every client in the firm.'" And further stated "I remember that's when we got our attorney involved, so that we were negotiating who the letters were sent to." (R:440, 441).

Mr. Spuches' next email requested information about the USB drive and did not address the joint letter any further. (R:1138). After several unanswered emails, Ms. Martinez stated, "you are refusing to send the letter in a language which is understandable to the clients" and the letter indicates "the client should notify me of their decision but does not provide contact information that would facilitate them being able to do that." (R:1140). Ms. Martinez also emailed the Firm "I believe negotiations are at a standstill" and "therefore, I will be notifying the clients myself." (R:1140). Mr. Silverberg represented to the Bar, "Unilaterally and without notice, Ms. Martinez ceased communicating with SB and began to directly contact Firm clients," (R:198, 1139, 1140). The Firm also alleged in their civil complaint that "Negotiations regarding the language of the Joint Letter were nearly complete when Ms. Martinez claimed that she was undergoing a medical procedure and would not be available for an extended amount of time." (R:25). On June 15, 2017,

when she was employed at the Firm. Ms. Martinez had informed the Firm of the procedure. (R:298, 300).

C. Client History and Firm Billing.

At the time of Ms. Martinez's employment, the Firm had approximately 400-500 clients. (R:1105, 359, 564, 826). Ms. Martinez was personally assigned approximately 150 cases. (R:564, 899). Mr. Silverberg testified he handled "probably in the range of somewhere between 50 and a hundred" and stated Ms. Brito did not have "any specific files that were assigned to just her." (R:565).

Seymour Marksman

Ms. Martinez prepared and filed the lawsuit on behalf of Marksman and performed all the work associated with this case, and the Firm told Ms. Martinez she could "take" the case with her. (R:440, 441, 1506). However, Mr. Silverberg sent unilateral correspondence to the client on or about June 22, 2017, regarding Ms. Martinez departure. (R:1576). When propmpted "In September, Ms. Martinez asked for a substitution of counsel to be signed, but the firm didn't provide the substitution of counsel until January of 2018," Mr. Silverberg responded "the client had called us asking us questions about the case. And we said, We can't discuss this with you; we are not your attorneys." (R:578). Mr. Silverberg testified "later, November or December of

2017, that the client called us back" because the Firm had not withdrawn from the case or executed the stipulation. (R:578). Marksman requested the Firm to withdraw a number of times and sign the stipulation but the Firm did not do so for approximately four months. (R:923, 578). Ms. Martinez provided the Firm a retainer contract signed by both Seymour Marksman and his wife Helen Marksman. (R:2011-2114). The retainer dated August 21, 2017, was provided to the Firm's attorney who stated it was not sufficient because it did not have a case number and name of the insurance company, in violation of the Order. (R:2121, 2011-2114). The August 8, 2017, Order stated in pertinent pert: "Ms. Martinez shall provide written confirmation from all clients in cases in which she has filed notices of appearance that the client has elected to retain her." (R:2099). Ms. Brito testified the Firm never refused to sign the stipulation: "Not at all. We never refused to sign anything." (R:746). On December 1, 2017 the Firm filed Ms. Martinez's August 21, 2017 retainer as an exhibit. (R:2094). The Firm had the Marksman retainer at minimum forty-nine (49) days before agreeing to withdraw on January 18, 2018. (R:926). Marksman passed away May 23, 2021.

Leonel Garcia

Ms. Martinez spent approximately eight hours preparing the Complaint due to the complexity of the allegations, and spent 4.6 hours drafting

discovery. (R:1507, 1892-2007). The Firm sent Garcia a unilateral departure letter on or about June 22, 2017, without notice to Ms. Martinez. (R:1576). Garcia sent correspondence to Ms. Brito on July 10, 2017 stating "I have chosen Alexa Martinez, esq. to continue to represent me in this matter and am formally requesting that my file be forward to her. Please send all documents and sign and submit the attached agreement to substitute her as my legal counsel in this case." (R:1713). On July 18, 2017, Ms. Martinez noticed her appearance in the case, after the Firm failed to sign a stipulation for substitution of counsel. (R:1575). The Firm did not sign the stipulation until August 10, 2017. (R:1713, 1716-1717). Thereafter, Mr. Silverberg communicated with the client again on December 13, 1017. (R:1714).

Noel and Evelyn Perez

Ms. Martinez prepared and filed the lawsuit on behalf of Perez and completed all the initial work on the case. (R:1504-1505). The record reflects Ms. Martinez engaged in settlement negotiation with opposing and indicated Ms. Martinez did speak with the clients. (R:1504). Regarding Perez' statement in the affidavit the Firm drafted for Perez to sign, that she did not speak with Ms. Martinez, the referee stated it is common for clients to get confused about who they spoke with about what. (ROR 4). Mr. Silverberg testified his basis for the contention that Ms. Martinez did not speak with the

client was billing records, “I'm looking at her entire billing records and she doesn't state anywhere in there that she spoke to [Perez].” (R:445, 446). Mr. Silverberg also stated the billing records do not reflect the entirety of the work on the case, including all client contact. (R:453). On July 10, 2017, following breakdown of negotiations, Ms. Martinez sent Perez a departure letter dated explaining that she is no longer with the Firm and they have the option to choose counsel. (R:1761). Perez chose to retain Ms. Martinez and signed a retainer agreement on July 18, 2017. (R:1761-1765). Thereafter, Ms. Martinez filed a Notice of Appearance, and the retainer was produced to the Firm. (R 1761-1765). Ms. Brito called Noel Perez who confirmed signing a retainer and electing Ms. Martinez to represent them (R:1577, 709). The Firm then advised Perez on the steps to take to fire Martinez. (R:1577). Perez “cancelled” the contract with Ms. Martinez and she withdrew as counsel. (R:1866, 941).

Jacques Firmin and Annerose Firmin

The Firm assigned Ms. Martinez two cases for Jacques. The record reflects 24 billing entries by Ms. Martinez, including settlement negotiations, several motions and other documents prepared and filed, phone calls with the client and opposing counsel, discovery preparation and preparation for hearings. (R:1509-1510). Mr. Silverberg testified the clients “did not speak

any English" and Mr. Silverberg does not speak Creole. (R:455, 199). Ms. Brito testified, Freddy Jacques, "the [son] was the contact point for the clients." (R:726, 727).

Freddy authorized Ms. Martinez to represent the clients, as the referee commented "she got consent from the son, who everybody agreed was an authorized representative of the client," and as Mr. Brito stated, "he told me he had given verbal authorization to A. Martinez to continue representing his parents in the case." (R:726, 990,1577).

The civil complaint stated the "Firm could not contact the clients. On or about July 18, 2017, the Firm managed to reach the clients' son." (R:28). Ms. Brito testified "I did not attempt to contact [the clients]." (R:727). Regarding the alleged misrepresentations by Ms. Martinez, Ms. Brito testified the statements were about her "being pregnant and not working in the firm." (R:746). The Firm claimed they had affidavits to refute alleged statements that Ms. Brito was "pregnant, and [she] was not working anymore on their cases." (R:303). When asked, "did you take any maternity leave after having your baby?" Ms. Brito replied "I did. I think I took like two months, two and a half months, something like that." (R:266, 268, 357). No executed affidavit of Jacques was ever presented. Ms. Martinez withdrew from this case on

August 14, 2017. (R:1770). The Bar stated to the Court that Ms. Martinez waited thirty days to withdraw. (R:991).

Luis Llerena

Ms. Martinez billed 16.7 hours to the case, including a three-hour in person deposition and a 1.6-hour strategy conference with the client. (R:1492-1573). When asked whether Martinez had contact with the client, Mr. Silverberg testified “No, not in her billing records” but did not have personal knowledge. (R:452).

The Bar alleged Ms. Martinez’s statement that she “left the Firm” was a misrepresentation to the client. The referee asked “Show me the misrepresentation that it proved by clear and convincing evidence.” (R:956). Bar counsel pointed to the affidavit the Firm drafted for Luis Llerena. (R:956). The referee asked, “What's the misrepresentation, that she left voluntarily?” Bar counsel confirmed. (R:956). Ms. Brito alleged Ms. Martinez confused Luis Llerena, “Ms. Martinez told Mr. Llerena that she had left Silverberg Brito voluntarily.” (R:706). The letter SilverbergBrito sent to Luis Llerena, signed by Ms. Brito and Mr. Silverberg states, “Alexa Martinez, Esq. left our firm to commence practice as a sole practitioner.” (R:1749). Ms. Martinez did not file a notice of appearance, where she did not receive confirmation that the client retained her, nor did she ever send Mr. Llerena any letter. (R:989).

Luckner Morelus

Ms. Martinez was assigned Morelus' two cases while at the Firm. The billing records show Martinez attended a deposition with the client, attended a hearin, prepared and filed documents, and spoke with opposing counsel in the case. (R:1511). On May 5, 2017, Ms. Martinez billed for a half hour phone call with the client. (R:1511). Ms. Brito testified she spoke to Morelus on July 18, 2017, and stated, "he did not know who [Ms. Martinez] was." (R:1578).

The referee concluded that there was insufficient evidence to support that Ms. Martinez was authorized to represent Morelus, and "She did not withdraw promptly. She waited 30 days." (R:987, 989). However, the referee acknowledged the delay resulted from confusion, "there's some question as to whether the form was not properly filled out. It had the X and then the X and then the "no" written in" (R:629, 1754). The document reflects Morelus selecting both to remain with SilberbergBrito and also the option to retain other counsel and was provided to Ms. Martinez August 1, 2017. (R:1755). Martinez withdrew from this case thirteen days later, on August 14, 2017, after trying to clarify the client's form. (R:1770). Bar counsel that Ms. Martinez withdrew a after a month delay. (R:991).

Mr. Silverberg's Bar Complaint stated "On July 18, 2017, there was a hearing in [Morelus] Despite her having filed a Notice of Appearance, Ms.

Martinez did not show up for the hearing."(R:29). The referee stated, "If you file a notice of appearance, you're counsel of record, you got to be at hearings."(R:629).When the referee asked Bar counsel "she missed a hearing?" Bar counsel had responded "yes." (R:950).The referee concluded that Ms. Martinez missed a hearing in the Morelus case, but later changed his ruling upon reviewing the dockets and notices which evidenced the statements made by the Bar and Mr. Silverberg were incorrect. (R:961,988). Ms. Martinez was not attorney of record when the hearing took place on July 18, 2017 at 9:00 am (R:615, 637). Ms. Martinez filed her notice of appearance later that day at 11:49 am. (R:617, 1676).

Yelena Gershfeld

Ms. Martinez was assigned to this case in February 2017 while the pleadings were still open (R:2063). She spent 31.7 hours on the case, including defending a 6.5-hour deposition of the client, attending another 6-hour deposition, drafting seven documents, drafting and responding to all discovery, attending an in-person hearing, communicating with opposing counsel for two hours including settlement negotiation, drafting and sending correspondence, filing documents, conducting legal research and 8.4 hours of direct client contact. (R:1509-1510).

Gershfeld discharged the Firm on July 19, 2017, and on July 24, 2017, Martinez requested the client's files and the Firm refused to send Martinez the client's files. (R:1576, 1794, 1798). On July 26, 2017, Martinez requested the Firm execute a stipulation for substitution of counsel and provide the client files, writing "Gisel has heard it from the client herself that she has discharged the Firm […] Again, here is the Stipulation for Substitution of counsel attached. Please have your client review and sign it. You have a duty to release the files to me as I am counsel for the Plaintiffs and they have made their wishes clear to you." (R:1799). The Firm later stated they printed out the paper files and Ms. Martinez would have to come get them. Mr. Silverberg testified "we always maintained an electronic file." (R:562).

On July 31, 2017 the Firm's attorney emailed Ms. Brito and Mr. Silverberg asking them to sign the stipulation. (R:1801). The Firm's attorney again asked Ms. Brito and Mr. Silverberg on August 1, 2017 "May I give consent to file the stip on Gershfeld" and "I think its necessary" (R:1755). The record reflects the Firm agreed to the stipulation on August 25, 2017, thirty-seven days after the client discharged the Firm. (R:2409, 1771).

Bartolome Frias and Marta Amable

Ms. Martinez prepared and filed the lawsuits March 10, 2017, and billed 20.2 hours to the Frias cases. (R:1504). The clients chose to retain Ms.

Martinez. On July 18, 2017, Ms. Brito spoke to the clients who confirmed they selected Martinez to represent them. (R 1578). Ms. Brito testified that she entered a substitution of counsel after receiving confirmation of the client's decision to leave with Ms. Martinez (R:740-741). When asked "Did you ever refuse to sign substitution of counsel in cases where there was a stipulation that the clients would go to Ms. Martinez?" Ms. Brito testified "Not at all. We never refused to sign anything." (R:746). The record reflects the Firm did not sign a substitution of counsel as of November 9, 2017. (R:2382).

Firm Billing Records Incomplete

Mr. Silverberg testified "I downloaded just all of the hours that she had and put it into a -- I downloaded it as a CSV file, and all of this was done by the software, not by me." (R:798). The Firm provided eighty-one pages of billing records for Martinez' three months at the Firm (R:1492-1573).

When asked "where Ms. Martinez represents that she provided a significant amount of legal work regarding the claims of the clients she contacted, based on your research was that accurate?" Mr. Silverberg stated "No." (R:801). Referring to the billing records the Firm provided, the referee stated "this is a significant amount of time she spent working on these clients'

matters, right?" and "It's not like she went to clients who she didn't have a working relationship with." (R:803).

Mr. Silverberg testified Ms. Martinez did not have contact with some of the clients because the billing records did not indicate it, "[s]he was required to reflect everything that she did in every case." (R:453). He later stated "yes, it is possible that she may have had [unbilled] contact with these other clients" (R:454). When asked "So you know she had contact with Leonel Garcia, but the records don't show that?" Mr. Silverberg confirmed "That's correct." (R:670, 453). Ms. Martinez referred Marksman and Garcia to the Firm through Jay Smilowitz, a public adjuster. (R:441). Mr. Smilowitz testified his client was "very happy with the way Ms. Martinez was answering her calls and responding to her when she had any questions." (R:794). Mr. Silverberg also stated that the billing records are not complete because they "may have non-billed certain hours and excluded them from [their] billing." (R:804). The referee stated "[Ms. Martinez] spent a good bit of time with each of these clients" and "that's exactly what the testimony indicates, that she performed significant legal services with extensive client contact." (R:960, 805).

D. Notices of Appearance.

Several of Ms. Martinez's clients at the Firm discharged the Firm and elected to continue representation with Ms. Martinez. (R:990). Ms. Martinez

requested the Firm sign stipulations for substitution of counsel. (R:578, 1747). Ms. Martinez only filed notices of appearance only in cases where the clients verbally confirmed they intended her to represent them, to keep apprised of the matters in each case. (R:926, 990). Mr. Spuches testified that Ms. Martinez filed notices of appearance in “nine different Silverberg Brito matters.” (R:842). Mr. Silverberg testified regarding the transitions, “Yes, she requested us to sign substitutions of counsel.” (R:578, 1747). When asked “In the cases that the clients did want to go with Ms. Martinez, did Silverberg Brito promptly return signed substitutions of counsel when requested by Ms. Martinez?” Mr. Silverberg responded “If we had -- I -- I don't know how to answer that with a yes or no. What I can tell you is that if we had something from the clients like a letter or something choosing to go with Ms. Martinez or we had spoken to the clients wherein the clients informed us, yes, they want to go with Ms. Martinez, then, yes, I would say we promptly signed a substitution of counsel and filed it.” (R:578).

The referee stated in the cases where Martinez filed a notice the clients consented to Martinez’s representation, “I took very good notes. Garcia case, consent case, she filed a notice of appearance. Marksman case, consent case, filed a notice of appearance. Gershfeld, the client chose to go with her. Llerena, she didn't file a notice of appearance. Perez […] He hired

her. Perez hired her. […] She had authorization from the client. MS. FALCONE: But -- THE COURT: Let me finish, please. […] THE COURT: He hired her. She thought she had authorization from the client. There's record evidence indicating that she thought she had authorization. That was not an unauthorized notice of appearance in the opinion of the Court. THE COURT: Jacques case, she got consent from the son, who everybody agreed was an authorized representative of the client. […] Frias case; the client consented. Innocent case; no NOA filed. You still take issue with my ruling?" to which Bar counsel replied, No, Your Honor." (R:989-990). The referee further stated, regarding these affidavits, "Not a single [affidavit] that says that they were not happy with her representation or that she filed a notice of appearance and prejudiced [their] case." (R:955). The Referee also said, "I don't see anything else in there that demonstrates by clear and convincing evidence that she might misrepresented that she handled a case -- in the beginning we went through the hours in detail." (R:957)(ROR:5).

E. Notices of Unavailability.

Mr. Spuches noticed a hearing, on Friday August 4, 2017 for the following Tuesday August 8, 2017, two days after serving Ms. Martinez with the lawsuit. (R:1871, 1869). Ms. Martinez contacted Mr. Spuches on August 7, 2017, stating she was unavailable and recovering from surgery and he

responses, “we are proceeding tomorrow with or without you”. (R:2008). The court stated that “nobody coordinated with [Ms. Martinez]” prior to the hearing. (R:1879) The judge called Ms. Martinez on her cell phone and conducted the hearing. (R:1872). Mr. Spuches stated, “after she received the notice of hearing she immediately file a notice of unavailability.” (R:1873). Mr. Spuches stated that Ms. Martinez was “stalling” because he “had] a client that just had quintuple bypass surgery on April 4th. He was back at work at the end of the month.” (R:1873). Ms. Martinez stated, “I’m not in my full mental capacity to do it because of the medication I’m taking as a result of recovery from my surgery” (R:1875). When the judge offered to reschedule the hearing, Mr. Spuches stated he was unavailable because he was taking a week off to vacation with his family. (R:1876). The Bar states Ms. Martinez performed during her unavailability because she filed a Motion for Extension of Time due to her unavailability. (R:2025). The referee stated on the topic: “There aren't any clear rules on when they should and shouldn't be filed. She's a first-year attorney. It's understandable.” (R:964).

The Bar also asserted Ms. Martinez tried to reschedule the unilaterally set deposition scheduled December 1, 2017, and Silberberg Brito filed a Motion to Compel. The Firm’s attorney emailed Ms. Martinez’ attorney after he unilaterally filed the notice of taking deposition without asking, “either you

or Ms. Martinez are unavailable on December 1, 2017" (R:2079). Ms. Martinez counsel responded stating that the deposition would need to be rescheduled and offered January 5th, 8th or 15th alternatively. (R:2087). Mr. Spuches testified he didn't remember Ms. Martinez requesting rescheduling, (R:852). Spuches was copied on the emails discussing the request. (R:2207, 2089, 2087). On November 3, 2017, the Firm's attorney threatened sanctions against Ms. Martinez's attorney, for filing Motion to Dismiss instead of an Answer. (R:2085). Ms. Martinez counsel sent the Firm a second email on November 29, 2017, following up on rescheduling and providing alternative dates in January. (R:2089). The Firm immediately filed a Motion for Order to Show Cause and for Sanctions. (R:2090).

Ms. Martinez had been hired at the Law Offices of Alex Hana and requested rescheduling because she was unable to take days off immediately. (R:2169). However, the Firm responded to the information by calling Mr. Hana and convincing him to fire Ms. Martinez based on the allegations in their civil complaint. (R:2169). Ms. Martinez later appeared for her deposition on January 5, 2018 as she was now unemployed. (R:2123). The Firm focused their questions on Martinez's heath, asked to see her medications and took photos of her medication bottles. (R:2143, 2153-2161). They stated they would be subpoenaing Ms. Martinez medical records from

Walgreens. (R:2152). Ms. Martinez's counsel terminated the deposition due to the "tone tenor and direction" of the questions. (R:2175).

Ms. Martinez was scheduled to be deposed a second time on May 26, 2018. On May 14, 2018. Mr. Silverberg filed a notice of appearance for the purpose of taking Ms. Martinez's deposition. (R:2564). Ms. Martinez filed a Motion for Protective Order on May 16, 2018, regarding Mr. Silverberg taking the deposition. (R:2564). The Bar claimed Ms. Martinez filed the motion to evade deposition. The motion alleged Mr. Silverberg filed his notice into the case in order to harass Ms. Martinez, and she sought relief for that reason. (R:500-503). Mr. Silverberg had no experience in commercial litigation and was not otherwise qualified to take the deposition. (R:498-500). When asked what qualified Mr. Silverberg to take the deposition, he was evasive. (R:500). When asked "did you ever work on any breach of non-competes, or non-confidentiality, or tortious interference claims?" Mr. Silverberg stated, "I don't know if I can discuss that." (R:500). When pressed to answer, he refused: "No, I don't. Not -- that's harassing. That's harassing." (R:500). Mr. Silverberg objected to the relevance of the question and refused to answer. (R:500). Ms. Martinez's counsel advised Mr. Silverberg, "an objection based on relevance is still required to be answered." (R:500). Mr. Silverberg then objected on the basis of "not reasonably calculated to lead to the discovery

of admissible evidence" and refused to answer. (R:501). When counsel asked Mr. Silverberg why he tried to take Ms. Martinez deposition, Mr. Silverberg claimed attorney client privilege on the basis of him being his own attorney, "Attorney-client, work product information. I can't give that to you." (R:502). When asked to clarify, Mr. Silverberg stated "Correct. I can't give you the attorney-client and work product information of why I filed my notice of appearance" (R:502). Mr. Silverberg thereafter attempted to terminate his 1:00 pm deposition because he was not willing to stay until 5:00 pm or to continue the deposition another day. (R:509). He announced and "ore tenus motion for protective order," which Mr. Spuches adopted the motion stating the deposition was "harassive" and "we're now inconveniencing witnesses needlessly," (R: 509). Mr. Spuches deposed Ms. Martinez for three days. (R:511).

Prior to her second deposition, on May 25, 2018, Ms. Martinez filed a motion or extension of time on the basis that Ms. Martinez had sought a hearing on her pending motions related to the deposition but the Firm would not coordinate hearing. (R:2564). The Firm failed to prosecute the case between July 21, 2018 and May 1, 2019. (R:2563). The Court to set a status conference sua sponte, and Mr. Spuches testified, "the case was dismissed with prejudice for failing to attend [the] case management conference."

(R:2563, 870). After the default was vacated, Ms. Martinez appeared for her second deposition and the Firm deposed her for two days, in addition to the January 5, 2018 deposition. (R:2062, 511).

SUMMARY OF ARGUMENT

The Bar gave inordinate deference to a civil complaint filed with malicious intent against Ms. Martinez by her former employers. The acrimonious dispute between Ms. Martinez and the Firm arose over her request to send letters notifying a handful of clients of her departure. Ms. Martinez was a brand-new attorney when the conduct occurred. She had no training or mentorship other than what was modeled at the Firm.

Instead of investigating the allegations, the Bar chose to defer investigation of the complaint for 5 years. The Bar improperly relied on the act of settlement of the civil case as conclusive proof of Ms. Martinez's misconduct. It was apparent before the final hearing that the Bar's witnesses were biased and lacked credibility, but the Bar proceeded. The Bar was unable to prove the majority of the allegations of the complaint by clear and convincing evidence and the referee's violations stemmed primarily from his own analysis of the evidence that was presented, and implications from the lack thereof.

Ms. Martinez seeks review of the referee's finding that Ms. Martinez's statement at the August 8, 2017 hearing, coupled with Mr. Silverberg's testimony that the USB drive was retuned blank, constituted uncontroverted evidence of spoliation of evidence because Ms. Martinez was not afforded due process with regard to the most serious charge against her. In consideration of the delay and lack of due process, a suspension is not warranted.

STANDARD OF REVIEW

This is an original proceeding under The Florida Supreme Court's exclusive jurisdiction pursuant to Art. V, §15, Fla. Const. The Florida Supreme Court's review of a referee's findings of fact is limited to whether the findings are supported by competent, substantial evidence in the record. *The Florida Bar v. Picon*, 205 So. 3d 759, 764 (Fla. 2016). Further, the Court is precluded from reweighing the evidence and substituting 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 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)).

The Court has also indicated that it "will generally not second-guess the referee's recommended discipline as long as it has a reasonable basis in existing case law and the Florida Standards for Imposing Lawyer Sanctions." *The Florida Bar v. Patterson*, 257 So. 3d 56, 62 (Fla. 2019) (citing *The Florida Bar v. Temmer*, 753 So. 2d, 555, 558 (Fla. 1999)).

Appeal of an issue of purely legal matters is subject to full, or de novo, review; under this standard, the appellate court makes its own determination as to the correct principle of law to be applied to a particular set of facts. *Smith v. Coalition to Reduce Class Size*, 827 So.2d 959 (Fla. 2002)(review of trial court's application of law is de novo). The issue of due process as applied to factual findings is subject to de novo review. *The Florida Bar v. Rubin*, 709 So.2d 1361 (Fla. 1998).

ARGUMENT

I. The referee erred in concluding Ms. Martinez deleted documents from the USB and that such actions constituted the destruction of potential evidence, in violation of rules 4-3.4(a), 4-8.4(c) and 4-8.4(d).

The Bar maintains the burden of proving violations by clear and convincing evidence; however, the record does not support that the Bar met this standard. The referee erred in factually finding that Ms. Martinez's deleted files from the USB drive, and in legally concluding this conduct constituted spoliation of evidence because A.) the Bar failed to present clear and convincing evidence establishing the contents of the USB drive if any; B.) the Firm previously demanded Ms. Martinez delete all files in the July 19, 2017, cease-and-desist letter; C.) assuming the factual findings, the legal elements of spoliation of evidence were not met; and D) there was a lack of due process in the surprise allegation of spoliation of evidence after the close of evidence. In addition to responding to the Bar's issues on appeal regarding the USB, Ms. Martinez, affirmatively seeks review of the factual finding regarding deletion of documents on the USB and the legal conclusion that such finding constitutes spoliation of evidence and incorporates her arguments in Section I.

A. Contents of the USB Drive Unknown

Neither Bar counsel nor Ms. Martinez presented evidence about the USB because Bar counsel informed the referee that they would not pursue the USB-related allegations due to insufficient evidence. (R:624). Although

neither part elicited testimony relating to the USB at the final hearing, the Firm's prior statements under oath conclusively established neither Mr. Silverberg nor Ms. Brito knew its contents. (R:352, 353, 567). The Firm's claims about the USB contents had been inconsistent and vague throughout the proceedings because they did not know what was on the USB.

Despite initially theorizing Martinez copied the Firm's retainer agreement documents, Silverberg admitted the documents could have been provided to her by clients or adjusters, like Jay Smilowitz, a personal contact of Ms. Martinez who was provided a copy of the subject retainer. (R:354, 355, 467, 475, 790) Mr. Silverberg also claimed Ms. Martinez stole the Firm's motions, which he characterized as "trade secrets" because he was adamant the Firm's form font, Times New Roman, was unique as was including Firm contact information in the footer of the documents. (R:467). The Firm's forms were neither unique nor private, where they were publicly filed on the docket and most practitioners include their contact information in filings and use Times New Roman. Therefore, this speculation that Ms. Martinez stole motions from the Firm via the USB drive was without merit. The Firm's theory that Ms. Martinez stole client contact information on the USB is equally unconvincing where Ms. Martinez testified clients had contacted her directly on her personal number and where they had unusual names like "Bartolome

Frias" and "Firmin Jacques" which whose contact information was easily searchable online. (R:23, 912, 891).

Mr. Silverberg was initially convinced that the USB drive contained documents because, he testified, on one occasion while working at the Firm Ms. Martinez stated she was taking some work on the USB drive to finish at home (R:468). He later confirmed he did not know what was on it. (R:567) Mr. Silverberg, testified he sent the USB drive for forensic evaluation; however, he objected to answering any questions regarding this evaluation, including the name of the company, the results of the evaluation and when testing was completed and refused to produce reports related to the evaluation, on the basis of "privilege." (R:470-471). Because the Firm lost the drive, it is impossible to know what was established about its contents. Mr. Silverberg and Ms. Brito each affirmed, under oath, that they did not know what was on the USB drive, they didn't have access to the USB drive during the entirety of Ms. Martinez's employment and had no way of knowing what the USB drive contained if anything. (R:352, 353, 23, 29, 599, 419). Moreover, at the final hearing, the referee found that at least one of the Firm partners lacked credibility, which bolsters Ms. Martinez's contention that Mr. Silverberg and Ms. Brito's statements regarding the USB drive's contents are unreliable. (R:1055).

Contrary to the referee's statement that the evidence was uncontroverted, the parties did, in fact, dispute the contents of the USB drive prior to the final hearing on multiple occasions, when the USB was related to the inquiry. (R:23, 25, 31, 38, 44, 46, 599, 602, 607, 608, 79). Ms. Martinez provided specific denials that the drive contained confidential client files, trade secrets, and Firm work product and specifically stating "The USB drive did not contain any such information." (R:44, 79).

In opining as to the contents of the USB, the referee relied heavily on Ms. Martinez's own statement at an August 8, 2017 hearing, which was held while Ms. Martinez was recovering from surgery. (R:1875). Ms. Martinez informed the Firm in June of her surgery date and anticipated recovery process, so the Firm was aware of her condition during that time but proceeded to unilaterally notice and proceed with hearings to create the narrative she was being evasive. (R:298, 300). Ms. Martinez was not physically present at the hearing because she was recovering from surgery and was still under heavy medication from same, as she informed the court. (R:1875) During the phone call from the court, Ms. Martinez expressed her frustration over the Firm's hyperfocus on recovering the USB drive during her convalescence, when she said "[the USB] has like a motion that I was working on at the time" (R:1877). The referee based his conclusion that the

USB drive “at some point contained files” on the statement Ms. Martinez made while she was post operatively medicated and the fact that Ms. Martinez did not present evidence to refute the allegation not previously reaised. (R:1877).

After the close of evidence, referee first commented that he found the Ms. Martinez’s remark coupled with Mr. Silverberg’s testimony that the USB was returned blank constituted uncontroverted evidence of spoliation and expressed his concern with the lack of evidence stating to the Bar “why didn't you spend more time on that?” and “Does the Bar think that is an act of dishonesty or deceit that violates 4-8.4(c)” (R:945, 987). The Bar responded they did not present more evidence because they had agreed with Ms. Martinez counsel not to pursue the USB allegations due their failure to establish “affirmative proof what was on the USB drive.” (R:946).

Because it is the Bar’s burden to prove the alleged violations, the referee’s many questions regarding the lack of evidence show that the Bar did not meet its burden of proof of showing Ms. Martinez deleted documents and violated the rules by clear and convincing evidence.

B. The Firm’s Cease-and-Desist Required Deletion.

On July 19, 2017, the Firm sent Martinez a cease-and-desist letter demanding the destruction of any Firm property and client files in her

possession “digital or otherwise.” (R:619). If the Firm wanted Ms. Martinez to preserve any documents as potential evidence, they should have served a preservation letter requesting the opposite conduct. Given this directive, and assuming the accuracy of the factual findings, the referee erred in concluding that deleting files from the USB constituted the destruction of evidence. Considering the cease-and-desist letter, this conduct instead indicates compliance with the Firm’s demand to delete their files. (R:619). The referee’s finding that Ms. Martinez deleted files from the USB should be seen as compliance rather than destruction of evidence. Although the referee stated that Ms. Martinez should have known better than to “destroy evidence” no matter the request, this letter was drafted by an experienced attorney bound to the same standards of integrity, so Ms. Martinez, just a few months out of law school, had no reason to believe the request from an attorney 20 years her senior demanded conduct that would be considered illegal.

C. The Elements of Spoliation Were Not Met.

Rule 4-3.4(A) states that “A lawyer must not: (a) unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably

should know is relevant to a pending or a reasonably foreseeable proceeding." The referee found a violation of this rule based on a finding of spoliation of evidence. Spoliation of evidence requires the following elements in civil cases: "(1) existence of a potential civil action, (2) a legal or contractual duty to preserve evidence which is relevant to the potential civil action, (3) destruction of that evidence, (4) significant impairment in the ability to prove the lawsuit, (5) a causal relationship between the evidence destruction and the inability to prove the lawsuit, and (6) damages." *Gayer v. Fine Line Constr. & Elec., Inc*., 970 So.2d 424 (Fla. 4th DCA 2007); *Cont'l Ins. Co. v. Herman,* 576 So. 2d 313, 315 (Fla. 3d DCA 1990); *Shamrock-Shamrock, Inc. v. Remark*, 271 So. 3d 1200, 1203 (Fla. 5th DCA 2019). Even accepting the factual findings as true, as a matter of law, the conduct of deleting a draft motion does not satisfy the elements of spoliation.

The majority of Florida cases have held there is no duty to preserve evidence pre-suit except under specific circumstances: by statute, a court order, a duly served discovery request, an administrative regulation, or a contract to preserve. *Ochoa v. Alie Bros., Inc*., 2007 WL 2781192, *5 (M.D. Fla. 2007); *Rockwell Intern. Corp. v. Menzies*, 561 So. 2d 677 (Fla. 3d DCA 1990); *Strasser v. Yalamanchi*, 783 So. 2d 1087, 1093 (Fla. 4th DCA 2001); *Public Health Trust of Dade County v. Valcin*, 507 So. 2d 596, 601, 69

A.L.R.4th 895 (Fla. 1987); *Miller v. Allstate Ins. Co*., 573 So. 2d 24, 27 (Fla. 3d DCA 1990). In this case there was no duty, at any point, for Ms. Martinez to preserve a motion she drafted, which is what the referee concluded was on the USB at some point. (R:944). Also, there is simply insufficient evidence of the USB drive's contents, if any, and when its contents were deleted to constitute spoliation of evidence. It's possible Ms. Martinez deleted the singular "motion [she] was working on at the time" immediately after finishing that motion, while still employed at the Firm. (R:1877). It's possible Ms. Martinez deleted this motion when she left the Firm, when there was no foreseeable lawsuit at the time. It's possible Ms. Martinez misspoke when she stated, while heavily medicated, that there was any motion on the USB at all. It is possible the motion was still on the USB when the Firm received it and the Firm itself deleted it, where the Firm has leveled numerous baseless accusations against Martinez and the referee expressed concerns with the integrity of one of the Firm's partners. When Mr. Silverberg was asked if it was possible Ms. Martinez deleted the document while still working at the Firm, he stated "anything is possible." (R:471).

The fourth, fifth, and sixth elements of spoliation focus on the significance and relevance of the evidence to a related lawsuit. In *Builder's Square, Inc*. *v. Shaw*, 755 So. 2d 721, 723 (Fla. 4th DCA 1999) the court

focused on how critical the evidence was to the suit in determining whether there was a duty to preserve it. A draft motion, which the referee concluded was on the USB at some point, bears no relevance to the ensuing civil complaint for injunction which alleged Ms. Martinez used the USB to steal trade secrets, client lists and proprietary forms. Neither the Firm nor the Bar made allegations that Ms. Martinez deleted a motion she drafted. The referee's conclusion that Ms. Martinez's deletion of a draft motion from the was legally insufficient to establish spoliation, where it was irrelevant to the underlying proceedings. While the referee stated the existence of the motion on the USB could have been relevant to Ms. Martinez's defense in the Bar proceedings, it is a circular argument to state that the motion on the USB could have defended an accusation about the deletion of the motion on the USB, especially where Ms. Martinez would not have known to present the evidence because the allegation was not raised earlier in the proceedings. Moreover had the Firm preserved the physical USB, it could also have assisted in Martinez's defense and following the same logic, the Firm discarding the physical drive was spoliation of evidence.

D. Ms. Martinez Was Not afforded Due Process.

The issue of destruction of potential evidence was first raised after the close of evidence; therefore, Ms. Martinez was not provided a reasonable opportunity to present evidence to refute the charge. Further, the Referee erred in finding violations relating to the USB because the Bar specifically withdrew those charges, due to lack of evidence, prior to the commencement of the final hearing, resulting in the opposite of providing notice. Additionally, the Bar's extreme and unreasonable delay in prosecuting the complaint prevented Ms. Martinez from the opportunity to defend herself properly where evidence was gone, clients moved or died.

The referee conducted a case management conference on August 25, 2023. During the case management conference, the referee outlined the issues of the case as follows:

> "At the end of the day, this seems like it's going to be an issue of factual disputes more than anything. This is about whether the USB drive was stolen. This is about whether the USB drive had confidential information, whether she used it, and to some extent, you know, the nature of her appearances in the subsequent cases. I think that's what this is about. Am I missing anything?" (R:159)

Bar counsel responded, "That's it, Your Honor." (R:159).

When prompted by the referee, the Bar stated, "you are permitted to make findings regarding other rule violations that are apparent on the four

corners of the complaint." (R:647) The referee then said he had "some interest in the allegations of failures to appear for scheduled depositions, especially since it looked pretty straightforward." (R:648).

Due process requires adequate notice and a genuine opportunity to be heard. Rule 3-7.4(h) requires the respondent be advised of the conduct that is being investigated and the rules that may have been violated. The respondent shall be given an opportunity to make a written statement, sworn or unsworn, explaining, refuting or admitting the alleged misconduct.

At the final hearing, during Bar counsel's closing statement, the referee raised for the first time the "destruction of evidence" relating to the USB drive allegedly being returned empty. He expressed his disappointment in the Bar's complete lack of investigation into the USB drive and the lack of evidence presented of the drive's contents. (R:635). Neither the civil complaint nor the Bar complaint make any allegation of deletion of documents or spoliation of evidence that would put Ms. Martinez on notice of the conduct at issue. Prior to the close of evidence, no allegations of destruction of evidence or deletion of files were ever made in the five years of "investigation." The allegations which mentioned the USB focused only on the physical return of the USB and assertions that Ms. Martinez used information alleged to be on the USB in a scheme to steal clients, which the

Bar could not evidence. (R:570). Following Ms. Martinez's depositions of the Firm partners wherein these allegations where contradicted, Bar counsel agreed with Martinez's counsel to withdraw the USB allegations due to lack of evidence stating "We will decline to prosecute that violation." (R 645; 624; 194-345; 374-559). The parties removed exhibits from the stipulated exhibit binder related to the USB drive prior to the final hearing for that reason. When the referee asked why the Bar did not present evidence on the USB, Bar counsel reiterated this was the reason. Ms. Martinez recognizes that a Referee is permitted to find violations of rules other than those pled by the bar, depending on the evidence presented; however, the referee made conclusions based the lack of evidence of conduct not at issue.

Regarding the spoliation issue, the Bar did not produce the USB or elicit any testimony regarding the USB at the final hearing. Ms. Martinez did not elicit testimony from any witness regarding the USB, in reliance on the Bar's stated intention of not prosecuting any of its USB allegations or presenting related evidence. (R:935-938). The Bar did not call Ms. Martinez as a witness, but when Ms. Martinez's counsel called her to the stand, neither the Bar nor the Referee asked Ms. Martinez any questions about the USB; Ms. Martinez counsel did not elicit any testimony to refute allegations which were not made. (R:935-938). The Bar inexplicably spent the entirety of Ms.

Martinez cross examination questioning her about her disability. (R:935-938).

Ms. Martinez did not present evidence to refute that she deleted evidence because no such allegation was made either in the Bar's complaint, in the Firm's civil complaint, at the final hearing, or at any point by anyone prior to the close of evidence. (R:5-10; 944). The Bar did not claim at any point that Martinez deleted anything from the USB, throughout their case in chief. For these reasons, Ms. Martinez was not provided with notice and an opportunity to present evidence to refute the claims which were never made before the close of evidence. Although the referee used Ms. Martinez own statement against her, Ms. Martinez was not given any opportunity to testify otherwise or elicit testimony from other witnesses to refute the claim. "A litigant's right to due process is not forfeited, however, because the most damaging evidence comes from his own confession or admissions" *The Florida Bar v. Rapoport*, 845 So. 2d 874, 880 (Fla. 2003) (Shaw, Senior Justice, dissenting).

Mr. Silverberg's July 27, 2017, Bar complaint against Ms. Martinez included a copy of the civil complaint the Firm had filed against Ms. Martinez on July 24, 2017. (R:15 - 41). Six years later, on March 23, 2023, the Bar filed its complaint against Ms. Martinez, relying exclusively on the allegations

of the civil complaint, realleging them in the Bar's own complaint, and attaching a copy of the civil complaint as an exhibit. (R:5-15). Neither alleges Ms. Martinez engaged in spoliation of evidence or similar conduct. Moreover, the Bar did not, in six years conduct any independent investigation whatsoever, to justify the delay. The Bar was informed that the civil case was settled January 20, 2021, but did nothing for two years. (R:1164). The Bar did not take *any* depositions, order the transcript of Ms. Martinez's deposition in the civil case, or conduct any investigation whatsoever. (R:98-99). However, during that time, several important witnesses who were willing to testify on Martinez's behalf became unavailable. (R:176). When Ms. Martinez was preparing her defense, she learned a witness who was at the center of these issues, Seymour Marksman, passed away in 2021, a year after the Bar was informed the civil complaint was settled. Also, during that time, the Firm lost the subject USB and medical records that could have supported Martinez mitigating factors were destroyed, where medical practitioners and pharmacies are not required to keep this documentation for so many years.

In *The Florida Bar v. McCain* the court stated it "will consider any unexplained, unreasonable delay in presenting the charges, and also whether, by reason of such delay, the accused has been deprived of a fair

opportunity of securing proof to meet the accusation" and that the court does not impose a statute of limitations "unless, from the nature of the circumstances of the particular case, it appears that it would be unjust or unfair to require the attorney to answer as to such occurrences." *The Florida Bar v. McCain,* 361 So. 2d 700, 705 (Fla. 1978) citing to *People ex rel. Healy v. Hooper*, 218 Ill. 313, 75 N.E. 896 (1905). In *Walter*, A seven-year delay was unreasonable even where it was pursuing evidence of the allegations "especially considering that the delay is not attributable to [respondent]", and in the instant case the delay was nearly as long but without justification that the Bar was using the time to investigate, because they did nothing. *The Florida Bar v. Walter*, 784 So. 2d 1085, 1087 (Fla. 2001). Although "there is no express statute of limitations governing attorney discipline proceedings" the Bar is still bound by reasonableness, "The Florida Bar has a 'reasonable time after it obtains jurisdiction to proceed'" *The Florida Bar v. Walter*, 784 So. 2d 1085, 1087 (Fla. 2001)(quoting *Florida Bar v. McCain*, 361 So.2d 700, 704–05 (Fla.1978) and *Florida Bar v. Lipman*, 497 So.2d 1165 (Fla.1986).

Prior to the final hearing, Ms. Martinez filed a motion requesting the court allow remote testimony from a client who moved to Jacksonville and an elderly client, Gershfeld, who could not physically come to court but the motion was denied because the referee wanted all witnesses in court to

assess credibility. (R:176). The referee further explained “I think it's going to be a matter of credibility at the end of the day, which will be pretty easy to make a decision on after spending the day in a room with all of you with thorough examinations.” (R 159). The Bar does not address why it neglected to bring any former clients as witnesses to testify at the final hearing or attempt to subpoena or depose them at any point, but still attempted to use their affidavits, including an unexecuted affidavit as evidence. By failing to bring any clients to testify, the Bar denied Ms. Martinez the opportunity to cross examine their statements. (ROR:5). Moreover, because the Bar failed to prosecute the case for six years, Ms. Martinez was also robbed of the opportunity to collect any such evidence, which dissipated while the Bar investigation remained dormant.

Following the referee’s ruling at the final hearing, Ms. Martinez filed Respondent’s Motion for Reconsideration and Motion to Reopen Evidence and/or Supplement the Record, which was heard on the morning of the sanctions hearing and denied as to the USB. (R:616). However, Ms. Martinez asserts that the referee erred in his ruling regarding the USB because there are no findings on the record establishing by clear and convincing evidence the contents of the USB drive, the timing and justification of the deletion of its contents, or that deletion of its contents satisfies the prima facie elements

of spoliation of evidence under the law. Moreover, Ms. Martinez was not afforded due process in the proceedings because the spoliation allegation was first raised after the close of evidence.

II. The referee's findings and recommendation of not guilty as to rule 4-5.8 in relation to contacting clients is supported by the record and should be accepted.

The Bar alleges Ms. Martinez violated Rule 4-5.8 by unilaterally notifying clients of her departure without bona fide negotiations with the Firm. The Bar also claims Ms. Martinez contacted clients without providing significant legal services with direct client contact. The referee correctly found these allegations were not supported by the record considering that Ms. Martinez contacted The Florida Bar's Ethics Hotline and consulted with counsel to assist in the negotiation process. (R:915).

A. Ms. Martinez Was Authorized to Contact Clients.

During Martinez's exit interview, Silverberg authorized her to contact clients Seymour Marksman and Leonel Garcia. (R:440, 911). Rule 4-5.8(c)(1) states that the lawyer may not contact the clients unilaterally "[a]bsent a specific agreement otherwise." Brito's earlier testimony, "We gave her until the next day, June 20th, to contact the clients" and her written notes confirm the agreement. (R:670, 679). Ms. Brito did not dispute this when Ms.

Martinez notified the Firm that she contacted the clients per their agreement. (R:1130, 911)

Brito and Silverberg's treatment of clients as belonging to originating lawyers evidences their disregard for the clients' choice of counsel. In the case of Garcia and Marksman, it manifested as authorization for Ms. Martinez to contact the clients; however, regarding the other clients whom the Firm viewed as their property, it manifested via disparaging Ms. Martinez, refusing to withdraw from cases after being discharged, and refusing to provide Ms. Martinez with client files. (R:578, 923, 1794, 1798, 1755). Their inclusion of unenforceable non-compete contracts further demonstrated unethical behavior. (R:361, 464-466, 765, 1288). Florida Bar Ethics Opinion 93-4 states that these types of employment agreements constitute “impermissible restriction on an attorney’s right to practice in violation of Rule 4-5.6(a) and do not comport with the Rules of Professional Conduct which allow clients to choose their counsel.” Ms. Brito still testified, “No. I did not find that that [non-compete] conflicts in any way, shape or form with any of the rules.” (R:965).

B. Ms. Martinez Negotiated the Joint Letter.

Although Mr. Silverberg implied to the Bar that negotiation was initiated by him, it was actually Ms. Martinez who first emailed the Firm to propose a

joint letter informing clients of her departure modeled after the Florida Bar's form letter on Legal Fuel.com. (R:1130,17). Despite the urgency, the Firm delayed negotiations, prompting the referee to state, "The court has serious concerns with their reasoning provided by Ms. Brito for the one-week delay" and "a week is a grossly excessive period of time to work something that simple out." (R:971, 972).

The Bar argues, Ms. Martinez arbitrarily accused the Firm of delay; however, the Comment to Rule 4-5.8 underscores the importance of timely client notification, especially given upcoming depositions and hearings, "In those instances in which bona fide negotiations are unsuccessful, unilateral communication may be made by the departing lawyer or the law Firm." Rule 4-5.8 Comment also states "The actual notification to clients should also occur within a reasonable period of time. What is reasonable will depend on the circumstances, including the nature of the matters in which the lawyer represented the clients and whether the affected clients have deadlines that need to be met within a short period of time." The matter was urgent where there were depositions and hearings were upcoming. (R:1435,615). The Firm delayed when it benefitted them but then accused Ms. Martinez of delay when it favored the Firm, as the referee observed, "Everything was very

important in this case except when Ms. Martinez needed something and suddenly 24 hours wasn't enough, they needed a full week." (R:971).

Instead of engaging in negotiation, the Firm immediately hired an attorney, Christopher Spuches, claiming Ms. Martinez's demands during negotiation necessitated legal counsel, although Martinez had not made such demands and counsel was hired prior to any negotiation. (R:441, 1135). The Firm actually hired Spuches because they claimed they were too busy to review the short letter. (R:1131).

Ms. Martinez's email correspondence contradicts the Bar's allegation that she did not propose modifications to the letter. (R:1130-1136). Martinez's proposed changes to the letter, including her contact information and bilingual content, were declined by the Firm, which refused to negotiate, stating "We will agree only to the letter as drafted and attached to my 5:15 pm email without any additional modifications." (R:1133, 1135). Although Ms. Brito testified the Firm never ceased negotiations, the email speaks for itself. (R 745).

Ms. Martinez attempted negotiations over the joint letter for eight days. (R:1135-1138). However, Martinez's attempts to negotiate were futile as the Firm directed all communication to the USB issue. Despite the Bar's claim, otherwise, her emails clearly show efforts to resolve the impasse were

ignored. (R:1136, 1138). Contrary to the Bar's assertion, Ms. Martinez notified the Firm that due to the impasse she would be contacting the clients directly. (R:1140).

Despite arguing Ms. Martinez did not propose modifications, the Bar argues Ms. Martinez's desire to include her contact information was unreasonable because some clients already had her cellphone number. Because the Firm's proposed letter directed the clients to "advise Alexa Martinez, and us, as quickly as possible, of your decision" so it was very reasonable to provide an avenue for said contact. (R 1132). However, it was clear from the Firm's conduct and their improper non-compete contract, they did not intend to allow any clients to leave and did not want to provide them the resources for doing so.

The Bar's argument that Ms. Martinez improperly contacted clients via telephone is also without merit where the Comment to Rule 4-5.8 specifically states "contact by telephone is not prohibited under this rule." Moreover, Ms. Martinez did also send written correspondence to clients, as the record reflects. (R:1171). The Bar alleges Martinez wrongfully accused the Firm of contacting discharged clients, citing a July 21, 2017 email in the Gershfeld case. (R:1701.) However, evidence shows Brito continued contacting Gershfeld after being fired, confirming Martinez's accusation. (R:1800). The

Bar further claims Martinez unilaterally contacted clients after negotiations broke down, but evidence indicates the Firm did so persistently after Martinez's termination. (R:1575).

The Bar did not dispute that the Firm refused to provide Ms. Martinez with client contact information per Rule 4-5.8, which states “In order to comply with the requirements of this rule, both departing lawyers and the law Firm should be given access to the names and contact information of all clients for whom the departing lawyer has provided significant legal services and with whom the lawyer has had direct contact.”

The Bar argues the Firm’s refusal to provide the requisite client contact information pursuant to Rule 4-5.8 was Ms. Martinez’s fault because it was unreasonable to contact all of the Firm’s clients and Ms. Martinez failed to narrow the list. However, Martinez never requested contact with all 400+ clients, and no evidence was ever presented to support that allegation. Unsurprisingly, Mr. Silverberg was able to quickly narrow the list of Ms. Martinez’s clients without difficulty, both in deposition and at the final hearing, by referring to Ms. Martinez’s client list and the billing records when it supported his argument that Ms. Martinez did not provide significant legal services. (R:446, 447, 452, 453, 454, 455, 798). The Firm’s feigned inability to narrow the list was only an issue when Ms. Martinez needed the

information, but was resolved when it benefitted the Firm in their pursuit of the Bar complaint. The referee correctly concluded Ms. Martinez "went to the firm and did exactly what she was supposed to do out of the gate. She went to them and said, I want to send a joint letter to our clients. Let's work it out. The e-mails indicate the firm was obstinate at best. All right. They stonewalled her." (R:971).

C. Ms. Martinez Provided Significant Legal Services with Direct Client Contact.

The Bar argued Martinez did not perform significant legal work for the clients she contacted, but the referee disagreed, finding the eighty-one (81) pages of billing records for Ms. Martinez's short tenure at the Firm evidenced substantial legal services. (R:1492-1573).

The Bar argues Ms. Martinez did not perform significant legal service in the Luis Llerena case despite billing 16.7 hours, including a three-hour long in-person deposition and a 1.6-hour strategy conference with the client. (R:1492-1573) Again, in the Morelus case, the Bar argues that Ms. Martinez's attendance of a deposition of the client and attendance of a hearing on his behalf, did not constitute significant legal services. (R:1511). The Bar ignored the other dozens of billing entries, which show Ms. Martinez attended several hearings and depositions, prepared and filed documents,

and spoke with opposing counsel and the client on several occasions. (R:1511).

The Bar furthered the gross mischaracterization of the billing entries, stating, Ms. Martinez "billed for correspondence, preparation of a document and a deposition in Gershfeld," where the entries actually show Ms. Martinez not only defended an in-person deposition with the client, but she also had many phone calls with the client, drafted *seven* documents for the client, attended a hearing, communicated with opposing counsel, drafted correspondence, filed documents, and conducted legal research. (R:1510-1511). Similarly, in Jacques, the records are much lengthier than the Bar's claim she only "billed for correspondence, preparation for a hearing, discovery and drafting one motion." The record reflects dozens of billing entries, including settlement negotiations, *several* motions and other documents prepared and filed, phone calls with the client and opposing counsel, discovery drafting and preparation for hearings. (R:1509-1510).

The Bar's assertion that Martinez's work in certain cases was insignificant was contradicted by comprehensive billing entries showing substantial legal services provided, including depositions, hearings, document drafting, settlement negotiations, and client communication. Despite the Bar's attempt to discredit Martinez's work, the referee found her interactions with clients

and legal services to be substantial, and supported by the extensive billing records, “she spent a good bit of time with each of these clients.” (R:805). The referee stated, “that's exactly what the testimony indicates, that she performed significant legal services with extensive client contact.” (R:960).

The referee was skeptical of the Firm's affidavit claiming lack of client contact with Martinez, noting the likelihood of client misrecollection of who they spoke with at the Firm. (R:960). Moreover, the claim that Ms. Martinez did not have direct client contact with some clients is based entirely on the billing records which Mr. Silverberg testified he was certain were incomplete. (R:453,454).

The referee’s conclusion that Martinez engaged in good faith negotiations and provided significant legal services to clients is supported by the record. The Bar's allegations lacked clear and convincing evidence of violations, especially considering the credibility issues with the Firm partner's testimony and the absence of client testimony.

III. The referee’s findings and recommendation of not guilty as to rule 4-4.1 in relation to contacting clients are supported by the record and should be accepted.

Rule 4-4.1 states, “In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person.” The Bar argues Ms. Martinez violated this rule, based on two

affidavits the Firm drafted and procured from clients; however the referee had ruled prior to the final hearing that witnesses needed to be brought in person to asses credibility and the Bar inexplicably failed to so. (R:1751, 1767, 179)(ROR:5). At the final hearing, Ms. Martinez, was the only party to these conversations who was present in court to attest to them refuted these allegations in detail. (R:920, 926). The referee found Ms. Martinez's testimony credible. (R:971; ROR:5, 6).

At the final hearing the referee said to Bar counsel "My point is there was a lot of 'what ifs' that we could have clarified if we had the clients in here, subpoenaed, and testifying before us. You didn't bring a single disgruntled client to the court." (R:955). The referee further stated, "Not a single [affidavit] that says that they were not happy with her representation or that she filed a notice of appearance and prejudiced [their] case." (R:955). The referee further pointed to the lack of evidence "We don't know what misrepresentations were made because we don't have the clients here. The affidavits don't clearly point out any misrepresentations." (R:956). The referee, who is in the best position to analyze the witnesses and evidence, concluded "I don't see anything else in there that demonstrates by clear and convincing evidence that she might misrepresented that she handled a case […] we went through the hours in detail." (R:957; ROR:5).

The referee also found the alleged statement that Ms. Martinez expressed uncertainty whether Ms. Brito would be personally handling the case due to her pregnancy was neither material nor false. Because Ms. Martinez was no longer at the Firm, it would not have been a misrepresentation to tell the client that she didn't know who would be handling the case at the Firm or that Ms. Brito was pregnant. Ms. Brito's pregnancy was undisputed, where she testified that she was on maternity leave for several months. (R;266, 268, 357).

Finally, the Bar claims Ms. Martinez's statement that Martinez "left the Firm" was a material misrepresentation to clients because Ms. Martinez was terminated. However, the Firm's proposed letter stated that "On June 19,2017, Alexa Martinez, Esq. left our Firm to commence practice as a sole practitioner." (R:1132). Although this same language appeared on the Firm's letter, Ms. Martinez's letter, and the Florida Bar form letter, the Firm and the Bar argued it constituted a misrepresentation on Ms. Martinez's part. (R:342, 1749). It is reasonable to assume that a Florida Bar form complies with the Bar rules and Ms. Martinez's letter is nearly identical to language of the Bar's form departure letter.

Therefore, the evidence supports the referee's finding that Ms. Martinez is not guilty of violating rule 4-4.1, where the Bar failed to call

witnesses to testify in support of their allegations and where the language of the departure letter mirrored both the Firm's own letter to the clients and the Bar's form letter. (ROR:6).

IV. The referee's findings and recommendation of not guilty as to rules 4-3.1, 4-3.3 and 4-3.4, in relation to the notices of appearance and notices of unavailability, are supported by the record and should be accepted.

The Bar argues that Ms. Martinez did not have authority to file notices of appearance in the Morelus, Perez and Jacques cases; and that Ms. Martinez improperly filed a notice of unavailability in the SilverbergBrito case. However, in the Morelus case, Ms. Martinez had verbal authorization from the client, who the referee acknowledged was confused as to the process. (R:1754, 629). Moreover, the referee concluded that Ms. Martinez did have authority in the Perez case, based on the signed retainer contract; and Martinez was authorized by the Jacques, because "she got consent from the son, who everybody agreed was an authorized representative of the client." (R:941, 726, 990). Regarding the notice of unavailability, Ms. Martinez did not violate any rules, and her filing a motion for extension of time does not evidence she was available but rather shows the opposite was true. (R:2025).

A. Ms. Martinez Was Authorized to Represent Morelus, Perez, and Jacques and Withdrew Within Reasonable Time.

The Bar's argument that the clients did not consent to representation because there were no written contracts when the notices of representation were filed is unsupported by the facts and the law. The test for an attorney-client relationship "is a subjective one and hinges upon the client's belief that he is consulting a lawyer in that capacity and his manifested intention is to seek professional legal advice." *The Fla. Bar v. Beach,* 675 So.2d 106, 109 (Fla.1996). Evidence of bills, a retainer, or a formal representation agreement are not required as prerequisites to establishing an attorney-client relationship. *Pagidipati v. Vyas,* 353 So. 3d 1204, 1214 (Fla. 2d DCA 2022), review denied, SC2023-0271, 2023 WL 3596454 (Fla. May 23, 2023). The guiding principle in determining whether or not there exists a privileged attorney-client relationship is the intent of the client. *Kevlik v. Goldstein*, 724 F.2d 844, 849 (1st Cir. 1984).

It is impossible for the Bar to assess the client's wishes because the Bar chose not to call any former clients to testify, contrary to the referee's order. The only first-hand testimony of the clients' consent to representation on the record is Ms. Martinez's testimony, and she testified that she filed notices of appearance only in cases where the clients verbally confirmed

hiring her. (R:926) Ms. Martinez sought guidance from the Bar Ethics Hotline regarding this issue and the Bar told her its preferable to have the initial agreement in writing, but there is no rule that requires the agreement be reduced to writing immediately for the representation to be valid. (R:927). The Bar's reliance on rule 4-1.5, which requires a contingency agreement to be in writing, I misplaced where it states "[n]o lawyer or Firm may participate in the fee without the consent of the client in writing" indicating that the requirement for the contract to be in writing is a prerequisite to collecting contingency fees, not a prerequisite to representation itself. Ms. Martinez confirmed with The Florida Bar's Ethics Hotline that it is not prohibited for an attorney to represent a client pro bono until such a contingency agreement is formally made and reduced to writing. (R:927). It is undisputed that Ms. Martinez did not accept any contingency fees from any clients who did not sign a written contingency agreement.

The fact that some clients changed their decision later, does not make Ms. Martinez's statement that she was retained a misrepresentation. The referee concluded "the law Firm consented to the respondent taking these files with her. It also seems like whatever the dates may have been, the clients consented to that representation." (R:686, 920). The Firm had approximately 500 clients, Ms. Martinez was assigned about 150 of those

clients and only contacted a handful of those clients, and filed notices in less than ten of those cases, where the clients hired her. (R:905, 919, 912, 920). Ms. Martinez testified “I filed the notices because I had conversations with the client where they had expressed to me that they wanted me to continue representing them because they were happy with the work I had done on their case.” (R:926). The referee concluded that the evidence supports the clients clearly consented to the representation found in every case, except Mr. Morelus. (R:989, 990). The Bar conceded this issue after the referee painstakingly went over the circumstances of each representation, and asked Bar counsel, “You still take issue with my ruling?” to which Bar counsel responded, “No, Your Honor.” (R:990) Therefore, it is disingenuous of the Bar to now appeal the referee’s rulings related to the notices of appearance after agreeing with the referee.

The Bar alleges Ms. Martinez unreasonably delayed withdrawal in Morelus’ case, stating the document clearly shows Mr. Morelus’ intent and understanding of the circumstances; however, it is more likely he was confused by the letter. (R:1754) The referee acknowledged potential confusion about the form's completion, where Morleus checked both boxed indicating he wanted new counsel wished to discharge Silverberg Brito. (R:1754, 629). Martinez filed her notice of appearance on July 18, 2017,

received the ambiguous document on July 31, 2017, and withdrew around fourteen days later on August 14, 2017, after attempting to clarify the document. (R:1754, 9, 629, 987). However, because the Bar stated Ms. Martinez delayed withdrawal by "30 days" the referee assessed the delay of a month was unreasonable. (R:987, 991).

Regarding the alleged misrepresentations and notices in Jacques, the referee and Ms. Brito confirmed that Ms. Martinez was authorized to represent the clients. (R:990, 726, 990, 1577). The Bar did not bring Freddy Jacques or his parents to court to testify nor did they depose them. Freddy Jacques did not execute the affidavit the Firm drafted, despite the Bar listed it as an exhibit. (R:113). The Firm did not send written correspondence to the clients informing them of Ms. Martinez's departure or their choice of counsel.

In Jacques, the Bar asserted that Ms. Martinez never spoke with the clients and only contacted the clients' son, Freddy. (R:45) Yet, the Bar also asserted that Ms. Martinez made material misrepresentations *to the client,* and cites to her conversation with Freddy. (R:948,1107, 454, 728). Ms. Martinez could not have simultaneously made a misrepresentation to the clients and never have spoken to the clients. These arguments demonstrate the Bar, like the Firm, manipulated the facts to suit the argument and were

not actually concerned with the clients' interests as much as they cared about the Firm.

Likewise, the evidence showed the Bar's complaining witnesses engaged in far more egregious and longer delays when they failed to with withdraw for months in cases where the clients chose Ms. Martinez. Bar counsel not only condoned the Firm's conduct, but vehemently defended the Firm's thirty-seven day delay in Gershfeld, arguing it was okay because the Firm wanted to secure fees. (R:2409, 1771). The Firm failed to withdraw from the Marksman case for approximately four months after the client fired them. (R:923, 578). In Garcia, the Firm delayed about thirty days before withdrawing. (R:1713, 1716-1717). The docket does not reflect that the Firm ever withdrew from the Frias case (R:2382). The Bar's pursuit of discipline against Ms. Martinez for conduct that the Firm also engaged in, to a more serious degree, demonstrates a bias against Ms. Martinez in favor of the Firm. The Bar's trial counsel admitted as much when she said, "Our focus was primarily on the actions vis-a-vis the law firm. That's it." (R:648).

B. Ms. Martinez's Unavailability Was Not Misrepresentation.

The Bar alleges that Ms. Martinez's Notice of Unavailability was a dishonest attempt to delay proceedings because she continued to work

during this time. (R:963; 2024). However, Martinez's “work” during this time period was a motion for extension of time due to her unavailability. (R:2025).

Ms. Martinez was recovering from surgery during the time the Firm filed their lawsuit against Ms. Martinez and held hearings in the case. The subject hearing was scheduled unilaterally with the notice served only a few days prior to the hearing. (R:2024, 2019, 1871). Ms. Martinez attempted to reset the hearing but Mr. Spuches refused. (R:2011).

The Bar also argued, “Ms. Martinez had filed a notice of unavailability from July 1, 2017 through July 17, 2017” and “she did not file another notice of unavailability until after receiving notice of the August 8, 2017 hearing.” However, it was impossible for Ms. Martinez to file a notice of unavailability in this matter on July 1, 2017 where the case was filed July 24, 2027 and Martinez was served August 2, 2017. (R:2024, 2030).

Furthermore, the lack of clear rules regarding notices of unavailability should not penalize Ms. Martinez, as the referee noted “I have attorneys that have been practicing 20 years that still botch notices of unavailability. […] There aren't any clear rules on when they should and shouldn't be filed.” And concluded “She's a first-year attorney. It's understandable.” (R:964).

Regarding the alleged dilatory conduct, Ms. Martinez's counsel requested rescheduling of her deposition per local court rules, “Attorneys

should communicate with opposing counsel prior to scheduling depositions, hearings and other proceedings, so as to schedule them at times that are mutually convenient for all interested persons" See Eleventh Judicial Circuit Administrative Order No. 14-01 A1 (R:852, 2207, 2089, 2087). The Firm proceeded despite Martinez's medical condition, leading to termination of the deposition, where the Firm spent the entire deposition interrogating Ms. Martinez about her health, taking photos of her medication bottles, and threatening to subpoena Walgreens for her medication records. (R:1407; 2153-2161,2208,)

Martinez's motion for a protective order before her second deposition was prompted by Mr. Silverberg's sudden notice of appearance, filed for the apparent purpose of being able to personally take Ms. Martinez's deposition and harass her. (R:2564). Given Mr. Silverberg's lack of relevant experience, and his unprofessional conduct during his own deposition, it was a valid concern. (R:500-509) Mr. Silverberg had no articulable experience in commercial litigation that would reflect any level of competency in taking the deposition himself, over his own attorney who had over twenty years of trial experience, in two states. (R:839).

Mr. Silverberg defended his experience, "My dad is an attorney. Both neighbors when I grew up, they were both attorneys. Did I work in the courts

when I was in high school? I did. Did I work for attorneys when I was in high school? I did. Did I work for attorneys while I was in college? I did." (R:500). Mr. Silverberg refused to answer questions about his reason for attempting to take Ms. Martinez's deposition, claiming attorney-client privilege and harassment. (R:502; 500). Mr. Silverberg, moved "for an ore tenus motion for protective order" claiming the deposition was harassing because it was nearing four hours. (R 509). At the time of Mr. Silverberg's deposition, the Firm had already deposed Ms. Martinez for three days. (R:511).

Contrary to the Bar's claim, Martinez did not neglect to appear for her deposition in May; she filed a motion for extension of time due to the Firm's refusal to schedule a hearing on pending motions related to the deposition. (R:2564).

Subsequently, the Firm neglected to prosecute the case for almost a year, prompting the court to set a status conference, *sua sponte* for May 15, 2020, which they failed to attend, resulting in dismissal of their case with prejudice. The Firm had not initiated any record activity for nine months and ten days, just shy of warranting dismissal pursuant to Fla. R. Civ. P. 1.420(b) for failure to prosecute. (R:2063). Ms. Brito did not know that her case had been dismissed with prejudice and falsely claimed it could have been that "Ms. Martinez set something unilaterally" despite the record evidence

reflecting that was the Firm's pattern. (R:779). The Firm inappropriately shifts blame for delays in the case to Ms. Martinez, where it is the Firm's own neglect that caused the dismissal. (R:2561).

Despite the referee not finding Martinez's delay in returning the USB to be unreasonable or in violation of rules, the Bar suggests this delay supports the Firm's accusation of client file theft. However, the argument overlooks the simplicity of loading or deleting data on a USB drive and Martinez's delay was due to post-surgery recovery, not malintent. (R:916). Martinez's change from offering to mail the USB to requesting a courier was on advice of counsel to avoid false accusations by the Firm, which were valid concerns given these proceedings. Evidence, including Mr. Spuches own testimony, contradicts the Firm's claim that she never requested pickup of the USB. (R:823, 1878, 1879). The Firm's unilateral scheduling of an emergency hearing while Martinez was recovering, in lieu of simply facilitating delivery of the USB raises questions about their use of judicial resources. (R:823).

The referee's findings and recommendation of not guilty as to rules 4-3.1, 4-3.3 and 4-3.4, are supported by the record evidence showing Ms. Martinez had authority to represent the clients and Ms. Martinez was recovering from surgery upon noticing unavailability. The Bar did not prove

by clear and convincing evidence that Ms. Martinez made misrepresentations which constitute a violation of the rules, where they failed to bring witnesses to court to establish such allegations but instead relied on the biased and unreliable testimony of the Firm partners.

V. The referee's findings and recommendation of not guilty as to rules 4-3.1, 4-8.4(c), and 4-8.4(d) in relation to the Gershfeld case are supported by the record and should be accepted.

The Bar argued that Ms. Martinez lacked any basis in fact or law to claim any portion of the Gershfeld settlement, and that she caused substantial delay in dispersal of the client's the funds by allegedly attempting to undo Ms. Brito's settlement that the client had agreed to. However, the record shows that A.) Ms. Brito's failure to obtain the client's consent to make an offer on her behalf and her refusal to withdraw after being discharged was the actual reason for the delay and confusion in this matter; B.) the settlement authorized by the client to Ms. Martinez was not the same one that was offered by the Firm, and C.) Ms. Martinez was entitled to fees as counsel when the settlement was reached.

A. Ms. Brito's Offer Was Unauthorized

The Bar argued the Firm properly negotiated a valid settlement. However, Ms. Brito conceded that she did not believe she had authority to make the offer on behalf of Ms. Gershfeld.

Ms. Brito made a $30,00.00 settlement offer on Ms. Gershfeld's behalf (R:1430). Ms. Martinez filed her notice of appearance in the case on July 18, 2017 (R:1430). The following day, Ms. Brito contacted Ms. Gershfeld and told her she had been trying for some time to reach Ms. Gershfeld and made no mention the pending offer. (R:1779). The record reflects Ms. Brito had not spoken to the client in over a month, despite engaging in active settlement negotiations on her behalf. (R:1779). Despite her stated uncertainty regarding her authority to settle Ms. Gershfeld's case, Ms. Brito failed to withdraw her offer to Citizens, in order to secure attorney's fees. (R:696, 698). Ms. Brito testified that she was discharged July 19, 2017 but intentionally failed to withdraw, arguing among other things that the client's verbal discharge was not sufficient. (R:692-694, 700). Rule 4-1.16 makes it clear that "a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: […] (3) the lawyer is discharged." Ms. Brito's failure to withdraw from Ms. Gershfeld's case contradicts her previous testimony denying that she ever refused to

sign a stipulation of substitution where the clients chose to go with Ms. Martinez. (R:746).

The referee inquired “I'm trying to go figure out why, if the client told you she wanted to go with [Ms. Martinez], why you continued your representation, because that seems to be very similar to the allegations being levied against [Ms. Martinez]” (R:696). As justification for her actions Ms. Brito testified the offer had already been accepted; however, Ms. Brito had just testified moments prior Citizens accepted Ms. Brito’s unauthorized offer on July 21, 2017. (R:694, 691). In fact, both Ms. Brito’s statements under oath were false, where her own emails show Citizens accepted the offer on July 20, 2017. (R:1442). The evidence shows Ms. Brito waited until after Citizens accepted her offer to concede she had no authority because she wanted to secure fees by rushing to reaching a settlement before withdrawing rather than acting in the client’s best interest and following the rules. (R:691, 691). By failing to withdraw the offer prior to Citizens’ acceptance on July 20, 2017, Ms. Brito caused the confusion that ensued, and then blamed Ms. Martinez for it.

Rule 4-1.5 (f) (Contingent Fees) requires lawyers to advise clients that they have the right to make the final decision regarding settlement of their case and requires all offers to be communicated to the client. Ms. Brito’s

conduct was not consistent with rule 4-5.1(f), as evidenced by her testimony that at some point during the representation she got an idea of how much the client wanted and then made settlement offers throughout the case based on that range of authority, without consulting the client further. (R:690, 691).

Ms. Brito admitted under oath that she refused to withdraw from Gershfeld's in order to secure fees. (R:696). The referee specifically stated, "if a client tells they don't want you representing them, you don't represent them anymore." Bar counsel defended Ms. Brito, "What they did was what they could legally do to protect their own fee." (R:698) However, the referee concluded "It sounds to me like Silverberg Brito was concerned about their fees." (R:698). Ms. Brito's pecuniary interest rather than Ms. Martinez's conduct, caused the dispute over the settlement funds and led to Citizens' counsel filing a Motion to Enforce Settlement. Rule 4-1.16 (Declining or Terminating Representation) requires the protection of a client's interest after termination. Instead of complying with rule 4-1.16, Ms. Brito acted selfishly, to the detriment of the client, by causing confusion over the settlement negotiations, prejudicing Gershfeld's case, and refusing to provide Ms. Martinez the Gershfeld files contrary to the administration of justice in violation of Rule 4-1.16. (R:1794, 1798).

B. Ms. Martinez's Offer Differed From Ms. Brito's Offer

The Bar argued at the final hearing and in their brief that Ms. Martinez's statement that Ms. Gershfeld didn't agree to Ms. Brito's settlement offer was a misrepresentation because the total settlement figure remained $30,000.00; however, Ms. Martinez successfully negotiated additional money proportioned to the clients. (R:702).

A settlement figure is not the only material item to a valid agreement, and where the other material terms are in dispute, there is not a valid contract. Settlement agreements are governed by contract law. *Barone v. Rogers,* 930 So.2d 761, 763–64 (Fla. 4th DCA 2006). "To be enforceable, a settlement agreement 'must be sufficiently specific and mutually agreeable as to every essential element.'" *Barone v. Rogers,* 930 So.2d 761, 763–64 (Fla. 4th DCA 2006) quoting *Long Term Mgmt., Inc. v. Univ. Nursing Care Ctr., Inc.,* 704 So.2d 669, 673 (Fla. 1st DCA 1997)). Bar counsel, conceding that Ms. Brito lacked authority, argued "respondent was willing to settle for the same amount, even if she was the one with authority to settle the case on behalf of her client." (R:702). It is undisputed that Ms. Brito did not get actual authority to solicit a $30,000.00 offer, and that fact that Ms. Gershfeld later extended a $30,000 total offer after the fact did not change that. Gershfeld wanted the Firm to receive minimal fees due to their failure to keep

her informed of her case, and conditioned settlement on Gershfeld netting $15,000.00, rather than the $10,487.42 the Firm wanted to allot her. (R:1824, 1847) The Bar's contention that Ms. Martinez was acting selfishly and demanding $15,00.00 in fees neglects to assess that this settlement secured an additional $4,512.58 for the client, where the Firm was only going to give Ms. Gershfeld $10,487.42 and keep the remaining $19,512.58 (R:1842, 1388, 1841, 1846). The Firm was going to take two thirds of the settlement proceeds, but the Bar did not accuse the Firm of being selfish. (R:1841, 1388). These terms are clearly not the same and the referee concluded as much. (R:954).

C. Ms. Martinez was Entitled to Fees as Counsel.

Where the Bar argues Ms. Martinez did not have any claim for attorney fees, it is incorrect, as Ms. Martinez was Gershfeld's counsel at the time the settlement was reached with a valid contingency fee contract. However, the case law supports that Ms. Martinez was entitled to the full amount of her contingency contract. *Perlman, Bajandas, Yevoli & Albright, P.L. v. Atlas Holding Corp*., 377 So. 3d 617, 623 (Fla. 4th DCA 2023) ("In the absence of an agreement to split successor counsel's contingency fee, the trial court could not reduce successor counsel's fee to allocate it to former

counsel."). Ms. Brito was only entitled, as former counsel, to receive fees in quantum meruit. See *Rosenberg v. Levin*, 409 So.2d 1016, 1021 (Fla.1982).

Moreover, Ms. Brito would only have been entitled to any fees if she had not been fired for cause, which was not the case here where Gershfeld fired Ms. Brito for failing to communicate with her as the rules required. (R:1847). Ms. Brito understood the ramifications of withdrawal on attorneys' fees and purposely skirted the law by refusing to withdraw. Notably, the client's funds had already been dispersed at the time of the hearing on fees, and Ms. Martinez had attempted to negotiate amicably with the Firm to resolve the remaining matter of attorneys fees, but the Firm demanded that Ms. Martinez get nothing, necessitating a hearing on the motion for fees. (R:1842, 1846). The referee found Ms. Brito's conduct in the Gershfeld case improper because she did not get express authority to make the offer, which later resulted in complications with the fees and the Motion to Enforce. (R:690, 691, 692).

The referee's findings and recommendation of not guilty as to rules 4-3.1, 4-8.4(c), and 4-8.4(d) in relation to the Gershfeld case are supported by the record evidence and should be accepted. The Bar did not prove by clear and convincing evidence any conduct which constitutes a violation of the rules, where counsel failed to call Ms. Gershfeld as a witness and where the

record shows Ms. Brito's financial incentives drove her actions in making an unauthorized settlement offer and improperly refusing to withdraw, resulting in delays in the Gershfeld case.

VI Based on the referee's findings of fact, the standards for imposing lawyer sanctions, and relevant case law, this courts should accept the referee's recommended sanction.

A. The Applicable Standards.

Pursuant to Standard 3.1, Standards for Imposing Sanctions, each disciplinary case involves unique facts and circumstances which must be given consideration. The standards proposed by the Bar are not applicable because they do not comport with the referee's findings of fact. The referee found Ms. Martinez guilty of violating four rules: 3-4.3 and 4-8.4(d) for filing a notice of appearance without proper authorization in the Morelus case and delaying a month to file the motion to withdraw; 4-3.4 (Fairness to Opposing Party and Counsel), 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud deceit, or misrepresentation) and 4-8.4(d) (A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice) for "spoliation of potential evidence" for delaying in returning the USB drive which was empty.

The referee considered five standards in determining the recommended sanction: 4.4 (Lack of Diligence) for respondent's one month delay in filing a motion to withdraw in the Morelus case. Under standard 4.4(d), an admonishment is appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and causes little or no actual or potential injury to a client. No evidence was presented showing a client suffered any actual or potential injury due to the delay, let alone a serious injury, to warrant a public reprimand or suspension. As a result, an admonishment, rather than a suspension, is the appropriate sanction for this violation.

The referee also considered the following standards 5.1 (Failure to Maintain Personal Integrity); Standard 6.1 (False Statements, Fraud, and Misrepresentation); 6.2 (Abuse of the Legal Process); and 7.1 (Deceptive Conduct or Statements and Unreasonable or Improper Fees) with regard to Ms. Martinez allegedly erasing the USB drive before returning it to her former employers. The Bar argues a suspension is the appropriate sanction under each standard; however, Ms. Martinez disagrees.

The referee considered standard 5.1 (Failure to Maintain Personal Integrity), regarding Ms. Martinez's deletion of information from the USB drive which he concluded constituted the potential spoliation of evidence.

(cite transcript). Under standard 5.1(b), a suspension is warranted when a lawyer knowingly engage in dishonest conduct that reflects adversely on the lawyer's fitness to practice. However, in light of the murky evidence regarding the contents of the USB drive, the cease-and-desist letter, and Ms. Martinez's lack of experience, there is insufficient evidence that Ms. Martinez knowingly engaged in dishonest conduct. However, standard 5.1(c)(Public Reprimand) is the appropriate discipline when a lawyer negligently 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. Based on the mitigating factors found by the referee, including lack of experience, a public reprimand rather than a suspension is the appropriate sanction.

Under standard 6.1 (False Statements, Fraud, and Misrepresentation) a suspension is warranted when a lawyer knows a false statement or documents are being submitted to the court, or material information is improperly being withheld, and takes no remedial action. The evidence does not support that Ms. Martinez filed the notice of appearance in the Morelus with a dishonesty motive. The evidence shows Ms. Martinez believed she had authority to file the notice but subsequently remained with the Firm. Further, under standard 6.2 (Abuse of the Legal Process) suspension is appropriate when a lawyer knowingly violates a court order and causes injury

or potential injury or interference or potential interference with a legal proceeding. In light of Silverberg Brito's cease and desist letter instructing Ms. Martinez to delete all information in her possession, and her lack of experience, her conduct does not constitute "knowingly engaging in dishonest conduct" or meet the elements necessary to establish spoliation of evidence. As a result, standards 6.1(b) and 6.2(b) are inapplicable.

Contrary to the Bar's complaint, the referee found respondent had authority to file notices of appearance in eight out of nine cases. Therefore, standard 6.1(c) (Public Reprimand) is the appropriate sanction when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, regarding the notice of appearance Ms. Martinez filed in Morelus. In addition, standard 6.2(c) (Public Reprimand) is also appropriate when a lawyer negligently fails to comply with a court order or rule and causes injury or potential injury to a client or other party or causes interference or potential interference with a legal proceeding.

Finally, the Bar argues standard 7.1 (Deceptive Conduct or Statements and Unreasonable or Improper Fees) which applies to cases involving deceptive conduct or statements, improper division of fees, or unreasonable or improper fees, provides that suspension is appropriate when a lawyer

knowingly engages in conduct that is a violation of the duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. Ms. Martinez's conduct with regard to the USB drive should be considered a negligent at best, rather than intentional and, therefore, warrants a public reprimand, pursuant to standards 5.1(c), 6.1(c), and 7.1(c), If, however, the Court upholds the referee's conclusion of law that Ms. Martinez's conduct constituted potential spoliation of evidence, then she accepts the referee's recommendation of a 10-day suspension.

Finally, the referee also considered standards 6.1 and 6.2 regarding the notice of appearance Ms. Martinez filed in the Morelus case. Although the Bar alleged Ms. Martinez improperly filed notices of appearance in nine cases, ultimately, the evidence showed all clients, except Morelus, confirmed they wanted Ms. Martinez to represent them. No evidence was presented that Ms. Martinez knew Mr. Morelus did not want her to represent him when she filed the notice of appearance. Therefore, pursuant to 6.1(c) and 6.2(c), a public reprimand, rather than a suspension, is the appropriate sanction when a lawyer is negligent in determining whether a document is false.

B. Aggravating And Mitigating Factors.

The referee found four aggravating factors applied in determining Ms. Martinez's discipline: 3.2(b)(2) dishonest or selfish motive; 3.2(b)(3) a pattern of misconduct; 3.2(b)(6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; and 3.2(b)(7) refusal to acknowledge the wrongful nature of the conduct. The Bar argues the referee also should have applied 3.2(b)(4)(multiple offenses) in this case. The Report of Referee does not relate the aggravating factors to specific conduct by Ms. Martinez. The Bar alleges Ms. Martinez engaged in multiple offenses; however, all of the alleged misconduct arose from a single dispute, therefore the referee's finding of a pattern of misconduct is more applicable than multiple offenses. The Bar also alleged Ms. Martinez made misrepresentations based on alleged inconsistencies in her statements; however, the referee did not make any findings regarding Ms. Martinez's credibility, other than stating that she should have known erasing the USB drive constituted the potential destruction of evidence. As a result, standard 3.2(b)(6) does not apply in this case.

The referee found six mitigating factors applied to Ms. Martinez: 3.3(b)(1) absence of a prior disciplinary record; 3.3(b)(3) personal or emotional problems; 3.3(b)(6) inexperience in the practice of law; 3.3(b)(7)

character or reputation; 3.3(b)(9) unreasonable delay in the disciplinary proceeding; and 3.3(b)(11) imposition of other penalties or sanctions. The Bar does not dispute standards 3.3(b)(1), 3.3(b)(6), and 3.3(b)(7) should be considered as mitigating factors.

All of the mitigating factors considered by the referee are supported by clear and convincing evidence. Contrary to the Bar's argument, Ms. Martinez's medical condition, mental health, and personal problems at the time these events occurred are relevant to explaining her behavior, including the delay in returning the USB drive and her failure to appear in person at the injunction hearing due to post surgery restrictions and being heavily medicated. Further, the referee properly considered the Bar's unreasonable delay in prosecuting the case, as supported by *The Florida Bar v. Wolf*, 930 So. 2d 574; *The Florida Bar v. Micks*, 628 So. 2d 1104 (Fla.1993); and *The Florida Bar v. Marcus*, 616 So. 2d 975 (Fla.1993). In all three cases the Court approved of the referees' consideration of the Bar's delay when recommending the sanction. The allegations in the Bar's complaint could have been prosecuted years ago regardless of the civil case. By waiting, the Bar prejudiced Ms. Martinez because former clients and records became unavailable after 6 years. In *The Florida Bar v. Kaufman*, 347 So. 2d 430 (Fla. 1977), three years elapsed between the filing of charges and oral

argument before the Court. As a result, instead of approving the recommended two-year suspension, the Court placed Kaufman on probation for two years explaining 'respondent has had time to evaluate his conduct and has experienced personal and professional detriment" during those three years. *Id*. at 432. Like Kaufman, Ms. Martinez has had time to evaluate her conduct and has experienced personal and professional detriment as a result of the it. As a result, if the Court approves the charge of spoliation of evidence, it should approve the recommended ten-day suspension in light of the length of time that has passed since the conduct occurred.

One undisputed fact in the civil case as well as the Bar's case is the animosity and bias Ms. Martinez's former employers harbor against her, which motivated them to file the civil complaint and Bar complaint. This Court has previously held that disciplinary proceedings are not to be used as a substitute for civil proceedings and remedies. *The Florida Bar v. Della-Donna*, 583 So. 2d 307 (Fla. 1989). Further, this Court has consistently maintained that Bar disciplinary proceedings are not to be used to address private rights. *The Florida Bar v. Kane*, 202 So. 3d 11, 19 (Fla. 2016). In considering the case, the referee had the opportunity to observe the witnesses. The referee properly recognized that the Bar's case consisted of

disputed facts and was not dependent on the confidential settlement agreement in the underlying case.

C. Case Law.

Respondent's conduct does not warrant a rehabilitative suspension. The cases cited by the Bar don't apply to Ms. Martinez because she was not found guilty of the majority of the allegations in the Bar's complaint. For example, in *The Florida Bar v. Bischoff*, 212 So. 3d 312 (Fla.2017), the Court imposed a one-year suspension for a lawyer who filed a false pleading, ignored discovery orders, and filed frivolous pleadings, all of which contributed to the dismissal of the client's case, with prejudice. In *Bischoff*, the referee relied on the orders issued by the presiding judge and a magistrate in making her findings of fact. *Id* at 316. This Court has stated that "the referee in a disciplinary proceeding may consider judgements entered in other tribunals, and may properly rely on such judgements to support his or her findings of fact." *The Florida Bar v. Rosenberg*, 169 So. 3rd 1155, 1159 (Fla. 2015). However, in this case the Bar doesn't have a "judgment entered by another tribunal" on which to rely. Instead, the Bar relied on unverified pleadings, disputed facts, and a confidential settlement agreement in evaluating the complaint against Ms. Martinez.

First, Ms. Martinez's notice of appearance in Morelus wasn't an intentional misrepresentation like in *Bischoff*. The referee found Ms. Martinez filed one notice of appearance in a case in which she didn't have authority. Further, Ms. Martinez's nonappearance at her own deposition which resulted in a motion for sanctions, occurred in her personal litigation where she was a defendant, rather than in the course of representing a client and Ms. Martinez, fully complied with the court's order regarding those sanctions. Also, unlike *Bischoff*, no clients suffered injury as a result of Ms. Martinez's conduct. The Bar argued Gershfeld suffered damage due to the delay in receiving the settlement, however, Gershfeld actually received a higher net settlement with Ms. Martinez. Because Ms. Martinez's conduct is far less egregious than the conduct in *Bischoff*, a one-year suspension is too harsh.

The Bar also asks this Court to consider *The Florida Bar v. Marcellus*, 249 So. 3d 538 (Fla. 2018) as support for a one-year suspension. Like Martinez, Marcellus' misconduct was related to a personal dispute; however, that is the only similarity. Marcellus' misconduct was much more serious than Ms. Martinez's alleged misconduct. Marcellus conspired with a third party to forge his ex-wife's signature on loan modification documents for personal gain. When Marcellus failed to make the mortgage payments, his ex-wife was surprised to find she was a defendant in a foreclosure lawsuit.

Ms. Martinez's misconduct is much less egregious than Marcellus' misconduct. Marcellus repeatedly flouted court orders resulting in the lower court issuing a writ of bodily attachment, which he then tried to evade. Unlike Marcellus, Ms. Martinez did not intentionally disregard the lower court and her lack of compliance was due to her medical condition at the time the conduct occurred. The *Marcellus* opinion does not mention any mitigating factors; however, the referee found six mitigating factors applied to Ms. Martinez. Marcellus also had more aggravating factors than Ms. Martinez, including multiple offenses, vulnerability of victim, substantial experience in the practice of law, and indifference to making restitution. None of these aggravating factors were found to apply to Ms. Martinez. As a result, *Marcellus*' conduct is more egregious than Ms. Martinez's misconduct and should not be considered in determining the appropriate sanction.

Finally, the Bar argues this Court should consider *The Florida Bar v. James*, 329 So. 3d 108 (Fla. 2021) in determining the appropriate sanction for Ms. Martinez. James was found guilty of coaching his client, via text messages, during a telephone deposition; and subsequently lying about it by alleging he was texting with his daughter. After James was ordered to produce the text messages for an in camera inspection in the underlying case, he failed to produce any texts with his daughter and alleged he was

unable to retrieve them due to his own technological limitations. During the hearing on the motion for *in camera* inspection, James failed to be transparent and forthright with the judge regarding his texts. *Id* at 110. The referee recommended a thirty-day suspension; however, this Court ordered a ninety-one-day suspension, finding James' failure to be forthright with the judge to be particularly egregious. *Id* at 112. It should be noted, however, that three Justices dissented in *James* on the issue of discipline, stating they would accept the referee's recommended thirty-day sanction based on the mitigating factors noted by the referee, stating "the 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 Florida Standards for Imposing Lawyer Sanctions." *Id* 328, citing to *The Florida Bar v. Picon*, 205 So. 3d 759, 765 (Fla. 2016) (citing *The Florida Bar v. Temmer*, 753 So.2d 555, 558 (Fla. 1999). The referee found James' cooperation, the testimony of two credible character witnesses, and James' lack a disciplinary history were sufficient mitigating factors to justify a non-rehabilitative suspension. In this case, the referee found 6 mitigating factors, and noted that two character witnesses testified favorably regarding Ms. Martinez's legal skills, character, and integrity. (ROR:12-13). Finally, unlike James, Ms. Martinez was not found guilty of making a misrepresentation to the court. Filing a notice appearance

due to mistake is not equivalent to lying to a judge; therefore Ms. Martinez's conduct does not warrant a rehabilitative suspension.

The referee found Ms. Martinez guilty of a fraction of the conduct alleged in the Bar's complaint. He found Ms. Martinez's contact with clients did not strictly comply with rule 4-5.8, although she made a good faith effort in spite of the Firm's actions. He also found Ms. Martinez filed a notice of appearance on behalf of Morelus, then delayed in withdrawing. The referee found these violations constitute minor misconduct. Any reported cases that contain similar conduct also include more serious violations resulting in significant discipline and, therefore, are not applicable to Ms. Martinez. Nevertheless, the referee's findings are supported by this Court's approval of several conditional guilty pleas for consent judgements in table citations. In *The Florida Bar v. Gibson*, Supreme Court Case No. 2021-1716, this Court approved a public reprimand where Gibson continued to represent a client after being discharged, and delayed the reimbursement of the unused retainer. This Court also approved an admonishment in *The Florida Bar v. Davis*, Supreme Court Case No. 2019-1447, where Davis was hired to replace counsel of record in a divorce case but did not pursue a hearing on the matter for three months after former counsel refused to sign a joint motion for substitution of counsel. Davis' case is most similar to Ms. Martinez's

misconduct although Ms. Martinez's delay was much shorter. Finally, in *The Florida Bar v. Llopiz*, Supreme Court Case No. 2016-884, this Court approved a public reprimand for Llopiz, who failed to notify his prior law firm of the receipt of payments from a client he took with him when he left the firm. Subsequently the parties entered into a settlement agreement wherein Llopiz agreed to repay most of the funds to the prior law firm. Like Llopiz, Ms. Martinez's conduct occurred when separating from a law firm and also involved some clients that Ms. Martinez brought to the Firm. Also, in both cases the dispute between the parties was resolved with a settlement agreement. The most serious violation Ms. Martinez was found guilty of committing, spoliation of potential evidence, wasn't investigated or charged by the bar. The referee concluded that Ms. Martinez was guilty of spoliation of evidence based on her prior statement that it had a motion she was drafting on it, and Mr. Silverberg's testimony that the USB drive was returned empty. However, Ms. Martinez's conduct is not similar to the conduct in *Bischoff, Marcellus, or James;* therefore, a suspension is unsupported.

D. Costs.

It is within the Referee's discretion to not award the Bar's costs if the respondent shows the costs were unnecessary, excessive, or improperly authenticated. R. Regulating Fla. Bar 3-7.6(q)(3). The Bar alleges it was an

abuse of discretion for the referee to reduce the costs sought by the bar. As support, the Bar alleges it can be inferred from the language quoted from the final hearing transcript that "the referee and Bar counsel appeared to share a mutual understanding the Bar would order the transcript to ensure the accuracy of the report." Ms. Martinez and her undersigned counsel disagree with the Bar's allegation. To the contrary, if the referee had expected or requested the Bar order the hearing transcript he would have overruled Ms. Martinez's objection to it. Further, the Bar's suggestion that the hearing transcript was necessary in order to accurately draft the proposed report of referee rings hollow considering three Bar counsel tried this case. (R:643). The portion of the transcript relied on by the Bar doesn't reflect what was happening in the courtroom during the exchange. Bar counsel, Jennifer Falcone, was standing at the lectern facing the referee when he began to announce his ruling. As she said, "I'm sorry, can one of you write this down, please?" she turned toward her two co-counsels sitting at counsel's table behind her. When the referee responded, "I thought the court reporter's going to -" he was verifying whether the proceedings were on the record, not indicating a "mutual understanding" with Bar counsel that he wanted the transcript or acquiesced to it being ordered. In addition, transcripts are not required to be filed with this Court as part of the record, unless an appeal is

filed. The Bar's argument that it needed the transcript because it was charged with drafting the proposed report of referee is not credible because the Bar's counsel had two co-counsels available to take notes during the proceeding; therefore, they should have been able to note the referee's ruling. For the sake of argument, if Bar counsel believed she needed the transcript to prepare the proposed report of referee, then Bar counsel could have ordered an excerpt of the transcript for a fraction of the cost of the whole transcript. That didn't happen because Bar counsel ordered the final hearing transcript in anticipation of the Bar appealing the referee's ruling, which doesn't qualify as a taxable cost at the trial level, pursuant to rule.

Finally, the Bar argues that Ms. Martinez's counsel's request for copies of the hearing transcripts, after the Bar ordered them, indicates that both parties required the transcripts, and therefore the referee abused his discretion in failing to award full costs to the bar, pursuant to this Court's ruling in *The Florida Bar v. Rousso*, 117 So. 3d 756 (Fla.2013). However, Rousso is distinguishable from this case because the referee applied an "equitable adjustment" to the costs sought by the Bar which this Court found to be an abuse of discretion. In this case, the referee ruled based on the plain reading of rule 3-7.6 (q)(1) (Taxable Costs). The Bar prematurely sought to tax the cost of the full transcript, which was only needed for the

purposes of filing an appeal. As a result, the referee properly sustained Ms. Martinez's objection to the inclusion of the hearing transcripts in the costs taxed against her.

CONCLUSION

For the above stated reasons, Ms. Martinez asks this Court to accept the referee's findings and recommendations, with the exception of the findings related to the contents and deletion of the USB drive. If this Court rejects the referee's findings of spoliation of evidence regarding the USB drive, then Ms. Martinez asks the Court to impose a public reprimand. However, if this Court approves the referee's conclusion of law that erasing the USB drive constituted spoliation of evidence, then in light of the mitigating factors, Ms. Martinez asks this Court to approve the referee's recommended 10-day suspension as the appropriate sanction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original hereof has been e-filed with the Clerk of the Supreme Court of Florida, and true and correct copies of the foregoing have been furnished by email to Mark Lugo Mason, Bar Counsel, at mmason@floridabgar.org and to Patricia Ann Toro Savitz, Staff Counsel, at psavitz@floridabar.org, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399, this 29th day of April 2024.

/s/ ALEXA MARTINEZ_____
ALEXA MARTINEZ, ESQUIRE
Florida Bar No. 126341
Primary: alexamartinezlaw@gmail.com
11945 SW 81 Street
Miami, Florida 33183
786-606-6991
Respondent

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 21,388. It has been calculated by the word-processing system, and it excludes the cover sheet, the tables of contents and citations, the certificates of service and compliance, and the signature block for the brief's author from the page limits but it includes any footnote per Florida Rule of Appellate Procedure 9.210(a)(2)(E).

/s/ ALEXA MARTINEZ
ALEXA MARTINEZ, ESQUIRE