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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR, Complainant, vs. MALIK LEIGH, Respondent. _____/	Supreme Court Case No. SC2023-0518 The Florida Bar File Nos. 2017-50,987 (15F); 2018-50,286 (15F); and 2020-50,322 (15C)

ANSWER BRIEF

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TABLE OF CONTENTS

TABLE OF CONTENTS……..2

TABLE OF CITATIONS……...4

PRELIMINARY STATEMENT…….6

NATURE OF THE CASE…….8

STATEMENT OF THE CASE AND FACTS……10

I. The referee admitted social media posts, the bar confronted the respondent on the stand with social media posts, and the referee carefully evaluated all facts presented..…….10

II. The referee admitted all correspondence regarding the joint pretrial stipulation, evaluated the content and chronological order of all correspondence, and the credibility of all witnesses involved in the joint pretrial stipulation..……..…11

III. The referee admitted all the evidence presented in Counts III through VI, and carefully weighted the credibility of all Witnesses……. 21

SUMMARY OF THE ARGUMENT……...27

ARGUMENT…….28

I. The referee admitted social media posts, the bar confronted the respondent on the stand with social media posts, and the referee's recommendation as to facts and discipline are well supported by the competent, substantial record……...28

II. The referee admitted all correspondence regarding the joint pretrial stipulation, evaluated the content and chronological order of all correspondence, evaluated the credibility of all witnesses involved in the joint pretrial stipulation, and the

referee's recommendation as to facts and discipline are well supported by the competent, substantial record…..……..…….28
III. In Counts III through VI this Court should uphold referee findings and recommendation…….33
IV. Based on the referee's findings of fact and recommendations, this Court should uphold the referee report under the Standards for Imposing Lawyer Sanctions……..35
A. The applicable standards……..35

B. The aggravating and mitigating circumstances…….36

CONCLUSION……..……43

CERTIFICATE OF SERVICE……....46

CERTIFICATE OF TYPE SIZE & STYLE…….....47

TABLE OF CITATIONS

Cases

The Florida Bar v. Vining, 761 So.2d 1044,1048 (Fla. 2000)…...27

The Florida Bar v. Niles, 644 So.2d 504, 506 (Fla. 1994)…….27

The Florida Bar v. Rayman, 238 So.2d 594 (Fla. 1970)……27

The Florida Bar v. McMillan, 600 So.2d 457, 459 (Fla. 1992)…..27

The Florida Bar v. Lord, 433 So.2d 983, 986 (Fla. 1983)……..35

Fla. Bar v. Alters, 260 So. 3d 72 (Fla. 2018)……40

Fla. Bar v. Varner, 992 So. 2d 224 (Fla. 2008)……41

Fla. Bar v. Wolf, 930 So. 2d 574 (Fla. 2006)……41

Fla. Bar v. Rubin, 362 So. 2d. 12 (Fla. 1978)……..…42

The Florida Bar v. Summers, 728 So. 2d 739, 741 (Fla. 1999)…42

The Florida Bar v. Wolis, 783 So. 2d 1057, 1059 (Fla. 2001)……42

The Florida Bar v. Hecker, 475 So. 2d 1240, 1242 (Fla. 1985).…42

The Florida Bar v. Arcis, 848 So. 2d 296, 299 (Fla. 2003)…….42

The Florida Bar v. Germain, 957 So. 2d 613, 621 (Fla. 2007)…..42

Other Authority

Fla. R, App. P. 9.210

Rules Regulating the Florida Bar

Rule 3-4.3

Rule 3-5.3

Rule 4-1.1

Rule 4-3.1

Rule 4-3.4

Rule 4-3.6

Rule 4-4.2

Rule 4-4.4

Rule 4-8.2

Rule 4-8.4

Florida's Standards for Imposing Lawyer Sanctions

Standard 1.1

Standard 3.2

Standard 3.3

PRELIMINARY STATEMENT

The record in this matter contains substantial, competent evidence, submitted during 6 days of trial, that clearly and convincingly supports the referee's findings of fact and recommendations. The referee was in the best position to review the evidence and to assess the credibility of the witnesses who testified. Therefore, consistent with its prior holdings, this Court should not reweigh the evidence or substitute its judgment for that of the referee but should approve the referee's findings of fact and recommendations.

In addition, the referee's report in this matter specifically lists the Florida Standards for Imposing Lawyer Sanctions, specific facts and findings, and case law that the referee relied on in recommending the 91-day suspension from the practice of law with other conditions.

The respondent, Malik Leigh, is referred to as Mr. Leigh. The complainant is referred to as The Florida Bar or the bar.

The respondent's exhibits are referred to as "R-Ex." Followed by the applicable exhibit letter. The bar's exhibits are referred to as "TFB-Ex." Followed by the applicable exhibit letter.

This brief cites the final hearing transcripts as “T:” followed by the applicable tab number corresponding to the index. The report of referee is referred to as “ROR:” followed by the applicable page number.

Respondent adopts the following referee’s findings of fact as set forth in her report:

“I see a young lawyer, who at the time of the events in question had been admitted approximately seven years when he became involved in the Stonybrook litigation. Leigh and his partner were doing their first litigation in this new areas of the law. I find that Leigh’s conduct regarding Counts III through VI was the combination of lack of experience, unprofessional persistence fueled by emotion, and a level of frustration causing obfuscation. This finding is further reinforced by the fact that it is uncontroverted that Leigh has practiced in the areas of Family and Dependency competently and ethically for almost a decade.” (ROR: 25,26).

The referee also “considered the testimony of Leigh’s character and fitness witnesses, Jess Manger and Dr. Anubha Agarwal, both Leigh’s former clients. Manger and Agarwal testified that Leigh was professional, compassionate, respectful, and competent at all times during their representations. There is no evidence presented to this Court that, outside

the two particular litigations before this Court, that Leigh has failed to adhere to the ethics of the legal profession." (ROR: 26).

NATURE OF CASE

On April 10, 2023, The Florida Bar filed its six-count complaint which addressed actions that primarily occurred between 2016 and 2020. The Respondent, Malik Leigh, served a timely answer to the complaint.

The Florida Bar also filed a formal complaint against this Respondent's law partner, Danielle Renee Watson, on March 22, 2023, *The Florida Bar v. Watson*, SC2023-0416 (Fla, 2024). The Bar, when it filed the Leigh complaint, also filed a Notice of Related Cases. The final hearing was held over six days - August 14, 2023 through August 16 2013, August 21, 2023, and August 23, 2023 through August 24, 2023.

The Bar had alleged that Leigh violated ten provisions of the R. Regulating The Florida Bar in relation to a pair of unrelated civil litigations. Certain actions occurred in September 2016-2017 in civil actions against the Palm Beach County School District, referred hereto as the *Leigh/Parrish-Carter* cases. The other actions occurred between 2018 and 2020 in the civil case against multiple defendants on behalf of the residents

of Stonybrook Apartments. It took the bar almost six years to file the complaint.

After hearing the evidence and arguments of counsel, and after considering the Florida Standards for Imposing Lawyer Sanctions, case law, and aggravating/mitigating factors, the referee recommended respondent be suspended for 91 days from the practice of law, pay costs associated with this disciplinary action, followed by a 2-year probation, and that Leigh attends a practice and professionalism enhancement program. Also, as a condition of reinstatement, Respondent must pay all fees and costs imposed in any and all cases including this bar action. More specifically, Respondent is required to successfully complete the following practice and professionalism enhancement programs:

A. The Florida Bar's Professionalism Workshop; and

B. The Florida Bar's Ethics School.

The programs are to be completed as a condition to filing for reinstatement.

STATEMENT OF THE CASE AND FACTS

I. The referee admitted social media posts, the bar confronted the respondent on the stand with social media posts, and the referee carefully evaluated all facts presented:

Respondent testified on his own behalf, presented 19 additional exhibits, and also used the Bar's exhibits in his testimony, which were all considered by the referee in her resolution of the factual disputes herein.

As to Count I, Leigh acknowledged the impropriety of some of the posts relating to litigation and also provided context to some of the posts that were personal and unrelated to legal cases. (ROR: 6). Leigh expressed his belief that some of the social media posts provided as evidence were not true representations of the original posts as they appeared to be cropped and that, to the best of his recollection, he believes that some were not posted in the social media platforms as represented by the cropped posts. Leigh did testify to having written the content of the posts at the final hearing, consistent with his prior admissions in other proceedings as evidence by the multiple admissions introduced in the record by The Florida Bar. (ROR: 6).

The referee recognized that the totality of social media postings made by Leigh, whether intended to be private or public, or whether they were personal or related to his law practice, and regardless of where they were

posted, reasonably caused fear on readers and precipitated the safety actions taken by employees of the Palm Beach County School District. In reaching this finding, the referee also considered the testimony provided regarding Leigh's lack of criminal or violent record, and Ms. Baxter's testimony in cross-examination that neither her nor her employees ever experienced or witnessed violent behavior by Leigh. (ROR: 6,7).

II. The referee admitted all correspondence regarding the joint pretrial stipulation, evaluated the content and chronological order of all correspondence, and evaluated the credibility of all witnesses involved in the joint pretrial stipulation:

The Florida Bar presented the following witnesses regarding Count II (pretrial stipulation) relating to the *Leigh/Parish-Carter* cases filed both in state and federal court: Shawntoyia Bernard, Esq., Helene Baxter, Esq., Lisa Kohring, Esq., and Ana Jordan.

As to Count II, the referee specifically noted that Kohring and Jordan were very defensive on cross-examination on the issue of the pretrial stipulation and, especially as to Kohring, aggressively attempting to volunteer information outside the questions that were posed to her. (ROR: 7). In cross-examination Kohring refused to admit that her office made a

mistake when they failed to open the pretrial stipulation emailed by Leigh at 5:53 PM on September 5, 2017. (ROR: 7).

Also on cross-examination, Ms. Kohring failed to even entertain the idea that if she had disclosed their mistake to Leigh on September 6, 2017, maybe the issues would have been amicably resolved. The referee found by clear and convincing evidence that Kohring was not candid with Leigh regarding the facts leading to the dispute over the pretrial stipulation and that an opportunity for a good faith resolution was missed as a consequence of Kohring's lack of candor with opposing counsel. (ROR: 7,8).

Also regarding Count II, the *Leigh/Parish-Carter* litigation included a filing in federal court and this was the first case (along with two others) that had been filed by Leigh, with Watson as co-counsel of record. From the testimony presented, the referee found Leigh and Watson admitted that this was their first case of that kind, that they did not have experience in that area of the law, that Leigh was primary counsel in this case, and that Watson's name was affixed to all pleadings and she was copied on relevant e-mails. (ROR: 8).

One of the principal issues of Count II of the complaint regarding the *Leigh/Parish-Carter* litigation relates to the sanction order directed against Leigh and Watson, which order concerns actions taken regarding Watson's electronic signature being affixed on a pretrial stipulation and Leigh and Watson's reactions thereto. The following timeline and events were important to the referee's resolution and were established by clear and convincing evidence:

1. Prior to the events at issue, the parties to the *Parish-Carter* case were obligated to submit a joint pre-trial stipulation to the court by September 5, 2017. (ROR: 8).

2. Leigh and counsel for the school board (primarily Kohring) were working together to accomplish this task and had exchanged several drafts of the document between the respective offices. (ROR: 9).

3. It was uncontroverted that Watson was not involved in any manner in the drafting of the stipulation, but was copied on the various e-mails being exchanged between the respective offices. (ROR: 9).

4. Prior to the events in question, Watson and Leigh, while working on Watson & Leigh. P.A. matters would do so from their respective homes and the law firm did not, at that time frame, have an office other than their respective homes. (ROR: 9).

5. On September 5, 2017 at 4:26 PM, Leigh sent an email to Kohring, her paralegal, Jordan, and Watson providing the recipients of said e-mail a draft of the pretrial stipulation stating “let me know and we will sign it real quick.” (ROR: 9).

6. On September 5, 2017, at 5:13 PM, Kohring sent an email to Leigh, Watson, Bernard, and her paralegal Jordan with a draft of the pretrial stipulation that she desired to file with the court. (ROR: 9,10).

7. On September 5, 2017, at 5:20 PM, Kohring sent another email to Leigh, Watson, Bernard, and her paralegal Jordan telling him to disregard the 5:13 PM draft and provided an alternate pretrial stipulation draft that she desired to file with the court, asked Leigh to review same. (ROR: 10).

8. On September 5, 2017, at 5:25 PM, having now received two separate email drafts from Kohring, Leigh responded to Kohring stating that he had been on the phone and was reviewing the last draft sent (from 5:20 PM and no longer the 5:13 PM draft as requested). (ROR: 10).

9. On September 5, 2017, at 5:38 PM, Kohring sent an email to Leigh, Watson, Bernard, and her paralegal Jordan telling him to please let Ana know that she can file the pretrial stipulation. She is copied so please reply to all. Kohring then called Leigh and informed him that

Kohring was leaving work because of her wedding anniversary celebration that evening. (ROR: 10).

10. On September 5, 2017 at 5:35 PM, Kohring sent an e-mail to Leigh, Watson, Bernard and her paralegal, Jordan, providing the recipients of said e-mail with the draft of the pretrial stipulation that she desired to file with the court, asked Leigh to review same and to respond to Jordan if the stipulation could be filed as drafted. TFB-Ex. 3, bates 019. (ROR: 10,11).

11. At 5:53 PM that same day, Leigh responded to the same individuals via e-mail, provided a copy of a pretrial stipulation which had his signature affixed thereto and in the text of the e-mail stated: "Pretrial Stipulation to sign and file." TFB-Ex. 3, bates 021. This e-mail did not explain that Leigh had made further corrections to the draft stipulation or note that he had signed the PDF that was sent to everyone. (ROR: 11).

12. Shortly after Leigh's e-mail, Jordan filed the pretrial stipulation that was introduced as TFB-Ex. 1. This version of the stipulation was not the version of the stipulation that had been forwarded by Leigh and it contained an electronic signature purportedly from Watson. See TFB-Ex. 1, bates 14. (ROR: 11).

13. There was testimony that there were differences between the version of the stipulation filed by Jordan from the previous version provided

by Kohring and was different from the version provided by Leigh. That said, these factual disputes are not necessary to resolve herein. (ROR: 11).

14. Sometime after the stipulation was filed by Jordan, Leigh examined the version of the stipulation that she filed and quickly realized it was not the version he had e-mailed to Kohring in that his signature was not on the document, it did not contain the changes he had made, and his partner's electronic signature had been attached to the document. TFB-Ex. 1. (ROR: 12).

15. The uncontroverted testimony was that Leigh, from his home, reached out to Watson, at her home, to inquire if she had authorized the filing of the stipulation that had in fact been filed. She promptly advised that she had not done so and had not even examined the filed document as of that time. (ROR: 12).

16. By now it is well after normal business hours, Leigh was aware that Kohring had left the office for an anniversary dinner and did not believe he had any alternative but to file a version of the stipulation with his changes. (ROR: 12).

17. Late in the evening of September 5, 2017, Leigh filed his version of the pre-trial stipulation. See TFB Ex. 2. It is the second pleading that he filed that is the focus of the dispute between the parties. This

second pleading, included in TFB Ex. 2 at bates 022-023, styled Joint PreTrial Stipulation Addendum ("Addendum"), contained in pertinent part the following statement:

> . . . the Joint Pre-trial Stipulation [DE 71] by the Defendant's Counsel, Lisa Kohring, not only filed the wrong Pre-trial Stipulation, but she forged Plaintiff Counsel, Danielle Watson's electronic signature and filed it. The Actual "agreed" or "joint" stipulation which was submitted with Attorney, Malik Leigh, Esq's endorsement and submitted to Defense counsel or filing is attached herein without Defense Counsel's Signature. Counsel will follow up with an official Motion regarding this action.
>
> (ROR: 12,13)

18. From the testimony adduced at trial from Watson and Leigh, they were upset and shocked that an opposing counsel would affix a lawyer's electronic signature to a pleading without having secured permission to do so. (ROR: 13).

19. The next morning, Kohring reviewed the stipulation and Addendum filed by Leigh (TFB-Ex. 2), she also became upset and sent several e-mails to Leigh and Watson asking for a retraction of the comments made in the Addendum. Her testimony was that she also placed several calls to the Watson & Leigh law firm on September 6, 2017. The first e-mail she sent on September 6, 2017, at 12:49 PM, was addressed to

Leigh, but was copied to everyone who was on the day's previous e-mails, inclusive of Watson. See TFB-Ex. 4, bates 67. In this e-mail she demands a retraction of the statements made in the Addendum or that she would file a motion for sanctions. Her next e-mail at 2:29 PM, states that she called Leigh twice that day with no response and included further demands or that she would be seeking sanctions. See TFB-Ex. 4, bates 68. (ROR: 13,14).

20. At 2:52 PM on September 6, 2017, Leigh responded to Kohring's e-mail in a strident manner repeating the claims made about her office's actions in attaching Watson's signature without authorization as being a forgery and that she could be the subject of a sanction motion, as well as potentially other actions as forgery was a crime. (ROR: 14).

The referee found uncontroverted that Kohring did not disclose in any of her communications to Leigh and Watson on September 6, 2017, that her office never opened the version emailed by Leigh at 5:53 PM. It was also found uncontroverted that the first time Kohring and her office disclosed this mistake was at the hearing held before the Court. On September 7, 2017, Kohring filed the first motion for sanctions seeking sanctions solely against Leigh. TFB-Ex. 3, bates 1 (opening paragraph of motion). (ROR: 14,15).

Leigh filed the second motion for sanctions, shortly thereafter on September 7, 2017, focusing on the differences between the filed version of the stipulation from prior versions that had been shared with him and the version that he had submitted to the court and also referenced the signature issue. He first used the term “misrepresented endorsement,” but later used the terms forgery and explained how he believed that certain ethical rules had been breached, that a crime may have been committed and that Kohring had yet to justify why an opposing counsel had affixed her partner’s electronic signature to a court pleading without her permission. TFB Ex. 4. The motion included an explanation of some actions that were being taken by Watson and Leigh relative to the signature issues. (ROR: 15).

The referee found the uncontroverted testimony at trial that Judge Rosenberg denied both motions without prejudice pending resolution of a motion for summary judgment. Shortly thereafter, Judge Rosenberg entered summary judgment in favor of the school board and on September 19, 2017, counsel for the school board filed a renewed sanction motion. TFB-Ex. 5. (ROR: 16).

Later that same day, Leigh also drafted and filed a renewed motion for sanctions. TFB-Ex. 6. The parties filed various responses to each

other's motions and supplements to same. See TFB-Ex. 7 through 11. An evidentiary hearing was held before Judge Rosenberg on September 27, 2017, with testimony from several of the witnesses who also testified before the referee, inclusive of Leigh, Watson, Kohring and Jordan. See TFB-Ex. 14. On October 2, 2017, Judge Rosenberg entered her order on the competing motions, denied the motions filed by Leigh and granted the motions filed by the school board. TFB-Ex. 12. (ROR: 16,17).

Specifically as to Count II, the referee concluded that Leigh and Watson should have at least made inquiry of the other law firm to understand why they affixed Watson's signature prior to making said accusations. She also found that Khoring was not candid with Leigh and Watson by failing to disclose that her office never opened the "final" stipulation sent by Leigh and that this disclosure could have toned down the dispute that was raging between the lawyers. (ROR: 18,19).

Also specifically as to Count II, the referee concluded Leigh's conduct was the combination of lack of experience, unprofessional persistence fueled by emotion, and a level of frustration causing obfuscation. There was a personal element to Leigh in this litigation as the conflict arose from his conduct and the consequences quickly affected students and fellow teachers. (ROR: 18).

The referee found the use of inflammatory language in this isolated instance to be more of a professionalism concern than a violation of the ethical rules and didn't find a violation of the afore-mentioned rules. (ROR:19).

III. The referee admitted all the evidence presented in Counts III through VI, and carefully weighted the credibility of all Witnesses:

The *Stonybrook* litigation was in state court and this was the first case of this nature that had been filed by Leigh, with Watson as co-counsel of record. From the testimony presented before me, it is uncontroverted that Leigh and Watson admitted that this was their first case of that kind, that they did not have experience in that area of the law, that Leigh was primary counsel in this case, and that Watson's name was affixed to all pleadings and she was copied on relevant e-mails. (ROR: 19).

The operative exhibits presented by the Bar regarding these counts were primarily found at TFB-Ex. 18 through TFB-Ex. 105. Leigh testified on his own behalf, presented additional exhibits and also used the Bar's exhibits in his testimony, which were all considered by the referee in resolving the factual disputes. (ROR: 19,20).

The Florida Bar presented the following witnesses regarding Counts III through VI relating to the *Stonybrook Apartments* case: Katina M.

Hardee, Mahra C. Sarofsky, and Christy Goddeau. Leigh presented one factual witness, Adam Wasserman. (ROR: 20).

County III of the complaint alleges lack of competence and complete disregard of several court orders. Count IV of the complaint alleges Leigh filed a frivolous Motion for Default. Count V alleges that Leigh was disqualified for his participation in obtaining corporate documents and a deposition taken of a Stonybrook employee. Count VI alleges Leigh improperly attacked the integrity of a judge. The following timeline and events were important to the referee's resolution and were established by clear and convincing evidence:

1. Both Leigh and Wasserman described in detail the deteriorated conditions of the Stonybrook Apartments including fire damage, roof, and structural damages caused by Hurricane Irma. Wasserman testified as to his unsuccessful efforts to secure legal representation for the residents of Stonybrook Apartments. (ROR: 20,21).

2. Both Leigh and Adam Wasserman testified consistently as to how Leigh became involved in the Stoneybrook Apartments litigation. Wasserman, involved in the Palm Beach Tenant Union, was advocating on behalf of the residents of Stoneybrook Apartments and reached out to Leigh and invited him to visit Stonybrook. (ROR: 21).

3. Both Leigh and Wasserman testified consistently as to some of the children living in Stoneybrook Apartments requiring medical treatment due to what they believe were illnesses caused by the conditions at Stoneybrook Apartments. Leigh specifically testified about visiting some children at the hospital. (ROR: 21).

4. The referee found credible Leigh's testimony as to his legitimate concern for the residents of Stonybrook Apartments and find by clear and convincing evidence that he felt passionate and sincere empathy for the residents. The referee also considered the testimony of Wasserman describing the sincere concern shown by Leigh toward the residents as proven by Leigh's numerous visits to the Stonybrook Apartments. (ROR: 21).

5. Leigh testified that his intention was to only get the ball rolling on the injunction on a *pro bono* basis to immediately prevent further harm to the residents of Stonybrook and that he never intended to remain counsel of record. (ROR: 21,22).

6. On July 31, 2018, Leigh filed the first of several Plaintiffs' Ex Parte Emergency Motion for Preliminary Injunction in the 15th Judicial Circuit in and for Palm Beach County that were dismissed by the Court. (ROR: 22).

7. After the dismissal of the preliminary injunctions, Leigh filed several complaints which were also dismissed by the Court and were the basis for sanctions and assessment of attorney fees and costs against Leigh and his law firm. (ROR: 22).

8. Both Leigh and Wasserman testified consistently as to the harassment suffered by Leigh and his clients as a consequence of the legal action, namely: Police intervention when Leigh visited the location of Stonybrook Apartments and residents being told that repairs would occur if they terminated Leigh's representation. (ROR: 22).

9. The referee considered Leigh's Ex. 9 through 11 showing his efforts to comply with the mentor requirement imposed by the Court. (ROR: 22).

10. The referee considered Leigh's Ex. 13 and Ex. 17 regarding his efforts to communicate with opposing counsels about the issue he encountered when filing a complaint on or about August 8, 2019. (ROR: 22).

11. Leigh and Wasserman testified as to Leigh's efforts to have clients at Stonybrook Apartments comply with the gag order. (ROR: 23).

12. Leigh and Wasserman testified as to their involvement in

the statement taken of Lugaro, and the referee also considered the testimony and evidence presented by The Florida Bar consistent with Leigh's testimony regarding his inappropriate involvement and correctness of his disqualification. (ROR: 23).

13. The referee considered Leigh's Ex. 14, an ethics opinion, and his explanation for disclosing to opposing counsels the statement taken of Lugaro. (ROR: 23).

14. Leigh testified as to his efforts regarding his social media compliance with the gag order and explained that he was not aware of the Stonybrook resident's press conference until it was already underway. (ROR: 23).

15. Leigh testified as to his belief that his motion to disqualify the judge was truthful. (ROR: 23).

16. Leigh and Wasserman testified as to positive developments from Leigh's representation in the case, namely several benefits to the residents of Stoneybrook Apartments, including: Section 8 placements, effect of Notices to Cure in regards to government subsidies held payments to Stonybrook, creation of an evacuation plan for the residents, and free medical testing and treatment for some of the children living at Stonybrook Apartments. (ROR: 23,24).

17. Both Leigh and Watson testified about their recent communications with the law firms involved in both litigations to arrange for payment of ordered fees and costs. (ROR: 24).

18. Leigh testified as to his recent completion of ethics courses. (ROR: 24).

The referee found, as to Mr. Leigh, that he was a young lawyer, who at the time of the events in question had been admitted approximately seven years when he became involved in the Stonybrook litigation. Leigh and his partner were doing their first litigation in these new areas of the law. The referee found that Leigh's conduct regarding Counts III through VI was the combination of lack of experience, unprofessional persistence fueled by emotion, and a level of frustration causing obfuscation. This finding is further reinforced by the fact that it is uncontroverted that Leigh has practiced in the areas of Family and Dependency competently and ethically for almost a decade. (ROR: 25,26).

Also on this issue, the referee considered the testimony of Leigh's character and fitness witnesses, Jess Manger and Dr. Anubha Agarwal, both Leigh's former clients. Manger and Agarwal testified that Leigh was professional, compassionate, respectful, and competent at all times during their representations. The referee found no evidence presented, outside

the two particular litigations before this Court, where Leigh has failed to adhere to the ethics of the legal profession. (ROR: 26).

SUMMARY OF THE ARGUMENT

As to all counts, the bar's burden on review is to demonstrate that there is no evidence in the record to support the referee's findings or that the record evidence clearly contradicts the conclusions. See *The Florida Bar v. Vining*, 761 So.2d 1044,1048 (Fla. 2000). The standard of proof in a bar disciplinary proceeding is clear and convincing evidence. See *The Florida bar v. Niles*, 644 So.2d 504, 506 (Fla. 1994), citing *The Florida Bar v. Rayman*, 238 So.2d 594 (Fla. 1970). The respondent has met its burden of proof by clear and convincing evidence, while the bar failed to meet its burden of establishing that the record is wholly lacking in evidentiary support for the referee's findings.

This Court has consistently held that where a referee's findings are supported by competent substantial evidence, it is precluded from reviewing the evidence and substituting judgment for that of the referee. *Vining* 721 So.2d at 1167, quoting *The Florida Bar v. McMillan*, 600 So.2d 457, 459 (Fla. 1992). The referee was in the best position to assess

credibility and to determine guilt, and his findings and recommendations are clearly supported by the record.

The following is an analysis and discussion of each count supporting the referee's findings and recommendations.

ARGUMENT

I. In Count I Respondent accepted responsibility for social media postings should uphold referee findings and recommendation.

As to Count I, Leigh acknowledged the impropriety of some of the posts relating to litigation and provided context to some of the post that were personal and unrelated to legal cases. Leigh expressed his belief that some of the social media posts provided as evidence were not true representations of the original posts as they appeared to be cropped and that, to the best of his recollection, he believes that some were not posted in the social media platforms as represented by the cropped posts. Leigh did testify to having written the content of the posts at the final hearing, consistent with his prior admissions in other proceedings as evidence by the multiple admissions introduced in the record by The Florida Bar. (ROR: 6).

II. In Count II this Court should uphold referee findings and recommendation that respondent did not violate Rules 4-8.4(a) and 4-8.4 (d).

The Florida Bar takes issue with the referee's independent evaluation of the bar's own witnesses regarding Count II (pretrial stipulation) relating to the *Leigh/Parish-Carter* cases filed both in state and federal court: Shawntoyia Bernard, Esq., Helene Baxter, Esq., Lisa Kohring, Esq., and Ana Jordan.

As to Count II, the referee specifically noted that Kohring and Jordan were very defensive on cross-examination on the issue of the pretrial stipulation and, especially as to Kohring, aggressively attempting to volunteer information outside the questions that were posed to her. In cross-examination Kohring refused to admit that her office made a mistake when they failed to open the pretrial stipulation emailed by Leigh at 5:53 PM on September 5, 2017. (ROR: 7).

Also on cross-examination, Ms. Kohring failed to even entertain the idea that if she had disclosed their mistake to Leigh on September 6, 2017, maybe the issues would have been amicably resolved. The referee found by clear and convincing evidence that Kohring was not candid with Leigh regarding the facts leading to the dispute over the pretrial stipulation and that an opportunity for a good faith resolution was missed as a consequence of Kohring's lack of candor with opposing counsel. (ROR: 7,8).

Also regarding Count II, the *Leigh/Parish-Carter* litigation included a filing in federal court and this was the first case (along with two others) that had been filed by Leigh, with Watson as co-counsel of record. From the testimony presented, the referee found Leigh and Watson admitted that this was their first case of that kind, that they did not have experience in that area of the law. (ROR: 8).

One of the principal issues of Count II of the complaint regarding the *Leigh/Parish-Carter* litigation relates to the sanction order directed against Leigh and Watson, which order concerns actions taken regarding Watson's electronic signature being affixed on a pretrial stipulation and Leigh and Watson's reactions thereto. The bar wants the Court to disapprove the referee's rejection of their argument that the respondent acted in bath faith when the documentary and testimonial evidence at the hearing showed otherwise. As specifically stated by the referee in the ROR, the following facts and findings prove that rules 4-8.4(a) and 4-8.4(d) were not violated in this instance:

1) Sometime after the stipulation was filed by Jordan, Leigh examined the version of the stipulation that she filed and quickly realized it was not the version he had e-mailed to Kohring in that his signature was not on the document, it did not contain the changes he had made, and his

partner's electronic signature had been attached to the document. TFB-Ex. 1. (ROR: 12).

2. The uncontroverted testimony was that Leigh, from his home, reached out to Watson, at her home, to inquire if she had authorized the filing of the stipulation that had in fact been filed. She promptly advised that she had not done so and had not even examined the filed document as of that time. (ROR: 12).

3. By now it is well after normal business hours, Leigh was aware that Kohring had left the office for an anniversary dinner and did not believe he had any alternative but to file a version of the stipulation with his changes. (ROR: 12).

4. Late in the evening of September 5, 2017, Leigh filed his version of the pre-trial stipulation. See TFB-Ex. 2. It is the second pleading that he filed that is the focus of the dispute between the parties. (ROR: 12).

5. From the testimony adduced at trial from Watson and Leigh, they were upset and shocked that an opposing counsel would affix a lawyer's electronic signature to a pleading without having secured permission to do so. (ROR: 13).

The referee found uncontroverted that Kohring did not disclose in any of her communications to Leigh and Watson on September 6, 2017, that her office never opened the version emailed by Leigh at 5:53 PM. The referee also found uncontroverted that the first time Kohring and her office disclosed this mistake was at the hearing held before the Court. (ROR: 14).

Specifically as to Count II, the referee concluded that Leigh and Watson should have at least made inquiry of the other law firm to understand why they affixed Watson's signature prior to making said accusations. I also find that Khoring was not candid with Leigh and Watson by failing to disclose that her office never opened the "final" stipulation sent by Leigh and that this disclosure could have toned down the dispute that was raging between the lawyers. (ROR: 18,19).

Also specifically as to Count II, the referee concluded Leigh's conduct was the combination of lack of experience, unprofessional persistence fueled by emotion, and a level of frustration causing obfuscation. There was a personal element to Leigh in this litigation as the conflict arose from his conduct and the consequences quickly affected students and fellow teachers. (ROR: 18).

The referee rightly concluded that she saw the use of inflammatory language in this isolated instance to be more of a professionalism concern

than a violation of the ethical rules and did not find a violation of the afore-mentioned rules. (ROR:19).

III. In Counts III through VI this Court should uphold referee findings and recommendation

The bar *Stonybrook* litigation was in state court and this was the first case of this nature that had been filed by Leigh, with Watson as co-counsel of record. From the testimony presented before the referee, it is uncontroverted that Leigh and Watson admitted that this was their first case of that kind, that they did not have experience in that area of the law, that Leigh was primary counsel in this case, and that Watson's name was affixed to all pleadings and she was copied on relevant e-mails. (ROR: 19). The referee found all rules charged were violated in counts III through VI. However, the referee specifically found:

1. Both Leigh and Wasserman described in detail the deteriorated conditions of the Stonybrook Apartments including fire damage, roof, and structural damages caused by Hurricane Irma. Wasserman testified as to his unsuccessful efforts to secure legal representation for the residents of Stonybrook Apartments. (ROR: 20,21).

2. Leigh testified that his intention was to only get the ball

rolling on the injunction on a *pro bono* basis to immediately prevent further harm to the residents of Stonybrook and that he never intended to remain counsel of record. (ROR: 21).

3. Both Leigh and Wasserman testified consistently as to the harassment suffered by Leigh and his clients as a consequence of the legal action, namely: Police intervention when Leigh visited the location of Stonybrook Apartments and residents being told that repairs would occur if they terminated Leigh's representation. (ROR: 22).

4. The referee considered Leigh's Ex. 9 through 11 showing his efforts to comply with the mentor requirement imposed by the Court. (ROR: 22).

5. The referee considered Leigh's Ex. 13 and Ex. 17 regarding his efforts to communicate with opposing counsels about the issue he encountered when filing a complaint on or about August 8, 2019. (ROR: 22).

6. Leigh and Wasserman testified as to Leigh's efforts to have clients at Stonybrook Apartments comply with the gag order. (ROR: 23).

7. Leigh testified as to his efforts regarding his social media

compliance with the gag order and explained that he was not aware of the Stonybrook resident's press conference until it was already underway. (ROR: 23).

8. Leigh and Wasserman testified as to positive developments from Leigh's representation in the case, namely several benefits to the residents of Stoneybrook Apartments, including: Section 8 placements, effect of Notices to Cure in regards to government subsidies held payments to Stonybrook, creation of an evacuation plan for the residents, and free medical testing and treatment for some of the children living at Stonybrook Apartments. (ROR: 23-24).

IV. Based on the referee's findings of fact and recommendations, this Court should uphold the referee report under the Standards for Imposing Lawyer Sanctions.

A. applicable standards:

In the preamble to the Florida Standards for Imposing Lawyer Sanctions, this Court has set forth in section 1.1 three objectives for lawyer discipline: Fairness to society both in terms of protecting the public and not denying the public the services of a qualified lawyer as a result of undue harshness in imposing a penalty; judgment must be fair to respondent and at the same time encourage reformation and rehabilitation; and Deter others. See *The Florida Bar v. Lord*, 433 So.2d 983, 986 (Fla. 1983).

Furthermore, in section 2.8 of the preamble it is commented that the Court should be creative and flexible and in some cases consider limiting the lawyer's practice to certain types of cases.

The referee was very clear and precise as to her application of the guidance and spirit of the standards when she commented in the ROR:

"I specifically considered the four questions under Section 1.1 of the Standards for Imposing Lawyer Sanctions before recommending appropriate discipline: Duties violated; the lawyer's mental state; the potential or actual injury caused by the lawyer's misconduct; and the existence of aggravating and mitigating circumstances. I also gave great consideration to the comment under Section 1.1 of the Standards for Imposing Lawyer Sanctions outlining the three objectives for lawyer discipline: Judgment must be fair to society to protect the public but not to deny the public the services of a qualified lawyer; Judgment must be sufficient to punish and at the same encourage reformation and rehabilitation; and deterrence of others." (ROR: 26,27).

B. The aggravating and mitigating circumstances

In addition to the guidance, under the standards mitigation includes any factor that justifies a reduction in the degree of discipline imposed.

As to aggravation, the referee specifically did not find that respondent engaged in a dishonest or selfish motive, Standard 3.2(b)(2), in the Lungaro statement and specifically found respondent represented all clients in both litigations *pro se*. (ROR:28). The referee also did not find refusal to acknowledge the wrongful nature of conduct, Standard 3.2(b)(7), specifically finding that The Florida Bar read into the record dozens of admissions by respondent owning his mistakes and taking responsibility for his conduct in prior proceedings. The referee specifically found that the respondent was emotional, remorseful, and apologetic as to his conduct. (ROR:29).

The referee found that respondent established the following nine mitigating factors by clear and convincing evidence:

Standard 3.3(b(1) (absence of a disciplinary record) – At the time of the first events at issue Leigh was a six-year member of the Bar and is currently a twelve-year member of the Bar with no disciplinary sanction to date.

Standard 3.3(b)(2) (absence of a dishonest or selfish motive) – The referee found credible Leigh's testimony as to his legitimate concerns for his fellow teachers and the residents of Stonybrook Apartments. The referee found that respondent felt passionate and sincere empathy for all

the clients and acted selflessly. The referee also considered the testimony of Wasserman describing the sincere and selfless concern shown by Leigh toward the residents as proven by Leigh's numerous visits to the Stonybrook Apartments and the adversities he suffered during some of these visits. (ROR:30)

Standard 3.3(b)(3) (personal or emotional problems) – The referee found Leigh's initial testimony about his upbringing and personal struggles in life to be emotional, candid, and compelling. Leigh's personal testimony in this Court's opinion shed light on his personality traits and provided the Court with relevant insight as to Leigh's personal drive and passions. Specifically, the Court noted that Leigh grew up in a military family confronting the unusual challenges of constant uprooting from their communities and the absence of a father due to military duties. The Court also noted Leigh's testimony as to enduring emotional and physical abuse by his mother, which resulted in his leaving his home and family at the young age of thirteen. Leigh's testimony regarding his early adulthood also left an impression on this Court, specifically: That Leigh had a devastating car accident that derailed his plan to be an athlete in Europe, his rehabilitation and loss of reading skills as a result of the accident, the circumstances of the murder of his girlfriend, the death of the mother of his

young child, and two heart attacks – all endured by Leigh before reaching the age of thirty. The Court also notes that, as a result of the car accident, Leigh suffered from an undetected cyst that exploded in his head a decade later which developed into a brain tumor, required surgery. The above-mentioned personal struggles, and their influence shaping Leigh's personal traits and character, both positive and negative, were important considerations to the referee's resolution and were established by clear and convincing evidence. The Court found particularly compelling that, considering Leigh's life challenges, he was able to muster the discipline and drive to fulfill his dream of becoming an attorney at a later stage in life.

Standard 3.3(b)(5) (cooperative attitude towards the proceeding). The evidence presented to the Court is that Leigh participated in good faith at all stages of the investigation. Leigh testified as to his many communications with prior bar counsel assigned to the case.

Standard 3.3(b)(6) (inexperience in the practice of law). The referee saw Leigh as a young lawyer, who at the time of the initial events in question had been admitted approximately six and seven years when he became involved in the Palm Beach County Schools and Stonybrook litigations respectively. Leigh and his partner were doing their first litigation

in these new areas of the law. The referee found that Leigh's conduct was, in part, due to lack of experience.

Standard 3.3(b)(7) (character or reputation). The referee heard from two character reference witnesses (former clients Jess Manger and Dr. Anubha Agarwal.) and each of these witnesses presented compelling evidence about Leigh's otherwise exemplary character. Their opinions were based on their personal observations of Leigh through their representations.

Standard 3.3(b)(9) (unreasonable delay in the disciplinary process) warrants discussion. At the time of trial in August of this year the grievances had been pending against Leigh for almost six and three years respectively. No evidence presented that Leigh has caused any delay whatsoever in this matter. The referee found that Leigh responded promptly and by admitting to Minor Misconduct, tried to resolve the cases. She also found a large delay between the probable cause finding and the filing of a formal complaint, wherein Bar counsel simply explained the Bar was still investigating without explaining more or providing evidence of same.

The referee also considered the case law presented to her on the delay issue. See *Fla. Bar v. Alters*, 260 So. 3d 72 (Fla. 2018) (3-year delay

with some of the delay attributable to Alters); *Fla. Bar v. Varner*, 992 So. 2d 224 (Fla. 2008) (4-year delay and Varner petitioned the court for extensions of time) and *Fla. Bar v. Wolf*, 930 So. 2d 574 (Fla. 2006) (2-year delay accepted as a mitigating factor). In *Wolf*, the Court specifically found the delay to be mitigating on these facts:

> The check to Wolf's client bounced in October 2001. In May 2003, the Bar sent Wolf a letter seeking the production of certain documents. In August 2003, the Bar auditor completed a written report regarding the audits of Wolf's operating and trust accounts for various periods from January 2001 through December 2002. Nevertheless, the Bar did not file a complaint with the Court until July 2004. At that point, the Bar's complaint stated that Wolf had already been cooperating with the Bar. Thus, even though Wolf cooperated, his case was delayed for an extensive and detrimental period before the Bar filed the complaint. In light of Wolf's cooperation and his efforts to timely resolve the instant matters, *the Bar's unexplained delay in pursuing this case is a significant factor that affects the disciplinary sanction. Id.* at 579-579 (*emphasis added).*

The referee found *Wolf* to be more persuasive herein. As such she found Standard 3.3(b)(9) applies herein but understand the Bar's argument about demonstrable harm (no witness was unavailable due to the delay but having this matter open for six years is unconscionable and not a diligent

prosecution by the Bar). Also see *Fla. Bar v. Rubin*, 362 So. 2d. 12 (Fla. 1978). (ROR:34).

Standard 3.3(b)(10) [interim rehabilitation]. The uncontroverted testimony is that Leigh has practiced ethically since the last events in 2020. Leigh testified that he only practices in his areas of competence and that Watson became the managing partner in the current version of their law firm and that is a substantial change from 2017. (ROR:34).

Standard 3.3(b)(12) (remorse). Leigh provided emotional testimony as to remorse and his desire to abide by the rules and any conditions mandated by this Court. (ROR:35).

A referee's findings on mitigation and aggravation are treated essentially like any other finding of fact and carry a presumption of correctness that should be upheld unless clearly erroneous or without support in the record. See *The Florida Bar v. Summers*, 728 So. 2d 739, 741 (Fla. 1999). See also *The Florida Bar v. Wolis*, 783 So. 2d 1057, 1059 (Fla. 2001); *The Florida Bar v. Hecker*, 475 So. 2d 1240, 1242 (Fla. 1985); *The Florida Bar v. Arcis*, 848 So. 2d 296, 299 (Fla. 2003); and *The Florida Bar v. Germain*, 957 So. 2d 613, 621 (Fla. 2007). In the case before the Court, the referee found specific facts of overwhelming mitigation, all supported by the record.

CONCLUSION

In considering all of the evidence in this proceeding, the referee recommended to the Florida Supreme Court a 91-day suspension followed by a 2-year probation, and that Leigh attends a practice and professionalism enhancement program. Also, as a condition of reinstatement, Respondent must pay all fees and costs imposed in any and all cases, and successfully complete the following practice and professionalism enhancement programs to be completed as a condition to filing for reinstatement:

A. The Florida Bar's Professionalism Workshop; and

B. The Florida Bar's Ethics School.

The referee was in the best position to review the evidence and to assess the credibility of the witnesses who testified in six days of trial. The Referee rejected the bar's recommendation of disbarment based on the actual facts of this case, finding that "I see a young lawyer, who at the time of the events in question had been admitted approximately seven years when he became involved in the Stonybrook litigation. Leigh and his partner were doing their first litigation in this new areas of the law. I find that Leigh's conduct regarding Counts III through VI was the combination of lack of experience, unprofessional persistence fueled by emotion, and a

level of frustration causing obfuscation. This finding is further reinforced by the fact that it is uncontroverted that Leigh has practiced in the areas of Family and Dependency competently and ethically for almost a decade." (ROR: 25).

The referee's recommendation provides a pathway for respondent, who has no disciplinary history, to rehabilitate himself and potentially return to the practice of law as he has returned to accomplishing his lifegoals amid many adversities. The referee found "Leigh's initial testimony about his upbringing and personal struggles in life to be emotional, candid, and compelling. Leigh's personal testimony in this Court's opinion shed light on his personality traits and provided the Court with relevant insight as to Leigh's personal drive and passions. Specifically, the Court notes that Leigh grew up in a military family confronting the unusual challenges of constant uprooting from their communities and the absence of a father due to military duties. The Court also notes Leigh's testimony as to enduring emotional and physical abuse by his mother, which resulted in his leaving his home and family at the young age of thirteen. Leigh's testimony regarding his early adulthood also left an impression on this Court, specifically: That Leigh had a devastating car accident that derailed his plan to be an athlete in Europe, his rehabilitation and loss of reading skills

as a result of the accident, the circumstances of the murder of his girlfriend, the death of the mother of his young child, and two heart attacks – all endured by Leigh before reaching the age of thirty. The Court also notes that, as a result of the car accident, Leigh suffered from an undetected cyst that exploded in his head a decade later which developed into a brain tumor, required surgery. The above-mentioned personal struggles, and their influence shaping Leigh's personal traits and character, both positive and negative, are important considerations to my resolution and were established by clear and convincing evidence. This Court finds particularly compelling that, considering Leigh's life challenges, he was able to muster the discipline and drive to fulfill his dream of becoming an attorney at a later stage in life." (ROR:30,31,32)

In the case before the Court, the referee found specific facts of overwhelming mitigation, all supported by the record.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail only to: Linda Ivelisse Gonzalez, Bar Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, FL 33323 (lgonzalez@floridabar.org; esanchez@ floridabar.org); Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300 (psavitz@floridabar.org), and to Juan Carlos Arias, Counsel for Respondent (jcarias@jcalawyer.com, pleading@jcalawyer.com) this 29TH day of March 2024.

Juan Carlos Arias, Esq

Juan Carlos Arias, Esq.
Counsel for Respondent

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