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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MALIK LEIGH,

Respondent.

_____/

Supreme Court Case No. SC23-0518

The Florida Bar File No.
2017-50,987 (15F)
2018-50,286 (15F)
2020-50,322 (15C)

INITIAL BRIEF

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PRELIMINARY STATEMENT

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

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

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

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

NATURE OF THE CASE

This bar disciplinary case arises out of several judicial referrals by presiding judges in various litigation initiated by Mr. Leigh. These judicial referrals led to a six-count complaint filed by the bar against Mr. Leigh, as well as a one-count complaint filed by the bar against Mr. Leigh's law

partner, Danielle Watson, in *The Florida Bar v. Watson*, SC2023-0416 (Fla. 2024).

Count I of the bar's complaint addresses Mr. Leigh's social media activity, which included postings that created a reasonable fear held by members of a school district and necessitated a protective order regarding depositions to be taken by Mr. Leigh. Count II of the bar's complaint addresses Mr. Leigh's false accusations against opposing counsel in that same litigation accusing her of committing criminal forgery on a pretrial stipulation. Counts III through VI of the bar's complaint address various misconduct by Mr. Leigh in toxic tort litigation against owners and property managers of an apartment complex, as well as the City of Riviera Beach. Mr. Leigh's conduct during this litigation demonstrated a gross lack of competence, a refusal to file a complaint without scandalous and impertinent content, deceitful conduct by Mr. Leigh in unlawfully procuring the sworn statement of a defendant employee, and false allegations of racial bias directed toward the presiding judge.

Based on the misconduct at issue, the bar seeks rejection of the referee's proposed 91-day suspension and instead seeks disbarment.

STATEMENT OF THE CASE AND FACTS

I. Mr. Leigh's inflammatory, disparaging, and sometimes threatening postings on social media at issue in Count I of the bar's complaint:

At issue in Count I of the bar's complaint was Mr. Leigh's inflammatory, disparaging, and sometimes threatening statements on social media regarding various witnesses and defendants in ongoing litigation. Mr. Leigh filed a federal lawsuit on his own behalf against the Palm Beach County School District and various individual defendants associated with the school district. He also represented Loretta Parish-Carter and Raquel Abrams-Jackson in their respective lawsuits against the school district and many of the same individual defendants. All three cases were filed in the United States District Court, Southern District of Florida, and all three cases alleged that the defendants engaged in employment discrimination against the plaintiffs.

For an approximate period of one year—spanning from before these cases were filed in federal court and continuing after initiation of the three lawsuits—Mr. Leigh frequently wrote social media posts using an account associated with his law firm and a separate account identifying Mr. Leigh as a lawyer. (See generally TFB-Ex.20). Some of the social media postings at issue were directly related to the ongoing litigation, while other postings

were not. Many became the subject of multiple orders entered by the federal court and partly led to the bar complaint at issue. (See TFB-Ex.23-26). The federal court accurately summarized the content of these posts as follows:

> All of the social media posts are public. Many of the posts are directly related to this litigation. A few of the posts, although not directly related to this litigation, have violent or morbid themes that provide context to certain other litigation-related posts which raised legitimate safety concerns in this litigation.

(TFB-Ex.25, pg.6).

This brief will first address the litigation related posts. On May 26, 2016, Mr. Leigh posted that he had "checked in" at the School District of Palm Beach County building and wrote, "Hahahhaha……totally trolling!" (TFB-Ex.20, pg.31). In a letter to the bar, he explained that he was previously given a no-trespassing notice by the school district, so he "checked in on Facebook" in response. (TFB-Ex.31). On June 17, 2016, Mr. Leigh posted that an assistant principal who allegedly forced teachers to change grades was attempting to flee the country before an upcoming hearing even though she had been subpoenaed. (TFB-Ex.20, pg.20). The posting ends by stating, "JAIL DEAR…..YOU ARE GOING TO JAIL!" *Id*. On June 21, 2016, Mr. Leigh claimed that a school principal misused her school district's e-mail to advertise her jewelry for sale, which was known to

the school district but covered up without action taken against the principal. (TFB-Ex.20, pg.25). Mr. Leigh knew his social media postings were public and not private, as he stated, “Cmon District….I know you read these posts…..JOO GOT SUM ‘SPLAININ TO DO! (Equal Protection ~ unfair, unequal treatment).” *Id*. He further advised the district to accept his settlement offer and ended the post as follows: “Malik Leigh, Esq. <---- (that Esq. thing means, I know what I’m doing here!” *Id*.

On August 19, 2016, Mr. Leigh posted, “[s]ee, trying to remove me from the school wasn’t going to prevent me from getting the info you don’t want me to know! I’LL STILL FIND OUT!!!” (TFB-Ex.20, pg.23). Later the same day, he posted, “I wonder how the PBCSD is going to explain their area superintendents lying about Doctorates or Covering up testing fraud?! ooooooohhhhhh!!” (TFB-Ex.20, pg.24). On August 26, 2016, he posted, “Exposing the Palm Beach County School District will be like Making A Murder. Wish we had a film crew!” (TFB-Ex.20, pg.29). The federal court later found that the use of the word “murder” in relation to the litigation “showed extremely poor judgment at best, and constituted a veiled threat or reference to future violence at worst.” (TFB-Ex.25, pg.20).

On September 24, 2016, Mr. Leigh posted an article critical of a superintendent and wrote, “For teachers in Palm Beach

County…understand that your rights as teachers are in THIS guy's hands. And while Charlotte-Macklenberg schools are ridiculously segregated as they were in the Brown days, the 'change' you swear by isn't what you think." (TFB-Ex.20, pg.26). Again on December 5, 2016, Mr. Leigh suggested this superintendent, who was also a defendant, was a Ku Klux Klan member who resegregated a school district. (TFB-Ex.20, pg.32).

On February 15, 2017, Mr. Leigh posted that Elvis Epps was the interim principal of Lake Worth High School and a "Civil Rights violating principal." (TFB-Ex.20, pg.27). He encouraged parents with students to contact him about becoming a part of a discrimination lawsuit, and he referred to the Palm Beach County School District as "Robert Avossa's insanely corrupt school district." *Id*.

On May 26, 2017, Mr. Leigh posted that he and his colleague will be deposing Cheryl McKeever "about all that Bullshit about my so-called wholly inappropriate exam…and how much money she's stolen from the schools." (TFB-Ex.20, pg.7). The same post further stated that he will also depose "Darron Davis about his lying ass," "Elvis Epps about trapping kids in a room And forcing himself into locked cell phones without parents permission," "Robert Avossa about lying on TV about me. . . . And generally why he said racist shit to me at a table full of people," and "Marcia

Andrews. . . [regarding] her amazing affidavit detailing how the district retaliate on people." (TFB-Ex.20, pg.7). All of these individuals were named defendants in his lawsuit with the exception of Marcia Andrews. At a hearing in the federal case, Mr. Leigh stated that his word choice in disparaging and humiliating these people could have been better, but he was emotional. (TFB-Ex.23, pg.36-37).

On May 28, 2017, Mr. Leigh posted a picture of himself and stated in part, "After this round if [sic] depos in the next 2 weeks, would love to start a shooting campaign." (TFB-Ex.20, pg.3). At a hearing in the federal case, Mr. Leigh acknowledged that people who did not know him might believe he was referencing the use of firearms, but he was referencing his interest in photography. (TFB-Ex.23, pg.38-40). He initially admitted that a person reading this posting would—more likely than not—believe Mr. Leigh was referencing guns. *Id*. He then changed his mind and stated that he did not believe people would make this reference. (TFB-Ex.23, pg.41). In a letter to the bar, Mr. Leigh stated that "never in a million years" did he think anyone would believe he was referencing the use of a gun or other weapon. (TFB-Ex.31). This was also his testimony at the disciplinary hearing, during which he stated that his reference to a shooting campaign was "clear on its face what it is and what it means." (T:758).

The same day he posted on social media about starting a "shooting campaign," he also posted, "GOT me in here SMASHING this school board person that investigated me" and "tmrw I get to depose the MFing Superintendent." (TFB-Ex.20, pg.9-10). He stated in a letter to the bar that his language was "absolutely out of bounds" but he was only supplying emphasis rather than disparaging anyone. (TFB-Ex.31). He then posted, "So, who gets testimony proving Camille Coleman is a LIAR…and proved that the teachers contracts are based upon a lie? WE DO!" (TFB-Ex.20, pg.11). He also admitted that this post "was out of bounds," though this time he did not offer a similar claim that he was only supplying emphasis rather than disparaging anyone. (TFB-Ex.31). He later stated that his outbursts were nothing more than "stupid trolling comments" against individuals in "a school district that practices education segregation" and who admitted to lying about Mr. Leigh and the plaintiffs he represented during their depositions. (TFB-Ex.31).

On May 31, 2017, Mr. Leigh took the deposition of one of the defendants, Elvis Epps. (TFB-Ex.21). Counsel for the school district terminated the deposition early, stating that school police had just learned about a social media posting by Mr. Leigh referencing a "shooting campaign." (TFB-Ex.21, pg.7-8). Mr. Leigh confirmed that he wrote this

post, claimed that he was referencing his interest in photography, and stated his belief that this was a ploy to prevent him from taking depositions. (TFB-Ex.21, pg.10-11). On that same day, presumably after the deposition had been terminated, Mr. Leigh posted, “They claim that I’m going to shoot up the school or something because of this pic. maybe they didn’t see my personal website. really?” (TFB-Ex.20, pg.12). In a subsequent posting on that same day, he stated that the district police are supposedly investigating him and that “they will try anything.” (TFB-Ex.20, pg.13). The federal court later held that Mr. Leigh knew or should have known that his reference to a “shooting campaign” after two weeks of depositions “would reasonably and naturally be perceived as a threat of violence.” (TFB-Ex.25, pg.16). At the disciplinary proceeding, Mr. Leigh claimed that neither opposing counsel nor the witnesses had a reasonable and natural fear stemming from his implicit threats of violence, and the termination of the deposition was a staged production. (T:754).

While the federal court found that the above posts directly related to the litigation are unprofessional, disparaging, and objectively threatening by themselves, the court did not view these posts in a vacuum. (See generally TFB-Ex.24-26). The court instead viewed them in the broader context of some of Mr. Leigh’s other social media postings unrelated to the pending

litigation. (See TFB-Ex.25, pg.8-11). Of particular significance was a posting dated February 12, 2017, which begins as follows:

> If I was allowed to write the obituary for that worthless piece of shit former AP Government teacher of mine who died this week of the greatest cancer God ever created, it would be similar to this story.

(TFB-Ex.20, pg.33). The content that follows should be reviewed by this Court. The referee noted at hearing that she found the content of the post so concerning that she made sure her address was exempt from public disclosure after she read it. (T:932-33). The post is a morbid rant graphically describing the mutilations Mr. Leigh fantasized would be inflicted upon the dead body of his former teacher. See *id*. It states that Mr. Leigh hopes that "every job she's ever had blows up" and that "her old college buildings implodes [sic] from a bad water tank." *Id*. It further expressed his desire that those who remembered the teacher would suffer amnesia so that she is immediately forgotten and for there to be no remaining record of her existence on earth. See *id*. In a letter to the bar, Mr. Leigh referred to this post as "funny but graphic," he claimed that his former high school teacher was a racist, he had the option to "be the bigger man, or not" and chose the latter. (TFB-Ex.31).

Though this was the most graphic post by Mr. Leigh, it was not the only one fantasizing about committing violence or harm otherwise befalling

others. On February 4, 2017, Mr. Leigh posted a screenshot from a movie in which the character is firing a submachine gun. (TFB-Ex.20, pg.34). The image is prefaced by the caption, “Me the next time im in front of the #Liverpool back line!!” *Id*. On February 11, 2017, Mr. Leigh posted that he “can’t hate the US and it’s people more right now” and that the country needed “a mass extinction event right now!” (TFB-Ex.20, pg.28). He later explained in a letter to the bar that the posts were hyperbolic responses expressing his dissatisfaction with the outcome of a soccer game and the country’s immigration policy, respectively. (TFB-Ex.31). On May 12, 2017, he posted the hashtag, “#MomIn5Words” and wrote, “I wish mine would Die!” (TFB-Ex.20, pg.30). He later explained to the bar that his mother was abusive and attempted to murder his sisters. (TFB-Ex.31).

In his letter to the bar providing the underlying context absent from his social media postings, Mr. Leigh stated his position that “the logical thing to do would be to ask me what I meant instead of telling me what I said.” (TFB-Ex.31). Continuing with his position that he should be judged on his self-proclaimed intentions rather than objectively judged by his written words, he later reiterated that he “should not be penalized for [his social media postings] absent anyone asking me what I meant.” (TFB-Ex.31). The presiding judges in the federal cases repeatedly asked him

what he meant at a hearing on July 13, 2017. (See generally TFB-Ex.23). Despite this fact, Mr. Leigh maintained at his disciplinary hearing that the judges should have just asked him what he meant rather than telling him that he did something. (T:776-77).

The federal court issued a lengthy written order finding good cause for the defendants' actions in cancelling depositions based on safety concerns and granted a motion for a protective order requiring that future depositions be held in a secure location with a police officer present. (TFB-Ex.25, pg.12). In a letter to the bar, Mr. Leigh disputed this finding of a legitimate safety concern and claimed that the school district had purposefully taken his posts "not directed to them or anyone, and using it to bias a judge." (TFB-Ex.31). He maintained in a follow-up letter in response to his bar complaint that "[m]uch of this was to gain an advantage in a highly publicized and nationally followed case. Sadly, I took the bait." (TFB-Ex.32).

The federal court also found that these posts were prejudicial to the administration of justice, because they "unnecessarily complicated, delayed and interfered with the discovery process in these two pending federal civil cases, as well as with the Court's Scheduling Orders." (TFB-Ex.25, pg.14). In addition to Mr. Leigh's conduct complicating and delaying discovery, the

Court found that Mr. Leigh's postings "make it seem as if he is treating these cases, at least in part, as a game and that he wants to inconvenience and embarrass the Defendants and witnesses, such as Ms. Andrews, to the greatest extent possible." (TFB-Ex.25, pg.19). Mr. Leigh's letter to the bar stated that he was "proud to make people angry" by fighting for the rights of others, and the presiding judges in his federal cases were holding him to a subjective standard of behavior "because my everyday speech is not like the Judges', culturally or otherwise." (TFB-Ex.31). He also stated that in the absence of a total ban on the use of social media by all attorneys in Florida, "anything we say, if we choose to make it mean one thing or the other, can be used against us and depending upon who complains, we have no defense." (TFB-Ex.31).

The federal court awarded fees and costs to the defendants in the amount of $1,744.38. (TFB-Ex.28, pg.3). Later, the matter was referred to the Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance, and this committee suspended Mr. Leigh from practicing in the district court for a period of two years. (TFB-Ex.29). As a condition to reinstatement, the committee also required Mr. Leigh to complete a three-hour professionalism course, a three-hour ethics course, obtain a mentor approved by the court for a minimum of three months, and take a course on

responsible social media posting. *Id*. Mr. Leigh has not completed any of the above because he does not intend to practice in federal court. (T:901).

Consistent with the findings by the federal court, the referee found that the overall effect of the social media postings "reasonably caused fear on readers and precipitated the safety actions taken by employees of the Palm Beach County School District." (ROR:7). At hearing, the referee noted Mr. Leigh's pattern of using ambiguous wording as an excuse to avoid culpability for posting threatening content. (T:921). But the report of referee omits any description of the actual content of the social media postings summarized above. In fact, the report states that the operative exhibits regarding Count I are primarily found at TFB-Ex.1 through TFB-Ex.17. (ROR:5). But none of those exhibits relate to Count I of the bar's complaint, and instead are summarized *infra* because they exclusively relate to Count II. Though the referee found that Mr. Leigh's conduct violated the bar rules at issue in Count I, the referee attributed the misconduct to "the combination of lack of experience, unprofessional persistence fueled by emotion, and a level of frustration causing obfuscation." (ROR:18). This language is used three times in the report of referee to downplay the entirety of Mr. Leigh's pattern of misconduct at issue in the six-count complaint. (See ROR:18, 19, 25-26).

II. Mr. Leigh's false statements accusing opposing counsel of forging another lawyer's e-signature on a joint pretrial stipulation at issue in Count II of the bar's complaint:

In Count II of the bar's complaint, the bar alleged that Mr. Leigh violated multiple bar rules in filing a joint pretrial stipulation. (Tab#1). As stated *supra*, Mr. Leigh represented plaintiff Loretta Parish-Carter in litigation against the Palm Beach County School District and various individual defendants associated with the school district. Attorney Lisa Kohring and paralegal Ana Jordan represented the school district and engaged in back-and-forth e-mails with Mr. Leigh and his partner, Danielle Watson, regarding the filing of a joint pretrial stipulation. (See generally TFB-Ex.3). On August 24, 2017, Ms. Jordan enclosed a draft stipulation and, six days later, Ms. Kohring asked Mr. Leigh and Ms. Watson to review and provide comments because "all sides may need to confer on Friday before submission to the Court on Tuesday." (TFB-Ex.3, pg.7-9).

On September 5, 2017, Ms. Kohring sent Mr. Leigh and Ms. Watson an e-mail stating that she had not received comments to the draft pretrial stipulation. (TFB-Ex.3, pg.11). After receiving a draft from Mr. Leigh later that morning, Ms. Kohring noted that this was not a working draft from the revised draft previously sent by her, many portions of the stipulation remained incomplete, some of the stipulation contained inappropriate

content, and she tried calling Mr. Leigh and Ms. Watson twice that morning to resolve the matter but could not reach either of them. (TFB-Ex.3, pg.15). Mr. Leigh disagreed with these claims in an e-mail response, so Ms. Kohring asked that his firm call her to clear up any confusion. (TFB-Ex.3, pg.17).

At 5:13 p.m., Ms. Kohring sent an e-mail referencing their discussions, noted a few minor changes she added, and asked Mr. Leigh to "[p]lease confirm [so] we can affix your signature and file now." (TFB-Ex.3, pg.18). Minutes later, she sent a correction e-mail explaining she attached the wrong version of the stipulation to the e-mail, and she later sent a follow-up e-mail to ensure Mr. Leigh reviewed the correct version. (TFB-Ex.3, pg.18-19). At 5:53 p.m., Mr. Leigh sent an e-mail with an attachment which stated, "Pre trial Stipulation to sign and file." (TFB-Ex.3, pg.21). Due to the absence of any issues or concerns raised in this e-mail, Ms. Kohring and Ms. Jordan mistakenly believed Mr. Leigh had simply signed the pretrial stipulation without changes. (TFB-Ex.14, pg.25, 27-28). At a hearing on competing motions regarding this issue, Ms. Kohring testified to her belief that she was authorized to file the pretrial stipulation and "at the most, I think it was a mistake on my part and/or a miscommunication on his part which could have easily been resolved if he would have simply just

called me or emailed me and said you filed the wrong joint pretrial stipulation." *Id*.

Ms. Jordan filed the version sent to Mr. Leigh at 5:20 p.m. and 5:35 p.m., adding Ms. Kohring's and Ms. Watson's electronic signatures. (TFB-Ex.1; TFB-Ex.14, pg.31). This led to Mr. Leigh's filing of a Joint Pretrial Stipulation Addendum, which claimed that Ms. Kohring had not only filed the wrong stipulation, but she forged Ms. Watson's electronic signature and filed it. (TFB-Ex.2, pg.22). He filed this addendum with the "correct" Joint Pretrial Stipulation. (TFB-Ex.2, pg.1-21). At the disciplinary hearing, Mr. Leigh testified that "to this day" he believes this is what "we were supposed to do." (T:724).

The accusations leveled by Mr. Leigh against Ms. Kohring prompted her e-mail to him the following day. She explained the drafts that went back and forth leading to her firm's filing of the stipulation, noted that he waited until the afternoon of the due date to offer any comments on the stipulation, and she stayed late despite a preplanned anniversary dinner because Mr. Leigh was still reviewing the pretrial stipulation at 5:15 p.m. (TFB-Ex.4, pg.67). She asked him to immediately withdraw his defamatory pleading. *Id*. Later that afternoon, she sent a follow-up e-mail explaining that she had called him twice without response to resolve the matter and

would now be filing an appropriate motion to address his defamatory statements. (TFB-Ex.4, pg.68). Mr. Leigh finally responded that he called the U.S. Marshals Service to report her commission of a third-degree felony in forging a pleading. *Id*. At a hearing in the federal case, Ms. Watson explained that she and Mr. Leigh called the Palm Beach County Sheriff's Office as well. (TFB-Ex.14, pg.54). Further, Mr. Leigh also spoke with different state attorneys. (TFB-Ex.14, pg.55). Despite Mr. Leigh's admissions that he contacted law enforcement, Mr. Leigh stated at the disciplinary hearing that Ms. Kohring overreacted and wrongly interpreted his e-mail to mean that he had called law enforcement to report her for criminal conduct. (T:745).

On September 7, 2017, Ms. Kohring filed a motion for sanctions. (TFB-Ex.3). It explains the circumstances regarding the filing of the pretrial stipulation and accurately stated that Mr. Leigh made no effort to confer on the matter before accusing Ms. Kohring of intentional misconduct in a public filing. *Id*. Mr. Leigh filed a competing motion to strike and motion for contempt on the same day. (TFB-Ex.4). The motion notes that the only changes made by Mr. Leigh which were not incorporated into the stipulation Ms. Kohring's office filed were "a few objection language edits." (TFB-Ex.4, pg.2). The motion alleges that Ms. Kohring's actions were "an

attempt to deny the Plaintiff's valid Objections" and that Ms. Watson has called the U.S. Marshals Service regarding "the felonious nature of fraud and forgery." (TFB-Ex.4, pg.4-5).

Due to a pending motion for summary judgment, the federal court initially denied Ms. Kohring's motion without prejudice. (See TFB-Ex.5). Ms. Kohring prevailed on summary judgment and thereafter filed a renewed motion to strike. *Id*. The renewed motion notes that the only substantive discrepancy between the stipulation filed by Ms. Kohring and the stipulation filed by Mr. Leigh is that the latter includes the basis of the plaintiff's objections to some of the defendant's exhibits. (TFB-Ex.5, pg.3). The motion further argues that this minor discrepancy should have been resolved with a conferral rather than through defamatory filings. *Id*. A comparison between the two stipulations confirms the accuracy of this statement, though Mr. Leigh's version of the stipulation also omits Ms. Kohring's lack of foundation objection to "Medical diagnosis and Statements" identified in Schedule A as Plaintiff's Exhibit 15. (Compare TFB-Ex.1, pg.16 & TFB-Ex.2, pg.17).

In response, Mr. Leigh filed a renewed motion to strike and motion for contempt. (TFB-Ex.6). On September 22, 2017, Mr. Leigh filed a response to Ms. Kohring's renewed motion to strike and again accused Ms. Kohring

of attempting to mislead the court. (TFB-Ex.8). The response additionally alleged that Ms. Kohring was exploiting his prior sanction for his social media postings as "license to forge pleadings, communicate unprofessionally, and try to bias third parties involved in this case, and it is working." (TFB-Ex.8, pg.9). The response concludes by asking the court to refer the matter to The Florida Bar, and that Ms. Watson has already submitted a bar grievance against Ms. Kohring. (TFB-Ex.8, pg.10). Ms. Watson later filed a supplemental response accusing Ms. Kohring of engaging in an "attempt to promote bias from the Court, to silence Plaintiff's attorneys, and hamstring their prosecution and advocacy for their client in this case." (TFB-Ex.9, pg.1-2).

At a two and a half hour hearing on the competing motions, the court heard testimony from the lawyers. Ms. Watson testified that she did not speak with Ms. Kohring before contacting law enforcement agencies, she should have done so if she felt so strongly that a forgery had happened, and she did not have a good answer as to why she did not call Ms. Kohring first, or at any point. (TFB-Ex.14, pg.56-57). She also testified that she and Mr. Leigh filed a bar complaint against Ms. Kohring. (TFB-Ex.14, pg.67). Mr. Leigh admitted in his testimony that the differences between the competing stipulations were "relatively benign," though he later claimed

during the disciplinary hearing that the changes were substantive, and he misspoke at the hearing. (Compare TFB-Ex.14, pg.78 & T:737-41). Mr. Leigh then testified that he escalated the matter by contacting law enforcement agencies and filing a bar complaint rather than calling opposing counsel first because he believed he was accused of threatening defendants without anyone first contacting him. (TFB-Ex.14, pg.84). He also blamed other lawyers who allegedly advised him to contact law enforcement. (TFB-Ex.14, pg.85). Mr. Leigh then stated that he did not call Ms. Kohring because he probably would not have been able to reach her immediately anyway. (TFB-Ex.14, pg.90).

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

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

(TFB-Ex.12, pg.2). The federal court then notes the multiple actions taken by Mr. Leigh and Ms. Watson in furtherance of their claims that Ms. Kohring committed a forgery, namely the pursuit of criminal charges and filing of a bar complaint. (TFB-Ex.12, pg.2-3). Mr. Leigh never called Ms. Kohring, and the federal court found that Ms. Kohring "acted honestly, professionally, and fairly" in attempting to resolve the matter. *Id*. The differences between the two stipulations were "miniscule," "trivial at best," "amounted to no real prejudice to Plaintiff," and should have been resolved with a telephone call or a motion for extension of time. (TFB-Ex.12, pg.4). The court rejected Mr. Leigh's assertions that the affixing of Ms. Watson's signature was tantamount to fraud. Instead, the order found that affixing an electronic signature to a joint filing was "a commonplace, everyday matter" and "without any significance." (TFB-Ex.12, pg.4-5).

Further, the federal court found Mr. Leigh provided false testimony that he does not participate in such practice, because filings in companion cases contained his electronic signature. (TFB-Ex.12, pg.5-6; see also TFB-Ex.13; TFB-Ex.14, pg.77). Confusingly, Mr. Leigh continued to claim at the disciplinary hearing that he does not affix his electronic signature to documents and he "absolutely refuse[s]" to engage in that practice, but apparently it was done on other filings without his specific approval.

(T:711-12, 716-18). The court awarded attorney's fees to Ms. Kohring and referred the matter to The Florida Bar. (TFB-Ex.12, pg.7-8).

In a December 12, 2017 letter to the bar, Mr. Leigh maintained that he did nothing wrong, everything was misinterpreted by the federal court to the benefit of opposing counsel, and the adverse orders and referrals to the bar demonstrated extreme prejudice toward him. (TFB-Ex.18). The bar charged Mr. Leigh with violating Rules 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct); and 4-8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice). (Tab#1, pg.19). The referee concluded that Mr. Leigh's conduct was "more of a professionalism concern than a violation of the ethical rules" and determined he did not violate the rules charged in Count II. (ROR:18-19).

In reaching this holding, the referee implicitly rejected the federal court's finding that Ms. Kohring "acted honestly, professionally, and fairly" (See TFB-Ex.12, pg.3) and instead seemingly held her partially responsible for the misconduct at issue in Count II. (See ROR:7-8, 13-14).

III. Mr. Leigh's pattern of misconduct in a class action lawsuit filed against various owners and property managers of an apartment complex at issue in Counts III through VI of the bar's complaint:

A. In Count III of the bar's complaint, Mr. Leigh filed lengthy complaints with scandalous and impertinent content, made extrajudicial statements disparaging defendants, and repeatedly disobeyed court orders.

In Count III of the bar's complaint, the bar alleged that Mr. Leigh demonstrated a lack of competence and a complete disregard of court orders, including a gag order, in a toxic tort action. (Tab#1). Specifically, on July 31, 2018, Mr. Leigh filed an ex parte emergency motion for preliminary injunction in the 15th Judicial Circuit in and for Palm Beach County, Florida. (TFB-Ex.33). The motion alleged that an apartment complex called Stonybrook was a "privately owned apartment complex that is being maintained as a slum, and operated, in many respects as a prison." *Id*. The motion alleged that the living conditions are hazardous and the residents are experiencing health problems as a result of black mold and asbestos. *Id*. As relief, the motion sought an order requiring the defendants to pay for alternative accommodations for the residents of Stonybrook into nearby hotels. *Id*.

On August 3, 2018, the circuit court denied the motion as procedurally deficient because it did not allege matters entitled to be heard on an emergency or expedited basis. (TFB-Ex.34). The order further

advised Mr. Leigh that he could set a motion for hearing after service of process and notice of the scheduled hearing on the defendants. (TFB-Ex.34).

Mr. Leigh did not serve process on the defendants in response to this order. Instead, on August 10, 2018, he filed a Notice of Hearing setting the previously denied motion for a half day hearing. (TFB-Ex.35). Shortly later, Mr. Leigh filed an amended ex parte emergency motion which slightly changed the caption and certificate of service, but otherwise contained the same deficient content as the original motion. (TFB-Ex.36). The circuit court denied the amended motion on August 29, 2018 in a detailed order. (TFB-Ex.37). Specifically, the circuit court held that the facts pled in the ex parte motion did not warrant temporary injunctive relief under Fla. R. Civ. P. 1.610 because the motion (1) was unverified and unsupported by any affidavit; (2) failed to include any certification in writing of any efforts made to give notice and the reasons why notice should not be required; and (3) failed to demonstrate any clear legal right or claims in which the plaintiffs have a substantial likelihood of success on the merits. *Id*. The order further advised Mr. Leigh to cure the deficiencies in his filing within ten days, serve all defendants, and then seek non-emergency, non-ex parte relief in the ordinary course of business. *Id*.

On September 14, 2018, counsel for Millenia Housing Mgmt., Ltd. and Stonybrook FL, LLC filed a notice of limited appearance for the sole purpose of seeking cancellation of the previously scheduled half day hearing on a motion that had already been denied. (TFB-Ex.38). The limited appearance was accompanied by a response in opposition to Mr. Leigh's amended motion. See *id*. The response alleged that Mr. Leigh ignored the court's order denying the amended motion and ordering him to cure all deficiencies within ten days. *Id*. The response further alleged that Mr. Leigh had not served the defendants with process, named the wrong defendants in his motions, and the motions did not constitute a "complaint or petition" required to institute an action under Fla. R. Civ. P. 1.050. *Id*.

One day before the scheduled hearing, the circuit court entered an order cancelling the hearing for the reasons stated in its two prior orders denying Mr. Leigh's motions. (TFB-Ex.40). On October 2, 2018, Mr. Leigh filed a "**Corrected** Plaintiffs' Motion for Preliminary Injunction." (TFB-Ex.41). It contained identical allegations and sought the same emergency relief as the prior motions, but the motion was verified by two plaintiffs. *Id*.

The filing of this third motion prompted a motion for sanctions by one of the defendants. (TFB-Ex.42). The court heard argument on the motion and deferred ruling pending the filing of a complaint or petition stating a

valid claim. (TFB-Ex.44). This order deferring ruling on the motion for sanctions noted that Mr. Leigh had until April 3, 2019 to file such a pleading. *Id*.

On April 1, 2019, Mr. Leigh filed an 81-page class action complaint. (TFB-Ex.45). Two defendants filed motions to dismiss in response. (TFB-Ex.46-47). There were several bases for dismissal offered in the lengthy motions. See *id*. One of the motions also sought to strike certain portions of the complaint. (TFB-Ex.46).

On July 10, 2019, the court held a hearing on one of the motions to dismiss and to strike portions of the complaint. (See generally TFB-Ex.51). During the hearing, the court struck several portions of Mr. Leigh's complaint for the following reasons:

- The use of the word "slum" and phrase "slum lording" was stricken for being scandalous and impertinent (TFB-Ex.51, pg.21-25);
- A reference to a defendant using Christianity to obtain set asides and tax preferences for its personal benefit was stricken as scandalous and immaterial (TFB-Ex.51, pg.27-29);
- An allegation that state representatives and city council members offered false promises to provide assistance to Stonybrook residents was stricken as scandalous and immaterial (TFB-Ex.51, pg.42-44);
- An allegation that all of the plaintiffs are black Americans on public assistance was stricken as scandalous and impertinent

in the absence of a cause of action based on race discrimination (TFB-Ex.51, pg.45-48);

- An opinion statement that it was “alarming” and “depressing” the units were occupied by young children was stricken by stipulation of Mr. Leigh (TFB-Ex.51, pg.49);

- The word “maliciously” when used to describe a defendant allegedly contesting a finding that some of its units were in unsafe conditions was stricken as immaterial in the absence of a cause of action in which malice is an element (TFB-Ex.51, pg.52);

- The phrase “embarrassingly ridiculous” when used to describe an air sample test that produced allegedly unreliable results was stricken, with Mr. Leigh being asked to phrase his complaint in a “less hyperbolic way” (TFB-Ex.51, pg.56-57); and

- An allegation that the defendants’ negligence also violated criminal laws was stricken as scandalous and impertinent (TFB-Ex.51, pg.63).

Many portions of the complaint were stricken for other reasons, and throughout the hearing the judge repeatedly advised Mr. Leigh to limit his complaint to plainly and concisely asserting ultimate facts relevant to the causes of action. (See generally TFB-Ex.51). The judge specifically advised Mr. Leigh that the complaint could be substantially shortened without losing any of its importance, and that he would very likely be facing a similar motion to dismiss if he instead filed another 81-page complaint. (TFB-Ex.51, pg.72).

Less than a month later, Mr. Leigh filed an 83-page amended complaint. (TFB-Ex.53). Motions to dismiss soon followed. (TFB-Ex.56, 59). They asserted that the amended complaint contained many of the same immaterial, scandalous, and impertinent words and phrases stricken from the original complaint, did not contain a concise statement of the ultimate facts, and still failed to state a cause of action for various reasons. See *id*. At the disciplinary hearing, Mr. Leigh stated that the court did not advise him against using particular words or phrases, so long as he used the same words in a way that "take[s] the stink off a little bit." (T:825). So instead of calling a defendant a "slumlord," he used the term "slum lording" to describe actions by that defendant, which he stated "is something different to me." (T:829). On October 21, 2019, the court entered an order granting in part and denying in part a motion to dismiss, and the order attached as an exhibit a partial transcript of a hearing. (TFB-Ex.60).

In the transcript, the court announced its ruling granting the motion to dismiss without prejudice, referring the matter to The Florida Bar concerning Mr. Leigh's use of social media, professionalism, and candor to the court. (TFB-Ex.60, pg.3). The court also expressed concerns over Mr. Leigh's level of competency to handle a potentially complex case. (TFB-Ex.60, pg.4). To address this concern, the court required Mr. Leigh to

secure a mentor in consultation with the Palm Beach County Bar Association to be approved by the court within ten days, noting "you're young, but you're not that young and you've been out [practicing law] eight years, but I'm not sure that you've had the level of training and regimen that maybe you need to handle this kind of case." (TFB-Ex.60, pg.5). The purpose of the mentor was to either certify that the first amended complaint complied with previous court orders and stated a viable claim, or to provide aid to Mr. Leigh in filing an appropriate second amended complaint that cured these issues. *Id*.

The court further required Mr. Leigh to attend a two-hour course on professionalism and civility. (TFB-Ex.60, pg.8). The stated purpose of this requirement was to curtail Mr. Leigh's conduct outside the courtroom, because some of his social media postings caused concern that Mr. Leigh was trying to litigate the case in the press or publicly rather than in court. (TFB-Ex.60, pg.9). To immediately address this concern, the court entered a gag order on every attorney in the case from publicly discussing the case on social media until further order of the court. *Id*.

On November 21, 2019, Mr. Leigh filed a 67-page second amended complaint. (TFB-Ex.63). It did not contain a certification from a court approved mentor. *Id*. The defendants jointly filed a motion seeking

sanctions against the plaintiffs and their counsel for failure to comply with court orders, and the defendants separately filed lengthy motions to dismiss. (TFB-Ex.64-67). On February 13, 2020, the court granted one of the motions to dismiss without prejudice and attached a transcript of a lengthy hearing on several motions as an exhibit to its order. (TFB-Ex.69).

The primary arguments by the parties at hearing addressed more typical matters, such as the legal sufficiency of the complaint. See *id*. But the Court also addressed argument that Mr. Leigh's recent complaint continued to raise scandalous, immaterial, and impertinent allegations previously stricken from earlier versions of the complaint. Specifically, the second amended complaint contained the following allegations:

- The use of the phrase "slumlording" (TFB-Ex.63, ¶ 313);
- Allegations regarding media attention (*Id*. at ¶¶ 46, 207);
- Allegations regarding the race and economic status of the plaintiffs as "poor" and "black" (*Id*. at ¶¶ 212, 250); and
- References to alleged criminal violations by a defendant (*Id*. at ¶¶ 194, 216).

In allowing Mr. Leigh to file a third amended complaint against some of the defendants, the court clarified its prior ruling on the matters stricken from earlier versions of the complaint. The court struck references to slum conditions, stating the facts would speak for themselves on the condition of

the residences. (TFB-Ex.69, pg.77). The court struck references to race and economic status of the plaintiffs, because Mr. Leigh failed to assert a civil rights claim. *Id*. The court struck references to the lengths the plaintiffs went to in seeking media attention because they would invite bias and prejudice. (TFB-Ex.69, pg.79-81). The court struck references to certain conduct being criminal in nature because they were irrelevant to the specific civil claims being made. (TFB-Ex.69, pg.83). The judge additionally advised Mr. Leigh that in a third amended complaint, he should separately allege the damages of each individual plaintiff, separately allege the class action allegations, and separately allege the applicable facts related to each defendant. (TFB-Ex.69, pg.104-07).

At a hearing on February 3, 2020, the court addressed whether Mr. Leigh should be held in contempt for failure to comply with court orders. This resulted in a 28-page order finding that Mr. Leigh engaged in "willful, intentional, and contumacious disregard of the Court's orders." (TFB-Ex.70, pg.22). Specifically, most of the plaintiffs failed to appear at the show cause hearing despite being ordered to be personally present. (TFB-Ex.70, pg.2). Mr. Leigh also failed to pay a prior sanction of $780.00 jointly owed by the plaintiffs and their counsel or complete a 2-hour professionalism course as previously ordered. (TFB-Ex.70, pg.4, 9). The

court characterized Mr. Leigh's claim that he could not locate any such course as "a disingenuous tendency to mask intentional non-compliance with the Court's orders with contrived and self-serving explanations devoid of merit, truthfulness, or reality." *Id*. Mr. Leigh later testified at the disciplinary hearing that he did not comply with the court order because he was not sure what type of ethics course he was supposed to take. (T:849).

Mr. Leigh also violated the gag order repeatedly. The court's contempt order found that Mr. Leigh failed to remove direct references to Stonybrook Apartments from his website by including a documentary about the pending litigation. (TFB-Ex.70, pg.4-7). He posted a video on Twitter in which a plaintiff discussed issues in the litigation and—after entry of the gag order—he separately posted that this plaintiff lives in a "death trap." *Id*. Mr. Leigh failed to remove four videos from his law firm's YouTube channel regarding issues raised in the litigation. *Id*. He attended a rally at the state attorney's office organized by a plaintiff in which local news media were present, and he took no action to discourage the plaintiff from violating the gag order. *Id*. He also failed to discourage this plaintiff from further violating the gag order in her own social media postings. *Id*.

The contempt order allowed Mr. Leigh to purge his contempt of the gag order by filing satisfactory proof of compliance within five days, after

which he would be fined $100.00 per day thereafter for his noncompliance. (TFB-Ex.70, pg.23-24). In May 2020, the court held that Mr. Leigh failed to purge his contempt at issue in the February 2020 order, because he did not timely file proof of compliance with the Court's gag order, and his firm's YouTube channel still contained four videos regarding Stonybrook Apartments and the issues raised in the litigation. (TFB-Ex.77).

The February 2020 order of contempt also held that Mr. Leigh violated the court's order to obtain a court approved mentor by instead unilaterally selecting his own mentor without seeking approval. (TFB-Ex.70, pg.7). Mr. Leigh communicated with this "mentor" via WhatsApp exclusively, and the mentor's website was devoid of references to experience in toxic tort litigation or class action experience. *Id*. Further, Mr. Leigh's filing of a second amended complaint—which contained numerous errors and scandalous language previously stricken—demonstrated that the mentor "did not accomplish the most cursory of proof reading." (TFB-Ex.70, pg.7-8). At the disciplinary hearing, Mr. Leigh claimed he was not required to obtain court approval of his choice in mentor, and he chose someone with no experience in that area of law. (T:799-800; 842).

Due to Mr. Leigh's conduct, the court prohibited him from serving as counsel if the matter proceeded to a class action, due to his demonstrated inability to "effectively, efficiently, competently, and adequately represent the interests of the putative class members." (TFB-Ex.70, pg.23). Regarding Mr. Leigh's continued representation of individual plaintiffs, the court reiterated that Mr. Leigh's representation would remain subject to the supervision of a court approved mentor. (TFB-Ex.70, pg.23-24). The contempt order allowed Mr. Leigh additional time to purge his contempt by scheduling a 15-minute hearing for his mentor to appear before the court and demonstrate his or her qualifications to serve in this capacity. (TFB-Ex.70, pg.23-24). Mr. Leigh failed to schedule any such hearing. (TFB-Ex.76; TFB-Ex.81, pg.7-8).

The contempt order also required Mr. Leigh to pay prior monetary sanctions with interest and complete a bar approved professionalism course to purge his contempt. (TFB-Ex.70, pg.23-24). He failed to pay fees or complete the professionalism course. (TFB-Ex.75, pg.14, 26).

Though Mr. Leigh failed to comply with the bulk of the contempt order, he continued to litigate the matter by filing an 85-page third amended complaint on March 9, 2020. (TFB-Ex.78). This prompted the filings of motions to dismiss and strike. (TFB-Ex.79-80). On May 11, 2020, the

court again dismissed the complaint, holding that the recent complaint "represents a pleadings morass, continuing to be infected with improper group pleading, failing to have temporal specificity with respect to the facts and circumstances underlying Plaintiff's claims. . . and having immaterial, impertinent, and scandalous allegations replete throughout." (TFB-Ex.81, pg.6-7). The complaint continued to allege matters involving media and political attention, continued to allege references to the deficient conditions of other properties owned by the defendants that served no purpose but to inflame the reader and invite bias and prejudice, and continued to allege the economic status of the plaintiffs. (TFB-Ex.81, pg.16-17, 22-23). The dismissal was without prejudice on certain counts, but the court required certain plaintiffs with legally cognizable claims to re-file their claims individually. (TFB-Ex.81, pg.24). The order acknowledged this remedy was facially inefficient but necessary to minimize the continued waste of judicial resources caused by Mr. Leigh's conduct. *Id*. Later, the court found Mr. Leigh and his firm jointly and severally liable for attorney's fees incurred by the defendants and ordered fee and cost awards totaling $39,989.90. (TFB-Ex.73). Mr. Leigh also failed to comply with this order. (T:846-51).

Regarding the above facts at issue in Count III, the bar charged Mr. Leigh with violating Rules 4-1.1 (a lawyer must provide competent representation to a client); 4-3.1 (a lawyer shall not bring or defend a proceeding, or assert or controvert an issue, therein, unless there is a basis in law or fact for doing so that is not frivolous); 4-3.4(c) (a lawyer must not knowingly disobey an obligation under the rules of a tribunal); 4-3.6(a) (a lawyer is prohibited from making extrajudicial statements that the lawyer knows or reasonably should know will have a substantial likelihood of materially prejudicing a proceeding); 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct); and 4-8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice). (Tab#1, pg.50-51). The referee's findings of guilt regarding Count III—along with the subsequent three counts in the bar's complaint—are unclear. (See ROR:25-26). This will be addressed in the bar's argument section *infra*.

B. <u>In Count IV of the bar's complaint, Mr. Leigh filed a frivolous motion for default and a frivolous lawsuit against the City of Riviera Beach</u>

Count IV of the bar's complaint addressed a subset of the *Stonybrook* litigation at issue in Count III. Specifically, the bar alleged that (1) Mr. Leigh filed a frivolous motion for default because he had not properly served his

first amended complaint on defendants; and (2) Mr. Leigh filed a frivolous lawsuit against the City of Riviera Beach unsupported by the application of then-existing law. (Tab#1, pg.51-56). The bar will address each frivolous filing separately.

The frivolous motion for default:

After filing the first amended complaint (TFB-Ex.53), Mr. Leigh sought entry of a default against some of the defendants on August 29, 2019. (TFB-Ex.82). One day later, the defendants filed a response in opposition. (TFB-Ex.83). After serving Mr. Leigh a motion for sanctions and the lapsing of the 21-day safe harbor provision in section 57.105, Florida Statutes, the defendants filed a motion for sanctions. (TFB-Ex.84).

The motion for sanctions attached an e-mail Mr. Leigh sent opposing counsel on August 12, 2019—before the filing of the motion for default—in which he stated that there was an error with the court's filing portal and acknowledged they may not have received the first amended complaint. (TFB-Ex.84(D)). Mr. Leigh's motion for default nevertheless asserts that the defendants were served on August 8, 2019. (TFB-Ex.82). At the disciplinary hearing, he explained that when he sent the August 12, 2019 e-mail and received no response, he assumed all opposing counsel received service of the complaint on August 8, 2019. (T:817). The motion also

asserts that the defendants had ten days to answer the first amended complaint, even though the relevant order explicitly stated, “Defendant shall have twenty (20) days to respond.” (Compare TFB-Ex.52 & TFB-Ex.82). After denying the motion for default, the court held a hearing on the defendants’ motion for sanctions. (See generally TFB-Ex.85). At hearing, Mr. Leigh stipulated that he received an error message stating that service did not occur. (TFB-Ex.85, pg.4-5). He stipulated that his e-mail to opposing counsel did not constitute proper service because it did not comply with the Florida Rules of General Practice and Judicial Administration. *Id*. The court also noted that Mr. Leigh’s e-mail to opposing counsel did not include the exhibits attached to the complaint. (TFB-Ex.85, pg.7). The court found that the plaintiffs and their counsel should be required to pay defendants’ legal fees for attending the hearing on the frivolous motion for default. (TFB-Ex.85, pg.12). On October 8, 2019, the court entered a sanction order requiring plaintiffs and their counsel to jointly pay the defendants $780.00 based on the baseless filing of the motion for default. (TFB-Ex.58). Mr. Leigh has not satisfied this sanction order. (T:846-51).

The frivolous lawsuit against the City of Riviera Beach:

On April 1, 2019, Mr. Leigh filed his original class action complaint against several defendants, including the City of Riviera Beach. (TFB-Ex.45). The city timely filed a motion to dismiss in response. (TFB-Ex.47). Later in June 2019, the city filed a motion for sanctions against the plaintiffs for filing a lawsuit that was unsupported by then-existing law. (TFB-Ex.86). After the plaintiffs filed a first amended complaint in August 2019 (see TFB-Ex.53), the city filed a responsive motion to dismiss (see TFB-Ex.59). The same process occurred regarding the second amended complaint filed in November 2019. (See TFB-Ex.63 & TFB-Ex.65).

The court found that the facts alleged in the second amended complaint did not support a legally cognizable cause of action against the city, and therefore dismissed the matter with prejudice as to the city. (TFB-Ex.68). Specifically, the court found that the city had no common law duty to prevent the misconduct of third persons. *Id*. Pursuant to *Trianon Park Condominium Ass'n, Inc. v. City of Hialeah*, 468 So. 2d 912, 917-918 (Fla. 1985), the court found the city had no statutory duty to protect the plaintiffs as the basis for tort liability unless the city created or controlled the risk. *Id*. Since the city did not create, own, or otherwise control Stonybrook Apartments, it could not be held liable for the allegedly deficient condition of

apartment units. *Id*. The court additionally found the city was legally immune from plaintiffs' alleged negligence claim under its right to sovereign immunity. *Id*.

The court found that the plaintiffs' claims were not offered in good faith, because the binding law in *Trianon Park* precluded a good faith argument that the city could be held liable under the facts presented. (TFB-Ex.90). The court ordered a final judgment of $16,150.00 payable to counsel for the city by Mr. Leigh and his firm, jointly and severally. (TFB-Ex.91). Mr. Leigh has not satisfied this sanction order. (T:846-51).

The bar asserted that Mr. Leigh's actions at issue in Count IV violated Rules 4-1.1 (a lawyer must provide competent representation to a client); 4-3.1 (a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous); 4-3.4(c) (a lawyer must not knowingly disobey an obligation under the rules of a tribunal); 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct); and 4-8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice).

C. In Count V of the bar's complaint, Mr. Leigh improperly solicited sworn testimony of an employee of a defendant by directing a court reporter to ask questions to the witness.

Count V of the bar's complaint addressed another subset of the *Stonybrook* litigation. The bar alleged that Mr. Leigh actively participated in procuring the sworn statement of a represented corporate employee, knowingly obtained documents illegally, used those documents in the *Stonybrook* litigation, and offered false statements to the court regarding his involvement. (Tab#1, pg.56-61). The salient facts are stated in a 20-page order entered in the *Stonybrook* litigation on June 17, 2020. (TFB-Ex.96). On February 28, 2020, Mr. Leigh filed a Sworn Statement by Written Questions of Mayra Lugaro, which had been taken a few weeks earlier. *Id*. at pg.2. Ms. Lugaro was an assistant property manager for one of the defendants at the time of the sworn statement. *Id*. The filing of this statement led to a motion to disqualify Mr. Leigh as counsel for violating bar rules prohibiting him from communicating with an employee of one of the defendants. (TFB-Ex.95). The court held a special set hearing on the motion on June 1, 2020 (TFB-Ex.97), which resulted in Mr. Leigh's disqualification as plaintiff's counsel.

The written questions were administered and stenographically recorded by court reporter Carol Baer of Executive Reporting Services. *Id*.

On February 6, 2020, Ms. Baer was initially contacted by Mr. Leigh to take the sworn statement. (TFB-Ex.96, pg.3). Mr. Leigh explained to her that he was assisting Adam Wasserman, a non-lawyer and co-founder of the Palm Beach Tenant's Union, in obtaining Ms. Lugaro's sworn statement. *Id*. Mr. Leigh informed Ms. Baer that he assisted Mr. Wasserman in drafting the questions to be asked of Ms. Lugaro. *Id*. Ms. Baer testified that she never communicated with Mr. Wasserman and exclusively communicated with Mr. Leigh. *Id*. at pg.5.

Ms. Baer scheduled the sworn statement for later that day at Ms. Lugaro's residence. *Id*. at pg.3. Mr. Leigh e-mailed a list of questions to the court reporter. *Id*. The overall purpose of the listed questions was to elicit testimony from Ms. Lugaro that the defendants were knowingly violating the law and retaliating against Mr. Leigh's clients for suing the defendants. *Id*. at pg.3-4.

Mr. Leigh explained in a text message to Ms. Baer that he could not be present for the sworn statement because he is "an opposing party, so I cant [sic] talk to her." (*Id*. at pg.4; see also TFB-Ex.94, pg.12). Instead, he waited outside Ms. Lugaro's residence while her sworn statement was

taken. (TFB-Ex.96, pg.4).[1] During the sworn statement, Mr. Leigh sent additional texts to Ms. Baer advising her about grouping together important documents. *Id*. at pg.5. The judge found that this text demonstrated Mr. Leigh's advance knowledge of the documents Ms. Lugaro would be incorporating into her testimony. *Id*. These documents included internal confidential company e-mail correspondence, two documents containing confidential financial information of a non-party, a non-party's rent ledger showing rent payments, and various internal work order reports noting repair and habitability issues. *Id*.

At the direction of Mr. Leigh, Ms. Baer later sent an invoice for the transcript to Mr. Leigh, who paid her via CashApp on March 24, 2020. *Id*. at pg.6. After filing the sworn statement and illegally obtained exhibits, Mr. Leigh later relied on these documents to draft some of the allegations in his third amended complaint. *Id*. at pg.14. He also attempted to disqualify defense counsel and sanction defendants based on allegations that they were retaliating against his clients. *Id*. at pg.15. Based on this conduct, the court disqualified Mr. Leigh from representing any clients in the litigation or in any other matter against the defendants relating to the apartment

[1] Mr. Leigh disputed this factual finding by the court, as he testified before the referee that he waited down the street, not outside Ms. Lugaro's residence. (T:858).

complex. *Id*. at pg.16. The court then referred the matter, again, to The Florida Bar, explaining as follows:

> Unfortunately, the Court concludes that disqualification is not enough. Mr. Leigh has consistently demonstrated a flagrant and almost cavalier disregard of the Court's orders in this case, which as noted above, have resulted in a consistent and predictable pattern of conduct that has inexorably led to this day of reckoning. Despite numerous orders, Mr. Leigh has demonstrated no fear of violation of such orders or any contempt sanctions the Court may impose, but seems to have relied on his ability to confuse and obfuscate the issues by presenting to the Court rambling, incoherent, and ultimately not credible explanations.

(TFB-Ex.96, pg.16).

Based on the conduct at issue in Count V, the bar charged Mr. Leigh with violating Rules 3-4.3 (prohibiting the commission by a lawyer of any act that is unlawful or contrary to honesty and justice); 4-4.2(a) (prohibiting a lawyer from communicating about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter); 4-4.4(a) (prohibiting a lawyer from using means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such person); 4-8.4(a) (a lawyer must not violate the Rules of Professional Conduct); and 4-8.4(d) (conduct prejudicial to the

administration of justice). As stated *supra*, the referee's findings of guilt on Counts III through VI are unclear.

D. In Count VI of the bar's complaint, Mr. Leigh filed an appellate brief leveling false statements attacking the integrity of the presiding judge.

Count VI of the bar's complaint alleged that Mr. Leigh attacked the integrity of the trial court in the *Stonybrook* litigation without an objectively reasonable basis in fact. (Tab#1, pg.61-64). In July 2020, he filed an appellate brief in the Fourth District Court of Appeal on behalf of the plaintiffs in the toxic tort action. (TFB-Ex.98). In the brief, which resulted in a per curiam affirmance, he challenged the sanctions issued against him in the February 28, 2020 contempt order by labeling these actions as "the trial court's repeated acts of bias and disregard for neutrality in various hearings and positions." *Id*. at pg.5. He asserted that adverse rulings entered against him were based on his race rather than for any substantive purpose, stating as follows:

> Third, Plaintiffs' Counsel was accused of violating the Florida Bar [sic], in various areas: communication, candor, and competency. These were not based upon any substantive purpose other than they occurred after a witness (white) accused Plaintiffs' Counsel (Black) of being aggressive with her and calling her a pejorative; one who's very corroborative witnesses stated was not truthful.

Id. at pg.9.

> Sixth, whether the Court can bypass the Class Certification process set forth in F.R.C.P. 1.220 in retaliation of the Plaintiffs finding zero confidence in the trial court judge's ability to adjudicate fairly and without bias (implicit racial bias or any other exhibited) in a way that seeks to destroy both the Plaintiffs' credibility, the credibility of their arguments, and Plaintiffs' Counsel's credibility.

Id. at pg.10. Mr. Leigh also suggested that the gag order was entered based on a "proven false claim of "aggressive" behavior of Plaintiff's Counsel (Bearded 240lbs Black Male) against Defendant White Latino [sic] Female." *Id*. at pg.11-12. He accused the trial court of seeming "rankle[d]" by the fact that a plaintiff was a black woman, which was the reason the trial court struck references to race and ethnicity in the complaint as scandalous and impertinent. *Id*. at pg.27. Mr. Leigh's most direct accusation of racism by the trial court was as follows:

> What the Plaintiffs in the trial case; Appellants in the instant, are sure of is that the judicial system literally took one look at them and denied them a fair opportunity to be heard. That it all started typically enough: a white woman accused a large scary black man of something he did not do, and there were witnesses to support his side. But those witnesses all looked like him, and those on the other side all looked their way; and in the end, regardless of what was presented to the contrary, this is also what the Court saw.

Id. at pg.28.

In Count VI, the bar charged Mr. Leigh with violating Rules 4-8.2(a) (a lawyer shall not make a statement that the lawyer knows to be false or with

reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge); 4-8.4 (a) (a lawyer shall not violate the Rules of Professional Conduct; and 4-8.4 (d) (conduct prejudicial to the administration of justice. (Tab#1, pg.64). As stated *supra*, the referee's findings of guilt on Counts III through VI are unclear.

SUMMARY OF THE ARGUMENT

Emotion, passion, and aggression are not substitutes for competence, due diligence, and professionalism. They are also inadequate excuses to warrant an extra-judicial campaign of disparagement, humiliation, and sometimes threatening statements directed to opposing parties and their counsel. A lawyer's duty is to advocate for a client based on facts and law in a court of competent jurisdiction. Legal advocacy is not based on performative outrage and disparagement of others on Twitter, Instagram, Facebook, and YouTube.

To be clear, indignation at perceived injustice is a natural reaction, and a lawyer's ability to channel that indignation into effective, persuasive legal advocacy is commendable. But this is not what Mr. Leigh did. He was not the subject of a bar complaint based on some emotional outbursts caused by his "passionate and sincere empathy" for his clients. (See ROR:21). To either diminish or excuse his misconduct in this fashion

ignores the ongoing pattern of misconduct at issue in the six-count complaint. He engaged in a slew of bad faith filings, he leveled false accusations and pursued criminal charges based on those false accusations, he repeatedly disparaged and implicitly threatened others in social media postings, and he repeatedly demonstrated a grossly incompetent understanding of the facts and the law in litigation he initiated.

This conduct spanned a period of years, and it continued unabated despite repeated efforts by the courts to bring Mr. Leigh's conduct in line with the standards of professionalism expected of lawyers appearing in court. It is no defense to simply claim that Mr. Leigh is a passionate advocate. His so-called "passion" resulted in a great disservice to his clients, who became jointly and severally liable for sanction orders entered due to their lawyer's inability or refusal to comply with court orders. It also prevented the clients in the *Stonybrook* matter from achieving any goal in the litigation; the case languished for two years due to Mr. Leigh's inability to plainly state a cause of action, and the plaintiffs with valid causes of action were only given the option to refile their claims with a different lawyer.

Mr. Leigh characterized his clients as poor, as underrepresented, or as the victims of race discrimination. According to the pleadings filed by

Mr. Leigh, these clients sought redress for uninhabitable, dangerous living conditions in an apartment complex in the circuit court litigation, or redress for employment discrimination in the federal litigation. But Mr. Leigh's ongoing misconduct hijacked any legitimate claims that he could have presented. This also resulted in a waste of judicial resources, caused reputational harm to some of the defendants and their lawyers, and multiple defendants incurred tens of thousands of dollars in attorneys' fees defending against Mr. Leigh's frivolous claims.

This Court should render findings of guilt for all rule violations charged. Though the report of referee found Mr. Leigh's testimony at hearing to be credible and sometimes implied that other witness testimony was not credible, there is no rule violation and no material finding of fact that hinges on a credibility determination. To illustrate this fact, the bar's statement of the case and facts intentionally omits any citation to testimony from the six-day final hearing other than Mr. Leigh's testimony. Every material statement of fact is established by uncontested documentary evidence, and these facts establish every rule violation charged in the complaint.

This Court should also reject the report of referee's recommendation of a 91-day suspension and impose disbarment. The lighter sanction

recommended by the referee does not properly address the egregious misconduct at issue, the significant aggravating circumstances, and affords too much weight to mitigating factors that were either unsupported by competent substantial evidence or insignificant.

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

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

1. Findings of Fact

As this Court explained in *The Florida Bar v. Picon*, 205 So. 3d 759, 764 (Fla. 2016): "This Court's review of a referee's findings of fact is limited. If a referee's findings of fact are supported by competent, substantial evidence in the record, this Court will not reweigh the evidence and substitute its judgment for that of the referee. *The Florida Bar v. Frederick*, 756 So. 2d 79, 86 (Fla. 2000)." *See also The Florida Bar v. Schwartz*, 284 So. 3d 393, 396 (Fla. 2019); *The Florida Bar v. Parrish*, 241 So. 3d 66, 72 (Fla. 2018); *The Florida Bar v. Vining*, 721 So. 2d 1164, 1167 (Fla. 1998); *The Florida Bar v. Jordan*, 705 So. 2d 1387, 1390 (Fla. 1998); *The Florida*

Bar v. Spann, 682 So. 2d 1070, 1073 (Fla. 1996). In reaching findings of fact, the referee has a heightened role in determining issues of credibility, which are important in this particular review. This Court has long held, "The referee is in a unique position to assess the credibility of witnesses, and his judgment regarding credibility should not be overturned absent clear and convincing evidence that his judgment is incorrect." *The Florida Bar v. Tobkin*, 944 So. 2d 219, 224 (Fla. 2006) (quoting *The Florida Bar v. Thomas*, 582 So. 2d 1177, 1178 (Fla. 1991)).

2. Recommendation of Discipline

The referee's recommendation of discipline is subjected to greater review by this Court because of this Court's ultimate responsibility to make that decision:

> In reviewing a referee's recommended discipline, this Court's scope of review is broader than that afforded to the referee's findings of fact because, ultimately, it is the Court's responsibility to order the appropriate sanction. *See The Florida Bar v. Picon*, 205 So. 3d 759, 765 (Fla. 2016) (citing *The Florida Bar v. Anderson*, 538 So. 2d 852, 854 (Fla. 1989)). At the same time, this Court will generally not second-guess the referee's recommended discipline, as long as it has a reasonable basis in existing case law and the standards. *See The Florida Bar v. Alters*, 260 So. 3d 72, 83 (Fla. 2018); *The Florida Bar v. De La Torre*, 994 So. 2d 1032 (Fla. 2008).

The Florida Bar v. Altman, 294 So. 3d 844, 847 (Fla. 2020).

It is also important to consider that this Court has given notice to the members of the bar that it is moving toward stronger sanctions than in the past. *See The Florida Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015). As a result, case law prior to 2015 needs to be examined carefully to make certain that the application of sanctions in these earlier cases comports with current standards.

3. Consideration of Mitigating and Aggravating Factors

A referee's findings on mitigating and aggravating factors are treated essentially like any other finding of fact:

> [A] referee's findings of fact carry a presumption of correctness that should be upheld unless clearly erroneous or without support in the record. *See The Florida Bar v. Summers*, 728 So. 2d 739, 741 (Fla. 1999). This standard applies in reviewing a referee's findings of mitigation and aggravation. *See, e.g., The Florida Bar v. Wolis*, 783 So. 2d 1057, 1059 (Fla. 2001); *The Florida Bar v. Hecker*, 475 So. 2d 1240, 1242 (Fla. 1985).

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

"[A] referee's findings of mitigation and aggravation carry a presumption of correctness and will be upheld unless clearly erroneous or without support in the record." *The Florida Bar v. Germain*, 957 So. 2d 613, 621 (Fla. 2007). The burden of demonstrating that the findings in aggravation or mitigation are clearly erroneous lies with the party challenging the findings. See *The Florida Bar v. Glick*, 693 So. 2d 550, 552

(Fla. 1997) (holding that the burden of disproving a referee's findings of fact or recommendations as to guilt is upon the party challenging those findings).

Once the factors of mitigation and aggravation are found to exist, they are applied to "justify" an increase or a reduction in the "degree of discipline to be imposed." *Florida Standards 3.2(a), 3.3(a)*. This process of balancing the positive and negative factors is a mixed question of fact and law. It is part of the ultimate decision to impose a sanction.

ARGUMENT

I. In Count I of the bar's complaint, this Court should approve the referee's findings that Mr. Leigh's social media activity violated Rules 4-3.6(a), 4-8.4(d), and 4-8.4(a).

This Court should approve the referee's findings of guilt for all rule violations at issue in Count I. Though the referee's report omits any description of the social media postings by Mr. Leigh, the referee correctly found that the postings violated all bar rules at issue in Count I. (ROR:18). The bar will mostly defer to its statement of facts *supra* describing Mr. Leigh's social media campaign of disparaging, humiliating, and implicitly threatening defendants and witnesses while in litigation against a school district. Rule 4-3.6(a) of the Rules Regulating The Florida Bar states as follows:

> A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding due to its creation of an imminent and substantial detrimental effect on that proceeding.

Mr. Leigh's extrajudicial statements were publicly disseminated through different social media platforms and resulted in reasonable safety concerns. The referee concluded that "the totality of social media postings made by Leigh. . . reasonably caused fear on readers and precipitated the safety actions taken by employees of the Palm Beach County School District." (ROR:6-7). Those safety actions included a protective order requiring police presence at depositions in a secure facility and extension of the discovery deadline to complete previously noticed depositions. (See TFB-Ex.25). The court found that the extrajudicial statements "unnecessarily complicated, delayed and interfered with the discovery process in these two pending federal civil cases, as well as with the Court's Scheduling Orders." *Id*. at pg.14. This violates Rule 4-3.6(a).

The social media postings also violated Rule 4-8.4(d), which prohibits conduct prejudicial to the administration of justice, "including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any

basis. . . ." The federal court found that Mr. Leigh's postings violated both this rule and Rule 4-8.4(a), which prohibits a lawyer from violating or attempting to violate the Rules of Professional Conduct. (TFB-Ex.25). This Court should approve the referee's findings of guilt for all three rule violations at issue in Count I.

II. In Count II of the bar's complaint, this Court should reject the referee's recommendations and find that Mr. Leigh's false accusations of criminal forgery directed at opposing counsel violated Rules 4-8.4(a) and 4-8.4(d).

This Court should disapprove the referee's finding that Mr. Leigh did not violate Rules 4-8.4 (a) and 4-8.4(d) in Count II of the bar's complaint. (See ROR:19). Mr. Leigh leveled a false accusation against Ms. Kohring accusing her of committing a felony by forging his law partner's signature on a pretrial stipulation. He did not merely level this bad faith accusation in the litigation; he also contacted various law enforcement agencies to pursue criminal charges against Ms. Kohring. But the referee characterized this conduct as follows:

> I see the use of inflammatory language in this isolated instance to be more of a professionalism concern than a violation of the ethical rules and don't find a violation of the afore-mentioned rules.

(ROR:19).

This is an incorrect characterization of the misconduct at issue in Count II. Falsely accusing someone of committing a crime and seeking criminal charges against that person is not "inflammatory language." Unlike Mr. Leigh's characterizations of his social media postings, this was not mere bluster on his part. The referee's report in *The Florida Bar v. Watson*, SC2023-0416 (Fla. 2024) inconsistently found Ms. Watson guilty of violating Rules 4-8.4(a) and 4-8.4(d) for her role in accusing Ms. Kohring of forgery, while also finding that Ms. Watson was less culpable than Mr. Leigh. It is impossible to reconcile the two reports.

Most importantly, Mr. Leigh's misconduct at issue in Count II was not an "isolated instance." On September 5, 2017, he filed an addendum in the litigation accusing Ms. Kohring of forging his law partner's signature on the pretrial stipulation. (TFB-Ex.2, pg.22). On September 6, 2017, he sent an e-mail to the state attorney's office stating that his opposing counsel fabricated documents and forged another attorney's signature. (TFB-Ex.100). In the e-mail, Mr. Leigh stated that he was "not letting this slide," and he inquired into the procedure for filing charges, though at the disciplinary proceeding he claimed he was only trying to gather information to determine whether there was criminal conduct. (Compare TFB-Ex.100 & T:744). Later the same afternoon, he sent Ms. Kohring an e-mail

explaining that he contacted law enforcement and accused her of committing a third-degree felony. (TFB-Ex.4, pg.68). On September 7, 2017, Mr. Leigh filed a motion to strike and motion for contempt, again accusing Ms. Kohring of felony fraud and forgery. (TFB-Ex.4, pg.4-5). As relief, he asked the court to strike defendants' pleadings. *Id*. at pg.7. On September 19, 2017, he filed a renewed motion to strike and motion for contempt leveling the same accusations and seeking the same relief. (TFB-Ex.6). On September 22, 2017, he filed a response to Ms. Kohring's motion to strike, which again accused Ms. Kohring of fraud and forgery. (TFB-Ex.8). The above cannot be diminished as an isolated instance of using inflammatory language.

Mr. Leigh's claimed indignation at supposed criminal conduct only ceased at the September 27, 2017 hearing on the competing motions for sanctions, presumably because he finally had to argue the facts and law in front of a judge. Instead of asserting that Ms. Kohring intentionally forged a signature in a pretrial stipulation to deny the plaintiffs their valid objections to certain exhibits, Mr. Leigh instead conceded that the differences between his stipulation and the one filed by opposing counsel were "relatively benign." (TFB-Ex.14, pg.78). Mr. Leigh stated that he did not call Ms. Kohring before accusing her of fraud because he knew she had left

her office before the pretrial stipulation had been filed, so he would not have reached her anyway. *Id*. at pg.90. He offered no explanation on why he made no attempt to communicate with Ms. Kohring afterward. *Id*. He also offered no explanation on why he did not instead seek a continuance if he believed the matter was so time sensitive. However, Mr. Leigh maintained that the bar complaint he and Ms. Watson filed against Ms. Kohring had debatable merit, though he also offered to withdraw it—if the court ordered him to do so. (*Id.* at pg.96-98).

There is a pattern of misconduct in Counts II, III, IV, and V in which Mr. Leigh offers strong accusations in his filings and in his communications, but then softens his tone and his posturing considerably in front of a judge. It should not take court hearings for Mr. Leigh to back down from his multiple bad faith allegations of criminal conduct by opposing counsel, scandalous content in his complaints, false assertions in a motion for default, or to acknowledge his role in procuring the sworn testimony of a defendant's employee without notice to the defendant. These are not isolated instances and they do not constitute the mere use of inflammatory language. Mr. Leigh violated Rule 4-8.4(d) because his conduct was prejudicial to the administration of justice and objectively disparaging and humiliating toward Ms. Kohring. By engaging in this conduct, Mr. Leigh

also violated Rule 4-8.4(a), which prohibits a lawyer from violating or attempting to violate the Rules of Professional Conduct. This Court should find him guilty of violating both rules.

In nevertheless finding that Mr. Leigh's conduct in Count II was more of a professionalism concern, the referee seemed to hold Ms. Kohring partially responsible for Mr. Leigh's actions. (See ROR:7-8). This finding constitutes a rejection of the federal court's finding that Ms. Kohring and her paralegal "acted honestly, professionally, and fairly." (TFB-Ex.12, pg.2-3). Given that the referee made a contrary finding, the bar will address this matter, even though another person's misconduct does not give a lawyer license to engage in misconduct. See *The Florida Bar v. Jacobs*, 370 So. 3d 876, 885 (Fla. 2023) ("even assuming those bank attorneys did violate Bar Rules, their conduct does not excuse misconduct by Jacobs").

The referee found that Ms. Kohring was not candid with Mr. Leigh and Ms. Watson because she did not disclose that her office never opened the stipulation sent by Mr. Leigh, and had she done so, this disclosure "could have toned down the dispute that was raging between the lawyers." (ROR:18-19). This was apparently based on Mr. Leigh's testimony asserting the same. (See T:731-32). No competent substantial evidence supports the referee's characterization of Mr. Leigh's conduct toward Ms.

Kohring as the result of a mere lack of communication caused by both lawyers. There was no dispute raging "between the lawyers" regarding the pretrial stipulation until Mr. Leigh instigated one. In response to being accused of committing a felony in a court filing without prior notice, Ms. Kohring placed telephone calls and sent e-mails to Mr. Leigh and Ms. Watson the following day to resolve the matter without court intervention. The only lawyers "raging" about anything at that point were Mr. Leigh and Ms. Watson. The referee found that Ms. Kohring made these attempts at communication before filing any motion in court. (ROR:13-14). The finding that Ms. Kohring lacked candor essentially blames her for a lack of communication even though she was the only lawyer attempting to communicate.

Further, Mr. Leigh's filings in court and his actions in immediately contacting law enforcement and the bar belie any assertion that cooler heads would have prevailed if only Ms. Kohring had given him more information. At the disciplinary hearing, he testified that he "probably could have" called Ms. Kohring before filing the addendum accusing her of fraud, but he believed she altered the pretrial stipulation deliberately and he thought this was his chance to show the court what he had been trying to explain. (T:926-27). He did not return her telephone calls because he

knew there would be potential for an argument. *Id*. His law partner whose signature was supposedly forged stated that she should have called Ms. Kohring before joining in Mr. Leigh's accusations of criminal activity. (TFB-Ex.14, pg.56-57).

Mr. Leigh knew or should have known that Ms. Kohring believed the pretrial stipulation her office filed was the correct version. Specifically, Ms. Kohring sent an e-mail to Mr. Leigh before her office filed the stipulation asking him to "[p]lease confirm [so] we can affix your signature and file now." (TFB-Ex.3, pg.18). From the outset, Mr. Leigh knew of Ms. Kohring's intention to affix his firm's e-signature, and he never clarified that he only authorized his wet signature on the filing. Mr. Leigh's e-signature appears on filings in other cases. (See TFB-Ex.13, pg.12, 19). At the disciplinary hearing, he nevertheless claimed his wet signature was sacrosanct and he would never authorize his e-signature (T:719-20). But he never told this to Ms. Kohring. Further, he claimed in a motion for sanctions that the affixing of an e-signature was an affirmative act establishing Ms. Kohring's fraud on the court and "[t]he opportunity for mistake is zero." (TFB-Ex.8 pg.5). Mr. Leigh knew Ms. Kohring treated his final e-mail approving the stipulation as approval of the version she had sent him earlier in word format, because she explained all of this in an e-

mail the day after he accused her of fraud. (TFB-Ex.4, pg.67). He also conceded the differences between the stipulation filed and the stipulation he signed were "relatively benign." (TFB-Ex.14, pg.78).

Again, whether Ms. Kohring committed misconduct or not has no bearing on a determination of whether Mr. Leigh violated Rules 4-8.4(a) and 4-8.4(d). The referee's findings regarding Ms. Kohring's actions or inactions are largely immaterial, because they were not placed at issue in the bar's complaint nor did they cause the misconduct. But even if the referee's findings regarding Ms. Kohring's alleged lack of candor bore any relevance, these findings are also unsupported by competent substantial evidence. This Court should reject the referee's finding by clear and convincing evidence that Ms. Kohring lacked candor in communications with opposing counsel, and instead find that Mr. Leigh violated Rules 4-8.4(a) and 4-8.4(d) in Count II of the bar's complaint.

III. In Counts III through VI of the bar's complaint, this Court should reject the referee's recommendation of diversion and instead find that Mr. Leigh's conduct in pursuing a class action lawsuit violated all bar rules charged.

Mr. Leigh's conduct in litigating a potential class action lawsuit against multiple defendants in the *Stonybrook* litigation violated multiple bar rules. Before addressing the rule violations at issue, as a preliminary matter, the bar will first address the referee's unclear findings of guilt

regarding Counts III through VI. Specifically, the referee's report groups together the four counts. (See ROR:25-26). The report cites to Rule 3-5.2(h)(2) in support of findings of guilt, which does not exist. (ROR:26). One page later, the report cites to Rule 3-5.3(h) instead, which only governs diversions in lieu of discipline before a formal complaint is filed. (See ROR:27). Rather than analyzing the facts as to each count and rendering applicable findings of guilt, the report's analysis is limited to two paragraphs addressing mitigating circumstances. (See ROR:25-26).

Adding to this confusion, the report initially states, "I make findings of guilt as to the potential violation of all the rules referenced in the Bar's complaint" (ROR:26). But in the very next sentence after making findings of guilt regarding "potential violation[s]" the report states, "Having found the Respondent guilty of the violations charged by the Bar I make a disciplinary recommendation." *Id*.

The referee also recommended a 91-day suspension followed by two years' probation. *Id*. This is inconsistent with recommending diversion in lieu of discipline based on a finding of minor misconduct pursuant to Rule 3-5.3(i)(2), which is the rule the referee likely intended to reference. But this rule does not apply to the conduct at issue. Specifically, the rule authorizes a referee to recommend diversion of a disciplinary case to a

practice and professionalism enhancement program after submission of the evidence. However, this is only authorized when the referee determines before making a finding of guilt that the conduct, if proven, is not more serious than minor misconduct. The referee's recommendation of a rehabilitative suspension period demonstrates that the referee made no finding of minor misconduct necessary for Rule 3-5.3(i)(2) to apply.

The ambiguous and sometimes contradictory nature of the report's findings regarding the rule violations at issue warrant this Court's rejection of the report. The bar asks this Court to render findings of guilt on all rule violations charged in Counts III through VI of its complaint.

A. In Count III of the bar's complaint, this Court should find that Mr. Leigh's lack of competence, his filing of frivolous motions, and his failures to comply with court orders violated Rules 4-1.1, 4-3.1, 4-3.4(c), 4-3.6(a), 4-8.4(a), and 4-8.4(d).

In the *Stonybrook* litigation, Mr. Leigh failed to provide competent representation to the plaintiffs in violation of Rule 4-1.1. For two years, Mr. Leigh could not plainly state a viable cause of action against a single defendant, much less plead a class action lawsuit. He stated at the disciplinary hearing that even though he had no relevant experience in this type of complex litigation, he felt compelled to try to do something. (T:784). Even though some of the plaintiffs stated a cause of action that would normally survive dismissal, Mr. Leigh could not do so on their behalf. His

repeated pattern of disobeying court orders and leveling scandalous accusations at the defendants precluded his continued representation of the plaintiffs. Mr. Leigh's incompetent representation of his clients in the *Stonybrook* litigation is conclusively proven by these court orders alone.

Second, Mr. Leigh violated Rule 4-3.1 by asserting issues without a basis in law or fact for doing so that is not frivolous. His scandalous, immaterial, and impertinent allegations in multiple versions of his class action complaint were a repeated issue at every motion to dismiss hearing. Mr. Leigh either could not or would not file a complaint that omitted scandalous allegations; his complaints repeatedly asserted that a defendant was acting as a slum lord, or that a defendant was projecting a façade of Christianity to obtain some personal benefits, or that state representatives offered false promises of assistance. The extraneous content and the overall hyperbolic language used in these complaints was patently frivolous. Mr. Leigh only needed to allege a short and plain statement of the facts applicable to each client and each defendant, and then separately allege the facts applicable to the class action. He never did, which a cursory reading of his confusing, scandalous, repetitive, and error-ridden 85-page third amended complaint readily demonstrates. (See generally TFB-Ex.78). This was Mr. Leigh's fourth and final attempt at a

complaint, filed in March 2020 in a matter that was first initiated by Mr. Leigh in July 2018. (See TFB-Ex.33).

Third, Mr. Leigh violated Rule 4-3.4(c) by knowingly disobeying an obligation under the rules of a tribunal. He set a previously denied motion for a half day hearing. (TFB-Ex.35; TFB-Ex.40). He filed an amended complaint with much of the same inappropriate content previously stricken from the original complaint. (TFB-Ex.53, 60). This pattern continued in the filing of the second amended complaint and the third amended complaint. (See TFB-Ex.69; TFB-Ex.81). Mr. Leigh failed to comply with a court order requiring him to pay a $780.00 monetary sanction. *Id*. He also failed to comply with an order requiring him to attend a 2-hour professionalism course and obtain a court approved mentor. *Id*. Mr. Leigh violated a gag order repeatedly. (TFB-Ex.70, 77). These violations of Rule 4-3.4(c) not only resulted in an order dismissing the case (TFB-Ex.81), it also resulted in an order requiring Mr. Leigh and his firm to pay the defendants $39,989.90 in attorneys' fees. (TFB-Ex.73). He also failed to comply with this order.

Fourth, Mr. Leigh violated Rule 4-3.6(a) by making extrajudicial statements that he knew or reasonably should have known would have a substantial likelihood of materially prejudicing a proceeding. Specifically,

the lawyers in the litigation were subject to a gag order, and Mr. Leigh repeatedly violated it. He did so by (1) posting that one of the plaintiffs lived in a "death trap;" (2) failing to remove four videos from his law firm's YouTube channel regarding issues in the litigation; and (3) attending a rally organized by a plaintiff, without taking any action to discourage plaintiff's own violation of the gag order. (TFB-Ex.70). Mr. Leigh also did not purge his contempt of the gag order because he did not remove the four videos from his firm's YouTube channel. (TFB-Ex.77).

Finally, by virtue of the above violations, Mr. Leigh engaged in conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d), and he violated the Rules of Professional conduct in violation of Rule 4-8.4(a).

B. <u>In Count IV of the bar's complaint, this Court should find that Mr. Leigh's frivolous lawsuit against the City of Riviera Beach and his filing of a frivolous motion for default violated Rules 4-1.1, 4-3.1, 4-3.4(c), 4-8.4(a), and 4-8.4(d).</u>

This Court should find that Mr. Leigh's misconduct in filing a frivolous motion for default and a frivolous lawsuit against the City of Riviera Beach in the *Stonybrook* litigation violated multiple bar rules. In both matters, Mr. Leigh's actions did not constitute the competent representation of a client mandated by Rule 4-1.1. They also violated Rule 4-3.1 and its prohibition on asserting an issue unless there is a basis in law and fact for doing so

that is not frivolous. The motion for default lacked a reasonable factual basis, as Mr. Leigh stipulated at a hearing that he had not properly served his complaint on the defendants. (TFB-Ex.85, pg.4-5). To ignore the defendant's motion for sanctions and instead continue to seek a default without any basis in fact and law further demonstrates these rule violations in the filing of the motion for default.

Regarding the frivolous suit against the city, binding case law in *Trianon Park Condominium Ass'n, Inc. v. City of Hialeah*, 468 So. 2d 912, 917-918 (Fla. 1985) firmly established that the city had no statutory duty to protect the plaintiffs at the risk of tort liability unless the city created or controlled the risk. Under *Trianon*, the city could not be held liable under a theory that it negligently failed to enforce law violations allegedly committed by third persons, and the city was entitled to sovereign immunity from such claims. To state a cognizable claim against the city, the complaint would have to include good faith allegations that the city created, owned, or otherwise controlled the apartment complex at issue. Mr. Leigh never offered any such allegation. Instead, he continued to assert this theory of liability against the city without offering any good faith argument that *Trianon's* holding was non-binding, distinguishable, or decided wrongly.

His conduct in pursuing these unsupported claims against the city violated Rules 4-1.1 and 4-3.1.

Mr. Leigh's frivolous motion for default resulted in a sanction order requiring him to pay $780.00 in attorney's fees. (TFB-Ex.58). His frivolous claim against the city also resulted in a $16,150.00 fee award entered against Mr. Leigh and his firm as a sanction. (TFB-Ex.91). By failing to pay these monetary sanctions, Mr. Leigh violated Rule 4-3.4(c) by knowingly disobeying an obligation under the rules of a tribunal. By virtue of these rule violations, Mr. Leigh also engaged in conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d), and he violated the Rules of Professional conduct in violation of Rule 4-8.4(a).

C. In Count V of the bar's complaint, this Court should find that Mr. Leigh's conduct in soliciting the sworn statement of Ms. Lugaro violated Rules 3-4.3, 4-4.2(a), 4-4.4(a), 4-8.4(a), and 4-8.4(d).

Mr. Leigh's actions in procuring the sworn statement of a represented corporate employee while denying his involvement in doing so violated multiple bar rules. Mr. Leigh knew that he could not depose Mayra Lugaro outside the presence of opposing counsel because she was an assistant property manager employed by one of the defendants. But he did so anyway by submitting written questions for a court reporter to pose to Ms. Lugaro. This violates Rule 4-4.2(a), which prohibits a lawyer from

communicating about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter. At trial, Mr. Leigh offered no defense to his actions, and his testimony to "clarify" the matter only further confirmed that he hired the court reporter, understood he could not speak with the witness directly, drafted the deposition questions asked by the court reporter, received corporate documents furnished by the witness, and paid the court reporter. (T:854-60).

Recently in *The Florida Bar v. Schwartz*, SC2019-0983 & SC2021-01484 (Fla. Jan. 18, 2024), this Court addressed a similar issue. Mr. Schwartz represented a defendant in a criminal case, and he later met with both his client and a co-defendant charged in a separate case. Mr. Schwartz knew the co-defendant was represented by the public defender's office, but he did not contact co-defendant's counsel prior to the meeting. *Id*. at *6. Mr. Schwartz then had the co-defendant execute a *Byrd*[2] Affidavit, which averred that the co-defendant wished to testify on behalf of Mr. Schwartz's client. Mr. Schwartz proffered at a later hearing that the co-defendant would testify to ownership and possession of the drugs at issue.

[2] See *Byrd v. Wainwright*, 428 F.2d 1017 (5th Cir. 1970).

This Court found that the respondent's conduct violated Rules 4-4.2(a) and 4-8.4(d).

Mr. Leigh's use of an intermediary—the court reporter—to obtain the sworn testimony of Ms. Lugaro violated Rule 3-4.3, which prohibits a lawyer from committing an act that is unlawful or contrary to honesty and justice. Since Mr. Leigh also received documents from Ms. Lugaro that he knew or should have known were illegally obtained, he knowingly used methods of obtaining evidence that violated the legal rights of a defendant in violation of Rule 4-4.4(a). (See TFB-Ex.96). By virtue of the above violations, Mr. Leigh engaged in conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d), and he violated the Rules of Professional Conduct in violation of Rule 4-8.4(a).

D. <u>In Count VI of the bar's complaint, this Court should find that the false and disparaging statements of racial bias leveled by Mr. Leigh against the presiding judge in an initial brief violated Rules 4-8.2(a), 4-8.4(a), and 4-8.4(d).</u>

The final count of the bar's complaint involved Mr. Leigh's brief filed in the Fourth District Court of Appeal appealing final orders by the circuit court in the *Stonybrook* litigation. Though the objective facts establish that Mr. Leigh's own misconduct resulted in multiple sanction orders and dismissal of his clients' cases, he instead alleged that the trial court acted with racial bias. Mr. Leigh's brief asserted that (1) the trial court issued adverse

rulings based on his race; (2) the trial court entered a gag order based on a false allegation that he acted aggressively toward a defendant; (3) the trial court was "rankle[d]" by the fact that a plaintiff was a black woman; (4) the trial court took one look at the plaintiffs and denied them a fair opportunity to be heard; and (5) the trial court bypassed the class certification process as retaliation for Mr. Leigh's lack of confidence in the judge's ability to adjudicate fairly and without bias. (TFB-Ex.98).

These allegations of racial bias were unfounded. Mr. Leigh engaged in an ongoing pattern of misconduct in the *Stonybrook* litigation which resulted in every adverse order that followed. The trial court did not "take one look" at the plaintiffs and deny them relief; in fact, most of the plaintiffs failed to appear at the only hearing they were even required to attend. The court also afforded Mr. Leigh repeated opportunities over the course of two years to correct his misconduct and state a cause of action against all relevant defendants, but he did not do so. The trial court was not "rankled" by the fact that the plaintiffs were black; the court only struck references to race and economic status from the complaint because Mr. Leigh did not assert a civil rights claim in which these allegations would have been material. Yet Mr. Leigh maintained at the disciplinary hearing that he was

pursuing a discrimination claim, which is immediately disproven by the complaints themselves. (Compare T:837 & TFB-Ex.78).

The court did not bypass the class certification process; Mr. Leigh simply never reached that point by filing an appropriate complaint. The court did not issue a gag order based on Mr. Leigh's appearance or a false allegation against him, but because he publicly disparaged the defendants, and by doing so he unnecessarily created a risk of bias during the jury selection process. But he still claimed during the disciplinary proceeding that others were trying to use his race and appearance to create a false narrative that he was aggressive. (T:761).

None of Mr. Leigh's allegations of racial bias by the presiding judge were grounded in fact or offered in good faith. By nevertheless leveling these allegations against the trial judge, Mr. Leigh violated Rule 4-8.2(a), which prohibits a lawyer from making statements the lawyer knows to be false or with reckless disregard as to their truth or falsity concerning the integrity of a judge. By virtue of the above violations, Mr. Leigh engaged in conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d), and he violated the Rules of Professional Conduct in violation of Rule 4-8.4(a).

IV. Based on the violations at issue, the Standards for Imposing Lawyer Sanctions, and relevant case law, this Court should reject the referee's recommendation and sanction Mr. Leigh with disbarment.

A. The applicable standards:

The Standards for Imposing Lawyer Sanctions provide a baseline for determining the appropriate sanction for a lawyer's misconduct before consideration of aggravating or mitigating circumstances that may justify an upward or downward departure from the sanction to be imposed. But other than aggravating and mitigating circumstances, the report of referee does not address the applicable standards. Under Standard 4.5(a) (lack of competence), disbarment is appropriate when a lawyer's conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures and causes injury or potential injury to a client. This standard applies based on Mr. Leigh's inability to comply with court orders, his improper service of pleadings, his multiple violations of the Florida Rules of Civil Procedure, and his stated belief that he could use a court reporter to take a deposition of a witness that he was not allowed to take. These actions demonstrate an inability to grasp fundamental legal principles. Mr. Leigh's actions injured his clients, who became liable for monetary sanctions. His actions also injured the defendants and the

judicial system, who expended significant resources addressing Mr. Leigh's ongoing misconduct.

Under Standard 6.2(a) (abuse of the legal process), disbarment is appropriate when a lawyer causes serious or potentially serious interference with a legal proceeding or knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another and causes serious injury or potentially serious injury to a party. Mr. Leigh's abuse of the legal process seriously injured his clients, the defendants, and the judicial system. The *Stonybrook* court found that Mr. Leigh's continued violation of court orders resulted in "unnecessary expense, delay, and prejudice" due to the various motions and hearings that led to two years of litigation without ever stating a viable cause of action. (TFB-Ex.70, pg.13). The court also found that the defendants suffered irreparable harm to their public image due to Mr. Leigh's social media activity in violation of the gag order. *Id*. This collective misconduct by Mr. Leigh both caused "extensive use of the Court's resources" and posed "the likelihood of a tainted jury pool within Palm Beach County, Florida as a direct result of ongoing violations of the Gag Order." (TFB-Ex.70, pg.14).

Under Standard 7.1(a) (deceptive conduct or statements and unreasonable or improper fees), disbarment is appropriate when a lawyer

intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another and causes serious or potentially serious injury to a client, the public, or the legal system. Mr. Leigh's conduct in soliciting the sworn testimony of Ms. Lugaro by submitting questions to a court reporter and waiting outside while the court reporter posed these questions to a witness constitutes deceptive conduct. The purpose of this conduct was to circumvent Rule 4-4.4(a) and its prohibition on knowingly using methods of obtaining evidence that violate the legal rights of a person. It caused the defendants to spend time and money taking the deposition of the court reporter to prove Mr. Leigh's misconduct, and it led to a motion for sanctions and court hearing on the matter. Therefore, this standard applies and supports Mr. Leigh's disbarment.

B. The aggravating and mitigating circumstances:

The appropriate sanction may be increased or decreased based on the presence of either aggravating or mitigating factors. Under Standard 3.2(b), the following aggravating factors are present in this case:

- Dishonest or selfish motive under Standard 3.2(b)(2);
- A pattern of misconduct under Standard 3.2(b)(3);
- Multiple offenses under Standard 3.2(b)(4);
- Refusal to acknowledge the wrongful nature of the conduct under Standard 3.2(b)(7);

- Substantial experience in the practice of law under Standard 3.2(b)(9); and
- Indifference to making restitution under Standard 3.2(b)(10).

The referee found that some of these aggravators applied but declined to find that Mr. Leigh had a dishonest or selfish motive, refused to acknowledge wrongdoing, or had substantial experience in the practice of law. (ROR:29). In finding that Mr. Leigh lacked a dishonest or selfish motive, the referee noted his sincere empathy for his clients. But this sincere empathy still led to intentionally dishonest acts. Mr. Leigh falsely accused another lawyer of committing a felony, either knowingly or in reckless disregard of the truth. He utilized a court reporter to circumvent Rule 4-4.4(a), which prohibited him from taking the sworn testimony of the affiant outside the presence of opposing counsel. He knowingly leveled false accusations against a judge on appeal. This Court recently held that when a lawyer's overzealous representation of a client is intended to benefit the lawyer's professional reputation, the referee commits error in finding the respondent lacked a dishonest or selfish motive. *Schwartz* at *22, SC2019-0983 & SC2021-01484 (Fla. Jan. 18, 2024). No competent substantial evidence supports the finding that Mr. Leigh lacked a dishonest or selfish motive.

The referee's finding that Mr. Leigh acknowledged wrongdoing is also unsupported by competent substantial evidence. Mr. Leigh's misconduct spanned multiple years and continued unabated. During that time he intentionally violated court orders, resulting in sanctions and dismissal. His misconduct continued on appeal. Mr. Leigh's steadfast refusal from reversing or at least stopping this course of conduct demonstrates his failure to acknowledge wrongdoing. See *The Florida Bar v. Germain*, 957 So. 2d 613 (Fla. 2007) ("With a minimum of legal research, [respondent] could have discovered that his conduct did constitute unethical conduct and either curtailed his activities or avoided them altogether. Where the issue rests on a legal question, the aggravating factor of failing to acknowledge the wrongfulness of the conduct clearly applies.").

In Mr. Leigh's letter to the bar addressing some of the misconduct at issue, he responded to a finding by a judge that he showed no remorse for his actions as follows:

> The Court states we have been reckless when we have not. It claims we have harassed the Defendants, when we have not. It claims we have shown no remorse for our actions, which quite honestly, I have no idea where this even came from. None of these issues were even at play during this hearing. The issue of remorse seems like something a psychologist would discuss, and I am 100% sure, Judge Rosenberg is not a psychologist.

(TFB-Ex.18, pg.6-7). In the next paragraph of this letter, Mr. Leigh then accused two magistrates of racial bias. *Id*.

The bar notes that Mr. Leigh's testimony contained token and heavily qualified claims of remorse for his misconduct. But he also claimed he never apologized for his misconduct earlier because he "didn't technically have an opportunity to do so." (T:775). The referee as a fact finder is entitled to deference in finding that Mr. Leigh acknowledged wrongdoing, which will be upheld if supported by competent substantial evidence. But this Court has also stated, "The fact that there is some evidence in the record to support a finding that a mitigating factor might apply does not mean that the referee should have necessarily found it applicable." *The Florida Bar v. Herman*, 8 So. 3d 1100, 1106 (Fla. 2009).

At a minimum, the referee's finding that Mr. Leigh acknowledged wrongdoing should be placed in the proper context. This acknowledgment by Mr. Leigh did not come until late into the disciplinary proceeding, after years of an ongoing pattern of misconduct. Even as Mr. Leigh concluded his testimony at the disciplinary hearing, the referee noted "Mr. Leigh, you have an excuse for everything. I have never heard someone with more – even just the question I just asked you, as opposed to, you know what, Judge? Listening to what you're saying, I was wrong." (T:917). She again

told Mr. Leigh he "was not admitting to the things that you did wrong, even now" and that he refused to comply with court orders because "I felt you looked at whatever contempt orders they gave you, you just felt like you were above the law." (T:937, 941). The lack of temporal proximity between Mr. Leigh's misconduct and his acknowledgments of wrongdoing should greatly diminish the weight afforded to this mitigating factor, even if the referee's findings of fact on this issue are approved.

The referee found that Mr. Leigh was neither experienced nor inexperienced in the practice of law, so his tenure as a member of the bar would not be considered an aggravating or mitigating factor. (ROR:29). Mr. Leigh has been a member of the bar since 2011. (ROR:28). The misconduct at issue occurred as early as 2017 with "the last events in 2020." (ROR:34). In *The Florida Bar v. Shankman*, 41 So. 3d 166, 170-71 (Fla. 2010), this Court found that a lawyer inexperienced in federal court but admitted to the bar three years before the misconduct at issue was substantially experienced in the practice of law, and the referee's contrary conclusion was clearly contradicted by the record evidence. See also *The Florida Bar v. Abrams*, 919 So. 2d 425 (Fla. 2006) (a lawyer admitted to the bar in 1997 was substantially experienced in the practice of law at the time

of the misconduct in 2000). Mr. Leigh's experience in the practice of law is sufficient for this aggravating factor to apply.

The referee's findings on this issue are also inconsistent. After stating that Mr. Leigh's tenure as a lawyer was neither an aggravating nor mitigating factor, the referee found as a mitigating factor that Mr. Leigh was inexperienced in the practice of law. (ROR:32). The referee characterized Mr. Leigh as a "young lawyer" inexperienced in the specific litigation he had filed while also finding that he is 49 years old. (ROR:28, 32). But lack of experience in a specific area of law has no bearing on whether a respondent has substantial experience in the practice of law. This Court recently explained that "the substantial experience factor is not parsed by expertise in specific areas of the law, but instead applies to experience related to the capability of determining whether conduct is violative of the rules." *The Florida Bar v. Bander*, 361 So. 3d 808, 817 (Fla. 2023).

Mr. Leigh was in his mid-to-late 40s during the misconduct at issue, and he had been a lawyer for several years. Further, his numerous rule violations are not strictly related to competency issues that are more prevalent in newer attorneys. The presiding judge in the *Stonybrook* litigation noted Mr. Leigh's lack of experience in class action lawsuits, but stated "there is no indication that he does not understand or is

inexperienced with the importance of adhering to the Court's orders or in maintaining adequate communications with his clients." (TFB-Ex.70, pg.12). Inexperienced lawyers may find themselves out of their depth on occasion, but this inexperience does not cause them to seek baseless criminal charges against others and ignore court orders. Mr. Leigh had sufficient experience to understand he should not publicly disparage or threaten people, and that he should comply with court orders.

The referee found the following mitigating factors:

- Absence of a disciplinary record under Standard 3.3(b)(1);
- Absence of a dishonest or selfish motive under Standard 3.3(b)(2);
- Personal or emotional problems under Standard 3.3(b)(3);
- Cooperative attitude toward the proceeding under Standard 3.3(b)(5);
- Inexperience in the practice of law under Standard 3.3(b)(6);
- Character or reputation under Standard 3.3(b)(7);
- Unreasonable delay in the disciplinary process under Standard 3.3(b)(9);
- Interim rehabilitation under Standard 3.3(b)(10); and
- Remorse under Standard 3.3(b)(12).

(ROR:30-35). The bar defers to its argument *supra* regarding the referee's findings of the lack of a dishonest or selfish motive, inexperience in the practice of law, and remorse. Aside from these factors, the referee's report dedicated significant discussion to two other mitigating factors: (1) personal or emotional problems; and (2) unreasonable delay in the disciplinary process.

In finding that Mr. Leigh suffered personal or emotional problems, the report includes nearly one-and-a-half pages of findings on Mr. Leigh's childhood upbringing and personal struggles "all endured by Leigh before reaching the age of thirty." (ROR:30-32). The referee found that these "personal struggles, and their influence shaping Leigh's personal traits and character, both positive and negative, are important considerations." (ROR:31). Mr. Leigh's one-and-a-half-page backstory is included twice in the report of referee, first as a preface before addressing the rule violations and again when addressing the mitigating factor. (ROR:3-5, 30-32).

Mr. Leigh is 49-years old, and the referee's findings on these issues address events that happened before Mr. Leigh was 30-years old. The bar does not dispute the referee's findings that these are formative events in Mr. Leigh's life that likely helped shape his character. But they are not the type of personal or emotional problems contemplated by Standard 3.3(b)(3) as a mitigating factor. See *Schwartz* at *24, SC2019-0983 & SC2021-01484 (Fla. Jan. 18, 2024) ("Standard 3.3(b)(3) (personal or emotional problems) does not apply because at issue is a life-long personality characteristic as opposed to an acute emotional impairment."). They also do not, in and of themselves, justify the referee's repeated findings that the collective misconduct at issue "was the combination of lack of experience,

unprofessional persistence fueled by emotion, and a level of frustration causing obfuscation." (See ROR:18, 19, 25-26).

This Court has stated that although it can "sympathize with the problems respondent had in her personal life," it cannot condone a respondent's behavior due to its responsibility to the citizens of this state. *The Florida Bar v. Valentine-Miller*, 974 So. 2d 333, 338 (Fla. 2008). For the mitigating factor to apply, the respondent must correlate these problems to the misconduct at issue. In *The Florida Bar v. Behm*, 41 So. 3d 136, 150 (Fla. 2010), the respondent introduced evidence establishing that the respondent's family was killed in a traffic accident in which the respondent also sustained multiple injuries. This Court found that neither this tragedy nor the consequent depression that followed constituted mitigation. *Id*. Specifically, since no testimony correlated the traffic accident to the respondent's intentional failure to pay income taxes, the personal or emotional problems at issue did not alter the Court's assessment of the severity of the misconduct. Similarly, Mr. Leigh offered no correlation between his misconduct and his abusive upbringing, his "devastating car accident," the murder of his girlfriend, or his two heart attacks. Even if there was a correlation between these events and the misconduct, this Court has found that "[w]here the composite conduct of a

lawyer is gross, disbarment is warranted." *The Florida Bar v. Setien*, 530 So. 2d 298, 300 (Fla. 1988). The referee therefore erred as a matter of law in finding these events "important considerations to my resolution" of this case. (ROR:31).

The report also dedicates significant focus to an unreasonable delay in the disciplinary process. (ROR:32-34). The referee found that "having this matter open for six years is unconscionable and not a diligent prosecution by the Bar." (ROR:34). This is unsupported by competent substantial evidence because there was not a delay of six years. The bar filed its formal complaint alleging misconduct on April 10, 2023. (Tab#1). In finding that Mr. Leigh established his interim rehabilitation, the referee relied on his testimony that he has practiced ethically "since the last events in 2020." (ROR:34). According to the referee's own findings regarding the last misconduct at issue in the formal complaint, there are three years between the most recent misconduct and the filing of a formal complaint, not six years.

To promote efficiency rather than file several formal complaints for each judicial referral sent to the bar, the bar investigated several judicial referrals contemporaneously. The bar also investigated potential misconduct by Mr. Leigh's law partner, Ms. Watson, regarding her role in

some of the misconduct at issue. This ultimately resulted in a six-count complaint attaching over 1,600 pages of exhibits. (See Tab#1). When grievances are filed against multiple lawyers regarding some of the same misconduct, "it understandably [takes] the Bar additional time to complete its investigation." See *The Florida Bar v. Varner*, 992 So. 2d 224, 230 (Fla. 2008); see also *Schwartz* at *25, SC2019-0983 & SC2021-01484 (Fla. Jan. 18, 2024) ("the delay in adjudicating this case is due to other pending Bar disciplinary cases brought against Schwartz.").

The bar's lengthy investigation insured there was no extensive delay once the formal complaint had been filed, which is reflected by the fact that discovery, a six-day trial, and the report of referee were completed in seven months after the bar's formal complaint. This case did not involve an extensive delay, it involved due diligence by the bar before filing a comprehensive six-count complaint. Further, unreasonable delay is only deemed a mitigating factor if the respondent demonstrates specific prejudice resulting from the delay. *The Florida Bar v. Senton*, 882 So. 2d 997, 1002 (Fla. 2004). The referee expressly found no prejudice, stating that "no witness was unavailable due to the delay but having this matter open for six years is unconscionable and not a diligent prosecution by the Bar." (ROR:34). There is no unconscionability exception that allows for the

mitigating factor to apply notwithstanding the absence of prejudice to the respondent. The referee erred as a matter of law in finding this mitigating factor.

The other mitigating factors found by the referee are insubstantial and only a few warrant discussion. The absence of a disciplinary record is not in dispute, but the weight afforded this mitigating factor should be minimal given the multiple offenses at issue in the six-count complaint. The referee's finding that Mr. Leigh had a cooperative attitude toward the proceeding should also be afforded minimal weight. The presiding judge in the *Stonybrook* litigation noted, "Although Mr. Leigh has always been courteous when appearing before the Court, he has nonetheless often provided rambling, incoherent, contrived, and patently disingenuous responses to inquiries from the Court." (TFB-Ex.95, pg.15). There is a wide gulf between how Mr. Leigh presents himself in front of a judge versus his conduct outside the courtroom toward others who lack the authority to sanction him. Mr. Leigh's demonstrated ability to behave appropriately in court belie his categorical claims that his multi-year history of misconduct were "unprofessional persistence fueled by emotion." (ROR:25-26). He can demonstrably regulate his emotions; he simply chooses not to do so.

For Standard 3.3(b)(5) to apply, this mitigating factor of full and free disclosure "contemplates something above and beyond the normal cooperation expected of every member of the Bar. . . ." *Herman*, 8 So. 3d at 1107 (Fla. 2009). But Mr. Leigh's answer to the bar's complaint instead denied violating any bar rules as well as the court's findings that resulted in judicial referrals. In fact, Mr. Leigh's affirmative defenses argued that his social media postings were protected free speech, the postings he admittedly authored were altered in some unspecified way, and he did not knowingly violate any bar rules because he lacked experience. (See generally Tab#24).

Finally, no competent substantial evidence supports the referee's finding that the mitigating factor of interim rehabilitation applies because Mr. Leigh "has practiced ethically since the last events in 2020." (ROR:34). He did not comply with court orders requiring him to attend professionalism courses, he did not obtain a court approved mentor, and he has not paid the attorney's fee awards entered against him and his firm. The referee repeatedly questioned him regarding this apparent lack of effort to comply with court orders, asked Mr. Leigh if he had done anything to educate himself beyond the continuing legal education required to maintain his law license, and Mr. Leigh gave a very unclear answer that he developed some

software that has a mental health component. (T:903-09). Mr. Leigh's ongoing failure to comply with these orders led to the referee stating, "I don't even know if I ordered you to do the CLE program if you would do it. That's my concern." (T:913). Mr. Leigh's decision to discontinue practicing in federal court or otherwise branch outside of his typical practice areas may be a wise one, but it is not interim rehabilitation. See *The Florida Bar v. Bitterman*, 33 So. 3d 686 (Fla. 2010) (declining to find interim rehabilitation based on a respondent's subjective, self-interested testimony).

C. The case law:

Based on the misconduct at issue, the bar seeks Mr. Leigh's disbarment from the practice of law. This Court has repeatedly stated its intent to impose stronger sanctions for lawyer misconduct than it has in the past. In a very recent opinion, this Court rejected a referee's recommended sanction, in part, because "the referee here neither cited nor applied our recent case law imposing more severe sanctions for lawyer misconduct." *Schwartz*, SC2019-0983 & SC2021-01484 at *25 (Fla. Jan. 18, 2024).

In *The Florida Bar v. Springer*, 873 So. 2d 317 (Fla. 2004), this Court disbarred the respondent for multiple instances of misconduct in six

matters, which collectively demonstrated a pattern of failing to provide competent representation, failing to act with reasonable diligence, and misrepresenting the status of the client's matter. In imposing disbarment, this Court stated:

> Springer's course of conduct patently exhibits a complete lack of understanding of the most fundamental legal procedures and obligations, resulting in serious injury to his clients. The multiplicity of incidents and prolonged nature of his incompetent and intentionally wrongful conduct reveals that he either cannot or will not master the knowledge and skills necessary for a minimally competent practice. Under the guidelines, disbarment is warranted on the basis of Springer's incompetent conduct alone.

Id. at 323. This same language equally applies in this case.

In *The Florida Bar v. Committe*, 136 So. 3d 1111 (Fla. 2014) the respondent filed a frivolous tort action and failed to pay the monetary sanction of $13,000.00 imposed for the frivolous lawsuit. After receiving two letters requesting payment be rendered, "Committee wrote to the United States Attorney accusing the defendant of attempting to extort money from him and requesting that he be criminally prosecuted." *Id*. at 1114. This Court imposed a three-year suspension for this misconduct.

In *The Florida Bar v. Patterson*, 330 So. 3d 519 (Fla. 2021), the respondent made unfounded allegations of racial bias against courts, counsel, and parties, misused a fax that was inadvertently sent to him by

an opposing party, and repeatedly violated procedural rules. This Court imposed a two-year suspension for this misconduct. Similarly in *The Florida Bar v. Nunes*, 734 So. 2d 393 (Fla. 1999), this Court imposed a three-year suspension based on the respondent's disparaging remarks about judges and opposing counsel, the filing of a frivolous lawsuit, the respondent's continued representation of clients after being discharged, and the respondent's false representations to a tribunal.

CONCLUSION

For the above stated reasons, The Florida Bar asks this Court to render the following findings of guilt:

- In Count I, Mr. Leigh violated Rules 4-3.6(a), 4-8.4(a), and 4-8.4(d);
- In Count II, Mr. Leigh violated Rules 4-8.4(a) and 4-8.4(d);
- In Count III, Mr. Leigh violated Rules 4-1.1, 4-3.1, 4-3.4(c), 4-3.6(a), 4-8.4(a), and 4-8.4(d);
- In Count IV, Mr. Leigh violated Rules 4-1.1, 4-3.1, 4-3.4(c), 4-8.4(a), 4-8.4(d);
- In Count V, Mr. Leigh violated Rules 3-4.3, 4-4.2(a), 4-4.4(a), 4-8.4(a), and 4-8.4(d); and
- In Count VI, Mr. Leigh violated Rules 4-8.2(a), 4-8.4(a), and 4-8.4(d).

Based on these findings of guilt, the bar further asks this Court to reject the referee's recommended sanction of a 91-day suspension from the practice of law and to instead enter an order of disbarment. Finally, the bar requests the Court impose the costs recommended by the referee.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the original hereof has been e-filed with the Clerk of the Supreme Court of Florida, on this 8th day of February, 2024, and a true and correct copy of the foregoing has been furnished via e-service to Juan Carlos Arias, Attorney for Respondent, 2699 Stirling Rd Ste B200, Fort Lauderdale, FL 33312 at jcarias@JCAlawyer.com and pleadings@JCAlawyer.com.

Mark Lugo Mason, Bar Counsel

CERTIFICATE OF TYPE SIZE & STYLE

I certify that this document complies with the applicable font and word count limit requirements of Florida Rules of Appellate Procedure 9.045 and 9.210(a)(2)(B) and this Court's order granting the bar's motion to file an extended brief. The font is 14-point Arial. The word count is 20,399 words. It has been calculated by the word-processing system, and it excludes the content authorized to be excluded under the rule, but it includes any footnote.

Mark Lugo Mason, Bar Counsel