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)

REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Rules Regulating the Florida Bar

Florida's Standards for Imposing Lawyer Sanctions

REPLY ARGUMENT

I. Mr. Leigh's disparaging and threatening social media postings at issue in Count I:

Mr. Leigh offers no argument regarding the bar's argument that Mr. Leigh's disparaging and, at times, threatening social media postings violated Rules 4-3.6(a), 4-8.4(a), and 4-8.4(d). (AB:28). Instead, he only argues that some of the posts might have been cropped, but they were all written by him. *Id*. Therefore, the bar defers to its initial brief on the matter without further argument, except to note that like the report of referee, the answer brief completely glosses over the content of Mr. Leigh's social media postings to instead excuse them away with argument about his passion for his clients. In fact, the answer brief does not specifically address any argument in the bar's initial brief, and instead mostly parrots the referee's report with conclusory assertions that the findings are well supported.

II. Mr. Leigh's false accusation of forgery at issue in Count II:

Apparently, Mr. Leigh believes that his passion for his clients should excuse him when he disparages and threatens parties in litigation. If anyone becomes reasonably upset by his personal attacks, Mr. Leigh further believes he is absolved based on another lawyer's reasonable response. Specifically, the answer brief argues that Ms. Kohring was

aggressive in her testimony at the disciplinary proceeding and refused to admit that her office made a mistake in filing the incorrect pretrial stipulation. (AB:29). A plain reading of Ms. Kohring's testimony demonstrates that this conclusory summary is not reflective of her actual testimony. Ms. Kohring explained that she was at an anniversary dinner when the e-mail was sent, and she could not speak to what her paralegal did or did not open, though she does not believe her paralegal noticed the attachment Mr. Leigh had enclosed. (T2:387-88). She also stated that she did not explain this to Mr. Leigh and Ms. Watson because they refused to respond to her calls or e-mails, except to accuse her of committing a crime. (T2:389). Therefore, she was not going to send an e-mail blaming Mr. Leigh and Ms. Watson or offering more explanation and argument because there was no point in doing so. (T2:394).

Most reasonable lawyers would have reached that same conclusion. On September 6, 2017—one day after Mr. Leigh filed the addendum—he responded to Ms. Kohring's e-mail explanation regarding why her office filed the pretrial stipulation. His response e-mail stated as follows:

> We have ALREADY called the Court. We have also called the Federal Marshalls Service because you cannot falsify a document and then forge a signature and file it in federal court. You can file WHATEVER YOU LIKE. You can call WHOMEVER YOU LIKE. We cannot prevent you from doing

> anything nor are we going to try to. There is NOTHING in my subsequent filing that was incorrect.

(TFB-Ex.4, pg.68). Mr. Leigh invited Ms. Kohring—in fact he flatly challenged her—to file a motion in court. Now he complains that she did exactly that, presumably because the outcome of the motion practice was—to put it mildly—unfavorable to him.

In fact, he complained at trial that when Ms. Kohring explained matters, "she skips all of that and basically just goes into accusation mode, you know." (T:732). Mr. Leigh believes he can immediately accuse another lawyer of committing a felony, but if that lawyer defends herself without summarizing every communication throughout the day leading to the false accusation, *she* is the one going into "accusation mode."

Mr. Leigh is not entitled to lob baseless accusations with impunity and then disingenuously portray himself as the victim when the target of his accusations responds appropriately. He did not have the benefit of *any* explanation from Ms. Kohring before he immediately accused her in a public filing of committing criminal forgery, or before he contacted law enforcement agencies to pursue criminal charges. He only knew that while Ms. Kohring was at her anniversary dinner, her office filed the latest draft pretrial stipulation she had sent him rather than the version Mr. Leigh had altered and signed—without disclosing that he had further revised the

document. This was the sum of Mr. Leigh's knowledge, because he refused to return Ms. Kohring's telephone calls. He then received Ms. Kohring's e-mail explanation, which is the only communication she could provide given his staunch refusal to confer in good faith. (See TFB-Ex.4, pg.67)

The referee clearly erred in blaming Ms. Kohring for a lack of candor or in failing to communicate. Mr. Leigh has had the benefit of hindsight to reflect on his actions, yet his answer brief still asserts that the victim of slander should have responded to the perpetrators with an apology and a more detailed explanation than what she provided. His defense to Count II is illogical, unreasonable, and hypocritical. Mr. Leigh's conduct toward Ms. Kohring and his continued deflection to the supposed mistake she made is not a professionalism concern resolved with a four-hour ethics course. Mr. Leigh has been sanctioned by the federal court and referred to the bar regarding the misconduct at issue in Count II, but he still testified to his continuing belief that his addendum accusing Ms. Kohring of forgery was exactly what he was supposed to do. (T:724). His answer brief further confirms this ongoing belief that he can accuse another lawyer of committing a felony so long as he demonstrates that the lawyer made a mistake in a filing. No amount of argument regarding the supposed

mistake morphs it into a reasonable accusation of criminal forgery by Ms. Kohring, especially when Mr. Leigh knew that Ms. Kohring was at a dinner and did not personally handle the filing of the pretrial stipulation. (See T:714). The issue in this case has never hinged on whether Ms. Kohring's office erred or not.

Mr. Leigh's false accusation against Ms. Kohring resulted in competing motions for sanctions, responses, and a lengthy evidentiary hearing, when the entire issue could have been resolved with a phone call and an amended filing. This was prejudicial to the administration of justice and objectively disparaging and humiliating to Ms. Kohring in violation of Rule 4-8.4(d). He also violated Rule 4-8.4(a) through his misconduct. The public filings, the calls to law enforcement, and the frivolous bar complaint filed by Mr. Leigh against Ms. Watson do not constitute an isolated instance of using inflammatory language. The referee's holding on this issue was clearly erroneous. The answer brief does not argue otherwise except to offer conclusory assertions that the referee's findings were correct. (AB:20-21). Notably, Mr. Leigh offers no argument explaining how the referee can find him not guilty of violating Rules 4-8.4(a) and 4-8.4(d), but his law partner can be found guilty for the same misconduct even though she was less culpable. (See IB:57). He also offers no explanation why he deleted

one of Ms. Kohring's objections to a plaintiff's exhibit on the pretrial stipulation he signed (see IB:19), and instead only states that "these factual disputes are not necessary to resolve herein." (AB:15-16). The answer brief is little more than a restatement of the referee's report.

III. Mr. Leigh's violation of multiple court orders and lack of competence at issue in Counts III through VI:

Mr. Leigh's argument regarding the litany of misconduct by him in representing residents of an apartment complex is not predicated on any assertion that he did not violate all rules charged in the formal complaint. Instead, he argues that he was inexperienced. (AB:33). Inexperience is a mitigating factor at best, not an excuse to ignore court orders and file scandalous pleadings. He argues that he intended to limit his legal representation to the pursuit of an injunction at the outset of litigation on a *pro bono* basis. (AB:34). He is not held to a lower standard simply because his legal services were unpaid. He relies on his unsupported testimony that his incompetent legal representation still produced benefits for the clients. (AB:35). The court entered multiple sanction orders against him and his clients while he failed to ever state a viable cause of action against a single defendant. Every version of Mr. Leigh's complaint was dismissed; if his clients ever received a benefit, this was *despite* Mr. Leigh's misconduct, not because of it. He repeats the constant refrain that he was

passionate and empathetic for his clients. (AB:37-38). This is not a defense to a rule violation and it is not mitigation, otherwise any lawyer guilty of misconduct can simply claim passion and empathy for their clients to either excuse their rule violations or escape an appropriate consequence for them. Given that Mr. Leigh does not challenge the bar's assertion that he violated all rules charged in Counts III through VI, the bar defers to its initial brief on the matter without further argument.

IV. Aggravating and mitigating factors:

The bar argued that Mr. Leigh had a selfish or dishonest motive under Standard 3.2(b)(2). (IB:78). In arguing otherwise, Mr. Leigh only argues that the referee did not make such a finding and he represented clients *pro se*. The applicability of this aggravating factor does not depend on Mr. Leigh receiving a financial benefit for his misconduct, as already explained in the bar's brief. (IB:78 (citing *The Florida Bar v. Schwartz*, SC2019-0983 & SC2021-01484, 2024 WL 188335 (Fla. Jan. 18, 2024)).

In arguing that the referee did not err in failing to find that Mr. Leigh refused to acknowledge wrongdoing, the answer brief states that Mr. Leigh provided dozens of admissions owning his mistakes and taking responsibility. (AB:37). He did not own his mistakes or take responsibility; he blamed everyone else for them. His disparaging and threatening social

media postings were excused by him as creative writing or cultural differences deliberately misinterpreted by opposing counsel so that they could cancel a deposition. To this day, he still blames Ms. Kohring for the misconduct at issue in Count II and claimed at trial that he did exactly what he was supposed to do when he publicly accused her of forgery without first conferring with her. Mr. Leigh's constant excuses for his failures to comply with court orders eventually caused the referee to explicitly state that 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 referee's report does not explain how the referee reached the conclusion that Mr. Leigh was emotional, remorseful, and apologetic for *all* of his misconduct. The conclusion by the referee is clearly erroneous.

In mitigation, Mr. Leigh reasserts that his difficult upbringing constitutes personal or emotional problems under Standard 3.3(b)(3). The bar argued that formative events in Mr. Leigh's childhood and early adult life do not constitute a mitigating factor unless he demonstrated that it was linked to his misconduct while he was in his mid to late 40s. (IB:84-86) (citing *Schwartz*, at *24, SC2019-0983 & SC2021-01484 (Fla. Jan. 18,

2024) & *The Florida Bar v. Behm*, 41 So. 3d 136, 150 (Fla. 2010)). Mr. Leigh does not address the bar's argument, and instead, simply reiterates the referee's factual findings. (AB:38-39).

The remaining mitigating factors addressed in the answer brief similarly reiterate the referee's findings without addressing the bar's argument. The bar argued that Mr. Leigh was not inexperienced in the practice of law, as he had been a lawyer for six years at the time of the earliest misconduct, and he was not a young lawyer, because he was in his mid to late 40s during the misconduct. (IB:81-82). The bar also noted that the referee inconsistently found that Mr. Leigh's experience was neither aggravating nor mitigating, only to later find that Mr. Leigh's inexperience was a mitigating factor. *Id*. Mr. Leigh's answer brief does not even acknowledge the blatant inconsistency. (AB:39-40). He instead reiterates that he was inexperienced in the new areas of law he had decided to practice. But the bar cited case law stating that a lawyer's experience in the practice of law is not parsed out into different practice areas. See *The Florida Bar v. Bander*, 361 So. 3d 808, 817 (Fla. 2023). The answer brief does not address this case law or any other in asserting that the mitigating factor applies.

The bar argued that delay in the disciplinary process is only a mitigating factor under Standard 3.3(b)(9) if the respondent suffered prejudice as a result of the delay. (IB:86-87). The bar argued that there was no delay of six years as found by the referee, because the conduct at issue occurred as late as 2020. The answer brief somewhat tacitly acknowledges that the referee's finding of a six-year delay is unsupported by the evidence, as it states "the grievances had been pending against Leigh for almost six and three years respectively." (AB:40). However, the answer brief does not acknowledge case law cited in the initial brief establishing that a delay in the proceedings is only a mitigating factor if the respondent is prejudiced by the delay. See *The Florida Bar v. Senton*, 882 So. 2d 997, 1002 (Fla. 2004). Instead, the brief only reiterates the referee's finding that the delay was "unconscionable" even though the delay caused no demonstrable harm. (AB:41).

In arguing that Mr. Leigh's misconduct warrants only a 91-day suspension, the answer brief pleas for leniency so that Mr. Leigh can potentially return to the practice of law. (AB:44). But this argument fails to consider *any* of the case law relied on in the bar's brief, which supports imposition of a much stronger sanction. (IB:90-92). The bar will not reargue these cases and their applicability, given that the answer brief does

not argue that they are distinguishable, nor does the answer brief offer any other case law which would support a 91-day suspension. Instead, Mr. Leigh's argument that the referee should accept the report is mostly predicated on the presence of "overwhelming mitigation." (AB:42, 45). The referee afforded too much weight to mitigating factors, which were either not established by the record evidence or were insubstantial.

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,

Mark Lugo Mason, Bar Counsel

CERTIFICATE OF SERVICE

I certify that the original hereof has been e-filed with the Clerk of the Supreme Court of Florida, on this 22nd day of April, 2024, and a true and correct copy of the foregoing has been furnished via e-service to 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

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Mark Lugo Mason, Bar Counsel