

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,)	
)	Supreme Court Case No.
Complainant,)	SC24-0622
)	
vs.)	The Florida Bar File No.
)	2022-00,292(2A)
ROBERT MICHAEL FOJO,)	
)	
Respondent.)	
)	
)	
	/	

ANSWER BRIEF OF ROBERT MICHAEL FOJO

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STATEMENT OF THE CASE AND FACTS¹

I. Mr. Fojo's Unblemished Record as an Attorney

Before the events that gave rise to this matter, Mr. Fojo was an attorney who was admitted to practice in Florida, New Hampshire, and Massachusetts, as well as several federal courts. R:5; T:4, 24. He graduated from Harvard Law School in 2005, and he enjoyed a successful career for 16 years, first at large law firms, and then when he started his own firm in 2014. Mr. Fojo had never received a complaint from a client concerning his practice of law or handling of client funds. ROR:19.

II. The ADO's Interactions with Mr. Fojo

The ADO first contacted Mr. Fojo in late June 2021 after a grievance was filed by one of his clients. R:167-175; T:46-48. In response to the grievance, Mr. Fojo fully cooperated with the ADO. R:167-175; T:46-48, 54-55. He acknowledged that his trust account record-keeping had become an issue, admitted to making a mistake, provided the documents and information requested by the ADO, and sought the ADO's assistance

¹ Citations to the record are referred to as "R" followed by the page number(s). Citations to the transcript of the hearing held on October 15, 2024 are referred to as "T" followed by the page number(s). Citations to the Amended Report of Referee are referred to as "ROR" followed by the page number(s). Citations to the Appendix are referred to as "App" followed by the page number(s). Some citations to the record will reference the way in which a particular exhibit was labeled in the hearing before the Referee (e.g., "Exhibit T," etc.) because those exhibits were inadvertently omitted from the record. Mr. Fojo will – after the filing of this brief – move to supplement the record to include those omitted exhibits.

and guidance in preventing similar mistakes in the future. R:167-175; T:46-48.

Over the following months, Mr. Fojo responded to all of the ADO's inquiries, met with the ADO on two occasions, and—at the ADO's request—spent significant time preparing a spreadsheet to properly reconcile his trust account. T:51. Mr. Fojo is not a certified public accountant and has no formal CPA training. *Id.* In addition, he engaged a professional to assist with the reconciliation of his trust account. *Id.*; R:194-96, 199-201, 206-08, 214-18. At the ADO's direction, he also contacted the New Hampshire Bar Association to correct his trust account compliance certification. R:227-29. The New Hampshire Bar Association referred him back to the ADO. *Id.*

Five months later, in mid-November 2021, the circumstances changed significantly. T:52. During the period from September to November 2021, Mr. Fojo filed more than 12 lawsuits on behalf of hundreds of parents against 40 different school districts in New Hampshire, Massachusetts, and Florida challenging COVID-era mask mandates. *Id.* Regardless of the broader debate on the efficacy of mask mandates, Mr. Fojo was representing his clients, and the arguments in these lawsuits did not necessarily reflect his personal views. *Id.* at 52-53. These lawsuits

were legally meritorious, as similar arguments were adopted by numerous state and federal courts across the country, including the U.S. Supreme Court. *Id.* The cases received widespread media coverage. *Id.* During an initial meeting with the ADO in late September, ADO Deputy General Counsel Mark Cornell acknowledged that Mr. Fojo was handling these cases. *Id.*

In mid-November 2021, despite Mr. Fojo having provided all requested materials, the ADO's approach shifted abruptly. *Id.* at 53. In an email dated November 15, 2021, Mr. Cornell accused Mr. Fojo of failing to provide certain information, failing to respond to follow-up inquiries, and failing to maintain other records. *Id.*; R:237-50. For instance, Mr. Cornell alleged that Mr. Fojo had not provided client ledger cards, despite Mr. Fojo having informed the ADO in both July and September that he did not have such records. *Id.* In response, Mr. Fojo explained that he had complied with all requests, provided all available documents, and had responded to all inquiries, except for records that did not exist. *Id.*

III. The ADO's Illegal Expansion of its Investigation and Due Process Violations

Following its initial inquiries, the ADO began requesting additional client files unrelated to the initial matter. On November 16, 2021, the ADO subpoenaed Mr. Fojo's trust and operating account records, despite the

fact that he had already provided all requested bank records, including trust account statements dating back to July 2019. R:237-50; T:55. The ADO did not provide Mr. Fojo with a copy of the subpoena before it was issued, and he did not receive a copy until nearly a week later. T:56; R:263-76. This delay deprived him of the opportunity to review and evaluate the subpoena in a timely manner and determine whether he should file a motion to quash, a right available to him under the applicable rules. *Id.*

During this time, Mr. Fojo encountered additional complications when his bank flagged fraudulent transactions in his operating account, requiring him to close his accounts. R:237-50. The bank's policy prohibited closing an account unless it had a zero balance. *Id.* As a result, Mr. Fojo worked diligently to open new accounts at a different financial institution. *Id.* However, due to the expiration of his PLLC corporate entity, he first had to establish a new entity, obtain an Employer Identification Number, and then open the new account. *Id.*

Concurrently, the ADO increased its demands for an accounting of the trust account, which contained only earned funds at that time.

Ultimately, Mr. Fojo provided the requested accounting. R:237-50, 282-88.

In mid-November 2021, despite possessing the same information that had been available since July, the ADO escalated its actions and, for the

first time, began threatening to suspend Mr. Fojo's license. R:263-76. Mr. Cornell then alleged that Mr. Fojo had failed to provide trust account statements dating back to July 2019. T:59; R:292-97. Mr. Fojo reminded Mr. Cornell that he had provided these statements during their in-person meeting in September. *Id.* Nevertheless, to ensure compliance, Mr. Fojo re-sent the documents. *Id.*

At this stage, Mr. Fojo began to resist the ADO's demands, as they had expanded beyond the initial grievance. T:59. The ADO subpoenaed his operating account and personal bank records for a two-year period and sought information about other clients. *Id.*; R:300-26. Under New Hampshire Supreme Court Rule 37A(II)(a)(2)(B), the ADO may initiate its own inquiry if there is a "reasonable factual basis" for doing so based on information lawfully obtained. T:59. However, in email correspondence, Mr. Cornell failed to identify any such basis for expanding the inquiry. T:59-61. No other client had filed a grievance, and there was no evidence that Mr. Fojo was out of trust with respect to any other clients. *Id.* Instead, the ADO vaguely suggested that there "perhaps" were "other discrepancies" in client files that required further investigation. *Id.*; R:300-26. Mr. Cornell further claimed that Mr. Fojo had admitted to failing to reconcile his trust account, a violation that Mr. Fojo had already acknowledged. *Id.* However,

there was no indication that he had misappropriated funds. *Id.* Indeed, Mr. Cornell conceded that he would not know of any such issues *unless and until additional documents and records were reviewed. Id.* At this point, the ADO's actions had evolved into a broad investigative probe seeking to uncover potential violations rather than addressing the original grievance. T:61.

Despite these developments, Mr. Fojo continued to cooperate and provided additional information, including revisions to the spreadsheet the ADO directed him to create to reconstruct his trust account records. *Id.*; R:255-58. Although he did not believe it was necessary, he also provided trust account statements dating back two years. R:292-97. Additionally, he corrected documentation related to a client whom the ADO alleged he was out of trust with by more than \$33,000. T:61; R:418. That client, a personal friend of Mr. Fojo, signed an addendum to their engagement agreement memorializing the payment of additional funds from a separate personal injury settlement. *Id.* Mr. Fojo provided this addendum to the ADO during a second meeting in early December. *Id.*

During that meeting, the ADO also attempted to pressure Mr. Fojo into disclosing privileged client information. T:62. The client in question had refused to waive privilege, and Mr. Fojo did not have the authority to

unilaterally do so. *Id.* Nevertheless, the ADO insisted that he should waive attorney-client privilege under New Hampshire Rule of Professional Conduct 1.6(b)(3) in order to refute accusations of misappropriation. R:513-14. Mr. Fojo appropriately declined to do so. T:62; Exhibit U.

In that same meeting, the ADO also inquired about the mask mandate lawsuits Mr. Fojo was handling and referenced specific parents by name. T:62. These cases were entirely unrelated to the grievance or the ADO's investigation. *Id.*

On December 13, 2021, Mr. Fojo provided his *third* attempt at reconstructing a spreadsheet detailing his trust account transactions over the prior two years. *Id.*; R:429. During the early December meeting with the ADO, he had explained that the previous versions contained errors due to the complexity of the task and the short time frame within which he had to complete it. T:62-63. Given that these records involved hundreds of transactions over a two-year period, it was nearly impossible to recreate them with absolute accuracy under the deadlines imposed. T:63.

Moreover, he was unable to secure the assistance of a bookkeeper or CPA within the given timeframe. *Id.* The ADO identified further errors in the third version of the spreadsheet. *Id.*; R:473-74. By this time, Mr. Fojo had retained an attorney, who informed the ADO that Mr. Fojo had spent

substantial time and effort on the reconciliation but, given his lack of expertise in accounting, there were likely to be mistakes. *Id.* Mr. Fojo's attorney also stated that he intended to engage a professional to complete the process. *Id.* In January 2022, he did so. *Id.*

IV. The “Emergency” Suspension of Mr. Fojo’s License and Procedural Violations

After six months of investigation, on December 17, 2021, at 5:24 p.m. (the week before Christmas), the ADO petitioned the New Hampshire Supreme Court to immediately suspend Mr. Fojo’s law license. T:63-64; R:495-527. A petition for immediate suspension is typically reserved for “emergency” situations or cases in which an attorney poses a “serious harm to the public.” T:64. However, the facts underlying the ADO’s petition on December 17 were no different from those known to the ADO in late July, when it first initiated its inquiry. *Id.* In fact, the ADO possessed all relevant facts concerning its allegations as early as September 2021 (before the ADO became aware of Mr. Fojo’s many COVID-related litigation activity). *Id.* Despite this, the ADO waited three months—until the eve of Christmas—to file its petition for suspension. *Id.*

Mr. Fojo was not afforded an opportunity to contest the petition before his license was suspended. T:64-65. Although the ADO sought immediate relief, its petition was procedurally premised on New Hampshire Supreme

Court Rule 37(9-A), which provides a respondent attorney with 20 days to respond, the opportunity to request a hearing before a judicial referee or a hearing panel of the Professional Conduct Committee, and 30 days to prepare for that hearing. T:65. Under Rule 37(9-A), the ADO bears the burden of proving the necessity of an interim suspension by clear and convincing evidence. *Id.*

The substantive basis for the ADO's petition was Rule 37(16)(f), which does not provide a basis for emergency relief. T:65; R:495-527. Rather, it is a mechanism for imposing suspension only after certain findings, none of which had occurred in this case. T:65. The ADO did not invoke the summary suspension procedure set forth in Rule 37(9-B), which is the rule governing cases involving allegations of "serious misconduct." T:65; R:495-527. Under Rule 37(9-B), the New Hampshire Supreme Court has the authority to issue summary suspensions or other emergency relief deemed necessary to protect the public. T:65-66. However, these provisions are distinct from Rule 37(9-A), the rule under which the ADO filed its petition. *Id.*; R:495-527.

The ADO had alternative procedural options available. T:65-66. For example, it could have filed a Notice of Charges and sought an interim suspension through the appropriate mechanisms. *Id.* Instead, it chose to

file its petition late on a Friday afternoon before Christmas, effectively depriving Mr. Fojo of a meaningful opportunity to respond. *Id.* This last-minute filing also severely limited his ability to manage client matters and address the potential disruption to his law practice: A more detailed explanation of the procedural issues with these rules is provided in Mr. Fojo's February 2022 hearing memorandum he filed with the New Hampshire Supreme Court. See Exhibit V.

Despite these procedural deficiencies, four days later, the New Hampshire Supreme Court granted the ADO's petition pursuant to Rule 37(16)(d) and (f) and temporarily suspended Mr. Fojo's license without a hearing. T:66; R:552-54. In doing so, the Court disregarded the process and time periods set forth in Rule 37(9-A). See *id.* The failure to provide Mr. Fojo with notice and an opportunity to be heard prior to his suspension constituted a violation of his due process rights. See *id.*

Mr. Fojo requested an immediate hearing to contest the Court's December 21 suspension. T:66; R:591-98. The Court scheduled a hearing for *January 4, 2022*. See Exhibits U, V.

V. The ADO's False Statements in its Petition for Emergency Suspension

The ADO's December 17, 2021, petition contained multiple false statements and material omissions. T:66. Among its allegations, the ADO

falsely asserted that Mr. Fojo had “misappropriated” tens of thousands of dollars from two clients while omitting critical context regarding the financial transactions involving those clients. See Exhibits U, V. Additionally, the ADO mischaracterized Mr. Fojo’s efforts to close out a medical lien with New Hampshire Medicaid on behalf of the client who had filed the grievance, falsely alleging that he had lied about those efforts. See *id.* The ADO’s petition also inaccurately claimed that Mr. Fojo had failed to cooperate with the ADO. See *id.*

Further, the ADO misrepresented the nature of the spreadsheet it had directed Mr. Fojo to create, labeling it an official “disbursement journal” for his trust account. See *id.* In reality, Mr. Fojo had made three separate attempts to comply with the ADO’s request, dedicating significant time and effort to reconstructing historical trust account transactions. See *id.* Despite his compliance, the ADO misconstrued certain errors in the reconciliation process—errors that were inevitable given that Mr. Fojo is not a certified public accountant—and then accused him of intentionally lying about those mistakes. See *id.*

The specific misstatements contained in the ADO’s petition are as follows:

- **Page 5** – Misrepresentation of Mr. Fojo’s efforts to close out the medical lien.

- **Page 6** – False claim that Mr. Fojo failed to provide a copy of the client file or ledger cards.
- **Pages 7-8** – Mischaracterization of alleged misappropriation of client funds related to another client and the Medicaid lien.
- **Page 9** – Misrepresentation of discrepancies in the “disbursement journal.”
- **Pages 9-10** – False claim that Mr. Fojo failed to cooperate with the ADO.
- **Pages 12-13** – Additional misstatements regarding the Medicaid lien.
- **Pages 15-16** – Mischaracterization of an alleged misappropriation of client funds concerning another client, despite the fact that Mr. Fojo had previously provided a full explanation of the relevant credit transaction.

R:495-527; see Exhibit U, V.

These inaccuracies and omissions materially distorted the factual record and formed the basis for the ADO’s petition to suspend – and the New Hampshire Supreme Court’s emergency suspension of – Mr. Fojo’s law license. See *id.*; R:552-54.

VI. The ADO’s Freezing of Mr. Fojo’s Bank Accounts

The New Hampshire Supreme Court’s December 2021 order directed Mr. Fojo not to use his trust account or withdraw any client funds from the account. R:552-54. Mr. Fojo fully complied with this directive, conducted a final accounting of the account, and withdrew any remaining earned funds. T:66-67.

Despite the clear terms of the Court’s order, the ADO took additional unilateral action. *Id.* Three days before Christmas, the ADO sent letters to

Mr. Fojo's bank, instructing it to freeze not only his trust account but also his operating account. *Id.*; R:606-07. The ADO issued these directives without adhering to the applicable out-of-state service of process protocols. *See id.* As a result, Mr. Fojo's operating account was frozen, leaving him unable to withdraw funds or pay his law firm's operating expenses during the Christmas holiday. T:67.

VII. Damage to Mr. Fojo's Reputation

Following the Court's suspension order, several news outlets reported on the matter, likely due to Mr. Fojo's prominence in the mask mandate lawsuits. *Id.* Articles such as one published by the *Union Leader* ran headlines like, "*State Supreme Court Suspends License of Anti-Mask Mandate Lawyer.*" *Id.*; Exhibit T. The timing and dissemination of these reports strongly suggest that the ADO was the source of the information. *See id.* Many of these outlets repeated the false allegations contained in the ADO's petition, including baseless claims that Mr. Fojo had stolen money from clients. T:67.

Each year, numerous attorneys face license suspensions or disciplinary actions, yet very few—if any—are subjected to the level of public scrutiny and reputational damage that Mr. Fojo endured. *Id.* The

widespread media coverage and the nature of the allegations amplified the harm far beyond what is typical in attorney disciplinary matters. *Id.*

However, the most concerning aspect of the *Union Leader* article was a statement made by Mr. Cornell of the ADO, which is buried in the middle of the article. T:67-68. In that statement, Mr. Cornell asserted: “*Any client who believes he or she is due funds from the account should contact the Attorney Discipline Office.*” T:68. This statement was highly problematic, as regulatory agencies such as the ADO are authorized to act only upon receiving a formal complaint or upon obtaining a reasonable basis for an investigation. *Id.* A blanket invitation soliciting complaints against a specific attorney—without any underlying basis—constitutes a due process violation. *Id.*

VIII. The New Hampshire Supreme Court’s January 4, 2022 Hearing

A hearing was held on January 4, 2022. *Id.* This was not, however, an evidentiary hearing with witness testimony. *Id.* Instead, the parties proceeded under offers of proof and submitted exhibits. *Id.* During the hearing and in the accompanying hearing memorandum Mr. Fojo filed, he presented documentary evidence that directly refuted the ADO’s allegations, including claims that he had misappropriated client funds,

misrepresented his efforts to close out a medical lien, and failed to cooperate with the ADO. *Id.*

Most significantly, Mr. Fojo had already rectified the error that formed the basis of the client's grievance. *Id.*, Exhibit U. In early August 2021, he issued a partial payment of the settlement funds to the client and set aside funds to satisfy any outstanding medical liens once those liens were resolved. *Id.*

Despite this, at the January 4 hearing, the ADO disregarded the documentary evidence provided and instead demanded that Mr. Fojo be disbarred entirely. T:68.

IX. The ADO "Canceled" a Prominent Attorney and Harmed His Clients

The sequence of events surrounding the ADO's actions cannot be viewed in isolation from their broader impact. T:68-69. The ADO's aggressive stance escalated in late November 2021—precisely when Mr. Fojo was actively litigating mask mandate cases against 40 school districts. *Id.* In December 2021, during a meeting with Mr. Fojo, the ADO specifically inquired about the parents involved in these lawsuits. *Id.* Then, on December 21, the Court's suspension order effectively left hundreds of Mr. Fojo's New Hampshire clients without legal representation. *Id.*

This group included hundreds of parents engaged in active litigation challenging school district mask mandates, as well as several large institutional clients for whom Mr. Fojo had secured highly favorable results in pending cases. *Id.* The impact was particularly severe for the parents involved in the mask mandate lawsuits, as they were unable to secure alternative legal representation. *Id.* Additionally, other clients with whom Mr. Fojo had established unconventional billing arrangements—such as hybrid or fixed-fee structures—were unable to find attorneys willing to honor those agreements. *Id.*

The ADO's efforts successfully sidelined Mr. Fojo and hundreds of parents. *Id.*

X. The New Hampshire Supreme Court Hearing Referee's January 12, 2022 Recommendation

After the January 4, 2022, hearing, the hearing referee issued a recommendation on January 12, 2022, that Mr. Fojo's temporary suspension should remain in place. T:69. However, the referee's decision was flawed in multiple ways. In his appeal of that recommendation, filed on February 10, Mr. Fojo highlighted several critical errors in the referee's analysis. *Id.*; Exhibit V at 9-10.

First, the referee applied the wrong standard of review, using a *preponderance of the evidence* standard instead of the required *clear and*

convincing evidence standard. *Id.* This fundamental error lowered the evidentiary threshold for justifying Mr. Fojo's continued suspension. *Id.*

Beyond the legal standard, the referee's conclusions ignored or misrepresented key evidence. T:69-70; Exhibit V at 9-10. He found that Mr. Fojo had been dishonest, despite documents directly refuting that claim. *Id.* He determined that Mr. Fojo had resisted the ADO's requests for information, even though Mr. Fojo had repeatedly provided documentation and made extensive efforts to comply. *Id.* The referee also drew an adverse inference against Mr. Fojo for refusing to disclose privileged information regarding a client whose funds the ADO accused him of misappropriating—despite the fact that Mr. Fojo was ethically bound not to waive that client's privilege. *Id.*

Additionally, the referee concluded that Mr. Fojo had overpaid himself in two matters, disregarding the clear financial records that showed no such overpayments had occurred. *Id.* Perhaps most concerning, the referee largely ignored the substantial evidence Mr. Fojo submitted to refute the ADO's allegations, further undermining the fairness of the proceedings. *Id.*

These errors formed the foundation of Mr. Fojo's appeal, as he sought to correct the misapplication of legal standards and the referee's failure to properly consider the evidence. *Id.*

XI. The Lack of Process Afforded Mr. Fojo

By mid-February 2022—nearly eight months after the ADO’s initial letter in late July 2021 and 46 days into Mr. Fojo’s suspension—the ADO had still not filed a formal notice of charges against him. T:70. As a result, he remained uncertain about the specific charges the ADO intended to pursue. *Id.*

Despite the significant time that had passed, no discovery had been permitted, no witnesses had testified, and no sworn affidavits had been submitted. *Id.* The lack of formal proceedings left Mr. Fojo in a state of uncertainty, unable to meaningfully respond to allegations that had yet to be clearly defined. *Id.*

XII. The New Hampshire Supreme Court’s Oral Argument and February 25, 2022, Order

The New Hampshire Supreme Court heard oral arguments on Mr. Fojo’s appeal on February 15, 2022. *Id.* As outlined in his brief for that hearing and reinforced by the arguments presented, additional critical information came to light. *Id.*; Exhibit V.

One significant issue was the participation of then-Chief Justice Gordon J. MacDonald. T:70. Before his appointment, Justice MacDonald had served as New Hampshire’s Attorney General under Governor Christopher T. Sununu. *Id.* In that role, he was directly involved in

overseeing litigation brought against the Governor—including four lawsuits that Mr. Fojo filed in 2020 challenging various COVID-related restrictions. T:70-71. Despite this prior involvement, Justice MacDonald did not recuse himself from the case and presided over the hearing. *Id.*

During oral argument, the ADO made a striking admission: for the first time, it acknowledged that the “timing” of its December 17, 2021, petition to suspend Mr. Fojo’s license—filed the week before Christmas—was not “gracious.” T:71. This admission underscored concerns that the petition’s timing was not driven by genuine urgency but rather by other motivations. *Id.*

The justices also focused heavily on the ADO’s handling of the medical lien issue, which had been a key element of its suspension petition. *Id.* The ADO had accused Mr. Fojo of lying about his efforts to resolve a medical lien for the client who had filed the grievance against him. *Id.* However, Mr. Fojo presented clear evidence demonstrating that he had diligently contacted New Hampshire Medicaid, attempted to submit the necessary documentation, and had been waiting on the agency’s response. T:71-72; Exhibit V. The delay was not attributable to him but to Medicaid’s slow response. *Id.*

Despite citing this alleged delay as part of the “emergency” basis for suspending Mr. Fojo’s license in December 2021, the ADO had done nothing to resolve the lien itself by the time of the hearing—two months later. *Id.* The justices repeatedly questioned why the ADO had not taken steps to confirm and settle the lien, particularly since Mr. Fojo, having been suspended, was no longer in a position to do so. *Id.* The ADO had no clear answer, merely stating that the process could take several months. This response undermined the credibility of the ADO’s claim that Mr. Fojo’s handling of the lien was an urgent matter warranting an immediate suspension. *Id.*

Nevertheless, on February 25, 2022, the Supreme Court issued an order concluding that Mr. Fojo’s temporary suspension should remain in place while the disciplinary process continued. T:72.

XIII. The Unprecedented Severity of Mr. Fojo’s Suspension, His Subsequent Attempts to Resign, and His Coerced Revised Resignation

The disciplinary process that led to Mr. Fojo’s suspension was unprecedented in its severity and set a troubling precedent for attorneys in New Hampshire. T:73. The process sent the wrong message to the legal community: attorneys are expected to cooperate with the ADO and be

transparent, yet Mr. Fojo's full cooperation ultimately worked against him.

Id.

Mr. Fojo contended that the ADO used this process as a means to "cancel" him. *Id.* The numerous lawsuits he filed challenging COVID-related restrictions were disruptive to government institutions, and when considering the sequence of events, it suggested an inference that the ADO exploited his bookkeeping and record-keeping issues as a pretext to target him for his legal challenges to state and municipal COVID measures. *Id.* The process appeared designed not only to damage his reputation but also to bring about the end of his legal career. *Id.* By February 2022, Mr. Fojo was forced to shift his focus entirely toward finding a new career and a way to support his household of seven. T:73-74.

Financially, he was drained. *Id.* The disciplinary process was expected to last several months to a year, and given the ADO's conduct and the precedent already established, there was no reason to believe the outcome would change in his favor. T:74. With no financial resources or time to continue his defense, Mr. Fojo sought to resign his law license. On March 14, 2022, he submitted an affidavit of resignation. T:74-76; Exhibit Y.

The Florida Bar ignores much of this process that followed concerning *three* affidavits Mr. Fojo filed, the second two of which were done under coercion. See Initial Brief at 2-3. The Bar pretends as if the first two affidavits do not exist. See *id.*

The applicable rule, Rule 37(11), concerning a request for resignation required only that an attorney acknowledge an ongoing investigation, generally admit that the facts underlying the complaint were true, and acknowledge that the allegations, if formally charged, could not be successfully defended. T:75-76. The rule also mandated that the affidavit remain confidential. T:76. In his submission, Mr. Fojo admitted to the same mistakes he had openly acknowledged all the way back in July 2021. *Id.* He remained transparent and consistent throughout the process. *Id.* However, the ADO opposed his request. T:76: Exhibit Z.

The ADO demanded that Mr. Fojo waive confidentiality, attach the Court's February 25, 2022, order—an order that falsely claimed he had moved additional client funds out of his trust account after the Court's suspension order—and admit that he had violated that order. T:76-77; Exhibit Z. The ADO insisted that Mr. Fojo revise his request and comply with these conditions because, in their view, he needed to be formally disciplined. *Id.*

In its formal objection to Mr. Fojo's request, the ADO reiterated these demands but also conceded, on page 3 of its objection, that no violations had yet been proven and that the Court had mistakenly applied a *preponderance of the evidence* standard instead of the required *clear and convincing evidence* standard. T:77; R:176:93.

The Court – taking the ADO's lead – denied Mr. Fojo's request and directed him to resubmit his affidavit while waiving confidentiality and admitting to the findings in the Court's prior orders. T:78; R:198.

Attempting to comply, Mr. Fojo revised and expanded his affidavit. T:78; R:220-26. He went through the specific allegations and findings, admitting to those that were consistent with his original admissions from July 2021. *Id.* He also acknowledged confusion regarding other errors and expressed his apologies. *Id.* Despite this effort to meet the Court's demands, the ADO again objected. T:78; R:203-04; 210-12. It insisted that Mr. Fojo fully comply with the Court's March 22 order, simplify the affidavit, waive confidentiality, attach the Court's prior orders, and admit to the findings therein. T:78; R:210-12. Despite his filing the revised affidavit, the ADO formally objected again. T:78-79; R:231-36. The Court denied Mr. Fojo's request once more. T:79; R:254.

At this point, Mr. Fojo was under extreme financial and emotional distress. T:79. His bank account was repeatedly overdrawn, he was interviewing for jobs, and he was struggling to make ends meet. *Id.* Ultimately, he was forced to comply with the ADO's demands. *Id.* He submitted a simplified affidavit, waived confidentiality, attached the two Court orders, and resubmitted his request. *Id.*; R:260-61. After reviewing the affidavit, the ADO *finally* assented. T:79; R:280-81. The final affidavit was filed. T:79; R:290-91. The Court accepted it on May 18, 2022. T:79; R:299.

XIV. The Massachusetts Disciplinary Proceeding

Mr. Fojo initially contested the reciprocal discipline case in Massachusetts. R:338-416. However, he was unable to attend the second hearing due to physical constraints. He requested a continuance, but the Massachusetts Board of Bar Overseers refused to assent, and the Court issued an order forcing him to resign (in his absence at that hearing). R:423-27.

XV. Notification to the Florida Bar and the Bar's Complaint

Mr. Fojo – through the ADO – notified the Florida Bar of the disciplinary action above on or about May 20, 2022. T:25. Bar counsel

appeared to believe that Mr. Fojo had failed to notify the Florida Bar; that was inaccurate. *Id.*

The Florida Bar waited *over two years – until April 26, 2024* – to file a Formal Complaint for Reciprocal Discipline. R:5-19.

XVI. Recent Events That Absolved Mr. Fojo

Two recent developments further refute the allegations and findings made against Mr. Fojo in New Hampshire.

First, in December 2022, the ADO received correspondence from an attorney it had engaged to negotiate any outstanding medical liens related to the client who had filed the original grievance against Mr. Fojo. T:79-80; R:431-71. The purpose of this engagement was to determine whether there were any liens so that the funds Mr. Fojo had set aside in escrow could be properly disbursed. *Id.* The attorney confirmed that there was, in fact, a lien with New Hampshire Medicaid in the amount of \$3,027.58. *Id.* This confirmation directly disproves the ADO's prior accusation that Mr. Fojo had lied about the existence of the lien. *Id.* Despite this clear evidence, the ADO never corrected its misrepresentations to the Court. *Id.*

Second, the ADO took action concerning \$5,000 that remained frozen in Mr. Fojo's trust account since December 2021. T:80. It directed that these funds be deposited into the New Hampshire Superior Court and filed

a bill of interpleader to determine whether the funds belonged to Mr. Fojo or another client. *Id.*; R:476-93. Mr. Fojo initially contested the interpleader proceeding on the basis that there was no legitimate reason for it. T:80-81; R:529-535; 556-89; 600-04. Ultimately, Mr. Fojo and the client in question reached an agreement regarding the funds: the client acknowledged that the funds rightfully belonged to Mr. Fojo, and as part of the resolution, he forgave a portion of the invoices totaling half of the funds, with the parties agreeing to split them evenly. T:80-81; R:609-10.

These developments further demonstrate that the ADO's allegations were unfounded. *Id.* The claim that Mr. Fojo misrepresented the existence of a medical lien was proven false, yet the ADO has not rectified the record. *See supra* p. 25. Likewise, the assertion that the remaining trust account funds did not belong to him was also incorrect, as confirmed by the agreement reached with the client. T:80-81; R:609-10.

XVII. Mr. Fojo's Grievances Against The ADO Attorneys Who Prosecuted Him Are Currently Being Deliberated by the Full Professional Conduct Committee

Mr. Fojo filed grievances against Mr. Cornell and the other attorney – Elizabeth Murphy – who prosecuted the disciplinary action against him in

New Hampshire. App:1-6.² The grievances targeted their allegations that Mr. Fojo lied about the above-referenced Medicaid lien. *Id.* After an independent counsel’s incomplete review – and dismissal – of those grievances, Mr. Fojo submitted a request for reconsideration. App:7-57. The Complaint Screening Committee – which routinely screens out hundreds of grievances and requests every year – reviewed it and forwarded it to the full Professional Conduct Committee for deliberation and decision. App:58-60.

XVIII. Mr. Fojo’s Pending Lawsuit Against the ADO

On December 23, 2024, Mr. Fojo filed a lawsuit in New Hampshire Superior Court against the ADO (ADO), Mr. Cornell, and the Union Leader Corporation. App:61-84. The complaint alleges that the ADO engaged in egregious overreach and punitive actions against Mr. Fojo, targeting him for his legal representation of parents in lawsuits challenging COVID-era mask mandates. *Id.* He alleges – as he has all along – that the ADO exploited a minor grievance related to trust account record-keeping, escalating the matter into a broad disciplinary proceeding that ultimately led to Mr. Fojo’s suspension. *Id.* The complaint also asserts that the ADO

² “[C]ourts may take judicial notice of official records of administrative agencies without more.” *Freimuth v. State*, 272 So. 2d 473, 475 (Fla. 1972); *Byrne Realty Co. v. S. Fla. Farms Co.*, 81 Fla. 805, 837 (1921) (court took judicial notice of public agency records).

misrepresented facts, improperly expanded its investigation beyond the original grievance, and violated Mr. Fojo's due process rights. *Id.* It further alleges that the ADO collaborated with the Union Leader to publicly defame him, causing severe reputational and financial harm. *Id.* The lawsuit includes claims for due process violations, defamation, and intentional and negligent infliction of emotional distress, and it seeks monetary damages, injunctive relief, and other remedies. *Id.* A scheduling order has not yet been entered in the case.

XIX. The Referee's Report

A hearing was held before a Referee on October 15, 2024. During the hearing, Mr. Fojo requested that the Court impose a lesser sanction than disbarment, citing the deficiencies in the proceedings against him. T:81-82. While he believed that a reprimand or public censure would have been the appropriate disciplinary measures, he was always willing to accept some form of discipline and was now agreeable to a suspension. *Id.* He noted that he had effectively not practiced law since June 2022, following his suspension in Massachusetts, with the exception of filing a stipulation in a Florida case in early 2024 to conclude that matter. T:82. Given that he had already been out of practice for over three years, he was willing to accept a suspension that accounted for this time and to comply

with any remedial measures the Court deemed necessary to prevent future mistakes. T:82-83. Mr. Fojo emphasized that he had suffered significant personal and professional consequences, including the loss of his legal career, severe financial hardship, and damage to his reputation. *Id.* Having made amends, he sought to preserve the possibility of resuming his legal practice in the future. *Id.* Mr. Fojo explained he would agree to a three-year suspension, but the Florida Bar repeatedly insisted the same discipline – forced resignation or disbarment – should be imposed. *Id.*

The Referee examined whether any of the three exceptions to reciprocal discipline under Florida law—due process violation, paucity of evidence, or grave injustice—applied to Mr. Fojo’s case. ROR:12-14. The Referee determined that none of these exceptions were met. *Id.* Despite that ruling, the Referee found that disbarment was too severe a sanction and agreed with Mr. Fojo and imposed a three-year suspension. ROR:15. The Referee based that conclusion on “the **evidence and argument presented to me today.**” *Id.* (emphasis added)

SUMMARY OF ARGUMENT

The Referee’s recommendation of a three-year suspension for Mr. Fojo is well-supported by existing case law, disciplinary standards, and the substantial mitigating factors present in this case. While misappropriation of client funds is a serious offense, this Court has consistently recognized that mitigating circumstances—such as cooperation, restitution, lack of client harm, and absence of fraudulent intent—can justify suspension rather than disbarment. Mr. Fojo fully cooperated with the Attorney Discipline Office (“ADO”) from the outset, admitted to record-keeping errors, sought guidance to prevent future mistakes, and worked to reconcile his trust account. There is no evidence that any client suffered financial harm, and Mr. Fojo took proactive steps to rectify the issue with the client who filed the grievance. Moreover, the ADO’s allegations concerning his handling of a Medicaid lien and trust account funds were later proven false, undermining the severity of the charges against him.

Florida’s disciplinary standards also support suspension rather than disbarment. Standard 4.1(b) states that “Suspension is appropriate when a lawyer knows or should know that the lawyer is dealing improperly with client property and causes injury or potential injury to a client.” Mr. Fojo’s trust account mismanagement resulted from poor record-keeping and lack

of oversight, not intentional misconduct or dishonesty. The absence of fraudulent intent distinguishes this case from those in which disbarment was deemed necessary. Moreover, Mr. Fojo has already been effectively suspended for over three years, during which he has not practiced law in Florida. Given that this Court has routinely imposed suspensions rather than disbarment for attorneys who have engaged in similar or even more egregious conduct, the three-year suspension recommended by the Referee is appropriate.

Further, while this Court has the discretion to impose a more or less severe sanction than that imposed in another jurisdiction, it should not disturb the Referee's recommendation unless it lacks a reasonable basis in existing case law and disciplinary standards. The Referee, who was in the best position to assess key considerations such as Mr. Fojo's degree of culpability, cooperation, remorse, and potential for rehabilitation, determined that a three-year suspension appropriately balances the need for accountability with the opportunity for rehabilitation.

Additionally, recent developments further support Mr. Fojo's position. The attorneys who prosecuted the case against him, Mark Cornell and Elizabeth Murphy, are now under investigation by their own regulatory authority for their handling of the matter. Furthermore, Mr. Fojo has filed a

lawsuit against the ADO, Cornell, and the Union Leader Corporation, alleging misconduct, misrepresentation of facts, and punitive overreach. These developments highlight the significant flaws in the underlying disciplinary process and reinforce that disbarment would be an excessive and unjust sanction.

Because the Referee's recommendation is well-grounded in Florida law, supported by precedent, and takes into account the extraordinary circumstances surrounding Mr. Fojo's case, this Court should approve the Referee's recommended discipline and impose a three-year suspension rather than disbarment.

ARGUMENT

I. Standard of Review

A. Findings of Fact

The Florida Bar seeks to impose reciprocal discipline based on the sanctions Mr. Fojo received in New Hampshire, which included an interim suspension followed by a resignation equivalent to disbarment. The Bar relies on Rule 3-4.6(a) of the Rules Regulating the Florida Bar, which states that a final adjudication of misconduct by another jurisdiction serves as conclusive proof of the misconduct in Florida disciplinary proceedings. However, a respondent may challenge the validity of a foreign disciplinary judgment under three exceptions: First, the respondent may argue that the disciplinary process violated due process by failing to provide adequate notice or a meaningful opportunity to be heard. *Fla. Bar v. Wilkes*, 179 So. 2d 193, 198 (Fla. 1965). Second, the respondent may demonstrate that the judgment was based on insufficient or unreliable evidence, rendering it an untrustworthy determination of guilt. *Id.* Finally, the respondent may assert that enforcing the foreign judgment would result in a grave injustice. *Id.*

B. Recommendation of Discipline

While this Court has discretion to impose a disciplinary sanction that is more or less severe than that imposed in another jurisdiction, *Fla. Bar v. Hagendorf*, 921 So. 2d 611 (Fla. 2006), it should not disturb the referee’s recommendation unless there is no reasonable basis for it in existing case law or disciplinary standards: the Florida Bar correctly states that “[i]n 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.” *Fla. Bar v. Altman*, 294 So. 3d 844, 847 (Fla. 2020) (emphasis added) (cited in Initial Brief at 15). However, as *Altman* also makes clear, “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.” *Id.* (emphasis added).

This Court has further recognized that “the referee ‘occupies a favored vantage point for assessing key considerations—such as a respondent’s degree of culpability and his or her cooperation, forthrightness, remorse, and rehabilitation (or potential for rehabilitation).’” *Fla. Bar v. Tauler*, 775 So. 2d 944, 946-47 (Fla. 2000) (quoting *Fla. Bar v. Lecznar*, 690 So. 2d 1284, 1288 (Fla. 1977)). Given

the referee's unique position to evaluate these factors, his or her recommendation should not be disturbed unless it lacks a reasonable foundation in precedent and disciplinary guidelines. *See id.*

Moreover, because the Court's scope of review is broad and it bears the ultimate responsibility for determining the appropriate sanction, it may review the record that was before the referee and identify the bases that likely informed the referee's disciplinary recommendation. *See id.* In doing so, the Court may consider the evidence of Mr. Fojo's cooperation, remediation efforts, and the absence of actual client harm, which are well-supported by the record and align with prior decisions imposing suspensions rather than disbarment. *See id.* This approach ensures that the sanction imposed is not only fair and proportionate but also consistent with Florida's established disciplinary framework.

II. This Court Should Approve the Referee's Recommendation of a Three-Year Suspension.

A. Case Law

There is a reasonable basis in existing case law for the Referee's recommendation of a three-year-suspension.

In *Tauler*, for example, this Court upheld the referee's recommendation of a three-year suspension rather than disbarment for Tauler because certain mitigating factors distinguished her case from prior

disbarment cases. 775 So. 2d at 947-48. The referee found that Tauler's misappropriations were limited in scope and driven by desperation rather than greed. *Id.* at 948. Additionally, the Court considered Tauler's strong history of public service and legal aid, particularly her extensive pro bono work assisting indigent women and immigrants. *Id.* The referee determined that Tauler was amenable to rehabilitation, had taken responsibility for her actions, and had voluntarily stopped practicing law before formal disciplinary proceedings. *Id.* This Court found that a three-year suspension appropriately balanced the need for punishment with the opportunity for rehabilitation, concluding that while misappropriation of trust funds is a serious offense, the unique mitigating circumstances warranted a lesser sanction than disbarment. *Id.* at 948-49.

In *Florida Bar v. Thomas*, 698 So. 2d 530 (Fla. 1997), this Court upheld the referee's factual findings that Thomas knowingly retained \$1,900 belonging to his client in excess of the agreed contingency fee. *Id.* at 532. The Court declined to impose disbarment, noting that Thomas had no prior disciplinary history and that his misconduct was an isolated incident. *Id.* Instead, the Court imposed a 90-day suspension, balancing the need for accountability with the recognition that the violation did not reflect a pattern of misconduct. *Id.* at 532-33.

In *Florida Bar v. Corces*, 639 So. 2d 604 (Fla. 1994), this Court determined that a two-year suspension was the appropriate sanction for Corces and rejected the Bar's request for disbarment. *Id.* at 605-06. While Corces was found guilty of intentionally misappropriating client trust funds—a violation that typically warrants disbarment—the Court found that mitigating factors justified a lesser penalty: Corces had cooperated with the investigation, made full restitution before the Bar's involvement, and faced no client complaints or harm. *Id.* at 605.

In *Florida Bar v. Macmillan*, 600 So. 2d 457 (Fla. 1992), this Court upheld the referee's findings that MacMillan intentionally misappropriated client funds and knowingly failed to disclose the transfers in a guardianship report. *Id.* at 460. Despite his admission of "misgivings" about taking the funds and his later restitution, MacMillan falsely certified under penalty of perjury that the guardianship account report was complete, omitting both the withdrawal and repayment. *Id.* While the Court acknowledged that disbarment is the presumptive sanction for intentional misappropriation and submitting false documents to a court, the Court recognized mitigating factors such as MacMillan's cooperation and restitution. *Id.* The Court approved the referee's recommendation of a two-year suspension. *Id.*

In *Florida Bar v. Schiller*, 537 So. 2d 992 (Fla. 1989), this Court upheld the referee's findings that Schiller misappropriated client trust funds but concluded that disbarment was not warranted. *Id.* at 993. Schiller admitted to writing unauthorized checks from his trust account and using client funds for personal purposes, resulting in a deficit that grew to over \$29,000. *Id.* However, before the final hearing, he repaid the entire amount, and there was no evidence that any clients suffered direct financial harm. *Id.* Additionally, Schiller cooperated with the investigation, expressed genuine remorse, and was deemed a good candidate for rehabilitation. *Id.* While the Court recognized that misuse of client funds is one of the most serious offenses an attorney can commit and that disbarment is the presumed sanction, it found that Schiller's restitution and cooperation rebutted this presumption. *Id.* The Court imposed a three-year suspension to reinforce the gravity of the offense while still allowing for rehabilitation. *Id.*

B. Standards

The Referee considered three standards for imposing discipline: Standards 4.1 (Failure to Preserve the Client's Property), 4.6 (Lack of Candor), and 5.1 (Failure to Maintain Personal Integrity). All three standards support the recommendation of a three-year suspension.

Standard 4.1(a) states “Disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury.” Standard 4.1(b) states “Suspension is appropriate when a lawyer knows or should know that the lawyer is dealing improperly with client property and causes injury or potential injury to a client.”

Standard 4.6(a) states “Disbarment is appropriate when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another regardless of injury or potential injury to the client.” Standard 4.6(b) states “Suspension is appropriate when a lawyer knowingly deceives a client and causes injury or potential injury to the client.”

Standard 5.1(a) states “Disbarment is appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.” Standard 5.1(b) states “Suspension is appropriate when a lawyer knowingly engages in criminal conduct which is not included elsewhere in this subdivision or other conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.”

C. A Three-Year Suspension is Appropriate

The Referee's recommendation of a three-year suspension for Mr. Fojo is supported by case law and the disciplinary standards governing attorney misconduct. Although serious, Mr. Fojo's actions do not warrant disbarment, as they were not driven by fraud, dishonesty, or intentional misappropriation of client funds. Instead, his misconduct stemmed primarily from poor trust account management, a lack of oversight over his secretary, and disorganized record-keeping—factors that this Court has consistently recognized as warranting suspension rather than disbarment when mitigating circumstances are present.

i. Mr. Fojo's Cooperation, Lack of Harm to Clients, and Remedial Actions Warrant a Lesser Sanction

This Court has consistently held that while misappropriation of client funds is a serious offense, mitigating factors can justify a suspension rather than disbarment. *Tauler*, 775 So. 2d at 948; *Corces*, 639 So. 2d at 606. In *Tauler*, the Court imposed a three-year suspension instead of disbarment because the misconduct was driven by financial distress rather than greed, the attorney cooperated, and the harm was mitigated. 775 So. 2d at 947-49. Similarly, in *Corces*, the Court rejected disbarment where the attorney had repaid funds before disciplinary proceedings commenced and had no prior history of misconduct. 639 So. 2d at 605-06. Finally, in

Schiller, the Court imposed a three-year suspension on Schiller, finding that while his misappropriation of client funds was serious, his restitution, cooperation, and remorse rebutted the presumption of disbarment. 537 So. 2d at 993.

Here, Mr. Fojo's conduct falls within the scope of Standard 4.1(b), which states that "Suspension is appropriate when a lawyer knows or should know that the lawyer is dealing improperly with client property and causes injury or potential injury to a client." While Mr. Fojo's failure to maintain proper trust accounting records resulted in mismanagement of client funds, there is no evidence that his actions were intentional or fraudulent. Instead, his errors were the product of poor oversight, disorganization, and a lack of financial supervision over his secretary. Courts have recognized that mismanagement of client funds due to negligence, rather than deliberate misappropriation, warrants a suspension rather than disbarment. *See supra* p. ____.

Furthermore, Mr. Fojo fully cooperated with the ADO from the outset. Upon being contacted in June 2021, he admitted to record-keeping errors, provided all requested documentation, sought guidance from the ADO to prevent future mistakes, and worked to reconcile his trust account—even though he lacked CPA training. These actions mirror the mitigating factors

in *Tauler* and *Corces*, where cooperation, remediation, and an absence of fraudulent intent warranted a suspension rather than disbarment.

Additionally, there is no evidence that any client suffered financial harm. The client who initially filed the grievance was paid a partial settlement in August 2021, and Mr. Fojo set aside funds for outstanding liens, demonstrating his intent to rectify the issue. The ADO later confirmed the existence of a Medicaid lien that it had previously accused Mr. Fojo of fabricating, which undermined its allegations of dishonesty. Additionally, the \$5,000 frozen in his trust account was the subject of a baseless interpleader action, which was later resolved in Mr. Fojo's favor. These facts, taken together, confirm that his misconduct—while serious—did not result in client losses and was not motivated by personal enrichment.

Accordingly, because Mr. Fojo's misconduct falls squarely within Standard 4.1(b), and because his cooperation, restitution, and remedial efforts are consistent with precedent in *Tauler*, *Corces*, and *Schiller*, a suspension rather than disbarment is the appropriate sanction.

ii. Mr. Fojo's Misconduct Was an Isolated Incident, Not a Pattern of Misappropriation

In *Thomas*, the Court imposed a 90-day suspension rather than disbarment where the attorney knowingly retained \$1,900 of a client's funds

but had no prior misconduct and the violation was an isolated incident. 698 So. 2d at 532. Likewise, in *MacMillan*, a two-year suspension was imposed for misappropriation where mitigating factors, including restitution and cooperation, were present. 600 So. 2d at 460.

Here, Mr. Fojo's misconduct involved a single client grievance related to a trust accounting error. There is no evidence of a broader pattern of client fund misappropriation, fraud, or deceit. Indeed, even the other clients the ADO accused him of wronging never filed grievances. His actions were primarily the result of poor financial record-keeping and a lack of supervision over his secretary—not an intentional scheme to misappropriate funds. Given that courts have imposed suspensions rather than disbarment for more egregious and sustained financial violations, a three-year suspension is the appropriate sanction in this case.

iii. The ADO's Misrepresentations and Overreach Further Justify a Lesser Sanction

Mr. Fojo was subjected to an extraordinarily aggressive disciplinary process that deviated from standard procedures. The ADO falsely accused him of lying about a Medicaid lien, mischaracterized his attempts to rectify his trust account deficiencies, and expanded its inquiry beyond the original grievance without identifying any factual basis for doing so. The ADO also froze his operating account—without legal authority—three days before

Christmas, preventing him from meeting business obligations. This Court has recognized that the fairness of disciplinary proceedings is a relevant consideration in determining the appropriate sanction. *Wilkes*, 179 So. 2d at 198.

iv. Mr. Fojo Has Already Undergone a De Facto Suspension

Mr. Fojo has not practiced law in Florida since early 2022 and has already endured significant professional and financial consequences. He lost his legal career, suffered severe reputational harm, and was forced to seek new employment in a new industry to support his family. Given that he has already been unable to practice for over three years, imposing disbarment would be excessively punitive. Instead, the Court should impose a suspension that accounts for the time he has already spent out of practice, allowing him a path to eventual reinstatement.

v. The Case Law and Standards Support the Referee's Recommendation of a Three-Year Suspension

Here, the Referee's recommended three-year suspension is supported by the *Tauler*, *Corces*, *MacMillan*, and *Thomas* decisions, all of which involved financial misconduct but resulted in suspension rather than disbarment due to mitigating factors. It aligns with the disciplinary standards for mismanagement of client funds, and appropriately accounts

for the mitigating factors present in Mr. Fojo's case. Given his full cooperation, lack of client harm, remedial efforts, and the ADO's procedural overreach, disbarment would be an unjust and disproportionate sanction. Accordingly, the Court should approve the Referee's recommendation and impose a three-year suspension rather than disbarment.

CONCLUSION

For the foregoing reasons, this Court should approve the Referee's recommendation of a three-year suspension.

CERTIFICATE OF COMPLIANCE

Appellant certifies that this Answer Brief complies with the requirements for computer-generated briefs.

Respectfully submitted,

Dated: March 17, 2025

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