IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MONTGOMERY BLAIR SIBLEY,

Respondent.
_____/

Supreme Court Case
No. SC06-1387

The Florida Bar File Nos.
2003-00,597(2B) and
2005-00,557(2B)

ON PETITION FOR REVIEW

ANSWER BRIEF OF THE FLORIDA BAR

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SYMBOLS AND REFERENCES

For the purpose of this Answer Brief, The Florida Bar will be referred to as The Florida Bar or the Bar. Montgomery Blair Sibley will be referred to as "the Respondent." Other persons will be referred to by their respective surnames.

References to the transcript will be set forth as "T," the date of the hearing, and page number.

STATEMENT OF THE CASE AND OF THE FACTS

On or about July 14, 2006, The Florida Bar filed a two count complaint against the Respondent alleging violations of the Rules Regulating The Florida Bar. Count I of the complaint alleged that the Respondent violated Rule 4-8.4(h) of the Rules of Professional Conduct for willfully refusing to timely pay a child support obligation. Count II of the complaint alleged that the Respondent violated Rule 4-3.1 of the Rules of Professional Conduct for filing frivolous pleadings. On or about August 2, 2006, Judge John Crusoe of Leon County was appointed as the Referee. Upon motion of the Respondent, the matter was transferred to Miami-Dade County and on or about October 19, 2006, Judge Orlando Prescott was appointed as the Referee.

On or about January 23, 2007, a status conference was conducted in this matter. At the status conference, all outstanding motions were addressed by the Referee. Specifically, the Referee considered The Florida Bar's Motion to Strike Respondent's Affirmative Defenses; the Respondent's First Omnibus Motion; the Respondent's First Motion to Compel; the Respondent's Motion to Reconsider Order Denying Respondent's First Request for Issuance of Subpoena Duces Tecum; the Respondent's Motion to Dismiss or, Alternatively, Respondent's Third Affidavit and Motion to Disqualify and Motion for Contempt; and The Florida Bar's Motion for Partial Summary Judgment. In his Motion to Reconsider Order

Denying Respondent's First Request for Issuance of Subpoena Duces Tecum, the Respondent argued that Judge Prescott should reconsider the denial of the issuance of subpoenas to judges of the Third District Court of Appeal, Circuit Court Judge Maxine Cohen Lando, and the attorney for the Third District Court of Appeals by the previous Referee. Judge Prescott granted the Respondent's request and upon reconsideration, determined that there was no valid ground to vacate Judge Crusoe's order or issue the subpoenas requested by the Respondent. (T. 1/23/07 at 14-42; T. 4/16/07 at 27-28; Appendix B).

A final hearing on the complaint was conducted on April 16, 2007. The Respondent failed to appear for the final hearing, either physically or telephonically. (T. 4/16/07 at 3-4, 28-29; Appendix A). Additionally, the Respondent failed to contact either the Referee or Bar Counsel to explain his absence and failed to present any evidence for the Referee's consideration. (T. 4/16/07 at 3-4, 28-29; Appendix A). Because the Respondent was notified of the final hearing and his appearance was not excused, the Referee proceeded with the final hearing. Upon conclusion of the final hearing, Judge Prescott issued a Report of Referee dated April 25, 2007. (Appendix A).

In his Report of Referee, the Referee made the following factual findings concerning Count I of the complaint:

> By order dated August 5, 2002, Judge Maxine Cohen Lando of the Eleventh Judicial Circuit found the Respondent in contempt of

> court for willfully failing to pay child support. In that order, Judge Lando determined that the Respondent owed child support in the amount of $100,000.00. Judge Lando further determined that the Respondent had the present financial ability to pay the child support but willfully failed to do so and, accordingly, willfully violated the trial court's order. Because the Respondent was in contempt of court for willfully failing to pay child support, Judge Lando sentenced the Respondent to 90 days in jail unless the Respondent paid the outstanding child support. Judge Lando further set a payment plan for the Respondent to pay his outstanding child support.
>
> By order dated October 18, 2002, Judge Lando amended her contempt order to increase the incarceration period to an indefinite period of time until the Respondent fully paid the outstanding child support. As of November 22, 2002, the Respondent failed to pay any of the outstanding child support and failed to comply with Judge Lando's payment plan. Accordingly, on November 22, 2002, Judge Lando issued an Order of Contempt and Commitment to the Miami-Dade County Corrections Department. Respondent sought review of Judge Lando's various orders of contempt and they were upheld on appeal.

(Appendix A; Appendix C).

Based upon the factual findings, Judge Prescott found the Respondent had violated Rule 4-8.4(h) of the Rules of Professional Conduct. (T. 4/16/07 at 29; Appendix A).

The Referee also made the following factual findings concerning Count II of the complaint:

> On November 3, 2004, the Third District Court of Appeal filed an opinion in the matter of Sibley v. Sibley, 885 So. 2d 980 (Fla. 3rd DCA 2004) affirming the lower court's child support and contempt orders, and directing that the Respondent was precluded from further self-representation in that court. In that opinion, the Third District Court of Appeal found that the Respondent had initiated 25 self-represented appellate proceedings (24 of which were found to be of no

> merit); filed at least 12 federal court actions against various judges assigned to his case, the court system, and his former wife (all of which were dismissed); and had filed a federal action in Delaware against his former wife (which was dismissed). The Third District Court of Appeal also found that the Respondent "has served as an unending source of vexation and meritless litigation", and agreed that his appeals were without merit. (emphasis added). The Respondent sought review of the Third District's opinion by the Supreme Court of Florida, which was denied at Sibley v. Sibley, 901 So. 2d 120 (Fla. 2005).

(Appendix A; Appendix D).

Based upon the factual findings, Judge Prescott had found the Respondent had violated Rule 4-3.1 of the Rules of Professional Conduct. (T. 4/16/07 at 29-30; Appendix A).

Additionally, the Referee also found that based upon the evidence presented, the following aggravating factors were applicable: 9.22(b) (Dishonest or selfish motive), 9.22(c) (Pattern of Misconduct), 9.22(d) (Multiple offenses), 9.22(e) (Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency), 9.22(g) (Refusal to acknowledge wrongful nature of conduct), and 9.22(i) (Substantial experience in the practice of law). (Appendix A). Because the Respondent failed to appear at the final hearing and failed to present any evidence, no mitigating factors were found by the Referee. (Appendix A). Based upon the factual findings made by the Referee, the Referee recommended that the Respondent be suspended from the practice of law for three years. (Appendix A).

SUMMARY OF THE ARGUMENT

Due process requires that attorneys in disciplinary proceedings have notice of the discipline sought, ample time for preparation, and opportunity to be heard. As the Respondent in the case at bar was notified of the discipline being sought and had the opportunity to prepare a defense, but voluntarily failed to participate in the final hearing, there has been no due process violation. Additionally, as disciplinary proceedings are neither civil nor criminal proceedings, but quasi-judicial proceedings, the Respondent is not entitled to the same rights in which defendants in criminal proceedings are entitled.

Further, as the Referee's factual findings and recommendations are supported by competent, substantial evidence, there have been no substantial due process violations and this Court should approve the Referee's findings.

ARGUMENT

THE RESPONDENT WAS AFFORDED PROCEDURAL DUE PROCESS IN THE DISCIPLINARY PROCEEDINGS. (Restated to include response to the Respondent's argument II).

Attorneys are entitled to procedural due process in disciplinary proceedings. See The Florida Bar v. Committee, 916 So. 2d 741, 745 (Fla. 2005) citing The Florida Bar v. Rubin, 709 So. 2d 1361, 1363 (Fla. 1998). This Court has stated in The Florida Bar v. Carricarte, 733 So. 2d 975 (Fla. 1999) that due process requires that attorneys in disciplinary proceedings have notice of the discipline sought, ample time for preparation, and an opportunity to be heard. See id. at 979.

In The Florida Bar v. Daniel, 626 So. 2d 178 (Fla. 1993), the attorney alleged there was a due process violation because the referee recommended payment of costs without allowing the attorney the opportunity to challenge or refute the costs. See id. at 182. This Court found the attorney's argument meritless as the attorney voluntarily excused himself from the hearing and voluntarily failed to present any evidence concerning the costs. See id. Accordingly, because the attorney was afforded the opportunity to be heard but voluntarily chose not to take advantage of that opportunity, this Court found there was no due process violation. See id. at 183.

In the case at bar, there has been no due process violation as the Respondent was notified of the discipline sought by The Florida Bar on or about July 14, 2006

when the complaint was filed in the Supreme Court. Further, the Respondent had ample time to prepare a defense in the matter as the final hearing was not conducted until April 16, 2007. Finally, the Respondent was given the opportunity to present any evidence he wished at the final hearing as he was noticed of the final hearing but he voluntarily failed to participate in the proceedings or introduce any evidence. There has, therefore, been no due process violation.

In his Second Amended Initial Brief, the Respondent argues that Rule 3-7.6(f)(1) of the Rules of Discipline is unconstitutional because it fails to afford the Respondent due process rights.[1] Specifically, the Respondent argues that disciplinary proceedings should be treated like criminal proceedings rather than quasi-judicial administrative proceedings.

This Court has consistently stated that disciplinary proceedings are neither criminal nor civil proceedings but rather are quasi-judicial proceedings. See The Florida Bar v. Tobkin, 944 So. 2d 219, 224 (Fla. 2006). See also R. Regulating Fla. Bar 3-7.6(f)(1). Such a characterization is not unconstitutional as this Court has "exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted." Art. V, § 15, Fla. Const. Further, the practice of law is not an absolute right, but rather a privilege granted by the

[1] In his Second Amended Initial Brief, the Respondent incorrectly identifies the Rule as Rule 3-7.7(f)(1). Rule 3-7.7(f) of the Rules of Discipline concerns the application of the Florida Rules of Appellate Procedure in these proceedings.

Supreme Court. See Holland v. Flourney, 195 So. 138, 141 (Fla. 1940). Accordingly, as this Court has exclusive jurisdiction, this Court can dictate the manner in which disciplinary proceedings can occur. See generally Fla. Bar re Advisory Opinion, 398 So. 2d 446, 447 (Fla. 1981) ("Neither the legislature nor the governor can control what is purely a judicial function.")

The Respondent next argues in his Second Amended Initial Brief that he had speedy trial rights in his disciplinary proceedings which were violated. There are no speedy trial rights in disciplinary proceedings. Specifically, as previously argued, because disciplinary proceedings are neither criminal nor civil proceedings, but quasi-judicial administrative proceedings, the Sixth Amendment of the United States Constitution does not apply. The only "speedy trial" right the Respondent has is governed by this Court's requirement that the referee's report be filed within 180 days of appointment unless there are substantial reasons for delay. Further, the 180 days is not even a speedy trial right, but rather, a time line imposed by this Court.

Additionally, had there been an unreasonable delay in the disciplinary proceedings, that is a mitigating factor that is considered in determining the appropriate discipline. See Fla. Stds. Imposing Law. Sancs. 9.32(i). The Respondent, however, voluntarily failed to appear at the final hearing and failed to present any evidence of mitigation, including any mitigation about an unreasonable

delay. Accordingly, the Referee correctly found that no mitigating factors applied. (Appendix A).[2]

The Respondent next argues that the Referee erred by not allowing the Respondent to call witnesses at the final hearing. Specifically, the Respondent argues that he was not allowed to cross-examine any of the complaining witnesses and was also not allowed to call any witnesses on his behalf.

There is no right to cross-examine witnesses in disciplinary proceedings. In The Florida Bar v. Vannier, 498 So. 2d 896 (Fla. 1986), this Court stated that because disciplinary proceedings are neither criminal nor civil but quasi-judicial administrative proceedings, the technical rules of evidence do not apply. See id. at 898. This Court further stated that "hearsay is admissible and there is no right to confront witnesses face to face." Id. (citations omitted). Accordingly, the hearsay evidence that was presented was admissible and the Respondent had no right to request the opportunity to cross-examine any witnesses.

In support of his argument that he was not allowed to call any witnesses to testify, the Respondent alleges that the Referee failed to issue subpoenas to various members of the judiciary. The Respondent, however, is not entitled to subpoena

[2] The Florida Bar proffers that had the Respondent appeared at the final hearing and presented any evidence of a delay, there still would be no mitigation. Specifically, Fla. Stds. Imposing Law. Sancs. 9.32(i) requires that the delay was not due to any substantial contribution from the Respondent. In the case at bar, the matter was delayed solely at the Respondent's requests and because of the Respondent's conduct.

members of the judiciary to testify. Specifically, courts have consistently held that a member of the judiciary may not be compelled to testify regarding the motivations behind his or her judicial actions. See United States v. Morgan, 313 U.S. 409, 85 L. Ed. 1429, 61 S. Ct. 999 (1941); Fayerweather v. Ritch, 195 U.S. 276, 49 L. Ed. 193, 25 S. Ct. 58 (1904). While judges may be compelled to give testimony about facts within his or her knowledge, he or she cannot be compelled when the knowledge sought is related to some judicial action or decision. See Blair v. United States, 250 U.S. 273, 63 L. Ed. 979, 39 S. Ct. 468 (1919).

> The essential line of demarcation appearing from the cases is that judicial and quasi-judicial officers may be compelled to testify only as to relevant matters of fact that do not probe into or compromise the mental processes employed in formulating the judgment in question. See the Morgan decisions, supra, [referring to Morgan v. United States, supra, and its predecessor cases]. Thus, even though a particular inquiry may be factually directed, it may still be objectionable if it invades upon an officials' good faith decision-marking prerogative.

Standard Packaging Corp. v. Curwood, Inc., 365 F. Supp. 134, 135 (N.D. Ill. 1973).

As the sole purpose for the Respondent's issuance of subpoenas was to have the witnesses explain their reasoning for issuing the orders and opinions that have previously been issued in his underlying child support case, the Respondent is not entitled to compel the testimony of the witnesses. The reasoning for the judicial decisions that were made is absolutely privileged.

The Respondent next argues that the Referee abused his discretion in denying the Respondent's request for a continuance, thereby violating the Respondent's procedural due process. As the Respondent properly concedes in his Second Amended Initial Brief, a referee in a disciplinary proceeding has discretion in denying a request for a continuance. See The Florida Bar v. Kandekore, 766 So. 2d 1004, 1006 (Fla. 2000). In Kandekore, this Court found there was no due process violation because the referee acted within his discretion in denying the attorney's "eleventh hour" request for a continuance. Id. Like the attorney in Kandekore, the Respondent filed his motion to continue at the "eleventh hour" in the case at bar. Specifically, the Notice of Final Hearing was sent out on March 28, 2007. (Appendix E). The Respondent, however, waited until April 11, 2007 to send out his Motion to Continue. See also The Florida Bar v. Lipman, 497 So. 2d 1165, 1168 (Fla. 1986) (finding that there was no abuse of discretion in denying a motion for continuance when the attorney waited until the last minute to file his motion). Further, in his motion, the Respondent failed to state good cause for his continuance. Rather, the Respondent alleged that he had a scheduling conflict, but failed to state with any specificity what the scheduling conflict was. Further, the Respondent's Motion to Continue attempted to litigate issues that had already been resolved by the Referee. Specifically, the Respondent again moved to dismiss the complaint alleging a violation of the Respondent's speedy trial rights, rights which

the Respondent is not entitled to in disciplinary proceedings. Accordingly, the Referee did not abuse his discretion in failing to grant a Motion for Continuance that stated no good cause.

The Respondent next argues that the Referee erred by not compelling production of documents. It is within the Referee's discretion to grant or deny a discovery motion. Cf. Orlowitz v. Orlowitz, 199 So. 2d 97, 98 (Fla. 1967). See also The Florida Bar v. Huggett, 626 So. 2d 1304 (Fla. 1991) withdrawn for other reasons September 23, 1993. In the case at bar, the Respondent requested all documents related to every instance when The Florida Bar disciplined an attorney for violating Rules 4-8.4(h) and 4-3.1 of the Rules of Discipline. The Respondent also requested all documents related to reports detailing the number of complaints processed by The Florida Bar for each of the last three years and all documents related to reports detailing the length of time to process said complaints. The Florida Bar objected to the discovery requests as overly broad, irrelevant, and unduly burdensome. Specifically, The Florida Bar alleged that the Respondent was engaging in a fishing expedition in violation of McCarty v. Schultz' Estate, 372 So. 2d 210 (Fla. 3rd DCA 1979) since there was no substantial similarity between the discovery requested and the pending matter. Upon conclusion of argument of counsel and review of the pleadings, the Referee denied the Respondent's Motion to Compel finding the Respondent's requests were overbroad

and irrelevant. (T. 1/23/07 at 48-49; Appendix F). The Respondent has failed to establish how the Referee abused his discretion in denying discovery requests that were overly broad and irrelevant.

The Respondent next alleges that the Referee erred when he struck the Respondent's affirmative defenses. On or about September 15, 2006, the Respondent filed his nineteen Affirmative Defenses. The Respondent alleged that the complaint failed to state a cause of action, the Respondent acted under duress, The Florida Bar had unclean hands, public policy prohibited discipline, the doctrine of laches applied, the matter was handled in the wrong venue, the Respondent's parental rights were in jeopardy, the Respondent had the right to access courts, discipline would violate the Respondent's First Amendment rights, discipline would violate the Respondent's Fifth Amendment rights, and discipline would violate the Respondent's Fourteenth Amendment rights. On or about October 26, 2006, The Florida Bar moved to strike the Respondent's affirmative defenses alleging that the defenses were not recognized by Rule 1.110(d) of the Rules of Civil Procedure; the defenses, even if true, did not excuse the Respondent's misconduct; the Respondent failed to meet the elements of equitable estoppel; the Respondent failed to meet the elements of laches; discipline had nothing to do with the Respondent's parental rights or access to courts; and discipline would not violate any of the Respondent's constitutional rights. The

Referee allowed both parties to argue the merits of The Florida Bar's Motion to Strike the Respondent's Affirmative Defenses at the case management conference on January 23, 2007. (T. 1/23/07 at 51-53). At that time, the Respondent clarified that the affirmative defenses he raised went to mitigation rather than excusing any misconduct the Respondent committed. (T. 1/23/07 at 52). Accordingly, the Referee correctly struck the Respondent's affirmative defenses. (Appendix F). See also The Florida Bar v. St. Louis, No. SC04-49, 2007 WL 1285836, at *13 (Fla. May 3, 2007).

Further, even if the Referee erred in striking the Respondent's affirmative defenses, the Respondent failed to prove them at the final hearing. "The party seeking to assert the affirmative defense has the burden of proof as to that defense." Ellingham v. Florida Dept. of Children and Family Services, 896 So. 2d 926, 927 (Fla. 1st DCA 2005) citing Public Health Trust of Dade County v. Holmes, 646 So. 2d 266 (Fla. 3rd DCA 1994). As the Respondent failed to present any evidence at the final hearing of this cause including any evidence concerning his affirmative defenses, the Respondent has failed to meet his burden of proof.

The Respondent next alleges that his procedural due process rights were violated because the Referee adopted the Report of Referee submitted by The Florida Bar. The Respondent is incorrect. At the conclusion of the final hearing, the Referee detailed his factual findings concerning the guilt of the Respondent.

(T. 4/16/07 at 28-31). The Referee further instructed The Florida Bar to submit a proposed Report of Referee with the factual findings the Referee had already made. Further, the Referee did not adopt The Florida Bar's report as The Florida Bar recommended that the Respondent be suspended for two years and, therefore, submitted a proposed report with a recommendation of a two year suspension. The Referee, however, drafted his own report and recommended that the Respondent be suspended from the practice of law for three years.

Additionally, this Court has previously addressed the issue of a Referee adopting proposed findings. In The Florida Bar v. Barrett, 897 So. 2d 1269 (Fla. 2005), the attorney challenged the referee's factual findings because they were an adoption of The Florida Bar's proposed findings. See id. at 1273. This Court found that there was no error as the record indicated that the referee made factual findings on the record which were reflected in the proposed report submitted to the referee. See id. at 1273-74. See also The Florida Bar v. Cramer, 678 So. 2d 1278 (Fla. 1996) (holding that the referee did not err when it adopted proposed findings that had already been announced).

In the case at bar, the Referee indicated on the record that he found that the Respondent had violated Rules 4-8.4(h) and 4-3.1 by clear and convincing evidence. (T. 4/16/07 at 29-31). Because the Referee's findings are reflected on

the record and as the Report of Referee is in fact not a verbatim adoption of the proposed report submitted by The Florida Bar, there is no error.

The Respondent next argues that his procedural due process rights were violated because he was not afforded a trial by jury. As previously discussed, disciplinary proceedings are neither civil nor criminal, but quasi-judicial administrative proceedings. See R. Regulating Fla. Bar 3-7.6(f)(1). Accordingly, the Respondent is not entitled to a jury trial. Cf. The Florida Bar v. Furman, 451 So. 2d 808, 810-12 (Fla. 1984) (holding that an individual prosecuted for the unlicensed practice of law under the Rules Regulating The Florida Bar was not entitled to a jury trial).

Finally, the Respondent next argues that the Report of Referee should be rejected because the Referee was not fair and impartial. The Respondent, however, fails to provide any evidence of how the Referee was not fair and impartial other than issuing adverse rulings. Cf. Kokal v. State, 901 So. 2d 766, 775 (Fla. 2005) (citations omitted) (stating adverse rulings are not an adequate ground for recusal). Simply because the Referee did not agree with the Respondent's positions does not mean that the Respondent was not afforded a fair and impartial tribunal.

THE REFEREE'S FINDINGS THAT THE RESPONDENT VIOLATED RULES 4-8.4(h) AND 4-3.1 IS SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE. (Restated to include responses to the Respondent's arguments III and IV).

This Court has consistently stated that a referee's findings of fact carry a presumption of correctness and will be upheld unless they are clearly erroneous or there is no evidence in the record to support them. See The Florida Bar v. Vannier, 498 So. 2d 896, 898 (Fla. 1986) (citation omitted); The Florida Bar v. McCain, 361 So. 2d 700 (Fla. 1978); The Florida Bar v. Hirsch, 359 So. 2d 856 (Fla. 1978). If the referee's findings are supported by competent, substantial evidence, this Court will not reweigh the evidence and substitute its own judgment for that of the referee. See The Florida Bar v. MacMillan, 600 So. 2d 457, 459 (Fla. 1992) citing The Florida Bar v. Hooper, 509 So. 2d 289 (Fla. 1987). The party challenging the referee's findings carries the burden of demonstrating that there is no evidence in the record to support those findings. See The Florida Bar v. Spann, 682 So. 2d 1070, 1073 (Fla. 1996) citing The Florida Bar v. Miele, 605 So. 2d 866 (Fla. 1992).

In the case at bar, it is the Respondent who is challenging the factual findings of the Referee and must show that the evidence in the record does not support the Referee's findings. See Spann, 682 So. 2d at 1073. The Referee's factual findings and findings of guilt are supported by competent, substantial evidence. Specifically, at the final hearing, The Florida Bar introduced into

evidence an Order of Contempt and Commitment to the Miami-Dade County Corrections Department signed by Judge Maxine Cohen Lando of the Eleventh Judicial Circuit on or about November 22, 2002. (T. 4/16/07 at 11-12; Appendix A; Appendix C). That order specifically found that the Respondent was in contempt of court for willfully failing to pay child support. (T. 4/16/07 at 11-12; Appendix A; Appendix C). The contempt order was appealed and affirmed by the appellate courts and, accordingly, was a final order. (T. 4/16/07 at 12; Appendix A).

Rule 4-8.4(h) of the Rules of Professional Conduct states that a lawyer shall not "willfully refuse, as determined by a court of competent jurisdiction, to timely pay a child support obligation." Judge Lando has determined that the Respondent willfully refused to timely pay a child support obligation. (Appendix C). It was entirely reasonable for the Referee to rely upon Judge Lando's order in making factual findings. See The Florida Bar v. Clement, 662 So. 2d 690 (Fla. 1995) (finding that a referee in a bar discipline case can consider any evidence which is relevant in resolving a factual question); The Florida Bar v. Rood, 620 So. 2d 1252, 1255 (Fla. 1993) (stating that referees are authorized to consider judgments in civil proceedings in resolving factual questions). Accordingly, there is competent, substantial evidence to support the Referee's finding that the Respondent violated Rule 4-8.4(h) of the Rules of Professional Conduct.

The Respondent attempts to re-litigate the merits of Judge Lando's contempt order in arguing that he is not in violation of Rule 4-8.4(h) of the Rules of Professional Conduct. Judge Lando's order, however, has been affirmed by the Third District Court of Appeals. See Sibley v. Sibley, 833 So. 2d 847 (Fla. 3rd DCA 2002). The Respondent has had the opportunity and, in fact, availed himself of the opportunity to challenge Judge Lando's order. Accordingly, as there is a final order which can properly be considered by the Referee, there is competent, substantial evidence to support the Referee's finding that the Respondent violated Rule 4-8.4(h) of the Rules of Professional Conduct.

The Florida Bar also introduced at the final hearing a copy of an opinion issued by the Third District Court of Appeals cited at Sibley v. Sibley, 885 So. 2d 980 (Fla. 3rd DCA 2004). (T. 4/16/07 at 14; Appendix A; Appendix D). This opinion specifically found that the Respondent "has served as an unending source of vexatious and meritless litigation." Id. at 988 (emphasis added). (T. 4/16/07 14-17, 29-30; Appendix A; Appendix D). As a result, the Third District Court of Appeals prohibited the Respondent from any further pro se filings. See id. (T. 4/16/07 at 15; Appendix D).

Rule 4-3.1 of the Rules of Professional Conduct prohibits an attorney from litigating issues that are frivolous. The Third District Court of Appeals specifically found that the Respondent continuously engaged in meritless litigation. Id. (T.

4/16/07 at 14-17, 29-30; Appendix A; Appendix D). The Referee properly concluded that the word "meritless" is synonymous with "frivolous." (T. 4/16/07 at 30). Again, it was entirely reasonable for the Referee to rely upon the Third District Court of Appeal's decision in making his factual findings. See Clement, 662 So. 2d at 690; Rood, 620 So. 2d at 1255. Accordingly, there is competent, substantial evidence to support the Referee's finding that the Respondent violated Rule 4-3.1 of the Rules of Professional Conduct.

CONCLUSION

Based upon the foregoing reasons and citations of authority, there has been neither a procedural due process violation nor a substantive due process violation. Further, as the Referee's findings are supported by competent, substantial evidence, the Referee's report should be approved and the Respondent should be suspended from the practice of law for three years.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Answer Brief was forwarded via regular mail to the Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927; and a true and correct copy was mailed to Montgomery Blair Sibley, the Respondent, at his record Bar address of 1629 K Street NW, Suite 300, Washington D.C., 20006-1631 and his last known address of 50 West Montgomery Avenue, Suite B4, Rockville, Maryland, 20850; and to Brian David Burgoon, Designated Reviewer, at 999 Peachtree Street NE, Suite 2300, Atlanta, Georgia 30309-4416; and to Kenneth Lawrence Marvin, Director of Lawyer Regulation, at The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399, on this _____ day of October, 2007.

_____

BARNABY LEE MIN
Bar Counsel

CERTIFICATE OF TYPE, SIZE AND STYLE

I HEREBY CERTIFY that the Answer Brief of The Florida Bar is submitted in 14 point proportionately spaced Times New Roman font in Microsoft Word format.

_____

BARNABY LEE MIN
Bar Counsel

APPENDIX

A. Report of Referee dated June 28, 2007.

B. Order Denying Respondent's Request for Issuance of Subpoena Duces Tecum dated March 28, 2007.

C. Order on Former Wife's Motion for Contempt for Failure to Pay Child Support dated January 10, 2002 and Former Wife's Amended Motion for Contempt for Failure to Pay Child Support dated April 17, 2002 signed August 5, 2002; Amendment to Court Order dated August 5, 2002 as to Period of Incarceration dated October 18, 2002; and Order of Contempt and Commitment to the Miami-Dade County Corrections Department dated November 22, 2002.

D. Sibley v. Sibley, 883 So. 2d 847 (Fla. 3rd DCA 2002).

E. Notice of Final Hearing dated March 28, 2007.

F. Order Denying the Respondent's First Motion to Compel dated January 23, 2007.