Supreme Court of Florida

CASE NO. SC07-1071
Florida Bar File No. 2007-70,509
(11G-OSC)

THE FLORIDA BAR,

Petitioner,

v.

ANN BITTERMAN,

Respondent.

ON PETITION FOR REVIEW OF REPORT
AND RECOMMENDATION OF REFEREE

RESPONDENT'S ANSWER BRIEF

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STATEMENT OF THE CASE AND OF THE FACTS

This is an attorney discipline matter arising out of a Second Amended Petition for Contempt filed by The Florida Bar against the Respondent, Ann Bitterman. Resp. App. 3. Ms. Bitterman had been suspended for a period of ninety-one days in a consent order effective on September 23, 2004. Tr. 7. She was eligible to attain reinstatement of her law license in December of 2004, but instead continued a voluntary leave of absence from the practice for self-improvement purposes. Although she now has returned to live in Florida, during her suspension Ms. Bitterman moved to Hawaii for awhile to work on her health and her "quality of life." Tr. 73.

Ms. Bitterman is permanently disabled as a result of psychiatric conditions. Tr. 73. "The formal diagnosis is major depression with melancholia, chronic and psychotic." Tr. 74. She controls her condition with prescription medication costing $2,000 per month. Tr. 73.

The Bar relegates to a footnote (Initial Brief at 3) a casual remark about the original two complaints against Ms. Bitterman that led to these proceedings. These contempt proceedings were not filed as a result of Ms. Bitterman showing her Florida Bar card to a jailer in order to visit a personal friend, or to the towing company to obtain possession of an automobile over which she already had a valid power of

attorney. These proceedings arose as a result of false accusations that Ms. Bitterman had practiced law during a period of her suspension, in connection with dissolution and immigration matters for two clients.

The original Petition for Contempt was based on a complaint supposedly signed by former client Modesta Diaz[1] supported by an affidavit—found by Referee Newman to be false—accusing Ms. Bitterman of accepting thousands of dollars worth of home improvements and cash to handle two matters on her behalf. Referee Newman rejected the Bar's petition insofar as it pertained to Modesta Diaz, stating: "The real question is did . . . Ms. Bitterman accept consideration in the form of paid home repairs by Ms. Vanessa [sic] Diaz on her home for work and my answer is no, as a finding, she did not." Tr. 131.

Likewise, Referee Newman totally rejected the Bar's second allegation of contempt, contained in its Amended Petition alleging that Ms. Bitterman offered legal advice in an immigration matter to Claudia Bran. His Honor stated that the only evidence offered by the Bar was "a note to herself and it doesn't give any kind of indication that Ms. Bitterman gave advice [to Ms. Bran]." Tr. 142.

[1] The referee compared the purported signature on the complaint bearing Ms. Diaz's name to her signature on other documents and sustained Respondent's objection to the admissibility of the complaint, stating: "This document is not signed by Ms. Diaz." Tr. 41.

During the course of the Bar's failed crusade to prove that Ms. Bitterman agreed to provide legal services to clients during a period of suspension, the Bar learned that Ms. Bitterman had used her Florida Bar card as identification for two purposes, neither one of which involved providing legal services. In its Second Amended Petition for Contempt, filed one year after these proceedings commenced, the Bar sought to hold Ms. Bitterman in contempt for identifying herself as a member of The Florida Bar to visit her friend Zadis Fernandez in jail, and to later that same day to retrieve Zadis' car from the towing impound lot, where it was accruing daily storage charges.

Ms. Bitterman testified without contradiction or impeachment about the circumstances under which she went to the Miami-Dade County Jail in May of 2006 to visit Ms. Fernandez. Ms. Fernandez's female lover had left a note on Ms. Bitterman's gate to the effect that Ms. Fernandez had been arrested for attempted premeditated murder and was being held without bail. Tr. 100. Ms. Bitterman testified as follows when asked why she showed her Florida Bar card to jail officials at the time of her first of two visits, on May 20, 2006: "Because I didn't want to wait and I was freaked out and I wanted contact and this is a friend, someone I care about." Tr. 101. While visiting her in the jail, Ms. Bitterman did not provide Ms. Fernandez with legal advice or ask her to sign any legal documents in connection with the criminal

case. Tr. 103.

Ms. Bitterman visited Ms. Fernandez a second time in jail, on May 22, 2006. Tr. 106. On that second visit, Ms. Bitterman did not show her Bar card, but signed-in as an ordinary visitor. Tr. 107. The circumstances of that visit are addressed in the next section of this brief.

Facts Regarding Ms. Bitterman's Gift and Recovery of Automobile:

Ms. Bitterman had briefly been romantically involved with Ms. Fernandez. Tr. 109. When Ms. Bitterman would no longer allow Ms. Fernandez to live in her house, Ms. Bitterman purchased a 2001 Honda automobile as a gift for Ms. Fernandez, in order to give her someplace to sleep. Tr. 104-05. Ms. Bitterman transferred title to the car to Ms. Fernandez, but had obtained from Ms. Fernandez an executed Power of Attorney over the vehicle. 104-05.

Before Ms. Bitterman's first visit to the jail to see Ms. Fernandez on May 20, 2006, she learned that the automobile she had given her friend was being held in an impound lot by Diaz Towing. Tr. 108. Ms. Bitterman went to the lot immediately after the visit to the jail to try to retrieve the car. Tr. 108. She looked inside the car and saw Ms. Fernandez's property inside. Tr. 111. She was told that storage charges were accruing, and that after the car had been in the lot for thirty-three days, the storage charges would reach the point where the car would be forfeited. Tr. 111.

Ms. Bitterman convinced the towing company personnel to release the car to her, showing them identification reflecting that her address and Ms. Fernandez's home address were the same. Tr. 110-13. Ms. Bitterman also showed them her Florida Bar card in order to add "credibility" to her efforts to retrieve the car. Tr. 113. On May 22, 2006, Ms. Bitterman returned to the jail to see Ms. Fernandez, but this time did not show her Florida Bar card. Tr. 99. By the time of this visit, Ms. Bitterman already had possession of the car and an executed Power of Attorney giving her the power over the vehicle. On this visit Ms. Bitterman asked Ms. Fernandez to sign a lease of the car to her, which would provide Ms. Bitterman with an insurable interest in the car so she could purchase a policy of insurance on it, in order to protect Ms. Fernandez. Tr. 103-05.

Ms. Fernandez would not sign the lease, so Ms. Bitterman used the Power of Attorney to have the car re-titled in her name. Tr. 116. After Ms. Fernandez was released from jail, she unsuccessfully tried to re-take possession of the car from Ms. Bitterman. Tr. 117. When Ms. Bitterman would not give the car back to her, Ms. Fernandez waited until Ms. Bitterman left the country for Nicaragua, and then replevied the car. Tr. 117.

The Referee's Findings:

Judge Newman characterized any violation of Ms. Bitterman's suspension by

using her Bar card to visit "a friend/lover or you name it" as "hyper-technical," and an act that "[s]he did . . . largely out of concern for Ms. Fernandez." Tr. 142. Although the referee found "a technical breach of the suspension to use a Florida Bar card for gaining access to a prisoner," he understood that Ms. Bitterman was not practicing law in visiting Ms. Fernandez: "[W]hether it's as adult lovers or as a parent/child or just an extraordinarily caring human relationship . . . [,] there is some kind of relationship, and over-arching relationship there" that led to Ms. Bitterman's action. Tr. 132.

In the Report of Referee, Judge Newman made a finding of the aggravating factor of "dishonest or selfish motive." However, he also stated:

> Dishonest or selfish motive. However, the undersigned brings this comment: The Respondent and Ms. Fernandez may well have been engaged in a romantic relationship. Respondent, by recovery of the subject automobile, seemed to be motivated by a need to maintain some control over Ms. Fernandez. ***This was not the act of an attorney against a client***.

ROR at 8 (emphasis added).

<u>Respondent's Disciplinary Record Since 2004 Suspension</u>:

Ms. Bitterman's other disciplinary record is cited by the Bar as an aggravating factor in this case. Therefore, it is important that this Court be made aware of some of the circumstances of her record.

Case No. SC03-1370 led to the ninety-one day suspension that remained in effect (due to Respondent's having chosen to delay applying for reinstatement) when

the events leading to these later disciplinary proceedings occurred. That suspension resulted from an Unconditional Guilty Plea and Consent Judgment.

Case No. SC06-1592 involved another Unconditional Guilty Plea and Consent Judgment that led to a technical ninety-one day suspension imposed by this Court by order of January 18, 2007, *nunc pro tunc* to September 23, 2004. Because Respondent had not applied for reinstatement following the expiration of that original ninety-one day suspension period ordered in Case No. SC03-1370, the later suspension did not add any time to her period of ineligibility to practice law and had expired by the time it was imposed.

Case No. SC06-957 was a six month suspension for what the referee referred to as a "technical, although not substantial, violation of the probationary terms set forth in the Supreme Court's order dated September 23, 2004 in Supreme Court Case No. SC03-1370." Resp. App. 1 at 7. The nature of that technical violation was the failure to timely submit reports from Ms. Bitterman's treating psychiatrist, due to "some confusion about whether these reports could be e-mailed to the Florida Bar, and thereafter, some confusion about the person to whom the reports should be mailed." Resp. App. 1 at 5.

The referee made findings in his report including the finding that all the required medical reports "were later made up, . . . [that] Respondent has maintained

her regimen of taking her prescribed medications, . . . has demonstrated heroic and persistent efforts to combat her disease, and to maintain herself in a functioning manner . . . [, and] that Respondent is doing a great deal to compensate for her problem of major depression, including maintaining her treatment and medications." Resp. App. 1 at 5-6.

At the hearing that led to the entry of the Consent Judgment in Case No. SC06-957, the referee stated: "I truly believe that Ms. Bitterman is not an evil person and does not willingly cause harm to anybody." Resp. App. 2 at 8. Curiously, however, although the Referee made no mention at the hearing of imposing any period of suspension, the report that was prepared for his signature by Florida Bar counsel included a six-month suspension. *Compare* Resp. App. 1 at 7 with Resp. App. 2 at 8-9. That period of suspension expired in November, 2008.

SUMMARY OF THE ARGUMENT

This Court should affirm the Referee's Recommended Discipline because the Respondent was found to have committed only a technical violation that caused no harm and was not similar to a prior violation. Standard 8.1 of the Standards for Imposing Lawyer Sanctions provides that disbarment is appropriate under two circumstances. One is where the lawyer intentionally violates the terms of a prior disciplinary order and such violation causes injury to another. The second situation is

where the lawyer has been suspended for similar acts of misconduct and later engages in further similar misconduct. Neither of those circumstances are present here.

Ann Bitterman has been found by the Referee to be "not an evil person and [someone who] does not willingly cause harm to anybody." She is an intelligent attorney who has been tormented by mental illness now under control, but which contributed to her prior disciplinary record. Committing a technical violation of a prior suspension order by showing a Florida Bar card on two occasions was found by the Referee not to constitute the practice of law, and that conduct does not warrant disbarment.

Nor do the other aggravating factors found by the Referee support disbarment. Ms. Bitterman's motive in using her Florida Bar card was the result of a personal relationship between herself and Zadis Fernandez, "not the act of an attorney against a client" in the words of the Referee. Further, the Referee correctly considered Ms. Bitterman's testimony "that she was attempting to prevent harm to Ms. Fernandez" when she used her Bar card to retrieve the automobile from the towing yard.

The aggravating factor of a "pattern of misconduct" was erroneously found. There were only two acts of showing her Bar card. The courts have held that two offenses do not establish a pattern of activity.

The final aggravating factor found by the Referee, refusal to acknowledge the

wrongful nature of her conduct, was balanced by the fact that Ms. Bitterman acts out of a "level of humanism . . . that rises to the level of love" according to the Referee. Ms. Bitterman made a simple error of judgment out of love, not out of the inability to discern right from wrong. Therefore, disbarment is inappropriate and the recommended sanction should be adopted.

ARGUMENT

THIS COURT SHOULD AFFIRM THE REFEREE'S RECOMMENDED DISCIPLINE AS RESPONDENT WAS FOUND ONLY TO HAVE COMMITTED A TECHNICAL VIOLATION THAT CAUSED NO HARM AND WAS NOT SIMILAR TO A PRIOR VIOLATION

A. Introduction:

The referee's recommendation as to discipline should be affirmed because Ms. Bitterman was found to have committed, at most, a technical violation of the prior order of suspension. "This Court usually will not second-guess a referee's recommended discipline as long as that discipline has a reasonable basis in existing case law and in the Florida Standards for Imposing Lawyer Sanctions." *The Florida Bar v. Cueto*, 834 So. 2d 152, 156 (Fla. 2002). There is such a reasonable basis here because the violation caused no harm, and because Ms. Bitterman had not been suspended for the same or similar misconduct.

B. Applicable Legal Standards:

The Bar curiously fails to cite the section of the controlling standards[2] applicable to a case of this nature. These contempt proceedings were instituted as a result of Ms. Bitterman's alleged violation of a prior discipline order. Section 8.0 of the Standards for Imposing Lawyer Sanctions, entitled "Prior Discipline Orders," provides the starting place—before consideration of aggravating or mitigating factors—to determine the appropriate sanction for a violation of prior disciplinary orders.

Standard 8.1 provides for two sets of circumstances in which disbarment is appropriate for violation of a prior disciplinary order, absent aggravating or mitigating circumstances. Standard 8.1(a) recognizes the propriety of disbarment where the lawyer "intentionally violates the terms of a prior disciplinary order and such violation causes injury to a client, the public, the legal system, or the profession." Standard 8.1(b) provides that disbarment is proper when the lawyer "has been suspended for the same or similar misconduct, and intentionally engages in further similar acts of misconduct." Neither of those sets of circumstances are present here.

This case is similar to *The Florida Bar v. Neckman*, 616 So. 2d 31 (Fla. 1993) in which this Court rejected the Bar's request to disbar the respondent, an attorney

[2]This Court has approved the Standards for Imposing Lawyer Sanctions and frequently held that attorney discipline should be meted out in accordance with those standards. *See, e.g., The Florida Bar v. Dove*, 985 So. 2d 1001 (Fla. 2008).

who had resigned his license in connection with prior disciplinary proceedings. In the later matter, "Neckman had represented himself to be an attorney in connection with a debt collection matter after the date his resignation had been effective. . . [and] may have violated a statute during this conduct." *Id.* at 32.

In imposing a public reprimand upon Neckman, this Court held as follows:

> [W]e cannot agree that disbarment is appropriate. Disbarment would be appropriate where the violation results in injury or is an intentional repetition of prior misconduct for which discipline has been imposed. Fla. Standards for Imposing Lawyer Sanctions 8.1. The referee's findings do not establish either of these factors, and in fact disclose that they were entirely absent here.

Id.

Similarly here, Ms. Bitterman was not found to be guilty of repeating prior misconduct for which discipline had been imposed. Just like Mr. Neckman, she never previously had been charged with holding herself out as an attorney during a period of ineligibility to practice.

Nor did any injury befall anyone as a result of her actions. She did not render legal advice to anyone. She did not harm the public in any way. Her action in showing her Florida Bar card reduced harm by allowing Ms. Fernandez's car to be released to her by the impounding lot, rather than forfeited to pay storage charges.

It should be noted that the Standards for Imposing Lawyer Sanctions recognize a difference between "injury" and "potential injury." See definitions 1. and 5. Thus,

even if it could be said that Ms. Bitterman's action in showing her Bar card caused "potential injury," that would be insufficient to warrant disbarment under Standard 8.1(a).

C. The Bar's Authorities Do Not Support Disbarment of Respondent:

The cases cited by The Bar in support of the proposition that disbarment is required do not support disbarment of Ms. Bitterman because they are distinguishable on their facts. In *The Florida Bar v. Gussow*, 520 So. 2d 580 (Fla. 1988), the discipline of disbarment was appropriate for a variety of reasons not present here. First, disbarment was appropriate there because the respondent attorney had entered into a consent judgment agreeing to that sanction. Second, disbarment was appropriate in *Gussow* because "the Respondent had willfully failed to abide by the previously entered order of temporary suspension," whereas Ms. Bitterman was not guilty of a willful violation, but merely a technical violation. Third, the Respondent in the *Gussow* case already had been disbarred at the time of the imposition of discipline in the latest case. The disbarment was "concurrent discipline to that recommended" in the earlier case, meaning that there was no additional discipline imposed in the latest contempt proceeding. Fourth, disbarment was appropriate in the *Gussow* case because clients had been "harmed by Respondent's misconduct, including The Florida Bar's Clients' Security Fund." *Id*. at 581. No such client harm occurred in this case.

This case is much different from *The Florida Bar v. Jones*, 571 So. 2d 426 (Fla. 1990). In *Jones*, the "Respondent failed to comply with this Court's suspension order by engaging in the practice of law on numerous occasions after the effective date of his suspension . . . [and] knowingly misrepresented his compliance with the suspension order in his Reply to the Petition to Show Cause filed with this Court." *Id*. at 428. Here Ms. Bitterman was expressly found by the Referee to be not guilty of The Bar's charges of practicing law during her suspension. It was only her "hyper technical" violation of showing her Bar card to non-clients that led to the Referee's recommended discipline in this case.

Likewise dissimilar is *The Florida Bar v. Bauman*, 558 So. 2d 994 (Fla. 1990). In that case, "[w]hile suspended, the Respondent engaged in at least five distinct acts of practicing law . . . was held in contempt by a circuit judge for holding himself out as an attorney [while suspended, y]et subsequent to the contempt citation he again represented clients in court." *Id.* at 994. Ms. Bitterman did not engage in a single act of practicing law during the period of her suspension.

The Bar cites as authority for its position that "[d]isbarment is appropriate where there is a pattern of misconduct and a history of discipline" *The Florida Bar v. Walkden*, 950 So. 2d 407 (Fla. 2007). However, the *Walkden* case involved much more than a history of prior discipline imposed as supporting the sanction of

disbarment. Although the *Walkden* case does state that "[d]isbarment is appropriate where . . . there is a pattern of misconduct and a history of discipline," in addition to prior disciplinary sanctions, this Court noted that "cumulative misconduct ***of a similar nature*** warrants an even more severe discipline than might dissimilar conduct." *Id*. at 410. Further, the misconduct in *Walkden* included the Respondent's inexcusable acts of brazenly practicing law during a period of suspension, before, during, and after contempt proceedings were initiated in the latest action leading to disbarment. Ms. Bitterman here has not engaged in the practice of law while suspended, and has done nothing that would amount to "misconduct of a similar nature" that would warrant more harsh punishment.

Ms. Bitterman's history of discipline is nothing like that involved in *The Florida Bar v. Forrester*, 916 So. 2d 647 (Fla. 2005). In that case, the prior disciplinary history of the Respondent included improperly representing clients with adverse interests, failing to protect his client's interests, charging illegal, prohibited, or clearly excessive fees, trust account violations, concealing evidence, and testifying misleadingly. This Court found that the Respondent's conduct in prior disciplinary proceedings was "somewhat similar to that involved" in another prior case in that "[b]oth instances display an attitude of 'playing fast and loose' with the truth." *Id*. at 653. Even with that prior disciplinary records, however, this Court stated that "would

likely conclude that an appropriate discipline would be a ninety-one-day suspension." *Id*. at 654. However, such a suspension was inadequate because the case had been consolidated with a contempt proceeding involving the respondent's improper practice of law, including direct client contact during a period of prior suspension.

In the present case, on the other hand, Ms. Bitterman was found not to have engaged in improper legal practice during suspension. Nor did her prior disciplinary record include any conduct similar to that involved in the present case.

This case is nothing like *The Florida Bar v. Greene*, 589 So. 2d 281 (Fla. 1991). It was not merely a prior history of disciplinary violations that led to the disbarment order in the *Greene* case. Instead, "it was a history of disciplinary violations stretching back more than twenty years coupled with the respondent's contemptuous action of continuing to practice law during his suspension." *Id*. at 282-83.

D. Disbarment Unwarranted Under the Aggravating & Mitigating Factors:

As noted above, disbarment is normally inappropriate in a case involving violation of a prior disciplinary order, where the respondent has neither caused injury nor engaged in prior similar misconduct, "absent aggravating . . . circumstances." See Standard 8.0. Although the referee found aggravating circumstances here, the balance of the aggravating and mitigating circumstances do not support disbarment.

The first aggravating factor, "prior disciplinary offenses," does not warrant

disbarment for three reasons. First, Standard 8.1(b) already includes a component for the consideration of prior disciplinary offenses, by expressly limiting the sanction of disbarment to situations in which the respondent had previously been suspended "for the same or similar misconduct." If dissimilar prior misconduct were sufficient as an aggravating factor to warrant disbarment for violating a prior suspension order, then Standard 8.1 would not contain limiting language requiring a finding that the suspension be based on "the same or similar misconduct." The inclusion of such limiting language reflects an intent to restrict consideration of prior disciplinary offenses, as an aggravating factor, to prior similar offenses.

Second, even if the prior dissimilar disciplinary record of Ms. Bitterman is properly considered as an aggravating factor, that record does not support disbarment. That record was largely the result of her psychiatric condition, which is now under control.

As Judge Newman found in his report and recommendation in Case No. SC06-957, Ms. Bitterman "has demonstrated heroic and persistent efforts to combat her disease, and to maintain herself in a functioning manner . . . [, and] that Respondent is doing a great deal to compensate for her problem of major depression." Resp. App.1 at 6. At the final hearing in the present case, Judge Newman found that Ms. Bitterman had continued to make improvements; he stated: "Well I'm pretty impressed with how

well you've done for yourself and I think you are a beautiful person and you're very caring for people." He further found: "You have healed yourself in your mind and in your soul to some extent in Hawaii." Tr. 153.

The third reason the prior disciplinary record aggravator should not warrant disbarment is that the prior record appears to be more serious than it really was. Judge Newman stated at the final hearing in this case that he "was prepared to be more lenient with" Ms. Bitterman in his recommended discipline for the original suspension in Case No. SC03-1370. Tr. 152. His Honor recalled the circumstances under which he was prepared to be more lenient in that case as Ms. Bitterman being "accused of other extraordinarily humanistic and caring behaviors that caused the original suspension." Tr. 153. However, Ms. Bitterman had agreed to the consent judgment providing for the ninety-one day suspension.

Further, as noted above, Ms. Bitterman's most serious disciplinary case, which led to a six month suspension, resulted from a "technical, although not substantial, violation of the probationary terms set forth in the Supreme Court's order dated September 23, 2004 in Supreme Court Case No. SC03-1370." This is not a case in which a bad person is being sanctioned for a pattern of misconduct.

The next aggravating factor found by the referee is "dishonest or selfish motive." His Honor tempered that finding with his comment that Ms. Bitterman was

"motivated by a need to maintain some control over Ms. Fernandez," and that "[t]his was not the act of an attorney against a client." In addition, Judge Newman also considered in mitigation Ms. Bitterman's testimony "that she was attempting to prevent harm to Ms. Fernandez when she retrieved the car from the towing/impound lot," because "it ultimately would have lost all equity due to the garage lien that was accruing, and Ms. Fernandez was in no position to stop this assessment."

Judge Newman is right when he says that "Ms. Bitterman is not an evil person and does not willingly cause harm to anybody." She should not be disbarred.

The next aggravating factor is "pattern of misconduct." As found by the referee, "[t]here were only two acts of Respondent holding herself out as an attorney in this case." The First District in *Frederick v. State*, 556 So. 2d 471 (Fla. 1st DCA 1990) has held that two offenses do not establish a pattern of persistent and continuing criminal activity. *See also McKinney v. State*, 559 So. 2d 621 (Fla. 3d DCA 1990). *But see Lipscomb v. State*, 573 So. 2d 429 (Fla. 5th DCA 1991) (two similar offenses establish a pattern of criminal behavior). Therefore, this aggravator is inapplicable.

Next, Judge Newman found that Ms. Bitterman refused to acknowledge the wrongful nature of her conduct. Respondent submits that any refusal to acknowledge any wrongdoing was balanced by Judge Newman's finding that her actions are the result of a "level of humanism that [she] exhibit[s that] rises to the level of love.

Almost a masochistic love." Tr. 128. Ms. Bitterman is doing what she thinks is right, plain and simple. If she has made an error in judgment, it has been out of love, not out of an inability to discern right from wrong. This aggravating factor does not warrant disbarment.

The last aggravating factor is "vulnerability of victim." That factor does not support disbarment. Zadis Fernandez was not a "victim" of Ms. Bitterman using her Bar card to gain entrance to the jail. Ms. Bitterman would have seen her as a regular visitor (as she did two days later, on May 22d) if she had not shown her Bar card to visit her. Nor was Ms. Fernandez a "victim" of Ms. Bitterman showing her Bar card to the personnel at Diaz Towing. Ms. Fernandez was not present then, and the act resulted in the release of the car instead of its forfeiture or any other action to the prejudice of Ms. Fernandez.

None of the aggravating factors considered separately, and no combination of them considered together, support greater sanctions than those recommended by the referee. Therefore, the Respondent should be suspended for thirty days, *nunc pro* tunc to the date of the referee's report, with the other conditions contained therein.

CONCLUSION

WHEREFORE, The Florida Bar having failed to demonstrate that the Referee's recommended sanctions are unsupported by existing case law and the Florida

Standards, the Recommendations should be adopted and the thirty-day suspension be imposed, retroactive to the date of the Referee's Report and Recommendation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof was served by U.S. Mail, upon Jennifer Falcone Moore, The Florida Bar, Petitioner, 444 Brickell Avenue, Suite M100, Miami, Florida 33131, on this, the 26th day of May, 2009.

By: _____
ROY D. WASSON
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief has been computer generated in 14 point Times New Roman and complies with the requirements of Rule 9.210.

By: _____
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