IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

vs.

PETIA DIMITROVA KNOWLES,

Respondent.
_____/

Supreme Court Case
No. SC10-1019

The Florida Bar File
No. 2010-50,414(11A)

ON PETITION FOR REVIEW

INITIAL BRIEF OF THE FLORIDA BAR

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SYMBOLS AND REFERENCES

For the purposes of this Brief, Petia Dimitrova Knowles will be referred to as "Respondent", The Florida Bar will be referred to as "The Florida Bar" or "The Bar", and the referee will be referred to as the "Referee". Additionally, the Rules Regulating The Florida Bar will be referred to as the "Rules" and Florida's Standards for Imposing Lawyer Sanctions will be referred to as the "Standards".

References to the Appendix will be set forth as "A" followed by the sequence number and the corresponding page number(s), if applicable. References to the transcript of the final hearing held on November 30, 2010 will be set forth as "TR." followed by the page number. Finally, documents introduced into evidence by The Florida Bar will be designated "TFB Ex." followed by the corresponding exhibit number.

STATEMENT OF THE CASE AND OF THE FACTS

On or about June 2, 2010, The Florida Bar filed a formal Complaint against Respondent, and the Honorable Sandra Bosso-Pardo was subsequently appointed as Referee. On or about June 21, 2010, Respondent filed a Verified and Sworn Motion for Recusal of Referee. In her Motion, Respondent asserted that she feared she would not receive a fair and impartial hearing because of the Referee's "exhibited bias and prejudice" in a prior Bar matter heard by the same Referee.[1] A few days later, on June 25, 2010, Respondent filed her Answer and Affirmative Defenses to The Florida Bar's Complaint. Together with her Answer, Respondent also filed a Motion to Change Venue and a Motion to Dismiss. On or about July 2, 2010, The Bar filed a Response to Respondent's Motions to Change Venue and

[1] Respondent is currently the subject of another disciplinary matter, which is pending on appeal before this Court. The former matter was heard by the Honorable Sandra Bosso-Pardo on September 22, 2009, and it involves findings that Respondent sent e-mail communications to opposing counsel in a divorce proceeding threatening to file criminal charges against the opposing party unless he agreed to pay the sum she requested on behalf of her client, as well as that Respondent had testified under oath that she was "specialized" in the area of family law, despite knowing that such claim was false and misleading. (A2.) Based on these findings, the Honorable Bosso-Pardo concluded that Respondent was in violation of Rules 4-3.3(a)(1), 4-3.4(g), 4-7.2(c)(6)(a), 4-8.4(a), 4-8.4(c) and 4-8.4(d), and ultimately recommended that she receive a Public Reprimand and be directed to complete Ethics School, Professionalism Workshop, and ten (10) additional hours of continuing legal education in the area of ethics. (A2.) In making these findings, the Honorable Bosso-Pardo specifically noted that "[R]espondent, even now, fail[ed] to grasp the seriousness of her misconduct." (A2.) Respondent subsequently appealed from that recommendation, and the matter currently remains pending on appeal. (A2.)

Respondent's Motion to Dismiss. Additionally, The Bar filed a Motion to Strike Respondent's Affirmative Defenses.

On or about July 1, 2010, The Honorable Bosso-Pardo entered an Order granting Respondent's Motion to Disqualify, and the Honorable Barry M. Cohen was subsequently appointed as the new Referee in this matter. All pending matters were transferred to the new Referee. Thereafter, on or about July 19, 2010, The Florida Bar served its First Set of Interrogatories and Request for Production of Documents on Respondent.

Respondent failed to provide timely responses to The Bar's discovery requests and instead filed a Motion for Extension of Time to Respond to Discovery Pending Determination of her Motion for Clarification and for Specificity of Allegations, along with a new Motion for Clarification and for Specificity of Allegations. As a result of Respondent's failure to provide timely discovery responses, The Bar filed a Motion to Compel on August 30, 2010.

Following a telephonic hearing on September 3, 2010, the Referee entered orders denying The Florida Bar's Motion to Strike Affirmative Defenses, but granting The Florida Bar's Motion to Compel. Additionally, the Referee entered orders denying Respondent's various pending Motions, including her Motion for Extension of Time to Respond to Discover and her Motion for Clarification and for Specificity of Allegations.

In his Order granting The Florida Bar's Motion to Compel, the Referee specifically ordered that Respondent provide her discovery responses within twenty (20) actual days from the date of the Order, or she would be precluded from introducing any evidence, whether documentary or testamentary, including herself, as to either guilt or discipline, in the final hearing of this cause. In defiance of the Referee's order, Respondent failed to file her discovery responses as ordered and instead filed a Motion for Rehearing and Reconsideration of her Motion for Clarification and Specificity of Allegations on September 18, 2010.

The Bar subsequently filed its Response to Respondent's Motion for Rehearing, and the Referee entered an order denying Respondent's Motion on October 7, 2010. On or about November 1, 2010, Respondent ultimately filed untimely discovery responses to The Florida Bar's discovery requests. Additionally, Respondent filed a Motion to Set Aside and/or Strike the Referee's September 3rd Order granting The Florida Bar's Motion to Compel. Only a few days before the final hearing in this matter, Respondent filed a Motion for Trial Continuance, a Motion For Leave to Amend Original Motion to Dismiss, an Amended Motion to Dismiss, and a Revised Amended Motion to Dismiss.[2]

[2] Respondent also filed a Motion to Compel better discovery answers from The Bar. Additionally, despite the fact that she had been precluded from introducing evidence at the final hearing under the Referee's September 3, 2010 Order granting The Florida Bar's Motion to Compel, Respondent filed a Motion to Allow Telephonic Appearance of Witnesses and two Notices of Witnesses. The Referee

The final hearing took place on November 30, 2010. At the outset of the hearing, Respondent's Amended Motion to Dismiss was addressed and denied by the Referee.[3] (TR. at 18.) Despite Respondent's failure to provide timely responses to The Bar's discovery requests, the Referee allowed Respondent to present her testimony at the final hearing, as well as the testimony of David Fritz, her assistant, and an affidavit from an immigration expert regarding the allegation in The Bar's Complaint that she had failed to act with diligence in her client's immigration case. (TR. at 20; 65; 113.) Additionally, the Referee allowed Respondent to introduce two affidavits from character witnesses on the issue of mitigation.[4] (TR. at 176.) The Referee filed his Report of Referee in this matter on December 16, 2010. (A1.) The Bar now appeals the Referee's not guilty finding as to Rule 4-1.6 (confidentiality of information) and the Referee's

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recognized during the final hearing that these Motions had been filed at the "eleventh hour." (TR. at 21.)

[3] The Referee further recognized that, in the process of arguing her Motion to Dismiss, Respondent repeatedly attempted to argue the merits of the underlying case, as opposed to addressing the sufficiency of The Florida Bar's Complaint. (TR. at 15-16.)

[4] Prior to the final hearing, Respondent had also issued unofficial subpoenas to a number of witnesses to compel their appearance at the final hearing. (TR. at 10; 110.) At the commencement of the hearing, however, Respondent advised that she had "cancelled" the subpoenas. (TR. at 11.)

recommended discipline.[5]

Factual Background

Sometime in 2007, Daniela Sere ("Sere") retained Respondent to represent her in connection with various immigration matters, including a request for political asylum.[6] (TR. at 22.) On July 6, 2007, Sere was arrested at a hearing before the immigration court based on her prior conviction for grand theft in Broward County. (TR. at 49; 75.) Respondent filed a Motion to Reopen Deportation Proceedings with the immigration court, but she then failed to timely file sufficient supplemental affidavits in support of said Motion, and therefore, her

[5] In his Report, the Referee found Respondent to be in violation of Rule 4-8.4(d) (conduct prejudicial to the administration of justice), but he did not find her to be in violation of the other Rules alleged in The Bar' Complaint. (A1.) In addition to recommending that Respondent receive a ninety (90) day suspension, the Referee recommended that she be required to attend The Florida Bar's Ethics School and Professionalism Workshop. (A1.)

[6] At the commencement of its case, The Bar introduced the following exhibits into evidence: (1) Order on Motion to Reopen Deportation Proceedings, dated November 14, 2007; (2) First Motion to Withdraw, dated January 29, 2009; (3) Notice of Cancellation of Motion to Withdraw, dated February 2, 2009; (4) Second Motion to Withdraw, dated April 6, 2009; (5) Billing Statement for the case of *State Farm Mutual Automobile Ins. Co. v. Daniela Sere*, Case No. COCE-2008-008613; (6) Notice of Appearance in the case of *State Farm Mutual Automobile Ins. Co. v. Daniela Sere*, Case No. COCE-2008-008613, dated July 23, 2008; (7) Order to Show Cause in the case of *State Farm Mutual Automobile Ins. Co. v. Daniela Sere*, Case No. COCE-2008-008613, dated September 26, 2008; and (8) Final Judgment in the case of *State Farm Mutual Automobile Ins. Co. v. Daniela Sere*, Case No. COCE-2008-008613, dated January 12, 2009. All of these exhibits were ultimately admitted into evidence without objection from Respondent. (TR. 62.)

client remained incarcerated for four (4) months, until November 14, 2007. (TR. at 53; 75.)

In its Order granting Respondent's Motion to Reopen, the immigration court specifically noted that Respondent had filed "a supplemental affidavit dated August 23, 2007[,] … in support of the motion to reopen deportation proceedings," but that "this filing did not provide separate proof of compliance with *Matter of Losada*." (TR. at 53; TFB Ex. 1.) The Order further provided that Respondent had subsequently "filed with the [i]mmigration [c]ourt additional affidavits … in support of the motion to reopen deportation proceedings," but those affidavits, "were *still not sufficient*." (TR. at 53-54; TFB Ex. 1.) Despite the delay in filing the required supplemental affidavits, Respondent ultimately filed such affidavits and the Motion to Reopen was granted. (TR. at 81; TFB Ex. 1.)

On or about July 29, 2009, only four (4) days prior to a hearing before the immigration court, Respondent filed a Motion to Withdraw from the case. (TR. at 54; TFB Ex. 2.) As the basis for her Motion, Respondent asserted that her client had given her a bad check for $1,000 and that she had been unsuccessful in convincing her client to honor the check. (TR. at 54; 91; TFB Ex. 2.) Respondent further inferred in her Motion that the payment pertained to the same immigration matter, when in fact, Respondent's own billing statement reflected that said funds pertained to an unrelated personal injury matter in which Respondent had

previously represented Sere. (TR. at 54; 58; TFB Ex. 2; TFB Ex. 5.)

As part of her Motion to Withdraw, Respondent asserted that she had "received many, many reports from members of the Romanian community that [Sere] has robbed them as well." (TR. at 54; TFB Ex. 2.) Respondent further asserted that Sere "ha[d] failed to fulfill work assignments and/or ha[d] taken money and never delivered the contracted labor," and that she "regret[ted] having helped [Sere] who in reality was righteously convicted by the State of Florida for grand theft." (TR. at 54; TFB Ex. 2.) Finally, Respondent asserted that Sere would not be prejudiced by her withdrawal from the legal representation. (TR. at 55; 101; TFB Ex. 2.)

In addition to filing a Motion to Withdraw, Respondent filed criminal charges with the State Attorney's Office against her client on the basis of the returned check. (TR. at 34; 58.) Additionally, Respondent billed Sere for the two and a half (2 ½) hours she spent preparing and filing the claim with the State Attorney's Office, as evidenced by Respondent's billing statement for the personal injury case. (TR. at 58; TFB Ex. 5.) Respondent filed criminal charges against her client on the basis of the bad check, despite the fact that she had already placed a retaining lien on her client's file on the same basis. (TR. at 119-120.)

Upon learning of Respondent's efforts to withdraw from the immigration matter, Sere visited Respondent at her office. (TR. at 99.) At that time,

Respondent indicated that she would only attend the upcoming hearing before the immigration court if Sere paid her an additional sum of money. (TR. at 24; 100; 102.) Sere ultimately agreed to pay Respondent $3,000 and Respondent agreed to file a Notice of Cancellation of her Motion to Withdraw. (TR. at 57; 100; TFB Ex. 3.) In her Notice of Cancellation of Motion to Withdraw Representation as Attorney, Respondent now asserted that because of the "short notice, just several days before her individual hearing, [Sere would] be prejudiced by [Respondent's] withdrawal from legal representation." (TR. at 57; 100; TFB Ex. 3.)

In or about April 2009, Sere ultimately decided to retain new counsel. (TR. at 24.) Respondent then proceeded to file a second Motion to Withdraw. (TR. at 57; TFB Ex. 4.) Rather than asserting that she was seeking to withdraw from the representation because Sere had retained new counsel, Respondent again asserted in her Motion that she had "received further reports from the Romanian community that [Sere] ha[d] willfully and intentionally failed to comply with her contractual promises towards parties" and repeatedly "refused to pay for fulfilled work assignments and/or ha[d] taken money and never delivered the contracted services." (TR. at 57-58; TFB Ex. 4.) Additionally, Respondent asserted once again that her client would not be prejudiced by her withdrawal from the legal representation. (TR. at 58; TFB Ex. 4.)

The Florida Bar presented Kathryn Heaven ("Heaven"), Assistant State

Attorney for Broward County, as its first and only witness. (TR. at 40.) Heaven has been an Assistant State Attorney for over twenty (20) years, since the time she graduated from law school. (TR. at 40; 49.) She was the Assistant State Attorney assigned to handle Sere's criminal case. (TR. at 40.) According to Heaven, sometime in May 2009, she received a call from Respondent, who advised her that "she ha[d] reason to believe that [Sere] intended to lie to the immigration court at her upcoming hearing." (TR. at 41-42; TFB Ex. 9.) Thereafter, on or about May 11, 2009, Heaven sent a letter to Peter Rodriguez, from the Department of Homeland Security, Office of Chief Counsel, to inform him of Respondent's call.[7] (TR. at 41; TFB Ex. 9.)

In her letter to the Department of Homeland Security, Heaven further indicated that she had received paperwork pertaining to Sere's political asylum case from an unidentified source, sent via priority mail on May 7, 2009. (TR. at 41; TFB Ex. 9.) Although the sender of the paperwork was unidentified, Heaven acknowledged during her testimony that, to her knowledge, political asylum files are confidential in nature and not available to the public.[8] (TR. at 42.)

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[7] In addition to the exhibits previously referenced in footnote 7, *supra*, The Florida Bar introduced a copy of Heaven's letter into evidence, without objection from Respondent.

[8] In response to Respondent's question on cross-examination whether she was aware that Sere had enemies throughout the State, specifically in North Florida where the package was sent from, who might have had a reason to send the

In addition to handling Sere's political asylum file, Respondent had previously represented Sere in an automobile accident case. (TR. at 60-61.) Respondent filed a Notice of Appearance of Counsel in that case on July 23, 2008. (TR. at 60-61; TFB Ex. 6.) On or about September 26, 2008, the court entered an Order to Show Cause, indicating that Sere had failed to appear at mediation on September 25, 2008, and that she had not otherwise been excused by the court. (TR. at 61; TFB Ex. 7.) Although Respondent had filed a Motion to Withdraw from the case at the time the case was set for mediation, said Motion was never granted by the court and Respondent failed to appear at the mediation. (TR. at 61; 95-96; TFB Ex. 7.) Respondent herself acknowledged that she had not attended the mediation. (TR. at 15; 94-95.)

On or about January 12, 2009, a final judgment was entered against Sere in the case. (TR. at 62; 154; TFB Ex. 8.) Respondent was served with a copy of the final judgment, but according to Sere, she never received notice that a final judgment had been entered against her, (TR. at 62.), although Respondent testified at the final hearing that her office had in fact mailed a copy of the final judgment to Sere. (TR. at 31.)

Following the conclusion of The Bar's case, Respondent called David Fritz

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information to the State Attorney's Office, Heaven testified that she had in fact received such reports. (TR. at 44-47.)

("Fritz") to the stand.[9] (TR. at 66.) Fritz has worked at Respondent's office as an office assistant from early 2007 to the present. (TR. at 66.) As the office assistant, Fritz is responsible for handling mailings, copying, filings, phone calls, billings, dealing with insurance, and other similar administrative tasks. (TR. at 66.) With respect to Sere's personal injury case, Fritz testified that he recalled having mailed a copy of the Order to Show Cause and the final judgment to Sere. (TR. at 68-69.) However, he did not recall having mailed her notice of the mediation. (TR. at 68.)

Respondent subsequently took the stand. (TR. at 75.) She first testified about her involvement with Sere's immigration case, and her filing of the Motion to Reopen Deportation Proceedings after her client was detained at the restitution hearing based on her prior criminal conviction. (TR. at 75.) According to Respondent, there had been numerous attorneys who represented Sere prior to her becoming involved in the case, and their attempts to have the immigration case reopened had been unsuccessful. (TR. at 77.) Respondent testified about the specific work she performed with regard to the Motion to Reopen Deportation

[9] Although Respondent was precluded from introducing any testamentary or documentary evidence pursuant to the Referee's Order granting The Florida Bar's Motion to Compel, dated September 3, 2010, as previously noted, the Referee permitted Respondent to testify on her behalf, as well as to introduce the affidavit of an immigration expert, Chuck Kuck, former president of the American Immigration Lawyers Association, regarding the issue of Respondent's diligence in handling the immigration case. (TR. at 74; 113.) Additionally, Respondent was permitted to introduce the testimony of David Fritz, her office assistant, and two affidavits from character witnesses. (TR. at 176.)

Proceedings and with regard to the case in general. (TR. 79-80.) According to Respondent, this was a difficult case because of Sere's prior criminal history, but she performed extensive work in the case, which included numerous hours of research and the filing of several motions. (TR. at 79-80.)

With respect to the Motion to Reopen Deportation Proceedings, Respondent testified that in order to prevail on the Motion she was required to establish ineffective assistance of counsel by Sere's prior attorney.[10] (TR. at 81.) In order to establish ineffective assistance of counsel, in turn, Sere was required to file a complaint with The Florida Bar against her prior attorney. (TR. at 81.) Respondent admitted that the Judge's Order stated her affidavits were not sufficient, but she then described the efforts she made to obtain the necessary information, including obtaining an affidavit from her client and filing her own complaint with The Florida Bar to establish ineffective assistance of counsel by Sere's prior attorney.[11] (TR. at 83-87.) Despite the delay in obtaining and filing the additional information and supplemental affidavits requested by the

[10] The basis for this claim was that Sere's prior attorney had allegedly advised her not to comply with a pending deportation order but to remain in the country instead. (TR. at 81.)

[11] The complaints filed by Sere and by Respondent with The Florida Bar against Sere's prior attorney were rejected because they were based on events that occurred more than six (6) years prior to the filing of the complaints, and therefore, they exceeded the statute of limitations applicable to Bar complaints. (TR. at 84.) Additionally, Sere's prior attorney was a disbarred attorney, and therefore, The Florida Bar no longer had jurisdiction to proceed on these claims. (TR. at 84.)

immigration court, such information was ultimately filed and the Motion to Reopen was granted. (TR. at 88-89.)

With respect to the Motions to Withdraw and the Notice of Cancellation of Motion to Withdraw, Respondent acknowledged that these pleadings contained the prejudicial statements quoted by The Bar. (TR. 100-101.) Respondent further acknowledged that she had made disparaging comments about her client, despite the fact that she had previously filed multiple affidavits with the immigration court asserting that Sere was actually a person of "good moral character." (TR. 106-107.) Nevertheless, Respondent argued that she did not see why these statements would be considered improper or intended to misrepresent, as they were truthful and "material" to the immigration case. (TR. 100-101; 156.)

Following the filing of her second Motion to Withdraw, Respondent contacted Heaven to express her concern that Sere would lie in court.[12] (TR. at 103; 122.) Respondent further advised Heaven that she did not know whether Sere was "a lesbian or gypsy," but that she would "say anything, any lie to remain" in the United States. (TR. at 103.) Finally, Respondent indicated that she was sure

[12] Although Respondent had filed her second Motion to Withdraw and Sere had retained new representation, Respondent had still not signed the Notice of Substitution of Counsel sent to her by Sere's new attorney at the time she contacted Heaven. (TR. at 106.)

Sere would "lie about [] defrauding other people."[13] (TR. at 103.) When asked by the Referee whether she had "actual knowledge" her client would lie to the immigration court, Respondent merely asserted that the bad checks Sere had given her in the past and the statements of other individuals who had been "defrauded" by her provided the evidence that her client would lie.[14] (TR. at 152.)

Respondent then testified about her involvement with Sere's personal injury case. (TR at 91.) Respondent testified about the efforts she made to obtain payment from Sere, but acknowledged that the returned check serving as a basis for her Motion to Withdraw in the immigration case had actually been given to her in connection with the personal injury case. (TR. at 91; 108.)

With respect to her failure to advise Sere that the case had been set for mediation, Respondent testified that she did not recall whether she had ever received the Notice of Mediation, as it was sent to her prior office address in Cooper City, Florida. (TR. at 93.) According to Respondent, she would have appeared at the mediation had she received notice, but she acknowledged that

[13] On the issue of the confidential paperwork received by the State Attorney's Office, Respondent simply testified that Sere had many enemies throughout the State, as well as a series of prior attorneys, all of whom could have sent the package. (TR. at 144.) Additionally, Respondent testified that she had no reason to send such paperwork to the State Attorney's Office, where they were already in possession of the information contained therein. (TR. at 144.)

[14] The Referee recognized that these were "prior bad acts" that did not really bear on the issue of whether Respondent had "actual knowledge" her client would lie. (TR. at 152.)

neither she nor her client had appeared at the Mediation. (TR. at 94; 154.) Similarly, although the Notice of Final Judgment was mailed to Respondent's prior office address, she acknowledged that she had obtained a copy from the online docket. (TR. at 93.) Moreover, Respondent was present at the hearing where a default was entered against her client, and therefore, she was aware that the default had been entered. (TR. at 95; 154.) Although Respondent had filed a Motion to Withdraw from the case at the time, said Motion had not yet been granted by the court at the time of the hearing. (TR. at 95-96.)

The Referee filed his Report of Referee in this matter on December 16, 2010. (A1.) Based on Respondent's testimony about the work she performed in the immigration matter and her expert affidavit, the Referee ultimately concluded that Respondent had been diligent both in the case in general, and more specifically, during the relevant time period, in attempting to obtain affidavits that would be legally sufficient as needed to have the case reopened. (TR. at 141-142; 163; A1.) Moreover, the Referee noted that Respondent had ultimately been successful in reopening her client's immigration case. (A1.) Consequently, the Referee did not find that Respondent had failed to act with diligence, in violation of Rule 4-1.3 of the Rules Regulating The Florida Bar. (A1.)

Similarly, while the Referee recognized that Respondent made inconsistent statements in her pleadings regarding the potential prejudice to her client by her

withdrawal from the immigration case, he did not find these statements in themselves to establish by clear and convincing evidence conduct involving dishonesty or lack of candor toward the tribunal, in violation of Rules 4-3.3 (candor toward the tribunal) and 4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules Regulating The Florida Bar. (A1.)

Nevertheless, the Referee did find that the statements contained in Respondent's Motions to Withdraw about her client's character constituted conduct prejudicial to the administration of justice, in violation of Rule 4-8.4(d). (TR. at 162; A1.) Specifically, the Referee found it "inconceivable … that anybody with any knowledge of the rules of ethics" would suggest "that in a motion to withdraw in just about any kind of case [this] kind of comments would be appropriate and would not be in violation or inconsistent with our administration of justice." (TR. at 162; A1.) The Referee further found that, regardless of intent, the very act of filing such a motion with such language is so prejudicial to the client so as to be actionable.[15] (TR. at 163; A1.) The Referee concluded that Respondent was:

> missing an essential aspect of our justice system. It's not only difficult to represent difficult clients or unpopular clients or people that are not well respected in various communities, but [there can be nothing] that would be

[15] The Referee similarly inquired from Respondent whether it was her "responsibility to poison the well[,] particularly if [she] [was] withdrawing." (TR. at 161.)

> more prejudicial to the administration of justice than to have a lawyer who has come to the point where [he/she] is dissatisfied with [his/her] client have free rein to say anything [he/she] want[s] that is bad about the client in a motion to withdraw. The fact that it's an immigration case in which ultimately the character of the defendant may become particularly important for the judge is particularly significant. It doesn't help [] at all. It hurts [] because what you are doing is suggesting to the very tribunal that is deciding the client's case that the [client] has bad character, that he[/she] has committed other crimes, he[/she]'s not worthy of trust, he[/she]'s not honest.
>
> (TR. at 161-162.)

Although the Referee was initially troubled by the testimony that Respondent contacted the Assistant State Attorney about a former client, the Referee found Respondent's testimony that Sere, "who had been through numerous [attorneys] in an effort to avoid deportation," "would say to her own [attorney] that she would do anything including lying in court to avoid ultimately being deported," to be credible. (TR. at 164.) Additionally, the Referee concluded that it appears an attorney "would have an ethical obligation to report future criminal conduct." (TR. at 164.)

Consequently, the Referee concluded there was "not clear and convincing evidence to establish that the act of calling the State Attorney would demonstrate a breach of confidentiality under the applicable rules," in violation of Rule 4-1.6 (confidentiality of information) of the Rules Regulating The Florida Bar. (TR. at

165; A1.) Similarly, the Referee did not find that the evidence regarding delivery of a package to the State Attorney's Office from an unidentified source rose to the level of clear and convincing evidence to establish that Respondent breached her duty of confidentiality. (TR. at 165; A1.) In reaching this determination, the Referee took into account Respondent's and Heaven's testimony that Sere had many enemies throughout the State, as well as the fact that Sere had previously been represented by numerous attorneys in the immigration case, all of whom had been in possession of the confidential paperwork received by the State Attorney's Office at one point or another. (TR. at 165.) Nevertheless, the Referee did note that it was "possible" the package could have been sent by Respondent. (TR. at 165.)

Based on these findings, the Referee ultimately concluded that a ninety (90) day suspension was the appropriate sanction. The Referee further recommended that Respondent be required to attend The Florida Bar's Ethics School and Professionalism Workshop.[16] (TR. at 180; A1.) The Bar filed its Petition for Review with regard to Referee's not guilty finding as to Rule 4-1.6 (confidentiality) and with regard to the Referee's recommended terms of discipline

[16] The Referee admitted into evidence on the issue of discipline the Report of Referee from Respondent's prior case, which is currently on appeal, Supreme Court Case No. SC09-403. (A2.) Additionally, in recommending that Respondent be required to attend The Florida Bar's Ethics School and Professionalism Workshop, the Referee noted that she did not "honestly comprehend part of the ethical guidelines for lawyers." (TR. at 180.)

on February 10, 2011. The Bar's Initial Brief follows.

SUMMARY OF THE ARGUMENT

This case involves findings that Respondent engaged in conduct prejudicial to the administration of justice when she made disparaging comments about her client in various motions she filed with the immigration court, while her client was facing possible deportation and criminal charges. Additionally, The Florida Bar presented evidence that Respondent breached the duty of confidentiality she owed to her former client when she contacted the State Attorney's Office to advise that she had reason to believe her former client intended to lie to the immigration court.

The Referee, upon consideration of the evidence, ultimately concluded that Respondent's disparaging comments about her client were not only actionable, but inconsistent with the administration of justice. The Referee disagreed, however, that Respondent's actions in contacting the State Attorney's Office to advise that she had reason to believe her former client intended to lie to the immigration court constituted a violation of the duty of confidentiality imposed under Rule 4-1.6 (confidentiality of information).

In reaching his determination that Respondent did not violate Rule 4-1.6, the Referee relied on the exception to the general duty of confidentiality, which provides that an attorney shall disclose confidential information to the extent reasonably necessary to prevent a client from committing a crime. In those cases where disclosure is necessary, however, the Rule and this Court's own case law

specifically require that the disclosure be made to the tribunal and only to the extent reasonably necessary to achieve the purpose. In this case, Respondent not only failed to make the disclosure to the immigration court and seek its guidance, but she made the disclosure to the State Attorney who has handling an unrelated criminal case against her former client, at a time when the client was facing criminal charges and possible deportation. Consequently, Respondent's disclosure of confidential client information was in direct contravention of the duty imposed under Rule 4-1.6, and The Bar submits that the Referee's not guilty finding in this regard was clearly erroneous and is not supported by the record.

Based on his finding that Respondent had violated Rule 4-8.4(d) (conduct prejudicial to the administration of justice), the Referee recommended that Respondent receive a ninety (90) day suspension. It is the position of The Florida Bar that this recommendation, particularly in light of the significant aggravation found by the Referee, is wholly inadequate and that Florida's Standards for Imposing Lawyer Sanctions and the case law mandate the imposition of a rehabilitative suspension. The Bar further requests that Respondent be ordered to undergo an evaluation by Florida Lawyer's Assistance.

ARGUMENT

I. THE REFEREE'S FINDING THAT RESPONDENT WAS NOT GUILTY OF VIOLATING RULE 4-1.6 (CONFIDENTIALITY OF INFORMATION), RULES REGULATING THE FLORIDA BAR, IS CLEARLY ERRONEOUS AND NOT SUPPORTED BY THE EVIDENCE AND RECORD AT TRIAL.

The duty of confidentiality imposed on attorneys by virtue of Rule 4-1.6 (confidentiality of information) of the Rules Regulating The Florida Bar "applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source.[17]" Commentary to Rule 4-1.6, Rules Regulating The Florida Bar. Despite the existence of this general duty of confidentiality, the Rule does recognize certain instances where an attorney would have a duty to disclose confidential information. One of these instances is "to prevent a client from committing a crime." Rule 4-1.6(b)(1), Rules Regulating The Florida Bar.

The Commentary to Rule 4-1.6 acknowledges that "[i]t is admittedly difficult for a lawyer to 'know' when the criminal intent will actually be carried out." Therefore, the application of this Rule requires the exercise of discretion, "[w]here practical the lawyer should seek to persuade the client to take suitable

[17] Additionally, this duty applies not only to communications with current clients, but also to communications with former clients. Therefore, even where Respondent contacted the State Attorney's Office after Sere had retained a new attorney in her immigration case, the protection afforded under Rule 4-1.6 continued. Moreover, Respondent had still not signed the Notice of Substitution of Counsel sent to her by Sere's new attorney at the time she made this call, and therefore, she was technically still the attorney of record in the case. (TR. at 106.)

action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose." Commentary to Rule 4-1.6, Rules Regulating The Florida Bar. Moreover, "the disclosure should be made in a manner that limits access to the information to the *tribunal* or other persons having a need to know." *Id.*

In reviewing an attorney's duty to reveal confidential client information, this Court has similarly concluded that in Florida, an affirmative duty to disclose privileged or confidential information arises only when necessary to prevent a crime or bodily harm. *The Florida Bar v. Lange*, 711 So.2d 518, 519-20 (Fla. 1998). In the instant case, Respondent disclosed confidential client information when she contacted the State Attorney's Office to advise that she had "reason to believe" her former client intended to lie to the immigration court. (TR. at 41-42) Although the act of lying to a tribunal is unquestionably an act of perjury and therefore criminal, Respondent breached the duty of confidentiality by making the disclosure to the State Attorney handling the client's then pending criminal case, rather than making the disclosure to the immigration court and seeking its guidance. What makes Respondent's disclosure particularly egregious is that the client was facing criminal charges and possible deportation. As this Court has specifically concluded, Respondent simply "should not have divulged privileged attorney-client communications" to the State Attorney's Office, but rather, she

"should have advised the court … and sought guidance from the court on how to proceed." *Lange*, 711 So.2d at 520.

The requirement that disclosure of confidential client information be made to the tribunal is affirmed in the Commentary to Rule 4-3.3 (candor towards the tribunal) of the Rules Regulating The Florida Bar. In addressing the specific situation presented in this case, the Commentary provides that where an attorney:

> knows that the client intends to commit perjury, the lawyer's first duty is to attempt to persuade the client to testify truthfully. If the client still insists on committing perjury, the [attorney] must threaten to disclose the client's intent to commit perjury *to the judge*. If the threat of disclosure does not successfully persuade the client to testify truthfully, the [attorney] must disclose the fact that the client intends to lie *to the tribunal* and, per [Rule] 4-1.6, information sufficient to prevent the commission of the crime of perjury.
>
> Commentary to Rule 4-3.3.

This specific situation has similarly been addressed by the Florida Bar's Committee on Professional Ethics in Ethics Opinion Number 04-1, which provides that, where an attorney knows that the client will testify falsely, "withdrawal does not fulfill the lawyer's ethical obligations, because withdrawal alone does not prevent the client from committing perjury." Fla.St.Bar Assn., Formal Op. 04-1 (2005). Therefore, the attorney "must disclose *to the court* [the] client's intention to commit perjury." *Id.* In conclusion, where an attorney "is representing a [] client who has stated an intention to commit perjury, the [attorney] is obligated,

pursuant to Rules 4-1.2(d), 4-1.6(b)(1) and 4-3.3(a)(4), to disclose the client's intent *to the court*."[18] *Id.* Although the evidence in this case indicates that Respondent had filed a Motion to Withdraw from the immigration case at the time she contacted the State Attorney's Office, the reason she sought to withdraw was unrelated to the client's testimony,[19] and moreover, the record is devoid of any evidence that Respondent ever sought to dissuade her client from lying to the court.

In a prior decision involving similar facts to those presented in the instant case, this Court similarly concluded that an attorney's conduct in revealing client confidences to law enforcement, where the information was disclosed merely to gain an advantage and not actually to prevent the commission of a crime, constituted a violation of Rule 4-1.6. *The Florida Bar v. Dunagan*, 731 So.2d

[18] Florida Statues impose a similar duty to maintain client confidences on attorneys. Pursuant to Florida Statute 90.502(4)(a), the provision dealing with the attorney-client privilege, it is for the *court* to determine whether an attorney-client communication falls within any of the statutory exceptions to the privilege. A party seeking disclosure under the crime-fraud exception must first establish a prima facie case that the party asserting the privilege sought the attorney's advice in order to commit a crime, or in an attempt to commit, a crime or fraud. *Id.* If the court determines that the crime-fraud exception applies, the client is still entitled to provide a reasonable explanation for the communication or its conduct at an evidentiary hearing. *Id.* The ethical duty imposed on attorneys under the duty of confidentiality encompassed in Rule 4-1.6 is broader than the legal duty imposed under the attorney-client privilege, making Respondent's disclosure in this case even more reprehensible.

[19] The reason Respondent sought to withdraw is that Sere had retained a new attorney to represent her in the immigration case. (TR. at 24.)

1237 (Fla. 1999). In that case, this Court specifically concluded that evidence that the wife in a proceeding was arrested after her former attorney, who had previously represented both her and her husband in a matter relating to a restaurant business, sent a letter to the police stating that the restaurant was the sole property of the husband, on which the police subsequently relied to arrest the wife, was sufficient to support a finding that the attorney had violated Rule 4-1.6. *Id.* at 1242. In the instant case, there similarly appears to be no apparent reason for Respondent's disclosure, other than to disparage the character of her former client, in the same way that Respondent had previously disparaged Sere through the derogatory statements she made in the Motions to Withdraw she filed with the immigration court.

In reviewing a referee's findings of fact, this Court has determined that such findings carry "a presumption of correctness and should be upheld *unless clearly erroneous or without support in the record*." *The Florida Bar v. Vannier*, 498 So.2d 896, 898 (Fla. 1986). If the referee's findings are supported by competent, substantial evidence, the Court is "precluded from reweighing the evidence and substituting [its] judgment for that of the referee." *The Florida Bar v. MacMillan*, 600 So.2d 457, 459 (Fla. 1992). In the instant case, the Referee's finding that Respondent did not violate Rule 4-1.6 when she disclosed confidential client information to the State Attorney's Office is clearly erroneous, without support in

the record, and therefore, must be reversed.

Both the Rules Regulating The Florida Bar and this Court's own case law clearly establish that disclosure under these circumstances must be made *to the tribunal*, and even then, only in a manner that is no greater than the attorney "reasonably believes necessary to the purpose." Commentary to Rule 4-1.6, Rules Regulating The Florida Bar. In this case, Respondent not only failed to make the disclosure to the immigration court and to seek its guidance, but she made the disclosure to the State Attorney handling an ongoing criminal case against her former client, to the detriment of the client who has then facing criminal charges and possible deportation. The foregoing facts and case law establish clearly and convincingly that Respondent breached the duty of confidentiality she owed to her former client, in violation of Rule 4-1.6, and that the Referee's finding to the contrary is "clearly erroneous," "lacking in evidentiary support," and therefore, must be reversed. *Vannier*, 498 So.2d at 898.

II. A NINETY-ONE (91) DAY SUSPENSION AND THE REQUIREMENT THAT RESPONDENT SUBMIT TO AN EVALUATION BY FLORIDA LAWYER'S ASSISTANCE IS THE APPROPRIATE SANCTION GIVEN THE REFEREE'S FINDING THAT RESPONDENT'S MISCONDUCT IN MAKING DISPARAGING COMMENTS ABOUT HER CLIENT TO THE IMMIGRATION COURT WAS INCONCEIVABLE, ACTIONABLE, AND INCONSISTENT WITH THE ADMINISTRATION OF JUSTICE.

This Court's scope of review over disciplinary recommendations is broader than that of findings of fact because it is the Court's responsibility to order the

appropriate discipline. *The Florida Bar v. Anderson*, 538 So.2d 852 (Fla. 1989). *See also* art. V, § 15, Fla. Const. "The Supreme Court shall have exclusive jurisdiction to regulate … the discipline of persons admitted [to the practice of law]." The Court will generally not second-guess a referee's recommended discipline, so long as it has a reasonable basis in existing case law and in Florida's Standards for Imposing Lawyer Sanctions. *The Florida Bar v. Temmer*, 753 So.2d 555 (Fla. 1999). A ninety (90) day suspension and the requirement that Respondent attend The Florida Bar's Ethics School and Professionalism Workshop were recommended by the Referee. This recommended discipline, particularly in light of the significant aggravation found, has no reasonable basis in existing case law and a ninety-one (91) day suspension with the requirement that Respondent submit to an evaluation by Florida Lawyer's Assistance, is the appropriate sanction.

The Florida Bar established by clear and convincing evidence, and the Referee so found, that Respondent engaged in conduct prejudicial to the administration of justice, in violation of Rule 4-8.4(d), Rules Regulating The Florida Bar, when she made disparaging comments about her client to the immigration court. The Referee specifically found it was "inconceivable … that anybody with any knowledge of the rules of ethics" would suggest "that in a motion to withdraw in just about any kind of case [the] kind of comments [made

by Respondent] would be appropriate and would not be in violation or inconsistent with our administration of justice." (TR. at 163; A1.) The Referee further found that, regardless of intent, the very act of filing such a motion with such language is so prejudicial to the client so as to be actionable.[20] (TR. at 163; A1.)

Not only did Respondent engage in conduct so prejudicial to the administration of justice, as to be actionable, (TR. 163; A1.), but The Bar further contends that she breached her duty of confidentiality to her former client by contacting the State Attorney's Office and suggesting that she had "reason to believe" her former client intended to lie to the immigration court. (TR. 41-42.) Confronted by this concern, Respondent made no attempt to bring these concerns to the attention of the immigration court and seek its guidance on how best to proceed, nor did she attempt to dissuade her client from lying to the court. Instead, in a further attempt to disparage her former client, Respondent contacted the State Attorney who was handling a criminal case against that same client to inform her

[20] The language of Rule 4-8.4(d) (conduct prejudicial to the administration of justice) specifically provides that "[a] lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic." Additionally, this Court has previously concluded in a number of decisions that "[any] conduct that prejudices our system of justice as a whole" is encompassed by Rule 4-8.4(d). *The Florida Bar v. Machin*, 635 So.2d 938, 940 (Fla. 1994).

that she had "reason to believe" her former client intended to lie to the immigration court. (TR. 41-42.)

There are a number of cases where this Court has determined that a rehabilitative suspension is the appropriate sanction for attorneys who engage in similar violations to those presented in this case. It is from that starting point, and then factoring in the significant aggravation presented, that The Bar advances its contention that a ninety-one (91) day suspension and Respondent's evaluation by Florida Lawyer's Assistance, is the appropriate sanction.

In *The Florida Bar v. Lange*, 711 So.2d 518 (Fla. 1973), this Court determined that a one (1) year suspension was the appropriate sanction for an attorney who engaged in various ethical violations, including the disclosure of confidential client communications and conduct prejudicial to the administration of justice, among others. In flagrant disregard of a former client's privacy, Lange knowingly offered intricate, damaging information about the former client relating to past uncharged crimes the former client had disclosed to him, for purposes of demonstrating a possible conflict in his representation of a different client. *Id.* at 522. Moreover, Lange divulged the former client's secrets without obtaining a waiver from the former client prior to making the disclosures to both opposing counsel and the court. *Id*.

Lange's misconduct arose in the course of his representation of a criminal

client in a federal criminal case. *Id.* at 519. He had previously represented an individual who was listed as a government witness against the current client. *Id.* Prior to the commencement of trial, in two separate motions, Lange divulged confidential communications made to him by the former client relating to past uncharged crimes that the former client had confessed to committing. *Id.* At the disciplinary hearing before the Referee, Lange argued that his disclosure fell within the crime-fraud exception to the attorney-client privilege. *Id.* Nevertheless, the Referee found that Lange should not have divulged privileged attorney-client communications, but rather should have advised the court, in generalities, of the potential conflict and sought guidance from the court on how to proceed. *Id.* In approving the Referee's findings, this Court similarly concluded that the information, although conceivably helpful to a current client, was injurious to the former client, especially since he was never charged with or convicted of the crimes in his case. *Id.*

In addition to the foregoing misconduct, the Referee in *Lange* found that the attorney had placed his own interests before those of another client, thereby engaging in conduct prejudicial to the administration of justice, when he failed to advise the client about a jury's request to see the crime scene in a capital murder case in order to avoid retrial. *Id.* at 520-21. Lange was also found guilty of advertising violations, and consequently, the Court ultimately determined that a

one (1) year suspension was appropriate. While *Lange* is distinguishable from the instant case in certain respects,[21] the case is significant because it involves analogous Rule violations and demonstrates this Court's willingness to impose a rehabilitative suspension for similar misconduct. Like Lange, Respondent gratuitously disclosed confidential client information in flagrant disregard of her former client's confidences, as well as engaged in conduct prejudicial to the administration of justice.

In a second case, *The Florida Bar v. Niles*, 644 So.2d 504 (Fla. 1994), this Court again determined that a one (1) year suspension was warranted for an attorney's misconduct involving disclosure of confidential client information and other ethical violations. Niles was appointed by the court as a special public defender to represent a defendant in a first-degree murder case. *Id.* at 505. After the defendant was placed in a correctional institution, Niles contacted the superintendent and requested permission to conduct an interview of the defendant regarding her codefendant. *Id.* Niles obtained permission to conduct the interview by indicating that the interview would be videotaped by him and his law clerk only, but he failed to disclose that the interview was in fact being conducted for a

[21] *Lange* involved two separate cases, one containing two separate counts, based on which this Court ultimately found violations of various Rules, including those prohibiting disclosure of client's secrets, representation of a client where the exercise of independent judgment might be limited by self-interest, and self-laudatory and misleading advertisements. *Id.*

television program. *Id.* Niles further failed to disclose that he would be receiving a fee for securing such interview. *Id.* During the course of the interview, Niles revealed confidential client information, without his client's consent. *Id.* at 506. Additionally, the client was placed in an exploitative and negative manner in the interview. *Id.*

Based on these facts, the Referee ultimately determined that Niles had engaged in a series of Rule violations, including the disclosure of confidential client information and conduct prejudicial to the administration of justice. *Id.* Like in *Niles,* Respondent in the instant case breached the duty of confidentiality that she owed to her former client when she contacted the State Attorney's Office to advise she had reason to believe her former client intended to lie to the immigration court. Moreover, just like Niles, Respondent placed her own client in an exploitative and negative manner by making disparaging comments about her character in the various motions she filed with the immigration court.

Even assuming, *arguendo,* that this Court were to agree with the Referee's finding that Respondent did not violate Rule 4-1.6 (confidentiality of information), these Court's past decisions unequivocally support the conclusion that a rehabilitative suspension is warranted based on Respondent's violation of Rule 4-8.4(d) (conduct prejudicial to the administration of justice) and the significant aggravation presented. For example, in *The Florida Bar v. Bloom,* 632 So.2d 1016

(Fla. 1994), this Court held that an attorney's failure to comply with proper discovery requests constituted conduct prejudicial to the administration of justice, sufficient to warrant the imposition of a ninety-one (91) day suspension from the practice of law. It would be difficult to imagine how the disparaging comments made by Respondent about her client could be considered any less prejudicial to the administration of justice than the attorney's refusal to comply with discovery requests in *Bloom*. The Referee himself found it "inconceivable … that anybody with any knowledge of the rules of ethics" would suggest "that in a motion to withdraw in just about any kind of case [this] kind of comments would be appropriate and would not be in violation or inconsistent with our administration of justice." (TR. at 163; A1.)

In *The Florida Bar v. Morgan*, 938 So.2d 496 (Fla. 2006), this Court similarly determined that the appropriate sanction for an attorney's inappropriate courtroom behavior, which constituted conduct prejudicial to the administration of justice, was a ninety-one (91) day suspension. In determining the appropriate level of discipline in *Morgan*, this Court took into account the fact that the attorney had previously been the subject of discipline for similar misconduct. In this case, while no formal discipline has been imposed against Respondent, she is currently the subject of another case pending before this Court, Supreme Court Case No. SC09-403, which involves the exact same type of misconduct, to-wit, conduct prejudicial

to the administration of justice,[22] and this Court has specifically concluded in past decisions that pending cases can be used in aggravation when determining the appropriate level of discipline. *The Florida Bar v. Bustamante*, 662 So.2d 687 (Fla. 1995).

Notably, this Court has been willing to impose suspensions as lengthy as six (6) months for attorneys who engage in no other Rule violations than conduct prejudicial to the administration of justice. For example, in *The Florida Bar v. Jones*, 403 So.2d 1340 (Fla. 1981), the Court determined that engaging in conduct prejudicial to the administration of justice, which adversely reflects on an attorney's fitness to practice law, warranted a six (6) month suspension.

As previously stated by this Court, some conduct is so detrimental to the administration of justice that an attorney who engages in such conduct "must be subject to [a] rehabilitative suspension." *Morgan*, 938 So.2d at 500 (Wells, J., concurring). As Justice Wells further stated in his Concurring Opinion in *Morgan*, the lesson of these decisions is that "the Court will not allow lawyers who engage in this conduct to do it in Florida courts without facing substantial discipline." *Id.* at 501. "Any conduct of an attorney that brings the administration of justice into scorn and disrepute demands condemnation and the application of appropriate

[22] As previously indicated, the Referee in the prior case recommended that Respondent receive a public reprimand, and Respondent subsequently appealed from that recommendation.

penalties. *The Florida Bar v. Calhoon*, 102 So.2d 604, 608 (Fla. 1958).[23]

This Court has repeatedly held that the purpose of lawyer discipline is three-fold. First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer; second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation; and third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. *See The Florida Bar v. Lord*, 433 So.2d 983, 986 (Fla. 1983).

The conclusion that a rehabilitative suspension is the most appropriate sanction based on the extensive findings in this case is further supported by Florida's Standards for Imposing Lawyer Sanctions. Specifically, Standard 4.22 provides that:

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[23] Notably, the attorney in *Calhoon* was disbarred for engaging in conduct prejudicial to the administration of justice. Specifically, the attorney was found to have used false accusations that a circuit judge had accepted a bribe in consideration of increased fees to parties handling a receivership in an attempt to compel the judge to enter orders more favorable to claimants in whom the attorney was interested and to allow additional fees to the attorney. Although the conduct of the attorney in *Calhoon* might be considered more egregious than Respondent's misconduct in the instant case, it is significant that the Court determined disbarment was appropriate, even where the attorney, much like Respondent, believed the accusations to be true at the time they were made. Moreover, Respondent in this case has previously engaged in similar misconduct, as evidenced by the findings of the Referee in her prior disciplinary proceeding, currently pending before this Court, Supreme Court Case No. SC09-403.

> Suspension is appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

Similarly, Standard 7.2 provides that:

> Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

In this case, there is no question that Respondent knowingly revealed her client's confidences and breached her duty of confidentiality when she contacted the State Attorney's Office to advise that she had "reason to believe" her former client intended to lie to the immigration court. (TR. at 41-42.) Respondent disclosed this information to the detriment of her client who was facing criminal charges, as well as possible deportation in the immigration matter.

Most significantly, Respondent unquestionably engaged in conduct that is a violation of her duty as a professional when she knowingly made disparaging and unnecessary comments about her client to the immigration court to the effect that her client had robbed members of the Romanian community, that she had failed to fulfill contractual work, and ultimately, that she regretted having represented Sere who in reality had been "righteously convicted." (TR. at 54; TFB Ex. 2.)

In addition to relying on the foregoing Standards,[24] the Referee in this case made specific findings that the following aggravating factors were present: 9.22(c) (a pattern of misconduct), 9.22(d) (multiple offenses), and 9.22(h) (vulnerability of victim). Additionally, based on this Court's decision in *Bustamante*, where the Court concluded that pending cases can be considered in aggravation, the Referee considered Respondent's pending disciplinary case, Supreme Court Case No. SC09-403, which involves similar findings that Respondent engaged in conduct prejudicial to the administration of justice, to be a further aggravating factor. (TR. at 138; A3.)

The Referee in this case found only one mitigating factor: 9.32(a) (absence of a prior disciplinary record). With respect to mitigation, one of the factors that Referees will typically rely on is 9.32 (l) (remorse). In this case, not only did Respondent fail to show any remorse for her actions, but she repeatedly continued to disparage her client's character throughout the proceeding and in the various motions she filed in the course of the disciplinary proceeding. Respondent further emphasized that she would continue to state "multiple times" that her former client was "very dishonest," "regardless of the fact that she [was] [her] client or [her]

[24] In reaching his ultimate recommendation, the Referee also relied on Standards 6.12 and 6.22.

former client."[25] (TR. at 32.) As the Referee recognized, Respondent took "the position from the outset that there was nothing really wrong with using that language," and she in fact "presented [such a] defense." (TR. at 178.) Such a blatant lack of remorse or acknowledgment of her misconduct makes the determination that a rehabilitative suspension is the most appropriate sanction in this case even more appropriate.

"A referee's findings of mitigation and aggravation are … presumptively correct and upheld unless clearly erroneous or without support in the record." *The Florida Bar v. Del Pino*, 955 So.2d 556, 560 (Fla. 2007) (citation omitted). Likewise, "a referee's recommendation on discipline is afforded a presumption of correctness unless the recommendation is clearly erroneous or not supported by the evidence." *Niles*, 644 So.2d at 506-07 (Fla. 1994). However, "unlike the referee's findings of fact and conclusions as to guilt, the determination of the appropriate discipline is peculiarly in the province of this Court's authority." *The Florida Bar v. O'Connor*, 945 So.2d 1113, 1120 (Fla. 2006). As it is ultimately this Court's

[25] Respondent similarly asked how it could be "callous and disparaging and humiliating if … [she] [was] doing what [she] [was] supposed to do if [Sere] intend[ed] to lie and she did all of this, defrauded all these people." (TR. at 37.) She then continued to disparage Sere's character throughout the entire proceeding and in the various motions she filed throughout the Bar proceeding by making unnecessary remarks about her moral character and sexual orientation, even after the Referee reminded Respondent that Sere's character was not the issue before him, nor was it relevant or material to the allegations contained in The Bar's complaint. (TR. at 38.)

responsibility to order the appropriate punishment, this Court enjoys broad latitude in reviewing a referee's recommendation. *Anderson*, 538 So.2d at 852.

In this case, the recommended discipline does not comport with existing case law, particularly in light of the significant aggravation presented. Based on the foregoing facts and case law, it is The Bar's position that a ninety-one (91) day suspension is the appropriate sanction. Additionally, in light of the Referee's finding that Respondent "honestly does [not] comprehend part of the ethical guidelines for lawyers," (TR. at 180.),[26] The Florida Bar submits that Respondent's evaluation by Florida Lawyer's Assistance is warranted.

[26] The Referee in Respondent's prior disciplinary case similarly concluded that Respondent "even now, fail[ed] to grasp the seriousness of her misconduct," and that she might "otherwise [be] inclined to recommend harsher discipline (based on [R]espondent's demeanor at trial and her continued lack of understanding of the Rules Regulating The Florida Bar)." (A2.)

CONCLUSION

In consideration of this Court's broad discretion and based upon the foregoing reasons and citations of authority, The Florida Bar respectfully requests that this Court reject the Referee's not guilty finding regarding Rule 4-1.6 (confidentiality of information), Rules Regulating The Florida Bar, as well as the Referee's recommended discipline of a ninety (90) day suspension. The Florida Bar further submits that a ninety-one (91) day suspension and an evaluation by Florida Lawyer's Assistance is the appropriate sanction.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the Initial Brief of The Florida Bar were sent via electronic mail to the Honorable Thomas D. Hall, Clerk, at e-file@flcourts.org, and via regular mail to Supreme Court Building, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399; and a true and correct copy was sent via electronic mail to Petia Dimitrova Knowles, Respondent, at pdk6@comcast.net, and via regular mail to 12550 Biscayne Blvd., Suite 800, Miami, Florida 33181; and via regular mail only to Kenneth L. Marvin, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399, on this _____ day of _____, 2011.

_____
DANIELA ROSETTE
Bar Counsel

CERTIFICATE OF TYPE, SIZE AND STYLE

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

_____
DANIELA ROSETTE
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