IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner/ Appellee,

v.

DANIEL EDGAR TROPP,

Respondent/Appellant.
_____/

Supreme Court Case
No. SC11-45

The Florida Bar File
No. 2010-70,301(11F)

ANSWER BRIEF OF THE FLORIDA BAR

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SYMBOLS AND REFERENCES

For the purpose of this brief, Daniel Edgar Tropp may be referred to as "Respondent". The Florida Bar may be referred to as "The Florida Bar" or the "Bar". The referee may be referred to as the "Referee". Additionally, the Rules Regulating the Florida Bar may be referred to as the "Rules" and the Florida Standards for Imposing Lawyer Sanctions may be referred to as the "Standards".

References to the Report of Referee will be by the symbol "ROR" followed by the corresponding page number(s). References to the transcript of the final hearing held on July 21, 2011 will be by the symbol "TR" followed by the corresponding page number(s).

References to The Florida Bar's exhibits will be by TFB, followed by the exhibit number. References to Respondent's exhibits will be by R, followed by the exhibit number.

STATEMENT OF THE CASE AND OF THE FACTS

In 2001, Respondent, Mr. Daniel Edgar Tropp, and his wife, Iris Toledano Egozi ("Egozi") initiated divorce proceedings. Following entry of the Final Judgment of Divorce, Respondent and Egozi commenced post dissolution litigation concerning custody and support issues. (ROR 2).

The post dissolution litigation was lengthy and contentious. (TR. 17-18, 55; TFB Comp. Ex. 3). Judge Firtel was the judge presiding over the post dissolution litigation during the time period relevant to this matter. Respondent was represented by Richard Baron ("Baron") for several years of this post dissolution litigation, up to and including the relevant time period (TR. 17, 18, 29-32; TFB Ex 4, 5; ROR 2). Egozi was represented by Deborah Chames ("Chames") (TR. 66; ROR 2).

A final hearing in the post dissolution case was scheduled to be heard on September 1, 2009. On August 7, 2009, Respondent filed the first of several motions to disqualify Judge Firtel, claiming he was biased. (TR. 28; TFB Comp. Ex. 3; ROR 2). Respondent filed an amended motion to disqualify Judge Firtel on August 13, 2009. (TR. 28; TFB Comp. Ex. 3; ROR 2-3). On August 21, 2009, Judge Firtel denied the motion as legally insufficient. (TR. 28; TFB Comp. Ex. 3; ROR 2-3). A mere four days later, on August 25, 2009, Respondent filed his third motion attempting to disqualify Judge Firtel. (TR. 28-29; TFB Comp. Ex. 3; ROR

3). The third motion also alleged bias, and was denied by Judge Firtel on September 1, 2009. (TR. 28-29; TFB Comp. Ex. 3; ROR 3). Baron, Respondent's counsel of record, did not join in any of these motions. (TR. 18, 29; ROR 3)

During the above time period, while Respondent was desperately attempting to remove Judge Firtel from the case (TR. 48-50), Baron filed a Notice of Limited Appearance and a Motion to Withdraw as to all issues except custody issues. (TR. 46-48, 63-64; TFB Ex. 6; ROR 3). However, the court did not grant this motion, and Baron remained counsel of record in this matter throughout the relevant time period. (TR. 18, 20, 29-32, 69-70; TFB Ex. 4; ROR 3). Baron was not allowed out of the case until successor Judge Ivan Fernandez entered an order granting his Motion to Withdraw on April 19, 2010. (TR. 31; TFB Ex. 5). In June, July and August, 2009, Respondent filed many of his own pleadings and generally acted in his capacity as an attorney, representing himself as co-counsel along with Mr. Baron. (TR. 35-44, 65, 69-70; R. Ex 1, 2; ROR 3).

On the same day that the third motion to disqualify Judge Firtel was denied, September 1, 2009, Respondent filed a Fourth Amended and Updated Verified Motion to Disqualify with Further Evidence Discovered on August 25, 2009 ("Fourth Motion"). (TR. 18; TFB Ex. 1; ROR 3). The Fourth Motion also alleges prejudice, and states:

> Then Ms. Chames told me that the Judge had a discussion *with her* and that he '*showed her* a piece of paper saying I will owe about $1,500 a month.' I learned of Judge Firtel predisposition on amount 'he's going to order' on 8/25/200[9] *which was said and done in chambers outside of my presence* and involving the financial issues herein sometime between 8/5/2009 to 8/23/2009.

(TR. 20; TFB Ex. 1, para. a; ROR 3)(emphasis added). The motion goes on to say that Mr. Baron had no recollection of such a conversation, further supporting the inference of an ex-parte communication between Judge Firtel and Chames. (TFB Ex. 1, para. b). In Paragraph "f" of the Fourth Motion, Respondent indicates that his motion is "based, in most part, on F.S.A 38.10(6) PREJUDICE . . ." (TFB Ex. 1, para. f). In Paragraph "h" of the Fourth motion, Respondent states, "This is just another example of the trips, traps, and adversarial nature that I have constantly face by Judge Firtel against myself and is proof of how he easily grants their motions, *reads their ex-parte communications*, enters virtually every single order authored or hand written from opposing counsel even when they don't send me a copy of the orders, letters or pleadings . . . ." (TFB Ex. 1, para. h)(emphasis added).

However, the allegations concerning an ex-parte conversation between Chames and Judge Firtel were deliberately misleading. (ROR 5). The conversation referred to in paragraph "a" of the Fourth Motion occurred during a recess in a hearing at which Respondent, Mr. Baron, and Chames were all present. (TR. 23; ROR 4). The judge called counsel of record into chambers. (TR. 23).

Baron and Chames both went into chambers with the judge, and they discussed Respondent's income and child support. (TR. 23; ROR 4). This was the conversation described in the Fourth Motion. (TR. 21, 23, 45-46). Despite their prior efforts to limit the representation, Baron was still counsel of record in the matter, and was present at all times during which substantive topics were discussed. (TR. 21, 23, 68; ROR 4). Baron emerged from the meeting and thereafter informed Respondent of the conversation. (TR. 24-26, 53-54; ROR 4).

Notwithstanding same, and fully aware that Judge Firtel would be allowed no opportunity to refute the allegations, Respondent filed his Fourth Motion on the day of trial, September 1, 2009. (TFB Ex. 1, and TFB Comp. Ex. 3). Baron did not join in the motion, and tried to dissuade his client from filing it. (TR. 18, 48-49). In the face of a legally sufficient motion, Judge Firtel had no choice other than to issue an Order Granting Fourth Verified Motion to Disqualify, despite the falsity of the assertions therein. (TR. 26, 49, TFB Ex. 2). Although the Order states that the Fourth Motion is legally sufficient, it refers the matter to the Florida Bar. (TFB Ex. 2; ROR 3). While technically accurate that the meeting took place outside of Respondent's presence, Respondent's failure to make any mention of the fact that Baron, his counsel of record, was present during the conversation was deliberately misleading and directly implied that there was an ex-parte meeting between Judge Firtel and Chames. (ROR 5)

Upon Judge Firtel's referral of the matter to the Florida Bar, an investigation commenced. The Florida Bar filed a formal Complaint in the Florida Supreme Court on January 11, 2011. (ROR 1). The Honorable Andrea R. Wolfson was appointed Referee in this matter on January 24, 2011. (ROR 1). Respondent filed his Motion for Summary Judgment on July 12, 2011. (See Respondent's Motion for Summary Judgment). The Referee issued an Order striking Respondent's Motion for Summary Judgment on July 20, 2011. (See Order on Respondent's Motion for Summary Judgment). The Final Hearing in this matter was heard on July 21, 2011. The Amended Report of Referee was issued on August 1, 2011.

Following presentation of the evidence, the Referee made factual findings. The Referee found that Respondent at all times relevant hereto was acting in his capacity as an attorney. (TR. 98; ROR 3). The Referee found that, while Respondent acted as co-counsel with Mr. Baron, it was in fact Respondent's expressed wish that Mr. Baron be in attendance for all conversations in the courtroom or chambers, or with opposing counsel. (TR. 99). There was no evidence presented to the Referee to suggest that Respondent expressed a desire to be present himself for all such conversations. (TR. 99). The Referee found that, although Respondent did not use the term "ex-parte" in paragraph "a" of his Fourth Motion, he did in fact describe an ex-parte communication. (TR. 100-101). And that anyone reading paragraph "a" is left with the impression that Judge Firtel and

Chames engaged in an ex-parte communication in the case. (TR. 101).

The Referee recommended that Respondent be found guilty of each of the Rule violations charged in the Complaint of the Florida Bar. (TR. 102-106; ROR 6). The Referee recommended that, based on the numerous motions to disqualify filed within a short period of time, none of which were granted until such time as Respondent made the false allegation of an ex-parte communication, there is clear and convincing evidence that Respondent violated Rule 4-3.1, which prohibits a lawyer from bringing or defending a proceeding, or asserting or controverting an issue therein, unless there is a basis in law and fact for doing so that is not frivolous. (TR. 102). The Referee further found that the numerous motions to disqualify demonstrate an abuse of legal procedure, and amount to reckless disregard for the truth. (TR. 102; ROR 4, 5). The Referee found that the Fourth Motion was frivolous. (ROR 5).

The Referee similarly recommended a finding of guilt for violation of Rule 4-3.3 which requires Candor Towards the Tribunal. (ROR 6). The Referee found that Respondent made a false statement to the tribunal regarding the ex-parte communication. (TR. 102; ROR 5). Further, even if Respondent at first was confused or misunderstood that Baron was present for the discussion, upon learning of Baron's presence in chambers, Respondent had a duty "to right the wrong," and to correct the false statement. (TR. 103). Respondent made no effort

to do so. (TR. 102-103).

The Referee recommended that Respondent be found guilty of violating Rule 4-8.2, prohibiting an attorney from making statements he knows to be false, or with reckless disregard to the truth or falsity of same, concerning the qualifications or integrity of a judge. (ROR 5, 6). The Referee found that there was no evidence to establish an ex-parte communication between Chames and Judge Firtel, and therefore Respondent was in violation of that Rule. (TR. 102-103). Further, there was no evidence to establish other statements contained within the Fourth Motion, particularly the allegations of pre-disposition, and the "trips and traps" and the ex parte communications referred to in paragraph "h." The Referee found all of these statements contained in the Fourth Motion to violate Rule 4-8.2. (TR. 103-104; ROR 5).

Finally, as to Rule 4-8.4(c), the Referee recommended that Respondent be found guilty based on her finding that Respondent's statements in the Fourth Motion, were dishonest and constituted misrepresentations. (TR. 105; ROR 5, 6). She further recommended a finding of guilt as to Rule 4-8.4(d), prohibiting conduct prejudicial to the administration of justice. (TR. 105; ROR 5, 6). In the instant case, the lengthy and contentious post dissolution litigation was drawing to a close and was ready to proceed to final hearing. However, once the Respondent successfully filed a motion to disqualify Judge Firtel, the matter had to be assigned

to a successor judge and the proceedings were therefore drawn out and further delayed. (ROR 5).

The Referee recommended a public reprimand as the appropriate sanction, and further recommended that Respondent be referred to Florida Lawyer's Assistance (FLA) for any evaluation deemed appropriate, and entry into a contract for any recommended treatment. (TR. 121, ROR 7-8). Respondent filed the instant appeal to contest the Referee's recommendations as to guilt and the appropriate sanction. The Answer of the Florida Bar follows.

SUMMARY OF THE ARGUMENT

The Referee's findings of fact and recommendations as to guilt are supported by competent and substantial evidence, and are not clearly erroneous. Therefore, the factual findings and the recommendations as to guilt should be adopted by this Court. Further, this Court has the jurisdiction and authority to determine whether Respondent made false statements with reckless disregard for the truth in his motion to disqualify Judge Firtel, and to discipline Respondent for that misconduct. Finally, the recommended sanctions of a public reprimand and referral to FLA for evaluation, are supported by existing case law and the facts and circumstances presented to the Referee in this case. However, should the Court be inclined to impose a harsher sanction, based in part on Respondent's conduct of the present appeal, a rehabilitative suspension of between one and three years is also supported by existing case law.

ARGUMENT

I. THE REFEREE'S FINDINGS OF FACT SHOULD BE ADOPTED BY THIS COURT, AS SUCH FINDINGS OF FACT ARE SUPPORTED BY COMPETENT AND SUBSTANTIAL RECORD EVIDENCE, AND ARE NOT CLEARLY ERRONEOUS.[1]

Respondent argues that several specific factual findings, and/or legal conclusions, contained in the Report of Referee are inaccurate. Contrary to Respondent's assertions, the Referee's findings of fact and conclusions of law, are neither clearly erroneous, nor unsupported by record evidence; therefore, the Referee's recommendation should be adopted by this Court.

In a disciplinary proceeding before a referee, the Bar has the burden of proving the allegations of misconduct by clear and convincing evidence. *The Florida Bar v. Marable*, 645 So.2d 438 (Fla. 1994). However, on review of a referee's findings of fact, this Court presumes the findings to be correct. *Id.;* see also *The Florida Bar v. Vannier*, 498 So.2d 896 (Fla. 1986). The party seeking review of such findings and/or recommendations carries the burden of showing that they are clearly erroneous or lacking in evidentiary support. *The Florida Bar v. McClure*, 575 So.2d 176 (Fla. 1991). Because the referee is in the better position to evaluate the demeanor and credibility of the witnesses, the referee's finding of fact should be upheld if they are supported by competent, substantial

[1] The Florida Bar's Argument I in its Answer Brief refers to Respondent's Argument "a" in his Amended Brief of Respondent

evidence. *The Florida Bar v. Marable*, 645 So.2d 438 (Fla. 1994). Where a party contends that the referee's findings of fact and conclusions as to guilt are erroneous, that party must demonstrate that there is no evidence in the record to support those findings or that the record evidence clearly contradicts the conclusions made. *The Florida Bar v. Rue*, 643 So.2d 1080 (Fla. 1994). In the absence of such a showing, the referee's findings will be upheld. *The Florida Bar v. Hayden*, 583 So.2d 1016 (Fla. 1991); *The Florida Bar v. McKenzie*, 442 So.2d 934 (Fla. 1984). In the present case, the Respondent cannot meet his burden of establishing that there is no evidence in the record to support the Referee's factual findings or that the record evidence clearly contradicts the conclusions made. Respondent's argument is without merit and must be denied.

First, Respondent appears to contest the Referee's finding that Mr. Richard Baron was counsel of record in the post dissolution proceedings during the relevant time period. Respondent presents no record evidence to support his contention, and indeed, there is no record evidence that would support same. Rather, the evidence presented to the Referee at the Final Hearing established conclusively that Richard Baron was in fact counsel of record throughout the relevant time period.

Richard Baron came into the case on an unqualified Notice of Appearance several years before the occurrences giving rise to this disciplinary matter. (TR.

62-63). Then, in August 2009, during the time period giving rise to these proceedings, Baron and Respondent *attempted* to limit Baron's participation to that of co-counsel on custody issues only. (TR. 63). Baron filed a Notice of Limited Appearance and a Motion to Withdraw as to all issues except custody issues. (TR. 46-48, 63-64; TFB Ex. 6; ROR 3). However, the court specifically *refused* to grant this motion, and Baron remained counsel of record in this matter throughout the relevant time period. (TR. 18, 20, 29-32, 69-70; TFB Ex. 4; ROR 3). Baron was not allowed out of the case until successor Judge Ivan Fernandez entered an order granting his Motion to Withdraw on April 19, 2010. (TR. 31; TFB Ex. 5). Thus, the record evidence irrefutably supports the Referee's finding of fact that Richard Baron was counsel of record at the time he went into the judge's chambers with Chames, and engaged in the discussion referred to in Paragraph "a" of the Fourth Motion.

Next, Respondent appears to contest that the First Verified Motion to Disqualify was based on the alleged "bias" of Judge Firtel. Respondent's assertion is without merit. The First Verified Motion to Disqualify was introduced into evidence as the first document in The Florida Bar's Composite Exhibit 3. Throughout the motion the Respondent asserts his fear that he will not receive a fair and impartial trial. (TFB Comp. Ex. 3). Then, in the section entitled Legal Basis for Granting of this Motion for Disqualification, Respondent asserted, "The

primary concern is to avoid the appearance of bias. Thus, if the facts alleged would prompt a reasonably prudent person to fear he would not get a fair and impartial trial, the Motion must be granted." (TFB Comp. Ex. 3)(internal citations omitted). This document speaks for itself, and clearly supports the Referee's finding of fact.

The Respondent further contests the Referee's finding of fact that his second motion to disqualify was denied as legally insufficient. Instead, Respondent states that the motion was denied as legally insufficient and untimely. While this correction does not demonstrate that the Referee's findings of fact are incorrect, the Florida Bar does concede that the order denying the motion to disqualify does in fact state that is denied as legally insufficient and untimely. (TFB Comp. Ex. 3)

More relevantly, Respondent next disputes the Referee's finding that the Fourth Motion "alleged that Judge Firtel and Chames had improper ex-parte discussion." Rather, Respondent contends that his motion did not mention ex-parte conversations, but instead was based on the judge's predisposition. Respondent's assertion is without merit. The Fourth Motion was introduced into evidence as The Florida Bar's Exhibit 1. In that document, the Respondent specifically asserted that Chames and the judge had a meeting at which he was not present, wherein the support payments were discussed, and further states that his attorney had no recollection of being present for any such meeting. These statements, taken

together clearly describe an ex-parte conversation between the judge and Chames. The fact that the word "ex-parte" does not appear in that paragraph does not change the inherent characterization of same. (TR. 100-101; TFB Ex. 1). This document speaks for itself, and clearly supports the Referee's finding of fact and conclusion of law.

Finally, Respondent disputes the Referee's finding that the in chambers meeting took place during a recess of a hearing. He further suggests that Baron did not testify conclusively regarding these events, but rather, could not remember same. Contrary to Respondent's contentions, the record evidence clearly supports the Referee's findings of fact concerning the meeting.

The only testimony in the record regarding this meeting came from Mr. Baron, who testified unequivocally and without impeachment that the meeting took place during a recess in a court proceeding. (TR. 23). While Respondent is correct that Mr. Baron could not remember the specific language he employed to inform Respondent of the in chambers conversation between himself, Chames and Judge Firtel, he did state that he was absolutely certain that he informed Respondent of the conversation. (TR. 53-54). In response to cross-examination by Respondent on this issue, Mr Baron stated, "As I sit here today, I'm certain that I discussed what happened in chambers that day, whether it was immediately after the judge and I and Deborah had that conversation or if it was an hour later or six hours later,

I can't tell you with certainty, but I do know that was a discussion we had." (TR. 54). Respondent did not impeach Mr. Baron, nor did he present any evidence to contradict Baron's testimony. Therefore, the record evidence clearly supports the Referee's findings of fact, and same should be adopted by this Court.

II. THE REFEREE'S RECOMMENDATION OF GUILT AS TO THE RULE VIOLATIONS CHARGED ARE SUPPORTED BY COMPETENT AND SUBSTANTIAL RECORD EVIDENCE, AND ARE NOT CLEARLY ERRONEOUS.[2]

It is unclear what argument Respondent is asserting in his Argument "b". It appears that Respondent may be asserting that the Referee and this Honorable Court lack authority or jurisdiction to determine the truth or falsity of the claims raised in his motions to disqualify, and correspondingly to impose discipline based on false statements contained in that pleading. To the extent that the Florida Bar understands the nature of the argument, it is without merit and must be denied.

Respondent appears to misapprehend the nature of these proceedings, and the substantive context of the legal precedent on which he relies. Respondent accurately recites the case law regarding whether a judge may address the truth or falsity of the claims made in a motion to disqualify *for the purposes of ruling on said motion.* However, there is no authority which allows Respondent, or any litigant, to make false statements in such a pleading with reckless disregard for the

[2] The Florida Bar's Argument II in its Answer Brief refers to Respondent's Argument "b" in his Amended Brief of Respondent

truth, as Respondent did here. The duty of candor towards the tribunal is ever-present, and is not set aside simply because a judge is legally prohibited from addressing the truth or falsity of the allegations. Further, there is no authority to support the contention that, just because Judge Firtel could not address the falsity of the allegations, that this Court is likewise prohibited from attending to same. This Court has absolute authority and responsibility for disciplining an attorney who makes false statements in a pleading submitted to the court. Any ruling to the contrary would be antithetical to protecting the integrity of legal proceedings. This is especially true in a situation such as the one presented here, where the judge is prohibited as a matter of law from addressing the truth of the allegations. As this Court recently reiterated:

> '[B]asic, fundamental dishonesty ... is a serious flaw, which cannot be tolerated' because dishonesty and a lack of candor 'cannot be tolerated by a profession that relies on the truthfulness of its members.' *Fla. Bar v. Rotstein*, 835 So.2d 241, 246 (Fla.2002). Dishonest conduct demonstrates the utmost disrespect for the court and is destructive to the legal system as a whole.

The Florida Bar. v. Head, 27 So. 3d 1, 8-9 (Fla. 2010). Respondent's argument is without merit and must be denied.

III. THE REFEREE'S FINDINGS CONCERNING THE ALLEGATIONS CONTAINED IN THE FOURTH MOTION TO DISQUALIFY ARE SUPPORTED BY COMPETENT AND SUBSTANTIAL RECORD EVIDENCE, AND ARE NOT CLEARLY ERRONEOUS.[3]

Respondent asserts that, since he never used the words "ex-parte discussions," then he did not allege an ex-parte communication in his Fourth motion to Disqualify Judge Firtel. Rather, Respondent contends that he alleged predisposition as the basis for disqualification. Respondent's assertion is without merit and must be denied.

While it may be true that predisposition was also alleged in his motion, there is no doubt that in paragraph "a" of the motion Respondent alleged that an ex-parte communication occurred between Judge Firtel and Chames. The Fourth Motion was introduced into evidence as The Florida Bar's Exhibit 1. In that document, the Respondent specifically asserted that Chames and the judge had a meeting at which he was not present, wherein the support payments were discussed, and further states that his attorney had no recollection of being present for any such meeting. These statements, taken together clearly describe an ex-parte conversation between the judge and Chames. The fact that the word "ex-parte" does not appear in that paragraph does not change the inherent characterization of same. (TR. 100-101; TFB Ex. 1). This document speaks for itself, and clearly

[3] The Florida Bar's Argument III in its Answer Brief refers to Respondent's Argument "c" in his Amended Brief of Respondent .

supports the Referee's finding of fact and conclusion of law. Respondent, himself, acknowledged this fact in his opening statement, wherein he admitted that in the body of the motion he cited "a bunch of cases that, technically speaking, it was ex-parte communication." (TR. 11). Respondent's contention is therefore without merit, and must be denied.

IV. THE REFEREE'S FINDINGS CONCERNING THE ALLEGED EX-PARTE COMMUNICATIONS ARE SUPPORTED BY COMPETENT AND SUBSTANTIAL RECORD EVIDENCE, AND ARE NOT CLEARLY ERRONEOUS.[4]

Respondent appears to assert that the discussion that took place between Chames, Baron and Judge Firtel in chambers was in fact an ex-parte discussion because he was not present. Respondent's assertion is without merit and must be denied.

The evidence presented in this case is unrefuted and clearly establishes that Richard Baron was counsel of record for Respondent during the relevant time period. Further, the evidence is unrefuted and clearly establishes that Judge Firtel called counsel of record back into his chambers during a recess in a hearing, and that the discussion referred to in the Fourth Motion occurred at that time. Both Chames and Baron were present during this discussion. According to Black's Law Dictionary, the definition of an ex-parte communication is, "A communication

[4] The Florida Bar's Argument IV in its Answer Brief refers to Respondent's Argument "d" in his Amended Brief of Respondent.

between counsel and the court when the opposing counsel is not present." *See Black's Law Dictionary, 9th Edition*, at 316 (2009). Even in the cases cited by Respondent to support his contention, each case holds that an ex parte communication occurs when the party *or his counsel* is not present. (emphasis added). Since Respondent's counsel of record, Mr. Baron, was present for the discussion, it was not, as a matter of fact and law, an ex-parte communication. Respondent's assertion is without merit and must be denied.

V. THE REFEREE'S RECOMMENDATION OF GUILT OF RULES 4-3.1, 4-3.3, 4-8.4(c) AND 4-8.4(d) ARE SUPPORTED BY COMPETENT AND SUBSTANTIAL RECORD EVIDENCE, AND ARE NOT CLEARLY ERRONEOUS.[5]

Respondent titled his argument "e" as an attack on the Referee's recommendation of guilt of the charged Rules, where he was acting in his capacity as a pro se litigant, rather than in his capacity as an attorney representing a client. Respondent then went on to cite cases and authority protecting his right to appear pro se, and protection of pro se litigants. It does not appear that he has presented any authority or made any argument indicating that anything recommended by the Referee was improper. As such, there is nothing to which the Florida Bar can Answer.

However, to the extent that Respondent's heading contends that the charged

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[5] The Florida Bar's Argument V in its Answer Brief refers to Respondent's Argument "e" in his Amended Brief of Respondent

Rules do not apply to an attorney representing himself, the Respondent's contention is without merit and must be denied. Respondent is an attorney admitted to the Florida Bar. Therefore, if he is in violation of the Rules Regulating the Florida Bar, he may be disciplined by this Honorable Court. *See generally* Rules 3-1.2, 3-3.1, and 3-4.2 of the Rules Regulating the Florida Bar. Further, there is nothing in the language of Rules 4-3.1, 4-3.3, nor 4-8.4 that limits its application to a lawyer's representation of a third party client. As such, Respondent's possible assertion of error is without merit and must be denied.

VI. THE REFEREE'S RECOMMENDED SANCTION COMPORTS WITH CASE LAW AND ADDRESSES THE CIRCUMSTANCES RAISED IN THE CASE.[6]

Respondent asserts that the Referee's recommendation of a referral to FLA for an evaluation was not proper. Respondent has not substantively addressed this Court's order, dated May 2, 2012, directing Respondent to address the appropriateness of the recommended sanction, or why a more severe sanction including suspension should not be imposed. Contrary to Respondent's assertions, the entirety of the Referee's recommended sanctions are proper.

"The Supreme Court shall have exclusive jurisdiction to regulate...the discipline of persons admitted [to the practice of law]." Art. V, §15, Fla. Const. Therefore, "unlike the referee's findings of fact and conclusions as to guilt, the

[6] The Florida Bar's Argument VI in its Answer Brief refers to Respondent's Argument "f" in his Amended Brief of Respondent

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 ultimately it is this Court's responsibility to order the appropriate discipline, this Court enjoys broad latitude in reviewing a referee's recommendation. *The Florida Bar v. Anderson*, 538 So.2d 852 (Fla. 1989). The 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. Temmer*, 753 So.2d 555 (Fla. 1999).

In the instant case, and based on the evidence presented to the Referee, the recommended sanctions are consistent with existing case law. This Court has punished similar cases of misconduct with a public reprimand. *See The Florida Bar v. Ray*, 797 So.2d 556 (Fla. 2001)(holding that making statements questioning judge's veracity and integrity, and his fairness at a hearing involving the attorney's client, with reckless disregard as to the truth or falsity of such statements, warranted a public reprimand); *The Florida Bar v. Clark*, 528 So. 2d 369 (Fla. 1988)(holding that making repeated, frivolous claims on appeal from a traffic violation without following mandatory rules of procedure and making unsubstantiated charges against judiciary warrants public reprimand); *The Florida Bar v. Carter*, 410 So. 2d 920 (Fla. 1982)(holding that making statements

derogatory to the trial judge in a motion to recuse and placing client funds in a personal account warrant a public reprimand).

The Referee, in making her recommendation of a public reprimand took several factors into consideration, including the personal nature of post dissolution proceedings, the long and contentious history of the case, and the apparent red flags in the underlying litigation and during the course of the instant proceedings that suggested there may be an underlying psychological issue that may have influenced Respondent's conduct.

To the extent that Respondent argues that the referral to FLA is not appropriate, his argument is without merit. The Referee observed indications of paranoia and an inability to conform to normal standards of professional and personal conduct, both in the present case and in the underlying proceedings. (TR. 114-117). Additionally, in the underlying proceedings, there was an agreed order requiring a psychological evaluation and treatment, giving further support to such a recommendation in the instant case. (TFB Ex. 7).

Finally, based at least in part on events that occurred during the pendency of this appeal, this Court has ordered Respondent to address whether a more severe sanction is appropriate. As previously indicated, because ultimately it is this Court's responsibility to order the appropriate discipline, this Court enjoys broad latitude in reviewing a referee's recommendation. *The Florida Bar v. Anderson,*

538 So.2d 852 (Fla. 1989). Should the Court be inclined to impose a more severe sanction, including suspension, such a sanction would be supported by existing case law. In the *Florida Bar v. Kleinfeld*, 648 So.2d 698 (Fla. 1995), this Court held that a three year suspension was the appropriate sanction for an attorney's attempt to disqualify a judge based on submission of a false affidavit. Similarly, rehabilitative suspensions were imposed in other cases where misrepresentations were made in formal court pleadings. *See The Florida Bar v. Segal*, 663 So.2d 618 (Fla. 1995)(imposing three year suspension for misrepresentation in petition for discharge resulting in a single violation of Rule 4-3.3(a)(1)); *The Florida Bar v. Head*, 27 So. 3d 1 (Fla. 2010)(imposing a one year suspension for violation of Rules 4-1.7(b), 4-3.1, 4-3.3(a), 4-4.1, 4-8.4(c) and 4-8.4(d) arising from attorney's lack of candor towards a bankruptcy court regarding his fees, and his filing of a false "Suggestion of Bankruptcy" on behalf of his law firm in order to avoid the bankruptcy court's order to disgorge his fees).

CONCLUSION

Respondent has failed to establish the existence of error. The findings of fact and conclusions of law are supported by competent and substantial record evidence and the recommended sanction is supported by existing case law. Thus, the Court should adopt the Report of Referee in this case.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of The Florida Bar's Answer Brief were sent via U.S. Mail (and a true and correct copy was sent via electronic mail at e-file@flcourts.org) to the Honorable Thomas D. Hall, Clerk, Supreme Court Building, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399;; and that a true and correct copy was sent via electronic mail to **Daniel Edgar Tropp, Respondent**, at dantropp@bellsouth.net, and via regular mail at 5750 Collins Avenue, Suite 4-A, Miami Beach, Florida 33140; and via regular mail only to **Kenneth L. Marvin**, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399, on this 26th day of June, 2012.

JENNIFER R. FALCONE MOORE
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.

JENNIFER R. FALCONE MOORE
Bar Counsel

THE FLORIDA BAR

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June 26, 2012

Honorable Thomas D. Hall, Clerk
Supreme Court of Florida
Supreme Court Building
500 South Duval Street
Tallahassee, Florida 32399

RE: The Florida Bar v. Daniel Edgar Tropp
Supreme Court Case No. SC11-45
The Florida Bar File No. 2010-70,301(11F)

Dear Mr. Hall:

Enclosed please find an original and seven copies of The Florida Bar's Answer Brief on Appeal regarding the above-referenced matter. In addition, an electronic copy of The Florida Bar's Answer Brief has been emailed on this date to this Honorable Court, as well as to Respondent.

Thank you.

Sincerely,

JENNIFER R. FALCONE MOORE
Bar Counsel

JRFM\nf
Enclosures

cc: Daniel Edgar Tropp, Respondent (w/ enclosures)
Kenneth L. Marvin, Staff Counsel (w/ enclosures)