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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

DANIEL GARY GASS,

Respondent.

_____/

Supreme Court Case
No. SC12-937

The Florida Bar File
No. 2011-51,529 (17I)

INITIAL BRIEF

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PRELIMINARY STATEMENT

The Complainant, The Florida Bar, is seeking review of a Report of Referee recommending a 60 day suspension. The Florida Bar is seeking a one year suspension.

Complainant will be referred to as The Florida Bar or as The Bar. Daniel Gary Gass, Respondent, will be referred to as Respondent or as Mr. Gass. Other persons will be referred to by their respective surnames.

References to the Report of Referee shall be by the symbol ROR followed by the appropriate page number.

References to specific pleadings will be made by title. Reference to the transcript of the final hearing are by symbol TR., followed by the volume, followed by the appropriate page number. (e.g., TR. II, 289). Reference to the transcript of the sanction hearing are by symbol SH. followed by the appropriate page number.

STATEMENT OF THE CASE AND OF THE FACTS

The Florida Bar filed its Complaint against Respondent, Daniel Gary Gass, on or about May 7, 2012, charging Respondent with violating the Rules Regulating The Florida Bar. The allegations concerned Respondent's lack of diligence and communication in representing his clients, Complainants John Bria, Sr. and Georgiann Bria (hereinafter referred to as "the Brias").

On May 14, 2012, the Honorable Laura Johnson, a county court judge in Palm Beach County, was appointed as Referee. A final hearing was held on September 9, 2013 followed by a sanction hearing on September 24, 2013. The Referee found that Mr. Gass had violated Rules 4-1.3, 4-1.4(a)(3), 4-1.4(a)(4), 4-1.4(a)(5) and 4-8.4(d) of The Rules Regulating The Florida Bar while representing the Brias. The Referee found Mr. Gass not guilty of violating Rule 4-3.2 of The Rules Regulating The Florida Bar. The referee issued her Report of Referee on October 29, 2013. In her report, the Referee recommended that Respondent be suspended from the practice of law for 60 days. (SH. 66). The Florida Bar appeals that recommendation and argues that Respondent should be suspended for one year.

In recommending a 60 day suspension, the Referee considered the following mitigating factors as enumerated in the Standards for Imposing Lawyer Sanctions: 9.32(b) absence of a dishonest or selfish motive; 9.32(d) timely good faith effort to

make restitution or to rectify consequences of misconduct; 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; 9.32(g) character or reputation and 9.32(l) remorse. In aggravation, the Referee found the following aggravating factors: 9.22(a) prior disciplinary offenses and 9.22(i) substantial experience in the practice of the law. (ROR. 16).

In this matter, as a result of Respondent's misconduct, the Brias, a married couple, were both held in contempt of court in a civil suit and incarcerated. John Bria, Sr., who was 69 years old at the time, was incarcerated for three days and two nights. Georgiann Bria, who was 66 years old at the time, was incarcerated for three days and three nights. Neither of the Brias had ever been arrested or incarcerated prior to this case. (ROR. 2).

The Brias were owners of Florida Safety Equipment Company Inc., a family business that had thrived for approximately 30 years. In approximately 2008, the company began to face financial challenges that led to legal challenges in court. (ROR. 3) (TR. I, 98).

The Brias met with and retained the Respondent to handle a number of legal issues: the most pressing of which was the case styled Mark C. Weldon v. Florida Safety Equipment Company. et al (hereinafter referred to as "the Weldon case"). (ROR. 3) (TR. I, 6). At the time Respondent was hired by the Brias, there was

already a default judgment in the Weldon case against the Brias and their company for an outstanding debt. (TR. I, 98). During their initial meeting with Respondent, the Brias informed him that they had been subpoenaed by the plaintiff's attorney to be deposed and produce documents in the Weldon case.

At the final hearing, John Bria, Jr. was called as the first witness for The Florida Bar. John Bria, Jr. is the adult son of the Brias and was very involved in the business and the legal matters of his parents including the Weldon case. John Bria, Jr. testified that he provided the Respondent via facsimile with the subpoena duces tecum served by the plantiff's attorney requiring the Brias to appear on May 25, 2010 to be deposed and produce documents. This facsimile was admitted into evidence as The Florida Bar's Exhibit 1. (TR. I, 30). John Bria, Jr. as well as both of the Brias testified that the Respondent advised the Brias not to attend the deposition. (TR. I, 28, 58, 59, 99).

Based on Respondent's advice the Brias did not attend the May 25, 2010 deposition. (TR. I, 30, 59). The plaintiff then filed a Petition for Order to Show Cause and the court entered an order finding the Brias in contempt, but allowing them to purge the contempt by appearing at a rescheduled deposition to occur on June 22, 2010, and provide the requested documents. (TR. I, 31).

John Bria, Jr. testified that he provided the Petition for Order to Show Cause to Respondent via facsimile on June 14, 2010. The facsimile was admitted into evidence as The Florida Bar's Exhibit 2. (TR. I, 32).

The Brias attended the deposition on June 22, 2010; however, the Respondent failed to attend the deposition with his clients. (ROR. 32, 33, 59).

On July 13, 2010, Respondent formally entered his Notice of Appearance on behalf of the Brias in the Weldon case. The Notice of Appearance was admitted into evidence as The Florida Bar's Exhibit 3. (TR. I, 33, 34). However, the Referee found that although the Respondent formally filed his Notice of Appearance on July 13, 2010, that Respondent had been representing the Brias prior to that date. (ROR. 4). The Referee further found that the Respondent's failure to attend the deposition with his clients on June 22, 2010 was a clear indication of a lack of diligence. (ROR. 5).

At the deposition on June 22, 2010, the Brias provided the plaintiff with all the documentation they possessed but did not provide all of the documents demanded. (TR. I, 33, 59, 99).

The Brias informed Respondent that they did not have any additional documents to provide to the plaintiff. However, Respondent failed to inform

plaintiff's counsel that the Brias did not have any additional documents to provide. (ROR. 5).

Once the Respondent filed his Notice of Appearance the Brias no longer received correspondence directly from the plaintiff; and the Brias relied on Respondent to keep them informed about the status of the case. (TR. I , 34) (ROR. 5).

On July 27, 2010, plaintiff's counsel filed a second Petition for Order to Show Cause. Respondent received this Petition but failed to notify the Brias. On August 23, 2010, the court entered an ex parte Order to Show Cause ordering the Brias to produce the documents demanded by plaintiff's attorney. The Respondent received this Order but failed to notify the Brias. (ROR. 5).

The Order to Show Cause required the demanded documents to be produced at least 5 days prior to October 4, 2010, the date of the Show Cause hearing. Respondent received the Order to Show Cause, but failed to notify the Brias and failed to notify the plaintiff's counsel that the Brias did not have any additional documents to provide. (ROR. 6).

Respondent also failed to notify the Brias of the October 4, 2010 hearing and failed to attend the hearing on behalf of the Brias. (TR. I , 35, 60). The Respondent testified at trial that the Brias were aware of the hearing date and requested that the

Respondent not attend the hearing. (TR. II, 159-165). The Referee found Respondent's testimony was not credible. (ROR. 6).

John Bria, Jr. and the Brias testified that they were never informed of the October 4, 2010 hearing and would not have directed the Respondent to not attend the hearing on their behalf. (TR. I, 35). The Referee found this testimony to be credible. (ROR. 6).

The Referee found the Respondent's failure to notify his clients of the hearing and failure to attend on his clients' behalf was a lack of diligence as well as conduct prejudicial to the administration of justice. (ROR. 6).

Respondent testified that he believed he was not needed at the October 4, 2010 hearing because he was aware that the Brias had hired a bankruptcy attorney, David Tangora. (TR. II, 161). The Respondent further testified that a personal bankruptcy filing would stay the proceedings in the Weldon case and he believed Mr. Tangora was filing for personal bankruptcy on behalf of the Brias. (ROR. 6, 7).

Respondent admitted that he never contacted Mr. Tangora to determine whether a personal bankruptcy was being filed on behalf of the Brias. Respondent also testified that he did not file a Motion to Withdraw or Substitution of Counsel prior to the October 4, 2010 hearing. The Referee found that Mr. Gass remained as counsel for the Brias and should have attended the hearing. (ROR. 7).

In January 2011, the court entered a Renewed Order Regarding Hearing on Order to Show Cause on October 4, 2010. The Renewed Order was admitted into evidence as Respondent's Exhibit 6. (ROR. 8).

The Brias were personally served with the Renewed Order and wrote a letter to Respondent's secretary dated January 17, 2011. In that letter the Brias indicated that they had provided all the documents to the plaintiff and sought guidance from Respondent's office. The letter dated January 17, 2011, was admitted into evidence as Respondent's Exhibit 5. (ROR. 7) (TR. I, 60, 61, 81, 82, 100, 101).

The Brias testified that after sending the letter they communicated with Respondent's secretary who indicated that the Respondent was addressing the Order to Show Cause. (ROR. 7). (TR. I, 101).

On or about February 8, 2011, the court entered an Amended Renewed Order Nunc Pro Tunc as of January 10, 2011, Regarding Hearing on Order to Show Cause on October 4, 2010. The Amended Renewed Order was admitted into evidence as Respondent's Exhibit 7. (ROR. 7, 8).

The Order gave the Brias 10 days from the date that the February 2011 order was served to cure the contempt by producing the documents demanded. If they did not produce the documents, capias and bench warrants would be issued and the Brias would be arrested and incarcerated. (ROR. 8).

The Respondent testified that throughout his representation of the Brias he repeatedly warned the Brias that if they did not provide additional documents to the plaintiff or file personal bankruptcy they would be incarcerated. (TR. II, 156, 166, 218). The Referee found this testimony completely lacking in credibility. (ROR. 8). Furthermore, Respondent did not have any corroborating evidence, neither a record of a telephone conversation nor a meeting with the Brias, indicating he provided this advice and does not have any correspondence to his clients warning them of the impending incarceration. (TR. II, 166, 167).

The Brias testified that Respondent never advised them to file a personal bankruptcy or warned them of the possibility of being arrested and incarcerated. (TR. I, 61, 99) (TR. II, 174, 175). They testified that if they had been warned, they would have certainly taken action to avoid being arrested and incarcerated. (ROR. 8).

The Brias testified that they had hired Mr. Tangora to file for corporate bankruptcy and had Respondent advised them to file for personal bankruptcy they would have certainly directed Mr. Tangora to file for personal bankruptcy as well. (TR. I, 62, 65).

Mr. Tangora testified during the trial that he was working with the Brias on their corporate bankruptcy and the Brias never indicated that there was a need to

file personal bankruptcy. (TR. II, 181). Mr. Tangora further testified that the Respondent never contacted him to inform him of the urgent need to file a personal bankruptcy on behalf of the Brias. (TR. II, 186).

Mr. Tangora also testified that if he had been notified in January 2011 when the Respondent received the Renewed Order Regarding Hearing on Order to Show Cause on October 4, 2010 he could have filed a personal bankruptcy to prevent the Brias from being incarcerated. Mr. Tangora further testified that in February 2011, when Respondent received the Amended Renewed Order Nunc Pro Tunc as of January 10, 2011, there was still time to file a personal bankruptcy to prevent the Brias from being arrested and incarcerated. (TR. II, 185, 186).

Respondent testified that the Brias received the Renewed Order to Show Cause in January 2011 and would therefore have been aware of the potential arrest and incarceration. The Referee found that the Respondent's expectation that his clients interpret a legal document on their own indicates a callous indifference to his clients and was contrary to his obligations as an attorney. (ROR. 9) (TR. II, 281, 282).

On or about February 20, 2011, capias and bench warrants were issued and the Brias were arrested in their home on or about February 22, 2011, and placed in the Broward County Jail. (ROR. 9).

Respondent claimed during cross examination that he had received the capias and bench warrants prior to the date of arrest and contacted and warned the Brias. However, on direct examination, Respondent testified he had not received the warrant prior to the Brias' arrest. (TR. II, 169, 170, 226). The Referee found that Respondent did not present any credible evidence of communicating with his clients at this crucial time. (ROR. 10). The Referee noted that prior to their arrest, the Respondent failed to inform the court that the Brias had provided all of the documents in their possession. (ROR. 10).

Only after the Brias were incarcerated did Respondent take any meaningful action on their behalf. Respondent filed personal bankruptcy on behalf of the Brias and an Emergency Motion to Strike Capias and Bench Warrant. The Motion to Strike Capias and Bench Warrant was granted and the Brias were released several days after they had been arrested. (ROR. 10).

Both of the Brias testified about their very traumatic experience of being arrested and incarcerated. During the evening hours, the officers knocked on the front door of their home and informed them of the warrants for their arrest. The Brias were in utter shock and disbelief when they were taken into custody. John Bria, Sr. frantically called the Respondent with hopes that the Respondent could take action and prevent their arrest. (TR. I, 63).

Mrs. Bria was absolutely distraught and testified very emotionally about the anguish, fear and shame she felt when she was incarcerated. Mrs. Bria was transported to three separate jail facilities and was transported from the Broward County Jail to the Miami-Dade County Jail. (TR. I, 102-107).

Mrs. Bria testified about the humiliation of having to sleep on the floor of the jail cell. She further testified about being placed in a small room with countless women for several days. To this day, Mrs. Bria continues to feel terror when someone knocks on her front door and has requested that guests contact her by telephone rather than knock on the door. (TR. II, 40, 102-107).

Based on the factual findings by the Referee and the severity of the misconduct and the severity of the resulting injury, The Florida Bar petitions for review and is seeking a one year suspension.

SUMMARY OF ARGUMENT

Daniel Gary Gass treated John Bria, Sr. and Georgiann Bria with callous indifference as he failed to give them any form of legal representation while they faced imminent incarceration. The Brias hired the Respondent at a time when they were in a financial and legal crisis and completely relied on the Respondent to protect them. Instead, due to the Respondent's callous indifference the Brias at age 69 and 66 years were arrested in their home and jailed for several days due to no fault of their own.

In the disciplinary proceedings, the Respondent testified that he had advised the Brias that they were at risk of incarceration and how to avoid incarceration. The Referee found that the Respondent was not credible. The Brias testified that they were never warned of the possibility of incarceration and never advised how to avoid incarceration. The Referee found the Brias to be credible.

The Brias further testified that they had provided to the plaintiff all the documents demanded that were in their possession and were never advised by Respondent that their failure to provide additional documents would lead to their arrest. The Referee found the Brias testimony credible. The Referee also found that the Respondent never advised the plaintiff's attorney or the court that issued the contempt that the Brias did not have any additional documents to provide. The

Referee emphasized that it was unacceptable for the Respondent to not have one single correspondence to his clients during the time he represented them. The Referee found that Respondent did not do anything to protect his clients. Respondent did not attend the deposition with his clients, did not attend the hearing on their behalf, did not advise them how to avoid incarceration and did not warn them that they were facing incarceration. It was only after their arrest and incarceration that Respondent did anything to assist his clients.

Despite these very specific findings of misconduct, the referee imposed only a 60 day suspension. The findings, the case law, and the Standards for Imposing Lawyer Sanctions support greater discipline. The Florida Bar is seeking a one year suspension.

ARGUMENT

A SIXTY DAY SUSPENSION IS INAPPROPRIATE GIVEN THE REFEREE'S FINDINGS OF THE SEVERITY OF THE INJURY TO RESPONDENT'S CLIENTS; AN ELDERLY COUPLE THAT WERE ARRESTED IN THEIR HOME AND INCARCERATED FOR SEVERAL DAYS DUE TO RESPONDENT'S CALLOUS INDIFFERENCE TO THEIR MATTER.

While a Referee's findings of fact should be upheld unless clearly erroneous, this Court is not bound by the Referee's recommendations in determining the appropriate level of discipline. The Florida Bar v. Vannier, 498 So.2d 896 (Fla. 1986); The Florida Bar v. Wohl, 842 So.2d 811 (Fla. 2003); and The Florida Bar v. Rue, 643 So.2d 1080 (Fla. 1994). Furthermore, this Court has stated that the review of the discipline recommendation does not receive the same deference as the guilt recommendation because this Court has the ultimate authority to determine the appropriate sanction. The Florida Bar v. Grief, 701 So.2d 555 (Fla. 1997); and The Florida Bar v. Wilson, 643 So.2d 1063 (Fla. 1994). In The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970), this Court held three purposes must be held in mind when deciding the appropriate sanction for an attorney's misconduct: 1) the judgment must be fair to society; 2) the judgment must be fair to the attorney; and 3) the judgment must be severe enough to deter other attorneys from similar conduct. This Court has further stated that a Referee's recommended discipline

must have a reasonable basis in existing case law or the standards for imposing lawyer sanctions. The Florida Bar v. Sweeney, 730 So.2d 1269 (Fla. 1998); and The Florida Bar v. Lecznar, 690 So.2d 1284 (Fla. 1997). The Court will not second guess a Referee's recommended discipline "as long as that discipline has a reasonable basis in existing case law." This standard applies in reviewing a Referee's finding of mitigation and aggravation. The Florida Bar v. Arcia, 848 So.2d 296 (Fla. 2003).

In the instant case, the recommended discipline is too lenient given Respondent's callous indifference to his clients' matter, the actual injury caused by the Respondent's indifference as well as the aggravating factors found to exist. A one year suspension is the appropriate sanction.

The Referee found that the Respondent engaged in a plethora of misconduct:

(i) Advising the Brias not to attend the deposition scheduled on May 25, 2010;

(ii) Failing to attend the deposition on June 22, 2010;

(iii) Failing to inform the Brias of the July 27, 2010, Petition for Order to Show Cause;

(iv) Failing to inform the Brias of the August 23, 2010, Order to Show Cause;

(v) Failing to inform the Brias of the October 4, 2010, Order to Show Cause Hearing;

(vi) Failing to attend the October 4, 2010;

(vii) Failing to inform the plaintiff's counsel in the Weldon case that the Brias had produced all the documents they had in their possession;

(viii) Failing to inform the court that the Brias had produced all the documents they had in their possession;

(ix) Failing to inform the Brias that they could be incarcerated if they did not produce the documents or file personal banktruptcy;

(x) Failing to inform the Brias that personal bankruptcy would ensure that they would not be at risk of incarceration;

(xi) Failing to provide any written correspondence to the Brias;

(xii) Expecting the Brias to determine the meaning of the Order they received in January 2011 without his counsel;

(xiii) Failing to respond to the Brias' 2011 request for information; and

(xiv) Failing to take any action to prevent the incarceration of the Brias when such incarceration was a foreseeable consequence of his inaction. (ROR. 12-14).

These factual findings warrant a rehabilitative suspension. The Florida Standards for Imposing Lawyer Sanctions provide a reasonable basis for this Court to impose a rehabilitative suspension.

Standard 4.42 provides suspension is appropriate when (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to client.

The Standards for Imposing Lawyer Sanctions also outline additional factors to be considered before recommending or imposing appropriate discipline. One of the factors a Referee should consider is the actual injury caused by the lawyer's misconduct. Here, the Brias, an elderly couple, were incarcerated for several days regarding a civil suit as a result of Respondent's callous indifference.

Another factor to be considered before recommending appropriate discipline is the existence of aggravating or mitigating circumstances. The Referee found aggravating factors in determining the appropriate discipline. Florida Standards for Imposing Lawyer Sanctions 9.22 enumerates aggravating factors that may increase

the degree of discipline imposed. The Referee found the following aggravating factors:

(a) prior discipline offenses; and

(i) substantial experience in the practice of the law.

The Florida Bar would respectfully request that the Court find an additional aggravating factor pursuant to the record. Standards for Imposing Lawyer Sanctions 9.22(h) vulnerability of the victim. The Brias were vulnerable victims as they were elderly and unsophisticated in legal matters. (SH. 48). The Referee erred when she did not find the Brias to be vulnerable and stated: "The Brias are seniors, but weren't incompetent. They were just regular folks out there who needed representation of an attorney and relied on Mr. Gass to represent them." (SH. 68). However, at the end of the final hearing the Referee did recognize their vulnerability when she stated the following about the Brias: "...although long-time business owners, they were clearly unsophisticated in legal matters, and that's why they hired an attorney to advise them." (TR. II, 278). Thus, vulnerability of the victims because of both their age and lack of sophistication should have been found to be an aggravating factor.

Additionally, the Referee erred in finding remorse as a mitigating factor. Respondent was remorseful regarding the Brias being arrested and incarcerated but

not remorseful about his misconduct that led to the incarceration. The Referee stated during the sanction hearing: " I'm not sure he's remorseful for the actions he took in this case about the way he handled it, and I think that's the conduct we're attempting to address. But he was remorseful for what happened to the Brias…" (SH. 67). Thus, remorse should not be considered a mitigating factor since the Respondent was not found to have remorse regarding his actual misconduct.

Further evidence of Respondent's lack of remorse was that during the final hearing and the sanction hearing the Respondent was not truthful in his testimony. The Respondent testified that he informed the Brias on a number of occasions that they were at risk of being incarcerated. The Referee found that the Respondent was not credible. (ROR. 8) (SH. 42). Respondent also testified that he was directed by the Brias not to attend the hearing on October 4, 2010 when in fact he never informed the Brias of the hearing. (ROR. 6) (TR. I, 35, 50) (TR. II, 159-165). Respondent's intent to deceive the Referee conclusively demonstrates his lack of remorse and failure to accept responsibility for his actions.

The Referee found mitigating circumstances; however, those mitigating factors do not overcome the aggravators, the ethical misconduct and the severity of the actual injury caused by Respondent's misconduct.

While the Referee made very significant factual findings against Respondent for his ethical breaches, the referee erred in suspending Respondent for only 60 days.

In The Florida Bar v. Scheinberg, 2013 WL 3064825 (Fla. 2013) this Court increased Respondent's discipline from a one year suspension to a two year suspension. There this Court pointed out that mitigating evidence of the Respondent's good character and reputation in the legal community did not outweigh the seriousness of Respondent's misconduct. In the instant case, Respondent had four character witnesses that testified about Respondent's good character and reputation. However, as this Court found in Scheinberg, such evidence does not outweigh the gravity of Respondent's misconduct. This Court found in Scheinberg that the serious nature of the misconduct coupled with the harm the misconduct caused to the administration of justice warrants a severe sanction. Similarly here, the serious nature of the Respondent's misconduct along with the harm it caused warrants a more severe sanction.

In The Florida Bar v. Morrison, 669 So.2d 1040 (Fla. 1996) the Respondent was not diligent in his representation of two clients and failed to adequately communicate with his clients. The statute of limitation ran and precluded one of the complainants from filing her federal civil suit. The other complainant did not

receive compensation in her personal injury case because Respondent did not actively pursue the claim. There this Court found a one year suspension was an appropriate sanction. The instant case is even more egregious in that Respondent demonstrated callous indifference for his clients as they faced the much greater injury of loss of liberty.

The Court in Morrison highlighted that Morrison had similar prior misconduct. Here, Mr. Gass has prior misconduct that involved his failure to timely address a legal matter and received a public reprimand for this misconduct. In the instant matter, Respondent again failed to timely address a legal matter and thus a more severe sanction is warranted.

This Court has held that it deals more harshly with cumulative misconduct than it does with isolated misconduct. The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1982). The Court can take judicial notice of the aforementioned discipline along with its prior court order in reviewing the disciplinary history of the Respondent. It is respectfully requested that the Court review Respondent's history of ethical misconduct when considering an appropriate discipline in this case.

This level of misconduct cannot be lightly disciplined by this Court. Attorney discipline must protect the public from unethical conduct and have a deterrent effect

while still being fair to Respondents. The Florida Bar v. Pahules, 233 So.2d 130, 132 (Fla. 1970).

In The Florida Bar v. Batista, 846 So.2d 479 (Fla. 2003) the Respondent received a 91 day suspension for violating the communication, competence and diligence Rules Regulating The Florida Bar. In the Batista case, one of the complainants hired Respondent to handle a social security benefit matter, another complainant hired Respondent to handle an immigration matter and a third complainant hired Respondent to handle a driver's license reinstatement. Respondent failed to be diligent, competent and adequately communicate with these complainants. However, none of the complainants suffered the indignity of incarceration yet the Respondent in Batista received a rehabilitative suspension.

In support of the a 60 day suspension, the Referee cites to The Florida Bar v. Byron, 400 So.2d 13 (Fla. 1981) and The Florida Bar v. Maier, 784 So.2d 411 (Fla. 2001). However, the instant matter is distinguishable from both of these cases.

In Byron the Respondent neglected a legal matter that resulted in the complainant's case being dismissed with prejudice. The court there found a suspension of 60 days along with a public reprimand to be appropriate. There the Respondent's misconduct resulted in a case being dismissed however here the Respondent's misconduct resulted in two elderly individuals being arrested in their

home and incarcerated for several days for something not of their doing. The injury in the instant matter is far great than the injury in Byron and as such there should be a more significant sanction in the instant case.

In Maier, the Respondent was hired to assist her client in applying for a visa to allow her client to legally work and reside in the United States. Respondent failed to complete the application process and failed to adequately respond to her client's inquiries. There, although the Respondent had prior discipline, this Court found that the mitigating factors along with the amount of time that elapsed since Respondent's violation warranted a 60 day suspension rather than a 91 day suspension. Maier is also distinguishable from the instant matter. Maier had actually completed and submitted the immigration documents but failed to provide additional information requested. Here, Mr. Gass did not do any apparent legal work on behalf of his clients prior to their incarceration. This Respondent's misconduct was far more egregious.

Furthermore, just as the Standards for Imposing Lawyer Sanctions require referees and the Supreme Court to consider the existence of aggravating or mitigating factors, the potential or actual injury caused by the lawyer's misconduct must also be considered. In both Maier and Byron the physical and emotional injury to the clients was not as significant as the injury to the clients in the instant case. In

Byron the client lost the right to pursue a legal action and in Maier the client's immigration application was delayed. In both Maier and Byron the Respondents received a 60 day suspension, the same sanction recommended here. However, here the conduct of the Respondent was far more egregious given the advanced age of the Brias and the injury of several days of incarceration.

A one year suspension is the appropriate discipline given the foregoing.

CONCLUSION

Based upon the foregoing reasons and citations of authority, The Florida Bar respectfully submits that the Referee's recommendation of discipline is too lenient and the Respondent should receive 1 year suspension.

Ghenete Elaine Wright Muir, Bar Counsel

CERTIFICATE OF SERVICE

I certify that this document has been E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, using the E-Filing Portal and that a copy has been furnished to Kevin P. Tynan, Richardson & Tynan, Attorney for Respondent at ktynan@rtlawoffice.com, with a copy furnished to Staff Counsel of The Florida Bar at her designated e-mail address of aquintel@flabar.org on this 18 day of January, 2014.

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CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN

Undersigned counsel does hereby certify that this Brief is submitted in 14 point proportionately spaced Times New Roman font, and that this brief has been filed by e-mail in accord with the Court's order of October 1, 2004. Undersigned counsel does hereby further certify that the electronically filed version of this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

Ghenete Elaine Wright Muir, Bar Counsel