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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ZANA HOLLEY DUPEE,

Respondent.

_____/

Supreme Court Case
No. SC13-921

The Florida Bar File
No. 2012-00,429 (8B)

ANSWER AND CROSS-INITIAL BRIEF

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PRELIMINARY STATEMENT

The Complainant, The Florida Bar, is seeking review of a Report of Referee recommending a 90-day suspension followed by two years of probation with special requirements to attend Ethics School and a professionalism workshop.

Complainant will be referred to as The Florida Bar, or as the Bar. Zana Holley Dupee, Respondent, will be referred to as Respondent, or as Ms. Dupee throughout this brief.

References to the Report of Referee shall be by the symbol RR 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 appropriate page number/line numbers. (e.g., TR 289/5-10).

References to Bar exhibits shall be by the symbol TFB Ex followed by the appropriate exhibit number (e.g., TFB Ex. 10).

STATEMENT OF THE CASE

The Florida Bar filed its Formal Complaint on May 22, 2013, and Respondent filed her Answer on June 6, 2013.

On June 13, 2013, the Honorable Mark J. Hill was appointed referee.

A telephonic Case Management Conference was held on July 8, 2013, wherein the Final Hearing was set for November 25 through 27, 2013.

Discovery was conducted, witness and exhibit lists were exchanged and the case proceeded to final hearing as scheduled.

The referee filed a motion for extension of time to file the Report of Referee on December 6, 2013, which was granted on December 11, 2013, allowing until December 31, 2013 for filing.

The Report of Referee, Index to Pleadings and Certification was filed on December 27, 2013.

On December 26, 2013, Respondent filed Respondent's Motion for Reconsideration/Clarification and/or Rehearing.

A telephonic Status Conference was held on January 16, 2014, at which time a hearing on the motion was set for January 29, 2014.

The hearing was held as scheduled and the Referee denied the motion.

Respondent filed a Notice of Intent to Seek Review on January 30, 2014, and The Florida Bar filed a Cross-Notice of Intent on February 3, 2014.

STATEMENT OF THE FACTS

Respondent represented Miriam Steinberg in dissolution proceedings filed by her former husband, Michael Steinberg. In addition, prior to the dissolution proceedings, Respondent provided legal advice to Ms. Steinberg on estate planning and asset protection.

In the dissolution proceedings, the parties were unable to resolve disputed financial issues and ultimately proceeded to a trial. The parties owned substantial interests in real estate and other non-liquid assets, but the marital estate had relatively low cash or liquid assets.

As an important note, at some time in approximately 2000, for reasons not directly relevant to these proceedings, Mr. Steinberg made a voluntary payment of $100,000 to Ms. Steinberg.

Respondent initially met with Ms. Steinberg in approximately March 2010. During that meeting and in follow-up meetings, Ms. Steinberg asked for advice on "disinheriting" Mr. Steinberg. TR 116/19-20; TR 204/16-20. Ms. Steinberg and Respondent specifically discussed the potential disposition of a Campus USA account with an approximate balance of $480,000. TR 117/13-17; TR 205/18-25. Those funds were derived from the $100,000 payment from Mr. Steinberg, salary received by Ms. Steinberg and inheritance from her mother. The account was titled

in Ms. Steinberg's name alone. TR 118/14-19. Mr. Steinberg was unaware of that account during the marriage. TR 98/14-15; TR 100/7-8.

Respondent made Ms. Steinberg aware of the potential to transfer funds to the "Family Team Institute," or to a trust for the benefit of that entity, for charitable purposes. In fact, Ms. Steinberg testified that Respondent told her the name that the check should be made out to. TR 206/14-21. There was no charitable organization operating under that name and no trust had been formed for the benefit of such an organization. A friend of Respondent operated a for-profit business under that name, however, that organization never operated for charitable purposes. TR 216-217/24-3; TFB Ex. 26.

Mr. Steinberg filed his petition for dissolution in July 2010. Ms. Steinberg became aware that it was filed shortly thereafter and consulted with Respondent regarding the petition in August 2010. On or about August 31, 2010, Mr. Silverman served Ms. Steinberg, through Respondent, a request for production, followed by a set of standard family law interrogatories on September 2, 2010.

Ms. Steinberg's responses to the discovery requests concealed a substantial asset. That asset was the subject of an unusual transaction which occurred shortly after Respondent received Mr. Silverman's discovery requests. Respondent was aware of that transaction but did not disclose its existence. TR 124/22-24.

On September 10, 2010, Ms. Steinberg directed Campus USA to issue a cashier's check in the amount of $482,980.46, payable to "Parenting Education Charitable Trust." This item is referred to as the "PECT check." TFB Ex. 12. Ms. Steinberg delivered a copy of the PECT check to Respondent. TR 207/17-21.

At the time Campus USA issued the PECT check, "Parenting Education Charitable Trust" did not exist. Neither Respondent nor any other person ever prepared any documents to create such a trust. TR 139/20-21; TR 163-164/20-4.

The PECT check is a form of instrument generically known as a cashier's check, or a "teller's check," a type of negotiable instrument. §673.1041(8)(b), Fla. Stat. Under Florida law, because "Parenting Education Charitable Trust" (the payee) did not exist, the person in possession of the PECT check became its "holder." §673.4041(2), Fla. Stat.

Respondent had an affirmative duty to disclose the existence of the check to any person who had a legal claim to its proceeds.

On September 10, 2010, the date that Campus USA issued the PECT check, Respondent served her notice of appearance. TFB Ex. 14. Respondent did not serve a timely answer to Mr. Silverman's first interrogatories or the request for production, nor did she ever object to any of the interrogatories. On October 10, 2010, Mr. Silverman filed a motion to compel discovery, based on Respondent's failure to respond to his initial discovery requests. TFB Ex. 15.

On December 8, 2010, Ms. Steinberg signed a financial affidavit. TFB Ex. 4. Respondent filed and served that affidavit on December 10, 2010. Although the financial affidavit listed a number of bank accounts and disclosed one account at Alarion Bank held by Ms. Steinberg with a value of $16,285.40, it did not mention the PECT check or the Campus USA account. Other than the Alarion account, the financial affidavit disclosed no other substantial liquid assets owned solely by Ms. Steinberg.

On or about December 10, 2010, Respondent filed a written response to Mr. Silverman's first request for production. TFB Ex. 6. Item 6 of the request included a broad description of bank records for the preceding four years with specific subparts regarding "accounts," "records," and "checks and money orders." In her response, Respondent did not address item 6.C., the specific request for cashier's checks, money orders, or certified checks.

On December 13, 2010, Ms. Steinberg signed answers to Mr. Silverman's first interrogatories. TFB Ex. 5. Respondent filed and served those answers on the same date, with no written objections. The answer to the standard question for "assets" was: "No items other than the financial account listed in the Wife's Financial Affidavit." The financial affidavit did not reference a "financial account" or otherwise disclose the existence of the PECT check. Respondent knew the answer to that interrogatory was materially false.

Subsection 4.f of the standard interrogatories also asks for detailed information regarding closed accounts. Ms. Steinberg's answer to that standard interrogatory was: "Copies of statements are included in the documents being produced in response to Husband's Request to Produce." Respondent did not produce the documents requested at that time. In fact, those documents were concealed until their existence was exposed by the opposing party. TR 55/9-23.

In the responses to the first set of interrogatories and first request for production, in delaying production of documents, and in subsequently producing certain documents but withholding others, Respondent misrepresented the extent of Ms. Steinberg's assets. Respondent also failed to disclose a material fact, namely the existence of the PECT check and the transaction in which the PECT check was drawn. TFB Ex. 5, 6.

In communications with Mr. Silverman regarding production of documents, Respondent falsely represented that it would be impractical to produce the documents at Mr. Silverman's office based on the volume of the response. TR 41/17-22; TR 43/18-22. Mr. Silverman's request for production designated his office as the place for production. Respondent did not, at any time, file or serve an objection to the place of production. TFB Ex. 6.

On June 14, 2011, just before a scheduled mediation, Respondent sent Mr. Silverman a draft, proposed marital settlement agreement. TR 34/19-24; TR 35/18-

20. Under section 3.6(b) of that draft, Ms. Steinberg would receive sole ownership of "[a]ll funds in accounts or otherwise on deposit, including any accrued interest, in banks or other financial institutions, which are in [Ms. Steinberg's] sole name or from which [Ms. Steinberg] has the sole right to withdraw funds or which are subject to [Ms. Steinberg's] sole control." The PECT check was not mentioned anywhere in the draft. TFB Ex. 7.

On or about August 10, 2011, Ms. Steinberg deposited the PECT check into a new account at Campus USA. TR 211/8-15; TFB Ex. 27. Shortly thereafter, Ms. Steinberg withdrew the entire proceeds and deposited them, minus a small service fee, into her existing account at Alarion Bank. TR 212/7-13; TFB Ex. 28.

On September 9, 2011, Mr. Silverman deposed Ms. Steinberg. During that deposition, Mr. Silverman inquired about the fate of the $100,000 pre-petition payment from Mr. Steinberg to Ms. Steinberg. TFB Ex. 11. Ms. Steinberg evaded questions concerning that payment and the amount of funds available to her from the proceeds of the PECT check. Although Ms. Steinberg eventually disclosed the closed account at Campus USA and the transaction involving the PECT check, neither she nor Respondent disclosed the amount of funds involved. Ms. Steinberg falsely claimed that she was unaware whether the check exceeded $200,000 in value. TR 130/6-9; TR 224/6-8; TFB Ex. 11. Respondent was aware that Ms.

Steinberg's testimony was false but made no effort to correct that false testimony or to assist Ms. Steinberg in providing truthful testimony. TR 54/7-12; TR 130/17-18.

On September 16, 2011, Mr. Silverman noticed a hearing on his first and second motions to compel for September 20, 2011. TFB Ex. 10. On September 19, 2011, the day before the hearing, Respondent delivered a box of documents to Mr. Silverman, representing that the documents were responsive to the requests for production. TR 45/12-20. Contrary to prior representations by Respondent, the documents were not so voluminous as to require the production of documents at Respondent's office, rather than Mr. Silverman's office. TR 41/17-22; TR 45/12-20).

Respondent did not provide, with the September 19, 2011 production, the PECT check or the requested bank statements. There were no records of Ms. Steinberg's personal account with Campus USA, any documents showing the value of the Campus USA account before the PECT check transfer, or the value of the PECT check itself. TR 47-48/25-10; TR 94/4-6.

During mediation, shortly after the production of documents, Respondent provided Mr. Silverman a spreadsheet listing the parties' assets and liabilities. Listed on the spreadsheet was an account at Alarion Bank "in Wife's name," with a representation that the balance was $100,000. TR 102/18-22. In fact, the balance of the account at Alarion Bank exceeded $400,000 after the deposit of the PECT

check. The reference to $100,000, however, was consistent with Mr. Steinberg's payment of that amount to Ms. Steinberg earlier in the marriage.

Respondent's representation of Ms. Steinberg's financial condition was materially false. If Respondent knew the check had been re-deposited, the balance would have been well over $400,000. If she did not know, then the balance would have been either $0 or the $16,285.40 listed on Ms. Steinberg's initial financial affidavit.

On September 28, 2011, Mr. Silverman continued the deposition of Ms. Steinberg. In response to Mr. Silverman's request, Ms. Steinberg examined the box of documents previously produced by Respondent. The box did not include records of the Campus USA account or the PECT check. TFB Ex. 11; TR 91-93. While Ms. Steinberg described the issuance of a check to charity, she did not disclose that the value of the check was significantly greater than $100,000. TFB Ex. 11. Again, Respondent made no effort to provide accurate information on the value of the check or to attempt to rehabilitate Ms. Steinberg.

On October 7, 2011, Ms. Steinberg signed a new financial affidavit. In that financial affidavit, Ms. Steinberg, for the first time, disclosed the existence of the proceeds from the PECT check, listing a balance of $437,422.04 in an account with Alarion Bank. On October 10, 2011, Respondent filed and served a copy of that new financial affidavit as part of a pre-trial catalogue. TFB Ex. 16.

On October 13, 2011, prior to receiving the pre-trial catalogue, Mr. Silverman called to inquire about a recent discovery, made from a review of Ms. Steinberg's 2010 income tax return. TR 55/9-23. It appeared that Ms. Steinberg held a significant but undisclosed account which yielded interest income substantially greater than would be expected from Ms. Steinberg's known cash assets. After that conversation, on the same day, Respondent personally delivered copies of records demonstrating the existence of the former Campus USA account and the PECT check to Mr. Silverman's office. TR 56/6-19; TR 87-88/24-1.

Respondent concealed the existence of those documents in her written response to the request for production, the answers to interrogatories, and by producing an incomplete set of responsive documents, withholding documents that would disclose the PECT check and the former value of the Campus USA account. Respondent knowingly failed to amend her discovery responses and failed to take appropriate actions to correct Ms. Steinberg's false testimony. TR 54/7-12.

Mr. Steinberg had an interest in a coin collection of insubstantial monetary value, which he compiled before he married Miriam Steinberg. Ms. Steinberg claimed that she owned other coins, not included in Mr. Steinberg's collection. During the trial Ms. Steinberg delivered a set of coins to Respondent, expressing a concern that Mr. Steinberg would take possession of them. TR 131/5-10.

In the final judgment, the trial court awarded Mr. Steinberg a certain "coin collection in fireproof safe in study." That "study" was in a residence awarded to Ms. Steinberg. The trial court entered an order on March 28, 2012, allowing Mr. Steinberg to visit his former wife's residence for the purpose of locating disputed items of personal property. The order specifically directed that disputed items would be delivered to counsel for Mr. Steinberg to hold in trust until further resolution or a later court order. Mr. Steinberg visited the residence as directed by the order, but did not find the coin collection. Respondent, present on that day, declined to reveal their location. TR 132/2-8.

The dispute over ownership of the coins and related matters led to post-judgment motions for contempt. At a hearing on July 10, 2012, Respondent presented an inventory detailing the coins in her possession for the first time, despite the terms of the order requiring delivery of disputed items to counsel for the husband. TR 132-133/17-1.

SUMMARY OF ARGUMENT

The Report of Referee sets forth the findings of guilt as to the rule violations committed by Respondent. The report itself specifically finds that such findings of guilt were established by clear and convincing evidence.

Respondent seeks to overturn each finding of guilt by the referee by merely citing to contradictory testimony as a basis for reversing the findings of the referee. Respondent fails to demonstrate how such findings were not based upon competent and substantial evidence. Such failure fails to provide a basis for this Court to reverse such findings.

The referee was in the best position to discern the demeanor of the witnesses and part of his function was to assign credibility to the witnesses and their testimony. Respondent has failed to demonstrate how the referee abused his discretion as to assessing credibility.

The evidence and the record clearly show that Respondent acted deliberately and knowingly in allowing her client, Ms. Steinberg, to file a fraudulent financial affidavit and to falsely testify at her deposition. The actions Respondent claims she took to correct this misconduct were dismissed by the referee. The circumstances surrounding these actions described as remedial were not voluntary and should not be allowed to be argued as such.

The referee recommended a non-rehabilitative suspension of 90 days. This Court has addressed this particular misconduct as not being minor and has not hesitated to impose a rehabilitative suspension. Such a suspension requiring proof of rehabilitation would meet the three-pronged test of appropriate discipline. The repetitive nature of the cover-up by Respondent and her unwillingness to adhere to court rules governing discovery demonstrate a need for proof of rehabilitation.

ARGUMENT ON CROSS-APPEAL

THE RECOMMENDED SANCTION OF A 90-DAY SUSPENSION WAS INAPPROPRIATE.

In reviewing a referee's recommended lawyer discipline, the Court's scope of review is broader than that afforded to the referee's findings of fact because, ultimately, it is the Court's responsibility to order the appropriate sanction. The Florida Bar v. Nicnick, 963 So. 2d 219 (Fla. 2007). This Court will not second-guess the recommended discipline when it has a reasonable basis in case law and the Florida Standards for Imposing Lawyer Sanctions. The Florida Bar v. Herman, 8 So. 2d 1100 (Fla. 2009).

Respondent has argued that in the instant matter, the referee's recommendation lacks a reasonable basis and should not be followed. Contrary to this argument, the Bar argues that, while there are valid findings of guilty on multiple rule violations, the serious nature of the misconduct requires a more severe disciplinary measure.

Respondent argues that there should be no disciplinary measures handed down in that her actions do not warrant discipline.

Under Section 6.1, False Statements, Fraud, and Misrepresentation, of the Florida Standards for Imposing Lawyer Sanctions, Respondent argues that a public reprimand pursuant to Standard 6.13 or an admonishment under Standard 6.14 is more appropriate. As set forth in the Report of Referee, the conduct by Respondent

was knowing and intentional thereby excluding the possibility of a public reprimand or admonishment.

Standard 6.12 states that suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action.

It has been established by competent and substantial evidence that Respondent was guilty of misconduct. As set forth in The Florida Bar v. Nicnick, p. 223, intent can be satisfied by merely showing that such conduct was deliberate or knowing. Respondent allowed her client, Ms. Steinberg, to file a false financial affidavit knowing it was false. Such act or behavior cannot be viewed as negligent, thereby removing the misconduct from supporting a public reprimand (6.13) or an admonishment (6.14).

Respondent repeatedly refers to the remedial acts taken by her to correct the fraudulent financial affidavit or Ms. Steinberg's false testimony at her deposition. Respondent also cites to her remedial actions in providing Mr. Silverman the documentation requested as well as information on the Campus USA funds and PECT check.

A total view of Respondent's conduct shows that none of her referenced remedial actions were voluntary in nature. The box of documents was only delivered after Mr. Silverman filed a motion to compel. The PECT check and

Campus USA information was only produced after a question of their existence was raised due to the large interest earnings that were discovered on Ms. Steinberg's tax return. Although Respondent claims to have alerted Mr. Silverman to Ms. Steinberg's false testimony, Mr. Silverman denied such knowledge. In his discretion, the referee weighed the witnesses' credibility and found Mr. Silverman's testimony as truthful. RR 12, 20. Being forced into compliance should not be given credit as remedial action. Such would be similar to asking that forced restitution be afforded the status of a mitigating factor.

The referee correctly stated in his report that discipline must be fair to society, fair to the Respondent and must be severe enough to deter others who might be prone or tempted to become involved in like violations. RR 24.

The referee found that suspension was the appropriate discipline when a lawyer knows false statements or documents are being submitted to the court, when a lawyer violates a court order or rule and causes interference with a legal proceeding, and when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury to a client, the public or the legal system. RR 24.

In The Florida Bar v. Head, 27 So. 3d 1 (Fla. 2010), this Court specifically held that violations of Rule 4-8.4(c) are not to be viewed as minor. In its holding, the Court states that "basic, 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 truthfulness of its members." Head p. 9. Such dishonest conduct demonstrates the utmost disrespect for the Court and is destructive to the legal system as a whole.

In suspending Head for a period of one year, the Court found that a violation of Rule 4-8.4(c) merits a serious sanction. Head p. 9. In suspending Head, the Court cited to their holding in The Florida Bar v. Colclough, 561 So. 2d 1147 (Fla. 1990), where they suspended the respondent therein for six months for misrepresentations to a judge and opposing counsel. In Colclough, the attorney, as the Respondent herein, had no prior disciplinary history.

In Head, the Court also pointed to The Florida Bar v. Varner, 992 So. 2d 224 (Fla. 2008), as providing guidance. In Varner, the Court stated that the "profession of the practice of law requires lawyers to be honest, competent, and diligent in their dealings with clients, other lawyers and courts." Id. at 231.

In another similar case, The Florida Bar v. Nicnick, 963 So. 2d 219 (Fla. 2007), this Court suspended the respondent therein for 91 days for conduct violating professional rules prohibiting a lawyer from obstructing another party's access to evidence and engaging in conduct involving misrepresentation. Within Nicnick, this Court stated that the purpose of this rule is to secure fair competition

by ensuring that a party's right to obtain relevant evidence is not frustrated by the concealment of such evidence. Id. at p. 223.

Looking at the three elements of a disciplinary sanction, it can be seen that a rehabilitative suspension would be more appropriate in light of the violations. The increased term of at least 91 days would still be fair to the Respondent since it would allow Respondent the opportunity to return to practice after proving rehabilitation. It would be fair to the public in that it would remove Respondent from the practice of law as a result of her misconduct. And it would serve as a strong deterrent to those that may be tempted to conceal evidence in order to secure an advantage in competition. A non-rehabilitative suspension, as recommended by the referee, would allow an attorney to consider the fact that if caught he would only serve a non-rehabilitative suspension and then it would be business as usual.

The referee herein stated that the 90-day suspension would allow Respondent to rehabilitate herself. In light of the seriousness of Respondent's misconduct and the fact that as pointed out by the referee that Respondent attempted to harmonize her testimony with Ms. Steinberg's after the grievance committee hearing (RR 18), which the referee found disturbing, it should be clear that Respondent should be required to formerly prove rehabilitation before being allowed to practice law again.

ISSUE I

REFEREE'S FINDINGS OF FACT SHOULD BE UPHELD.

It is well settled that review of referee's findings of fact is limited and if such findings are supported by competent, substantial evidence in the record, the Court will not reweigh the evidence and substitute its judgment for that of the referee. The Florida Bar v. Draughon, 94 So. 3d 566 (Fla. 2012).

Likewise, this Court has long held that the referee is in a unique position to assess the credibility of witnesses and his judgment regarding credibility should not be overturned absent clear and convincing evidence that his judgment is incorrect. The Florida Bar v. Tobkin, 944 So. 2d 219, 224 (Fla. 2006).

Where there is substantial competent evidence in the record supporting the referee's findings, a party challenging a referee's factual findings must show there is a lack of evidence in the record to support the findings or that the record clearly contradicts the referee's conclusions, which burden cannot be met merely be pointing to the contradictory evidence. The Florida Bar v. Head, 27 So. 3d 1 (Fla. 2010).

A. Guilt as to Rule 3-4.3

Rule 3-4.3, Rules Regulating The Florida Bar, holds that a lawyer shall not engage in any act this unlawful or contrary to honesty and justice.

The referee found that the honest and just thing for Respondent to have done would have been to file an accurate financial affidavit in the Steinberg divorce action. The referee also noted Respondent should have communicated the facts surrounding the PECT check to Mr. Steinberg's attorney, Mr. Silverman. Without such disclosure, the referee found that the parties were not able to openly litigate their case with full knowledge of the facts and fair disclosure. RR 18-19.

Respondent first attacks this finding by making a sweeping statement that no finding of fraud or wrongdoing was entered by the judges in the lower proceedings. Such a statement fails to address the findings of the referee where he held Respondent in violation of Rule 3-4.3.

Respondent next argues that there was no evidence to contradict the testimony of Respondent that she reasonably believed that the PECT funds had been used to set up a trust as previously discussed with Ms. Steinberg.

The referee made a specific finding that the financial affidavit filed by Respondent did not mention the Campus USA account or the PECT check or its value. Respondent also failed to answer a specific request for cashier's checks, money orders or certified checks as requested. RR 9. The report also finds that Respondent did not follow the procedure required in Rule 1.340, Florida Rules of Civil Procedure, by not disclosing the Campus USA account, its balance or the circumstances when Ms. Steinberg closed the account.

Respondent was aware of the existence of these funds having counseled Ms. Steinberg about the effect of disinheriting Mr. Steinberg. Having this knowledge and seeing that there was no mention of any such funds on the affidavit, honesty and justice would require that she inquire of how these funds were disposed of by her client.

Respondent next tries to shift the blame to the recalcitrance of Mr. Silverman for not having discovered the account and the check were provided in Respondent's Notice to Court.

The referee, as the trier of fact, was able to observe the testimony and demeanor of the witnesses at trial. Sheer numbers do not establish credibility. In his report, the referee specifically stated that he found Mr. Silverman's testimony to be frank, concise and professional and placed great weight in his testimony.

The referee specifically found that Respondent's answer given to the standard interrogatory was false when it failed to mention the existence of the PECT check. Respondent fails to show such finding was in error by clear and convincing evidence. Respondent merely points to the conflicting testimony which the referee failed to find credible. Under the ruling in The Florida Bar v. Head, such an argument must fail.

B. Guilt as to Rule 4-3.3(a) and (b)

Rule 4-3.3(a), in part, holds that if a lawyer's client has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take remedial measures. Rule 4-3.3(b) requires a lawyer to take reasonable remedial measures if the lawyer's client has engaged in fraudulent conduct.

In finding Respondent guilty of Rule 4-3.3(a)(1), the referee specifically found that Respondent failed to correct several false statements of material facts made by her client, Ms. Steinberg, as well as failing to take steps to correct Ms. Steinberg's affidavit.

The referee specifically found where Respondent's client, Ms. Steinberg, had falsely testified during her deposition by Mr. Silverman. Ms. Steinberg evaded questions concerning the $100,000 payment by Mr. Steinberg and the amount of funds available. Likewise, Ms. Steinberg falsely claimed she was unaware whether the PECT check exceeded $200,000 in value.

Respondent argues that the referee ignored certain uncontradicted testimony that would establish remedial measures to correct the errors and misstatements by her client, Ms. Steinberg.

Respondent would have this Court believe that by having the PECT funds later deposited into Ms. Steinberg's Alarion account such would satisfy her obligations since reporting such funds would be inevitable. Such action again delayed the correction of the initial financial affidavit under which Mr. Silverman

was operating. Rather than simply disclosing this matter, Respondent argues that the other side should have known where to look to find such information rather than disclosing it.

The Respondent's attempt to lessen her client's false testimony in her deposition as merely being a terrible witness during a tough deposition belies the obvious. Ms. Steinberg had been counseled by Respondent about these funds, had obtained a cashier's check to a non-existent trust, had carried this check for almost 12 months before re-depositing the funds and transferring the monies into two more accounts. These facts negate any arguments that her false testimony was based upon neglect or being tired.

Again, the referee's report can be seen to be based on competent and substantial evidence that has not been shown as mistaken or non-existent. The mere citation of contradictory testimony will not meet the Respondent's burden of proof in reversing the referee's finding.

Respondent has presented the facts of Respondent's late compliance with her production of documents as being remedial in nature so as to comply with the rule's provisions. It is uncontradicted that Respondent failed to serve a timely answer to Mr. Silverman's first interrogatories or produce the documents as requested. RR 7. Even after producing the documents, the evidence of the funds from the PECT check was not presented until October 10, 2011. It was not until October 13, 2011,

when Mr. Silverman inquired of the basis for high interest payments in Ms. Steinberg's tax return that Respondent personally deliver copies of records demonstrating the existence of the former Campus USA account and the PECT check.

C. Finding of Guilt as to Rule 4-3.4(a), (b), (c), and (d)

Rule 4-3.4(a) provides that an attorney may not "unlawfully obstruct another party's access to evidence … nor counsel or assist another person to do any such act."

The referee found that the evidence presented clearly and convincingly that Respondent obstructed Mr. Steinberg's access to evidence and concealed a document from disclosure and a document she clearly had to know was important.

Again, the Respondent blames Mr. Silverman's stubbornness or lack of diligence on a timely discovery of the Campus USA account and the PECT check. And Respondent still insists on her late, last minute rush to compliance as some type of remedial action on her part. In making these arguments, Respondent is merely arguing contradictory testimony and fails to meet its burden of showing the lack of competent and substantial evidence to support such findings.

As clearly established in the record, Respondent had counseled Ms. Steinberg about "disinheriting" her husband of the funds in the Campus USA account. The name of the trust was given to Ms. Steinberg by Respondent. Respondent knew

that the funds were going to be subject to final distribution as an asset of the marriage and so advised her client. Having this knowledge and allowing a financial affidavit showing no such funds violates this rule.

The referee also found Respondent guilty of violating Rule 4-3.4(b) by her inaction in aiding Ms. Steinberg in providing false testimony in the financial affidavit and her deposition.

Respondent again makes the same argument about her late remedial actions but fails to address the fact that she took no such actions at the time the original financial affidavit was presented to her and was missing the Campus USA funds or moved to rehabilitate her client when she falsely testified in her deposition. These were affirmative obligations that when uncorrected allowed Mr. Silverman to labor under misleading information. As pointed out by the referee, Respondent's compliance on production took an extended period of time. RR 10.

Rule 4-3.4(c) prohibits the failure of a lawyer to comply with a legally proper discovery request. It took Respondent nine months to comply with Mr. Silverman's production request. Respondent claimed there were problems with the quantity of documents and demanded copying costs and production at her office. Respondent filed neither an objection to Mr. Silverman's place of production or a motion for protective order. RR 10. In the end, there was only a single banker's box of documents produced. By failing to produce such documents, Respondent was in

violation of Rule 4-3.4(c) by knowingly disobeying an obligation under the rules of a tribunal. Rather than pointing to a lack of evidence supporting such a finding, Respondent attempts to blame her managing partner, Mr. Towers, for blocking her ability to produce the box of documents in a timely fashion.

Respondent continues to cite to mere contradicting testimony from witnesses the referee found less than credible. RR 18.

D. Finding of Guilt as to Rule 4-4.1

Rule 4-4.1 provides that a lawyer shall not knowingly … make a false statement of material fact or law to a third person; or fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

The referee found Respondent guilty of violating this rule and held that by its very nature, the act of omission demonstrated in concealing a relevant document is deceptive (the PECT check).

Once again, Respondent presents the argument that the referee failed to consider contradictory testimony in reaching this finding of guilt. Respondent continues to blame others as well as trying to excuse Respondent's omission on a discovery dispute between Respondent's law partner, Mr. Towers, and Mr. Silverman.

Respondent ignores several issues here. Respondent fails to argue that there were any competent facts upon which the referee could have based his finding and it ignores Respondent's obligation under the discovery rules applicable to the dissolution litigation. As previously pointed out, Respondent never attempted to move for a protective order or an extension for compliance. Instead she just ignored her duty as an officer of the court and chose to not comply with discovery demands.

Again Respondent seeks to establish that her actions in producing such documentation should be remedial. Such characterization cannot overcome the fact that such actions resulted from Mr. Silverman's filing a motion to compel and raising the specter of undisclosed funds being secreted as a result of discovering a high amount of interest being claimed on Ms. Steinberg's tax return.

Respondent's position must fail since she failed to meet her burden of proof under the standards of review.

E. Finding of Guilt as to Rule 4-8.4(a) and (c)

Rule 4-8.4(a) prohibits a lawyer from violating the Rules of Professional Conduct and Rule 4-8.4(c) states that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Respondent cites to three cases arguing that the bar must prove intent to defraud to support a finding that the alleged conduct did not constitute dishonesty,

misrepresentation, deceit or fraud. Respondents' reliance on these cases is misplaced.

In all the cases cited by Respondent, each attorney was charged with trust fund violations and misappropriations of trust funds. Such allegations of misappropriation are absent in the present case.

The more appropriate standard in regard to the intent element of the professional rule prohibiting a lawyer from engaging in conduct involving misrepresentation can be satisfied by merely showing that the conduct was deliberate or knowing. The Florida Bar v. Nicnick, 963 So. 2d 219 (Fla. 2007). Nicnick actually deals with the obstruction of another party's access to evidence. Here the Court held that the intent element can be satisfied merely by showing that the conduct was knowing or deliberate. Nicnick at p. 223.

In Nicnick, the Court went further saying a referee's finding with regard to intent is a factual finding which must be upheld if there is competent substantial evidence in the record to support it. The Florida Bar v. Forrester, 818 So. 2d 477 at 483 (Fla. 2002). The holding in Nicnick further added that where a referee's factual 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. MacMillian, 600 So. 2d 457, 459 (Fla. 1992).

Respondent argues there was no intent to defraud anyone and claims there was no evidence to support an intent to defraud anyone. Such an argument is misleading in that the Report of Referee found specifically that Respondent's conduct involved deceit and misrepresentation. RR 21. The evidence presented to the referee clearly established that Respondent's actions regarding the Campus USA monies and her allowing a false affidavit and false testimony at her client's deposition were both deceitful and involved misrepresentation of the true facts.

The referee specifically found that his findings of fact were very clear and convincing and the evidence supporting them was precise and explicit. RR 18.

F. Finding of Guilt as to Rule 5-1.1(e) and (f)

Rule 5-1.1(e) and Rule 5-1.1(f) requires a lawyer to give notice to a third party if the lawyer is holding their property in trust and if two people are making claim to the same property, it shall be treated as trust property.

The violation of this rule centers around the Respondent coming into possession of a coin collection to which Mr. Steinberg had an interest. There was no dispute that she did in fact possess such coin collection. When she became aware that Mr. Steinberg had a claim, she was required by rule to disclose possession of such disputed property and hold it in trust. RR 22. The referee specifically found that Respondent failed to acknowledge possession of the coin collection even after the final judgment was entered. It was not until Mr. Silverman

filed a motion for contempt that Respondent ultimately acknowledged possession on the day the hearing on contempt was set to be heard. As pointed out by the referee, it was not for Respondent to decide herself who had ownership of the coins. By her actions, Respondent again thwarted the will of the court and caused the expenditure of resources that were not needed. Respondent argues only how reasonable it was for Respondent to assume the coins were her client's property. This in no way proves there was a lack of competent substantial evidence to support the referee's finding of guilt. Since Respondent has failed to meet her burden of proof to have this finding reversed, this finding must be affirmed.

ISSUE II

THE REFEREE DID NOT ERR IN THE APPLICATION OF FACTS REGARDING RESPONDENT'S INTENTIONS TO DEFRAUD, DECEIVE OR ACT CONTRARY TO HONESTY OR JUSTICE.

The fact that Respondent had no previous experience with a case of this magnitude points only to her competence to handle such a case, not to her actions with regard to assisting her client in hiding money, failing to disclose assets as required by Florida law and personally misrepresenting and allowing her client to misrepresent facts.

Respondent and Ms. Steinberg not only attempted to hide, but succeeded in hiding the Campus USA account and the $482,980.46 cashier's check, until its existence was discovered by Messrs. Steinberg and Silverman from the interest income listed on Ms. Steinberg's tax return. Until that discovery and Mr. Silverman's phone call to Respondent, the total money involved in Ms. Steinberg's "charitable donation" was represented either as much less or not disclosed at all.

Respondent testified that she knew, at the time she filed her notice of appearance, of the existence of the Campus USA account and that it contained over $480,000. She further testified that she and Ms. Steinberg had gone through all of Ms. Steinberg's assets to determine what would be a marital asset, and that Respondent's legal conclusion was that the $480,000 was a marital asset. TR 117/13-25.

In addition, Respondent testified that when Ms. Steinberg came to her office with the cashier's check, her instruction to her paralegal was to copy the check, as she would need it for disclosure purposes. TR 123/22-25.

However, she then admits that she did not disclose the check on the financial affidavit because there was no place that it would fit. TR 124-125/22-2.

Respondent also failed to respond to request for production 6, Banking Information, section C, Checks and Money Orders, requesting "All cashier's checks, money orders or certified checks in your possession or under your control." Instead of answering in the negative (if, in fact she believed Ms. Steinberg had tendered the check to the previously non-existent charity), Respondent simply left the entire section out of her responses. TFB Ex. 1, 6.

Rule 12.285(e)(8), Florida Family Law Rules, requires disclosure of "all periodic statements from the last 3 months for all checking accounts, and from the last 12 months for all other accounts … regardless of whether or not the account has been closed…".

Respondent knew, or should have known, that the disclosure of the Campus USA account and the $482.980.46 was required.

Respondent would lead this Court to believe that she "directed Ms. Steinberg" to re-deposit the PECT funds into a "disclosed account." Testimony, however, contradicts this statement. Ms. Steinberg testified that she deposited the

PECT check into a new Campus USA account and, once the funds cleared, transferred them to her existing Alarion account because "I didn't need another bank account at Campus USA and so I transferred the money from Campus – the new Campus USA account … to the Alarion account that was already existing." TR 209/7-16. There is no testimony regarding Respondent "directing" Ms. Steinberg to deposit the check into an "existing" account.

The failure of Respondent to include the Campus USA statements and a copy of the PECT check in the documents provided on September 19, 2011, is, in fact, supported by the evidence. Mr. Silverman testified that there were no Campus USA or Alarion statements and no PECT check in the initial box of documents provided. TR 47-48/25-10. Additionally, during Ms. Steinberg's deposition on September 28, 2011, Mr. Silverman asked Ms. Steinberg to review the documents that Respondent had initially provided and show him where the Campus USA statements were. She did not find any such statements. TR 92/5-15.

Mr. Silverman further testified that, in approximately mid-October 2011, when the interest income was discovered, he contacted Respondent questioning the large amount of interest income listed on Ms. Steinberg's tax return. Respondent showed up at his office that afternoon with additional documents not previously produced. TR 56/6-19. A copy of the cashier's check was contained in the second box. TR 57/5-7.

At the deposition of Ms. Steinberg, when Respondent was asked about the amount of the check, off the record, she told Mr. Silverman that the Campus USA statements and copy of the check were in the box of documents that he needed to get from Bogin, Munns office. TR 130/10-16. She went on to say that she did not know the amount of the check, that "[i]t's a very long number that's – I can't remember exactly what it is." TR 130/18-19. Even if Respondent did not know the "exact" amount of the check, she knew it was in the neighborhood of $400,000.

Mr. Silverman was completely unaware that the amount of the PECT check or the amount then held in the Alarion account was more than $400,000, as no documentation had been provided regarding that issue by the time of the deposition.

Again, Mr. Silverman testified that there were no documents in the production that he received the afternoon before his motions to compel were scheduled to be heard in any way related to the Campus USA account or to the PECT check. If Respondent did, in fact, have an opportunity to put those documents in the box, as her counsel suggests, she should have.

As previously stated the Supreme Court defers to the referee's assessment and resolution of conflicting testimony in an attorney disciplinary proceeding, because the referee is in the best position to judge the credibility of the witnesses. The Florida Bar v. Head, 27 So. 3d 1 (Fla. 2010). The referee stated in his report:

"I found Mr. Silverman's testimony to be frank, concise, and professional and I placed great weight in his testimony." RR 4, 18.

ISSUE III

THE REFEREE'S RECOMMENDATIONS AS TO GUILT.

Within this issue, Respondent attempts to attack all the recommendations of guilt that were set forth in the Report of Referee. In this issue, Respondent expands her arguments of the earlier specific rule violations found by the referee to include the argument that such findings were founded entirely on inferences made by the referee.

Rather than address her failures and shortcomings, Respondent seeks to place blame elsewhere and more precisely on Mr. Silverman. Specifically addressed here by the Respondent is the failure of Mr. Silverman to pay $400 in copy fees being demanded by Respondent's law firm. Under Rule 12.285(l), Florida Family Law Rules, all production of such documents as requested by a party shall take place in the office of the attorney for the party receiving the production. Accordingly, Respondent had a duty and obligation to have produced the requested documents without the issue of copying fees. Since Respondent was under a specific duty to produce Respondent's issue about Mr. Silverman's seeking a pre-payment of copying costs is not germane in any way to Respondent's failure to abide by the rules of mandatory disclosure.

How Mr. Silverman ultimately discovered the existence of the PECT monies in the Alarion account has no bearing on Respondent's guilt. Had Respondent

acted pursuant to production guidelines and not allowed a fraudulent financial affidavit by her client, the issue of discovering the funds through the Ms. Steinberg's tax return would not be an issue.

Next, Respondent attempts to argue that there was a break in the chain of custody regarding the documents produced alleging the documents were perhaps mislaid during copying or that Mr. Silverman's staff may have failed to copy the pertinent documents. The referee had listened to the testimony given in this trial and has assigned credibility to particular witnesses. He found Mr. Silverman to be frank, concise and professional, giving his testimony much weight. RR 18. In this same vein, the referee found it very disturbing that Respondent had admitted to attempting to harmonize her testimony with the false testimony of Ms. Steinberg at the conclusion of the grievance committee proceeding. RR 18.

Respondent has failed to show how the referee abused his discretion in attributing credibility to the witnesses. The evidence is clear that Respondent committed the acts of misconduct. The financial affidavit clearly failed to account for funds which Respondent had specifically counseled her client on regarding their being a marital asset subject to distribution. Respondent also sat by and allowed Ms. Steinberg to testify falsely at her deposition. Such facts are established by clear and concise evidence as pointed out by the referee, not inferences. Respondent's

attempt to discredit such findings by the referee by mere arguing possible inferences must fail.

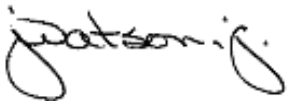
ISSUE IV

THE REFEREE'S RECOMMENDATION FOR SANCTIONS.

Respondent has raised the appropriateness of the sanctions recommended by the referee. The Florida Bar has cross-appealed the issue of the appropriateness of the recommended sanction. Respondent's Issue IV will be addressed within the Bar's cross-appeal.

CONCLUSION

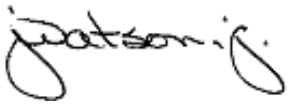
The Report of Referee's findings of guilt as to the cited rule violations were established by clear and convincing evidence. Respondent failed to meet her burden of proof to show such findings. In light of the seriousness of the misconduct, a more appropriate discipline would be a one-year suspension requiring proof of rehabilitation.



James N. Watson, Jr., 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 copies have been furnished to David Robert Ristoff, Counsel for Respondent, at drr@wrpblaw.com, and Staff Counsel of The Florida Bar at aquintel@flabar.org, on this 19th day of March, 2014.



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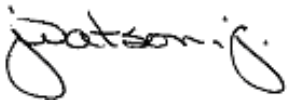
CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN

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.



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