IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JEAN M. PICON,

Respondent.

_____/

Supreme Court Case
No. SC15-385

The Florida Bar File
No. 2014-30,657(18C)

ANSWER BRIEF

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PRELIMINARY STATEMENT

The respondent, Ms. Jean M. Picon, is seeking review of a Report of Referee recommending a 91 day suspension from the practice of law.

Complainant will be referred to as The Florida Bar, or as the bar. Jean M. Picon, respondent, will be referred to as respondent throughout this brief.

References to the Report of Referee shall be referred to as "ROR" followed by the appropriate page number.

The transcript of the final hearing held on August 27, 2015 and August 28, 2015, shall be referred to as "TR" followed by the cited page and line numbers.

The bar's exhibits will be referred to as "TFB-Ex." followed by the exhibit number.

Respondent's exhibits will be referred to as "R-Ex." followed by the exhibit number.

References to specific pleadings will be made by title.

STATEMENT OF THE CASE

On February 27, 2015, The Florida Bar filed a complaint against respondent, which was subsequently assigned Supreme Court Case No. SC15-385. On March 17, 2015, The Honorable Robert Lee Pegg was appointed as referee. Respondent asserted venue for the final hearing to be held in Brevard County, where respondent's law practice is located.

On March 24, 2015, respondent filed her Answer and Motion to Dismiss with the Supreme Court of Florida via the e-portal. On April 8, 2015, The Florida Bar filed respondent's pleadings with the referee. The referee denied respondent's Motion to Dismiss on April 21, 2015.

On May 11, 2015, The Florida Bar served its Request to Produce and Interrogatories on respondent. Respondent's answers to the discovery were originally due on or before June 10, 2015. Thereafter, bar counsel gave respondent two separate extensions until June 30, 2015, to file her responses. On July 6, 2015, the bar filed a Motion to Compel Answers to Request to Produce and Interrogatories, which the referee granted on July 13, 2015. Respondent filed incomplete answers to discovery on July 20, 2015, and on August 10, 2015, the bar subsequently filed a Motion to Compel Complete Answers to Interrogatories. The referee granted the bar's Motion to Compel on August 11, 2015. Thereafter, the

parties exchanged witness and exhibit lists.

Judge Pegg entertained the final hearing on August 27, 2015 and August 28, 2015. The referee entered his report of referee on October 7, 2015, finding respondent guilty of violating the following Rules Regulating The Florida Bar: 4-1.1, for failing to provide competent representation; 4-1.3, for failing to act with reasonable diligence and promptness; 4-3.4(c), for knowingly disobeying an obligation under the rules of a tribunal; and, 4-8.4(d), for engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice (ROR-15-16). The referee further recommended that respondent be suspended from the practice of law for 91 days and that she pay the bar's disciplinary costs (ROR-23).

On December 11, 2015, respondent filed her Notice of Intent to Seek Review of Report of Referee. After obtaining extensions from this Court, respondent filed her Initial Brief on February 15, 2016. On February 23, 2016 and March 1, 2016, this Court issued orders striking respondent's Initial Brief and Amended Initial Brief for failure to comply with Florida Rule of Appellate Procedure 9.210. Respondent filed her Second Amended Brief on March 1, 2016.

STATEMENT OF THE FACTS

Respondent primarily practices law in Brevard County in the area of criminal defense involving both misdemeanor and felony cases. During 2012 and 2013, respondent engaged in a pattern of conduct wherein she was frequently late for court and/or failed to attend court proceedings (TR, p. 60, l. 14-22; TR, p. 74, l. 3-14; TFB-Ex. 3, 5, 6, 8, 14, 25; TFB-Ex. 22, p. 25, l. 16-17). Respondent had more cases than she could competently handle (TR p. 191, l. 17-23). On numerous occasions, respondent was required to appear before more than one judge on the same date and time (TFB-Ex. 25; TFB-Ex. 31, p. 49, l. 9-14). Respondent's calendar was routinely overbooked (TFB-Ex. 23, 24).

On or about February 22, 2013, respondent appeared before Judge Roberts pursuant to an Order to Show Cause for Indirect Criminal Contempt in State v. Picon, Case No. 05-2013-CF-046151 (TFB-Ex. 3). Respondent's misconduct primarily occurred during her representation of the defendant in State v. Smith, Case No. 05-2011-CF-048657-A (TFB-Ex. 3). The court charged respondent with being chronically and significantly late regarding court appearances (TFB-Ex. 3). The contempt charges also included respondent's failure to timely attend a scheduled trial as well as being tardy in submitting a dispositive motion (TFB-Ex. 3). Respondent's tardiness for trial caused the jury to wait nearly an hour before the

proceedings could reconvene. Respondent's tardiness for trial also affected a lay witness for the prosecution whose testimony could not be presented as scheduled. As a result, the witness had to take an additional day off work to appear the following day for his testimony (TFB-Ex. 8, p. 3).

On February 22, 2013, respondent requested additional time to prepare her defense to the contempt matter (TFB-Ex. 25; TFB-Ex. 30, p. 4, 7-8). Judge Roberts continued the hearing to February 27, 2013. At the conclusion of the contempt hearing on February 27, 2013, Judge Roberts commented on respondent's pattern of conduct, stating, "I can no longer tolerate this. It is impacting my ability to function as a judge in this division. It impacts my ability to service all the defense attorneys out there and their clients. It impacts witnesses and now a venire." (TFB-Ex. 25; TFB-Ex. 31, p. 50, l. 15-19).

Judge Roberts ultimately withheld adjudication and ordered respondent to pay a $250.00 fine. In addition, respondent was required to perform 25 hours of community service and to write a letter of apology to every judge and judicial assistant in the criminal division (TFB-Ex. 8). Judge Roberts also ordered respondent to report her misconduct and sanctions to The Florida Bar (TFB-Ex. 8). On January 21, 2014, the Fifth District Court of Appeals affirmed the contempt order entered by Judge Roberts (TFB-Ex. 9).

On or about November 26, 2013, respondent and her client failed to appear before Judge Dugan in State v. Jennings, Case No. 05-2013-CF-59079 (TFB-Ex. 14). Respondent subsequently appeared before Judge Dugan on or about December 13, 2013, and explained that she had overlooked the November 26, 2013 court date in State v. Jennings (TFB-Ex. 25; TFB-Ex. 32, p. 7, l. 11-14). Respondent further stated that she had also failed to inform her client of the scheduled matter (TFB-Ex. 25; TFB-Ex. 32, p. 7, l. 11-14, 17). During the December 13, 2013 hearing, Judge Dugan noted that respondent had a pattern of missing court dates, which involved "probably a dozen times over the last year or two." (TFB-Ex. 25; TFB-Ex. 32, p. 10, l. 15-17). Judge Dugan further noted that respondent was unreachable because her voicemail was consistently full and that respondent generally failed to respond to the court's emails and letters (TFB- Ex. 25; TFB-Ex. 32, p. 13, l. 2-4, 9-13).

At the December 13, 2013 hearing, Judge Dugan also expressed concern that respondent's client had been in custody since December 10, 2013 due to respondent's misconduct. Judge Dugan further stated that, "this isn't the first time we've had clients in custody because you can't do your job." (TFB-Ex. 25; TFB-Ex. 32, p. 14, l. 9-11). Judge Dugan referred the matter to The Florida Bar because respondent's lack of thoroughness and diligence resulted in respondent's client serving several days in jail on a Bench Warrant for Failure to Appear (TR, p. 228, l.

15-18; p. 241, l. 11-14).

On or about December 19, 2013, respondent appeared before Judge Koons at 10:00 a.m. in State v. Richardson, Case No. 05-2013-MM-58850 to argue her Motion to Modify Sentence (TFB-Ex. 25, 33). Respondent attended the hearing on her own motion at the incorrect time (TR, p. 142, l. 15-17). Respondent's client was not present because the hearing was originally scheduled for 1:30 p.m. (TFB-Ex. 21). Moreover, respondent argued incorrect information regarding the status of her client's compliance with the conditions of her probation (TR, p. 143, l. 18-25).

After Judge Koons denied respondent's Motion to Modify Sentence, and respondent had already departed the courtroom, respondent's client appeared before Judge Koons at 1:30 p.m. The client informed the court that respondent had failed to notify her about any earlier court proceeding scheduled for that day (TFB-Ex. 25; TFB-Ex. 33, p. 8, l. 11-12). At the 1:30 p.m. proceeding on December, 19, 2013, both respondent's client and opposing counsel informed Judge Koons that they were consistently unable to contact the respondent (TFB-Ex. 25; TFB-Ex. 33, p. 10, l. 13-19). Judge Koons then allowed respondent's client to present some evidence to support the Motion to Modify Sentence (TFB-Ex. 25; TFB-Ex. 33, p. 11-13). Judge Koons ultimately granted the motion which the client presented without respondent's assistance (TFB-Ex. 25; TFB Ex. 33, p. 13, l. 22-24).

In addition to the instances detailed above, during the period of time at issue, other judges, court personnel, and opposing counsel testified that respondent engaged in a pattern of tardiness and delaying court proceedings. At the final hearing, Chief Judge of the Eighteenth Judicial Circuit, John Harris, testified that respondent was frequently late for docket soundings and that staff sometimes had to send out emails to attempt to locate her (TR, p. 60, l. 14-22; TR, p. 62, l. 21-25). Judge Dugan's Judicial Assistant, Monica Gabbard, testified that respondent was consistently late for criminal docket soundings, and Ms. Gabbard would often attempt to contact respondent via cell phone (TR, p. 209, l. 10-25; TR, p. 215, l. 4-14). In regard to respondent's tardiness, Ms. Gabbard specifically stated, "I can't remember Ms. Picon coming in on time to any of the calendar calls." (TR, p. 211, l. 5-7).

William Respess, Chief Trial Attorney for Brevard County, was respondent's opposing counsel in the matter of State v. Smith, Case No. 05-2011-CF-048657-A. Mr. Respess testified that respondent was consistently late for court throughout the proceedings (TR, p. 116, l. 21-25). Mr. Respess also testified that respondent failed to file a dispositive pretrial motion in a timely manner, despite having been given extensions by the court (TR, p. 115, l. 2-19). Assistant State Attorney, William Scheiner, was opposing counsel in several matters where respondent represented

various defendants. Mr. Scheiner testified that there were multiple occasions when respondent was late to court (TR, p. 160, l. 3-22). Over a two year period, former Assistant State Attorney, Alexa Virgilio, frequently was respondent's opposing counsel (TR, p. 247, l. 4-14). Ms. Virgilio testified that respondent's repeated failure to timely file motions, as well as respondent's last minute continuances, routinely interfered with the progression of misdemeanor cases (TR, p. 259, l. 1-14).

Respondent often failed to respond to communications. Respondent's voicemail box was often times full and would not accept messages. Ms. Virgilio testified that upon attempting to call respondent, she continually received messages stating that respondent's voicemail box was full (TR, p. 248, l. 16-21; TR, p. 254, l. 5-8). Judicial Assistant, Monica Gabbard, testified that approximately 70 percent of the time respondent's voicemail was full and she could not leave a message (TR, p. 210, l. 7-9). As the overall record shows, respondent's pattern of conduct interfered with the administration of the cases set before the court. Further, respondent's overall pattern of conduct negatively impacted court personnel, the public, respondent's clients, and the legal profession.

SUMMARY OF ARGUMENT

Respondent was not denied due process in this matter, and her arguments as to due process are untimely. Following the referee's finding of guilt, he gave respondent ample opportunity to argue why she should receive a lesser discipline. Respondent failed to object and assert a lack of due process at the final hearing. Respondent also failed to file a motion for rehearing at the referee level.

The record in this matter contains substantial, competent evidence that clearly and convincingly supports the referee's findings of guilt concerning respondent's lack of competence and that she knowingly disobeyed an obligation under the rules of a tribunal. The referee was in the best position to review the evidence and assess the credibility of the witnesses who testified. Therefore, consistent with its prior holdings, this Court should approve the referee's findings of fact and recommendations of guilt and should not reweigh the evidence or substitute its judgment for that of the referee.

The referee's recommendation of a rehabilitative suspension is entirely appropriate due to respondent's lengthy disciplinary history involving similar misconduct and the fact that respondent has failed to demonstrate rehabilitation.

ISSUE I

RESPONDENT WAS NOT DENIED DUE PROCESS, AND THE REFEREE'S RECOMMENDATIONS AS TO FACTS AND FINDINGS OF GUILT ARE WELL SUPPORTED BY THE COMPETENT, SUBSTANTIAL RECORD EVIDENCE.

Respondent's burden on review is to demonstrate that there is no evidence in the record to support the referee's findings or that the record evidence clearly contradicts the conclusions. The Florida Bar v. Vining, 721 So. 2d 1164, 1167 (Fla. 1998). Respondent cannot satisfy her burden of showing that the referee's findings are clearly erroneous "by simply pointing to the contradictory evidence where there is also competent, substantial evidence in the record that supports the referee's findings." The Florida Bar v. Vining, 761 So. 2d 1044, 1048 (Fla. 2000). The evidence in this matter is substantial. It includes significant documentary and testamentary evidence to support the referee's findings. The referee in this matter also presented an extensive and thorough report.

The standard of proof in a bar disciplinary proceeding is clear and convincing evidence. The Florida Bar v. Niles, 644 So. 2d 504, 506 (Fla. 1994), citing The Florida Bar v. Rayman, 238 So. 2d 594 (Fla. 1970). The bar has met its burden of proof by clear and convincing evidence. This Court has consistently held that where a referee's findings are supported by competent substantial evidence, it is precluded

from reweighing the evidence and substituting its judgment for that of the referee. Vining, 721 So. 2d at 1167, quoting The Florida Bar v. MacMillan, 600 So. 2d 457, 459 (Fla. 1992). The referee was in the best position to assess credibility and to determine guilt. Moreover, the referee's findings and recommendations are clearly supported by the record. Thus, respondent has failed to meet her burden of establishing that the record is wholly lacking in evidentiary support for the referee's findings.

First, respondent is incorrect in her claims that she was not given due process and that the bar's comments were premature as to respondent's prior discipline. The bar's comments about respondent's prior discipline were not premature because they occurred after the referee's finding of guilt. The referee determined that respondent was guilty before he ever discussed rendering any type of disciplinary sanction (TR, p. 369, l. 11-19). Upon making his determination of guilt, but prior to learning of respondent's previous discipline, the referee originally stated that he would not recommend a suspension of more than 90 days (TR, p. 370, l. 1-3). The referee then asked both bar counsel and respondent's counsel to present arguments as to the appropriate discipline (TR, p. 370, l. 6-13).

During the sanction portion of the proceeding, after hearing bar counsel's arguments as to the appropriate discipline, the referee indicated he had not been

aware that respondent had any prior discipline (TR, p. 396, l. 15-16). After learning about respondent's prior discipline, the referee conveyed, "I have to admit that I am pretty disturbed by the fact that I came in and said that about the 90 days. I had no idea she had been - had two prior suspensions and a public reprimand all over the same type of thing." (TR, p. 410, l. 16-20).

Respondent's arguments as to due process are also untimely. Respondent failed to object and assert a lack of due process at the final hearing, and she failed to file a motion for rehearing at the referee level. Furthermore, at the final hearing, respondent's counsel presented significant oral argument to request discipline less than a 91 day suspension (TR, p. 397-406). The referee also required both parties to present written recommendations regarding the appropriate sanction to be imposed (TR, p. 412, l. 6-8). The referee noted that he would consider both parties' written arguments prior to issuing his report (TR, p. 412, l. 12-14). The record in this matter fails to support respondent's claim that she was not given due process. In fact, it supports that the referee was unbiased and completely unaware of respondent's prior misconduct when he found her guilty of the conduct in this matter.

Next, the referee's findings of guilt as to Rules Regulating The Florida Bar 4-1.1 and 4-3.4(c) are correct and supported by the evidence. Rule 4-1.1 requires that

an attorney be thorough and reasonably prepared for the representation. Respondent routinely made late court filings. Respondent was consistently late and ill prepared for her clients' hearings. As previously discussed, respondent's tardiness and lack of preparation negatively impacted her clients as well as the court system. In The Florida Bar v. Centurion, 801 So. 2d 858 (Fla. 2000), the referee found Centurion guilty of violating Rule 4-1.1 by failing to file all the required documents and to follow up on the filing of those documents and by failing to comply with court orders. In Centurion, the Court upheld the referee's findings as to facts and as to a violation of Rule 4-1.1.

The evidence also supports respondent's violation of Rule 4-3.4(c), for knowingly disobeying an obligation under the rules of a tribunal. In his Order finding respondent guilty of contempt, Judge Roberts found that "[b]ased on the totality of the circumstances, the Court finds the Defendant has intentionally disobeyed the direct orders of this court by her constant and consistent tardiness." (TFB-Ex. 8, p. 2). Respondent's misconduct was a pervasive pattern of behavior in violation of Rule 4-3.4(c) and not a onetime mistake. Prior to Judge Roberts finding respondent in contempt, he had privately admonished her. Judge Roberts previously admonished respondent on the record and had already fined her on two separate occasions (TFB-Ex. 8, p. 4). Due to the magnitude and pattern of respondent's

tardiness, she cannot convincingly argue a lack of intent or knowing conduct.

As the referee is in a unique position to assess witness credibility, this Court will not overturn a referee's judgment absent clear and convincing evidence that his judgment is incorrect. The Florida Bar v. Draughon, 94 So. 3d 566, 570 (Fla. 2012). The bar submits that there is no clear evidence that the referee's judgment is incorrect in this case. The referee was in the best position to review the evidence and assess the credibility of the witnesses who testified. Therefore, consistent with its prior holdings, the Court should not reweigh the evidence or substitute its judgment for that of the referee. The Court should approve the referee's findings of fact and recommendations of guilt.

ISSUE II

THE REFEREE'S RECOMMENDED DISCIPLINE OF A 91 DAY SUSPENSION IS APPROPRIATE GIVEN THE FACTS, CASE LAW, AND STANDARDS FOR IMPOSING LAWYER SANCTIONS.

"When reviewing a referee's recommended discipline, this 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 an appropriate sanction." The Florida Bar v. Spear, 887 So. 2d 1242, 1246 (Fla. 2004). As a general rule, the Court will not second-guess a referee's recommendation of discipline as long as the discipline is authorized under the Florida Standards for Imposing Lawyer Sanctions and has a reasonable basis in existing case law. Id. at 1246. The bar maintains that the discipline recommended by the referee, a 91 day suspension, is supported by respondent's pattern of misconduct, the existing case law, and the Florida Standards for Imposing Lawyer Sanctions.

On June 25, 2003, respondent was admitted to practice law in Florida. During respondent's nearly thirteen years of practicing law, she has been involved in four (including the instant proceeding) disciplinary proceedings. By Court order dated January 24, 2008, respondent received a ten day suspension and a two year period of probation for conduct prejudicial to the administration of justice by repeatedly appearing late for hearings in cases resulting in various judges issuing

orders to show cause. (B-Ex. 26, 27; ROR-24). By Court order dated April 29, 2011, following a Petition for Contempt and Order to Show Cause, respondent was suspended for 30 days and placed on a three year period of probation for failing to comply with the conditions of her prior ten day suspension (B-Ex. 26, 28; ROR-24). By Court order dated October 15, 2013, following a Petition for Contempt and Order to Show Cause, respondent received a public reprimand for failing to timely respond to inquiries from the bar pertaining to her failure to comply with the conditions of her probation (B-Ex. 26, 29; ROR-24).

In his report, the referee stated that he recommended a 91 day rehabilitative suspension due to respondent's prior disciplinary history and cumulative misconduct (ROR-22-23). The referee specifically stated that the misconduct in respondent's first disciplinary proceeding, for which she received a ten day suspension and a two year period of probation, is nearly identical in nature to the conduct in this case (ROR-23). In fact, all four of respondent's disciplinary matters involve a continuing pattern of tardiness and failure to comply with court orders and/or requests from the bar. In The Florida Bar v. Poe, 786 So. 2d 1164, 1166 (Fla. 2001), this Court noted that cumulative misconduct of a similar nature warrants an even more severe discipline than might dissimilar conduct. Therefore, a rehabilitative suspension is wholly appropriate to address respondent's cumulative

misconduct.

A suspension of 91 days is also appropriate to ensure respondent's rehabilitation. Respondent did not improve her attendance at court proceedings until she was found in contempt by Judge Roberts and until she was facing the serious threat of incarceration (TFB-Ex. 25; TFB-Ex. 31, p. 18, l. 8-25; TFB-Ex. 31, p. 49, l. 1-5; TFB-Ex. 31, p. 51, l. 8-10; TFB-Ex. 31, p. 52, l. 12-24). It is also important to note that respondent was still displaying a similar pattern of tardiness and unprofessionalism during this disciplinary proceeding. For example, the bar had to file two separate Motions to Compel before respondent filed her completed responses to the bar's discovery. Respondent was tardy for court on the second day of her disciplinary hearing, and the referee convened the proceedings without her (TR, p. 286, l. 23-25). While attempting to reach respondent during the bar's investigation of this matter, the bar's investigator discovered that respondent's voicemail was full (TFB-Ex. 10; TR, p. 30, l. 19-25; TR, p. 31, l. 1-10). It is troubling that respondent has failed to completely rehabilitate her pattern of behavior, despite being cautioned numerous times; despite paying fines; despite being found in contempt of court; and, despite being suspended and placed on probation by The Florida Bar.

Prior to recommending a 91 day suspension the referee considered a wide

range of disciplinary cases for similar misconduct, ranging from 60 day suspension to one year suspension (ROR-17-22). Although the referee presented significant case law to support a rehabilitative suspension, respondent's conduct and circumstances appear to be most akin to those detailed in The Florida Bar v. Cimbler, 840 So. 2d 955 (Fla. 2002).

In Cimbler, an attorney was suspended for one year for neglecting multiple client matters and for failing to maintain a current record bar address in order to make himself difficult to locate. He failed to record a deed and pay real estate taxes held in his trust account upon the sale of a client's real property, failed to appear at a hearing on opposing counsel's motion to dismiss, and failed to make prompt restitution to the client for the judgment entered against the client as a result of his neglect. Cimbler also failed to notify clients that they were required to appear for a deposition which resulted in the entry of a final judgment against the clients. In mitigation, Cimbler demonstrated remorse and suffered from emotional and mental health problems. In aggravation, he had a prior disciplinary history for similar misconduct.

Respondent similarly engaged in a pattern of neglect that affected her clients and the court system. Similar to Cimbler's neglect, respondent's failure to inform her client about a legal proceeding resulted in serious client harm. Respondent's

voicemail box was routinely full. Respondent's failure to properly and timely address the issues with her voicemail in order to receive incoming messages from clients, court personnel and opposing counsel had a direct impact on the clients' matters and court proceedings. Like respondent, Cimbler previously received a non-rehabilitative suspension followed by a probationary period. The Court noted that rather than being rehabilitated during that period of time, Cimbler proceeded to commit additional acts of client neglect. Respondent likewise continued her pattern of misconduct, despite having the chance to demonstrate rehabilitation. This Court noted that Cimbler's continued misconduct, even after his first suspension, reinforced the necessity for a longer period of suspension that would require him to demonstrate fitness before being reinstated. Id. at 960.

This Court's decision in Cimbler also illustrates that respondent is incorrect in her assertion that the referee's recommendation of a 91 day suspension is "extremely excessive and unsupported by existing case law." (Respondent's Second Amended Initial Brief, p. 31). Respondent maintains that her pattern of neglect and tardiness was unintentional and, therefore, warrants a lesser discipline. The referee in Cimbler concluded that Cimbler's "negligent handling of the three (3) matters in question either occurred due to simple communication lapses, errors in calendaring legal hearings, or possibly failures to attend hearings which were duly noticed, yet

not communicated to [Cimbler] by staff or opposing counsel." Id. at 958. Despite the referee's finding that Cimbler's conduct was primarily negligent, this Court determined that a one year suspension was more appropriate than the referee's recommendation of a 90 day suspension. Likewise, a 91 day suspension in this matter is not unduly harsh or unsupported by case law, especially considering respondent's prior suspension for nearly identical misconduct.

In addition, the Court's emphasis on the importance of professionalism supports that a rehabilitative suspension is appropriate in this matter. In The Florida Bar v. Adorno, 60 So. 3d 1016, 1018 (Fla. 2011), this Court made it clear that based on the increasing numbers of attorneys it is the Court's top priority to ensure that all attorneys strictly follow the boundaries set forth in The Rules Regulating The Florida Bar. Focusing on the priority of professionalism, this Court has also moved towards stronger sanctions for attorney misconduct in recent years. The Florida Bar v. Adler, 126 So. 3d 244, 247 (Fla. 2013), citing The Florida Bar v. Rotstein, 835 So. 2d 241, 246 (Fla. 2003).

The Florida Standards for Imposing Lawyer Sanctions further assist in determining the appropriate discipline. These standards, listed in the report of referee, support suspension as an appropriate sanction in this matter (ROR-16-17). Suspension is appropriate pursuant to Standard 4.42 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 a client. Suspension is appropriate pursuant to Standard 6.22 when a lawyer knowingly violates a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. To further support a rehabilitative suspension, the aggravating factors found by the referee outweighed the degree of mitigation presented by respondent (ROR-17). Respondent did not present evidence to support her concluding argument that the referee failed to find five additional mitigating factors.

A judgment must be fair to society, fair to the respondent, and severe enough to deter others who may be tempted to become involved in like violations. Spear, 887 So. 2d at 1246, citing The Florida Bar v. Lord, 433 So. 2d 983, 986 (Fla. 1983). Respondent's pattern of misconduct has negatively affected clients, judges, judicial assistants, court deputies, jurors, and opposing counsel. Judge Roberts specifically found that "Ms. Picon's actions embarrass the Court and erode the public's confidence in the judicial branch of justice." (TFB-Ex. 8, p. 3). Thus, the referee's recommendation of a 91 day suspension is appropriate to sufficiently address respondent's misconduct and act as an effective deterrent.

CONCLUSION

Respondent's conduct in this matter is cumulative, and it has caused significant harm to our legal system and to the public. Respondent's conduct must be addressed in order to prevent similar future misconduct by respondent.

WHEREFORE, The Florida Bar submits that this Court should affirm the referee's recommendations of a 91 day suspension and payment of costs.

Patricia Ann Toro Savitz, 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; a copy provided to Jean M. Picon, Respondent, Post Office Box 410004, Melbourne, Florida 32941-0004, via email at jeanlegalmachine@aol.com; and to Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323 at her designated email address of aquintel@floridabar.org, on this 17th day of March, 2016.

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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.

Patricia Ann Toro Savitz, Bar Counsel