IN THE SUPREME COURT OF FLORIDA

Supreme Court Case
No. SC16-1387

The Florida Bar File
No. 2016-10,959(6C)(OSC)

KELLEY ANDREA BOSECKER,

Appellant,

V.

THE FLORIDA BAR,

Appellee,

PETITIONER'S INITIAL BRIEF IN SUPPORT OF PETITION FOR REVIEW OF REPORT OF REFEREE

Dated: October 27, 2017

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INTRODUCTION

Reference to the Record will be referred to by R. and Tab #. Reference to documents on the dockets of SC15-1592 and this case will be referred to by D. and the date of the docket entry. References to the Appendix will be referred to by App. and letter.

References to April 27th-28th Hearing Transcript will be referred to as T. with page and line number.

STATEMENT OF THE FACTS AND THE CASE

This case was initiated by The Florida Bar (hereinafter "Bar" or "Petitioner") on August 1, 2016 (See Petition, D. August 1, 2016) through the filing of a Petition for Contempt and Order to Show Cause as to Respondent's alleged violations of a suspension imposed by this Court in Case SC15-1592 (See Order dated May 5, 2016, R. Tab 1) pursuant to the Conditional Guilty Plea/Consent Judgment agreed to by Respondent (See Guilty Plea Consent Judgment, D. 15-1592, April 14, 2016).

Respondent filed a Notice of Filing of Affidavits of Emmanuel Rucker and Lloyd Hodge and her Response to the Petition with this Court on September 7, 2016. (R. Tab 7 and Tab 8, September 7, 2016).

On April 27 and 28, 2017, a hearing ("Hearing") was held on Petitioner's Petition before Judge Martha Cook, the Referee appointed by this Court to hear the case.

On May 5, 2017, Petitioner filed it Memorandum of Law for Sanctions and its Closing Argument (R. Tab 38 and Tab 39).

On May 5, 2017, Respondent filed her Closing Argument and Memorandum Concerning Sanctions (R. Tab 41).

On May 5, 2017, Respondent filed her Motion to Re-Open Evidence to Allow Introduction of Two Mitigation Exhibits (R. Tab 40).

On May 5, 2017, Petitioner filed its Objection to Respondent's Motion to Re-Open Evidence to Allow Introduction of Two Mitigation Exhibits (R. Tab 42).

On May 10, 2017, Petitioner filed its Response to Respondent's Closing Argument and Memorandum Concerning Sanctions (R. Tab 43).

On May 10, 2017, Respondent filed her Response to Petitioner's Memorandum of Law for Sanctions (R. Tab 44) and her Corrected Response to Petitioner's Memorandum of Law for Sanctions. (R. Tab 45).

On May 17, 2017, Referee entered an Order denying Respondent's Motion to Re-Open Evidence to Allow Introduction of Two Exhibits (R. Tab 47).

On May 18, 2017, Respondent filed her Motion to Consider Letter to Referee (R. Tab 48).

On May 19, 2017, Petitioner filed its Motion to Strike Respondent's Motion to Consider Letter to Referee (R. Tab 49).

On May 19, 2017, Referee entered her Order granting Petitioner's Motion to Strike Respondent's Motion to Consider Letter to Referee (R. Tab 50).

On May 25, 2017, Judge Cook filed her Report and Index of Record, Certification of Record and Index, Trial Exhibits and Other Miscellaneous Pleadings (R. Tab 51 and Tab 52 May 25, 2017). The Report found Respondent in contempt of this Court's Suspension Order and adopted the Petitioner's recommendation tof disbarment.

On July 24, 2017, Respondent filed her Notice of Intent to Seek Review of Referee's Report with this Court. (D. July 24, 2017).

SUMMARY OF ARGUMENT

The sole reason for this appeal is that Respondent asserts that disbarment is an inappropriate sanction for Respondent's mistakes.

As indicated in Respondent's Notice of Intent to Seek Review of Referee's Report, Respondent asserts that the Referee erred as to a number of the determinations contained in her Report, and specifically: in determining that Respondent intentionally violated this Court's suspension order; that Respondent held herself out as an attorney during the suspension period; that Respondent practiced law during the suspension period; that Respondent engaged in conduct

involving dishonesty, fraud, deceit or misrepresentation; that Respondent's conduct caused injury to the legal system and her clients; that Respondent intentionally deceived clients and engaged in conduct with the intent to benefit Respondent; that Respondent failed to acknowledge any fault in her conduct and is not remorseful; that there were no mitigating factors to justify a reduction of discipline in this case; that Respondent's conduct was deliberate and that Respondent had a dishonest or selfish motive; that Respondent doesn't have the reputation or character that is expected of members of The Bar; the determination that Respondent's emails and other communications on behalf of Attorneys Andrea Roebuck and Ann Pellegrino and emails regarding the Reed loan modification constituted the practice of law; that Respondent did not make a timely effort to rectify her errors; and finally, that disbarment is an appropriate sanction for Respondent's errors.

Respondent asserts that there were mitigating factors that should have applied in determining the appropriate sanction imposed against Respondent. Respondent has been an attorney for thirty-three (33) years and did not have any complaints to the Bar for the first twenty-nine (29) years of practice. Respondent did fully cooperate with the Bar in this case (and the prior case 15-1592) including agreeing to depositions (R. Tab 21) and providing all information requested by Petitioner to

Petitioner. Respondent did not have dishonest or selfish motives and is remorseful about her mistakes.

Petitioner submitted information to the Referee with respect to Respondent's alleged violations of the suspension in the Mealy and Betty Read case with respect to a loan modification application after the Petition for Contempt was filed and the Petition was never amended to include the claims. Respondent attempted to submit a letter from Mr. Reed as additional evidence for Respondent to the Court but the Petitioner opposed and the letter was not accepted as evidence by the Referee. Since Petitioner was permitted to make arguments not pled, Respondent was entitled to produce evidence to rebut those claims.

Petitioner also presented Attorney Julie Anthousis as a witness at the Hearing as to these issues. (See Transcript) Respondent asserts that it was improper for the Referee to consider the claims as to the Reed case because the claims were not included as part of the Petition and by considering the claims, Respondent was prejudiced by not being able to respond to the claims or to introduce evidence to dispute the claims. The Referee considered a claim a claim not properly pled. In addition, Respondent asserts that work as to a loan modification is not the practice of law.

A number of Respondent's clients prepared letters to the Bar supporting Respondent. (See Letters, R. Tab 22). The letters should have been considered by

the Referee as mitigation in determining the appropriate sanction. Respondent has only had one complaint to the Bar by a client in thirty-three (33) years. Respondent sent Respondent's Motion to Re-Open Evidence to Allow Introduction of Two Mitigation Exhibits to the Referee on May 5, 2017 requesting that two (2) additional client letters that were received by Respondent after the April hearing be considered as mitigation by the Referee (R. Tab 40). The Referee denied the Motion. (R. Tab 47). Petitioner would not have been prejudiced by the admission of the letters. Respondent asserts that it was an abuse of the Referee's discretion to deny the admission of the letters and in not considering the letters and the lack of client complaints as a factor of mitigation in determining the appropriate sanction.

All actions taken by Respondent were truly solely to make sure that all clients' pending matters were appropriately handled and that no deadlines were missed during the suspension period.

Respondent also asserts that the Referee's Report recommends a sanction which denies Respondent equal protection under the law because Respondent as a suspended attorney should not be prevented from performing activities typically performed by a legal assistant, including having contact with clients.

For all these reasons, Respondent asserts that disbarment is too severe of a penalty for the mistakes of Respondent and requests that this Court not accept the Recommendation of the Referee as to the appropriate sanction and impose a

sanction for Respondent to redo the forty-five (45) day suspension or impose a sanction of not more than a ninety (90) non-rehabilitative suspension.

ARGUMENT

I. WHETHER THE REFEREE ERRED BY DETERMINING THAT RESPONDENT VIOLATED A NUMBER OF ETHICAL RULES

Respondent admits that she made mistakes in the administration of her suspension but asserts that the "punishment doesn't fit the crime". Respondent asserts that she did not intentionally violate this Court's suspension order. Respondent did her best to wind down her practice as required by the Rules Regulating the Florida Bar ("Rules") and protect her clients' interests.

Respondent understands that both the initial Complaint by Petitioner in SC15-1592 and the Petition for Contempt and Order to Show Cause were initiated by the Clerk of Court for the 5th DCA at the request of Judge Vincent Torpy. In the SC 15-1592 case, the 5th DCA Clerk sent two (2) opinions of the 5th DCA as to dismissals of quiet title cases of Respondent's clients that had been affirmed by the 5th DCA to The Bar. In July of 2016, the 5th DCA Clerk sent a letter to Petitioner stating that Respondent's client Erica Deparedes had filed a Motion for Extension to File Reply Brief that looked substantially similar to documents filed by Respondent. Erica Deparedes testified at the Hearing that Respondent didn't prepare or file the document. In addition, information provided by Petitioner to

the Referee at the Hearing based on contact to the 5th DCA Clerk confirmed that the Motion for Extension was filed by Deparedes and not Respondent.

Judge Torpy also testified at the Hearing .). Judge Torpy stated that Ms. Bosecker was dilatory and frequently requested extensions. As this Court well knows, requests for extensions of time to file briefs in appellate cases are frequently filed in appeals – it is common practice.

Respondent is very distraught that Judge Torpy has such a negative opinion of Respondent. Respondent can only speculate that the reason is that since 2012, Respondent has consistently had at least twenty five (25) ongoing appeals with the 5th DCA. (See App. A). Respondent has prevailed in three (3) appeals to the 5th DCA in the last year- see Hall v. ALS-RVS LLC Case No. 5D15-765 (October 2016), 998 SW 144th v. Lovejoy et.al., 5D15-2185 (April 2017) and Kumar v. US. Bank 5D16-2889 (August 2017

Respondent admits that suspension notices were not sent prior to the start of the suspension as Respondent now understands is required by the applicable Rules . Petitioner did not advise Respondent that the suspension notices had to be sent prior to the start of the suspension. (See Letter from Petitioner to Respondent dated May 6, 2016, App. B; letter was provided to the Referee at the Hearing)

Respondent understood that the notices had to be sent by the time Respondent was required to provide the Affidavit of provision of the notices to this Court. (See Respondent's Affidavit attached to Petitioner's Petition R. Tab 1)

Respondent did send at least two notices to clients after she filed her Affidavit with this Court as to the provision of the notices. Respondent admits that she made a mistake in not filing an Amended Affidavit with this Court regarding the late notices and admitted this at the Hearing.

The situation in the Hodge case was particularly critical at the time of the suspension. Lloyd Hodge is an extremely disabled individual. The trial Court denied an agreed Motion to Cancel Sale based on a pending loan modification and a Writ of Possession was entered against the Hodges. Respondent prepared an Emergency Motion to Stay Writ prior to the suspension and Atty. Ann Pellegrino agreed to take on the case. Respondent had been attempting to get a hearing ser on the Emergency Motion prior to the suspension but had not had a response for the JA. Although Ms. Pellegrino had not yet appeared in the Hodge case, she and Respondent discussed the case and Pellegrino asked Respondent to continue to get a hearing time.

Respondent notified all her clients by telephone or email of the suspension prior to the start of the suspension on May 27, 2016. In all communications with clients, counsel and other parties after the date of the suspension, the first sentence

out of Respondent's mouth or in the email was "I am currently suspended by The Bar." (See email exhibits attached to Petition R. Tab 1) The only communications Respondent had with the Court and opposing counsel during the suspension period were as to matters that do not constitute the practice of law- requests for hearing times and or requests for extensions of times for filings.

Attorneys Andrea Roebuck and Ann Pellegrino agreed to take on some of Respondent cases to assist the clients during the suspension period. As indicated by Attorney Roebuck's and Attorney Pellegrino's testimony at the April 2017 hearing and the Affidavits signed by them (Respondent's Hearing Exhibits A and E, R. Tab 37), they acknowledged that Respondent made arrangements with them prior to the suspension for them to take on certain cases and Respondent did get permission from them to contact the Courts and counsel regarding hearing times and extension requests. Roebuck and Pellegrino ideally should have filed appearances in the cases they took on before the suspension started, but they didn't.

In addition, in at least one conversation with a judicial assistant and in one email to a judicial assistant, Respondent did not say she was contacting on behalf of Roebuck or Pellegrino. This was a mistake. However, in these contacts Respondent did not represent to the JA's that she was an attorney. At no time during the suspension did Respondent represent that she was a practicing attorney.

Neither Respondent, Roebuck or Pellegrino, were aware that notices had to be filed with The Bar to report that Respondent was "employed" by Roebuck and Pellegrino during the suspension period. Respondent was not paid by Roebuck or Pellegrino for any work. Respondent provided assistance only to Roebuck and Pellegrino with matters that they took on for Respondent's clients due to the suspension. As soon as Respondent, Roebuck and Pellegrino became aware of the reporting requirements, they immediately filed the required notices with the Bar . In addition, the final quarterly report was filed timely by September 30, 2017 (See see Notices App C).

How does one properly complete a 45 day extension where clients advise that they do not want to retain alternative counsel? Respondent is a sole practitioner with one full time legal assistant and one part time assistant. Respondent has over two hundred (200) clients and worked as hard as she could to make sure that all clients were notified of the suspension and that client matters were attended to prior to the suspension, and to prepare and provide the suspension notices to the best of her ability. Thirty days is a very short time period within which to get this done with the number of clients involved and the small staff to assist.

Respondent did not accept any fees for legal services, provide legal advice or file any documents during the suspension. Respondent asserts that any activities

performed by Respondent during the suspension were activities normally performed by legal assistants and did not constitute the practice of law.

Respondent asserts that the Referee erred in determining that Respondent continued to practice law during the suspension, that Respondent's conduct engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, that Respondent's injury caused injury to the legal system, that Respondent intentionally deceived clients or others and that Respondent does not have the reputation or character that is expected of members of the Bar.

II. Whether the Referee Erred By Making Findings as to a Claim Beyond Those Found on the Face of the Petition for Contempt

At the Hearing, Petitioner presented evidence and testimony from Attorney Julie Anthousis (see Hearing Transcript) regarding the Mealy and Betty Reed loan modification.

It was improper for this claim to be considered and heard because nothing about the Reed case was included in Petitioner's Petition. The applicable law is clear that relief cannot be awarded on a claim not properly pled. See Jeff Ray v. v. Jacobson 566 So.2d 885(Fla. 4th DCA 1990)

In addition, the Referee improperly denied Respondent's request to submit evidence in response to Petitioner's Reed case allegations.

III. WHETHER THE REFEREE ERRED BY GIVING THE EXTREME SANCTION OF DISBARMENT

The disbarment of Respondent is too extreme. Prior to the suspension based on the 2015 Complaint, Respondent had only one other discipline incident.

Respondent's good faith effort to timely notify all of her clients, opposing counsel, and judges of her suspension should distinguish this case from *Florida Bar v. Norkin*, 183 So. 3d 1018 (Fla. 2015). In that case, the Respondent attorney made a conscious decision to not notify the required parties prior to the imposition of discipline upon him because he had a pending motion for rehearing that he hoped would extend that deadline. However, the Court in rejecting that argument, held that "Norkin's argument that his motion for rehearing tolled the time for him to submit the required affidavit is disingenuous and we reject it [because] the Court's opinion clearly required Norkin to comply with Rule 3-5.1(h) . . . [and] also clearly stated that the suspension would be effective thirty days from the date of the opinion, and that the filing of a ***motion for rehearing did not alter the effective date*** of the suspension." *Id*. at 1021 (emphasis added). In the present case Respondent's affidavit was timely filed, with only very small omissions that resulted from a very few cases being overlooked in her very large foreclosure defense practice.

Further, Respondent should not be seriously punished for misconstruing the deadline for providing the notices themselves as the date for the affidavit. Respondent was, at the time of the required notices, unaware of the court's decision in *Norkin* that "the notice requirements must precede the effective date of the suspension." *Id*. It was innocent and reasonable for Respondent to believe that she had until the due date for the affidavit to complete the notices to clients, opposing counsel, and judges. If anything, the technical violation would warrant minor discipline, certainly not a lengthy suspension or disbarment.

Nor is this case similar to other cases in which attorneys are disbarred for being held in contempt for violating suspension orders. In *Florida Bar v. Forrester*, 916 So. 2d 647 (Fla. 2005), the respondent attorney was disbarred for ethical violations including practicing law while under suspension. In that case, instead of associating with other experienced attorneys to take over her cases, the respondent "interviewed and hired . . . a young, inexperienced recent law school graduate who had become licensed to practice [only one month before]," and who essentially handled the substantive legal work. "Essentially, nothing left the office without Forrester's approval." *Id*. at 650. Further, the respondent attorney in *Forrester* was properly disbarred because she had two prior suspensions among other disciplinary actions.

Unlike the final hearing in the present case, in which the Respondent Bosecker presented independent witnesses including her employing attorneys to testify that she did not practice law during the suspension, "[t]he only evidence in the record supporting Forrester's claim that she did not violate the suspension order intentionally is her own testimony," which "[t]he referee heard and rejected." *Id*. at 652. Respondent submits that any violation of Respondent's suspension order could not have been intentional, in light of the testimony from other witnesses that no such violation occurred.

This case is unlike *Florida Bar v. D'Ambrosio*, 25 So. 3d 1209 (Fla. 2009). In that case, "[e]ven though he was suspended, D'Ambrosio continued to engage in the practice of law by providing legal services to [his client] Bolera through the paralegal and writing to California attorney Kurtz [on his attorney letterhead]." *Id*. at 1219. "In addition, D'Ambrosio has a disciplinary history which demonstrates that his conduct is ***not*** improving," including two suspensions: one for ninety days and one for one year. *Id*. at 1220. "During both suspensions, he has engaged in further misconduct." *Id*. That case is not authority for the proposition that Respondent should be disciplined further.

Respondent should not be disbarred for the few minor technical violations of her suspension because the Bar has failed in its burden of establishing a "[c]lear violation of any order or disciplinary status that denies an attorney the license to

practice the law generally," which is the requirement for disbarment in contempt cases. *See Florida Bar v. Brown*, 635 So. 2d 13, 13-14 (Fla. 1994). Further, even if there was such a "clear violation," this case is not appropriate for disbarment because of "strong extenuating factors," recognized in both the *Brown* case and later decisions including *Florida Bar v. Lobasz*, 64 So. 3d 1167 (Fla. 2011). In *Lobasz*, there was a "clear violation" of the suspension order because the respondent, "while suspended, appeared at an immigration hearing on behalf of a former client with the client's new counsel, made legal arguments at immigration hearing, and questioned his former client at the hearing." *Id*. at 1169. The Supreme Court in *Lobasz* found no mitigating factors sufficient to outweigh the aggravating circumstances, and thereby insufficient "extenuating circumstances" to overcome the presumption of disbarment. Notably, the Respondent's disciplinary record in *Lobasz* was much worse than is Respondent's; Lobasz had been suspended for a three year period when he engaged in the unlicensed practice of law during that suspension. Therefore, the present case is distinguishable and any discipline should be much less than disbarment.

Disbarment is not an appropriate sanction in the present case pursuant to standard 8.1 Florida Standards for Imposing Lawyers' Sanctions. Standard 8.1 only provides that "[d]isbarment is appropriate when a lawyer: a) ***intentionally*** violates the terms of a prior disciplinary order and such violation ***causes injury to***

a client, the public, the legal system, or the profession; or b) has been suspended for the same or similar misconduct, and intentionally engages in further similar acts of misconduct" (emphasis added). There was no injury caused by any of the actions of which Respondent has been accused and no showing that her violation (if any) of the prior suspension was done "intentionally." The prior suspension had nothing to do with practicing law during a period of suspension, so subsection (b) is inapplicable.

Disbarment is not appropriate because the aggravating factors under Standard 9.22 have not been sufficiently established, and do not outweigh the mitigating factors. Although there were "prior disciplinary offenses" in Respondent's record, she did not act out of a "dishonest or selfish motive," did not exhibit "a pattern of misconduct," has not been accused of "multiple offenses," and did not behave in such a way as to render applicable other aggravators under that standard.

This Court should not find an aggravating factor under Standard 4.6 "lack of candor." Although Respondent mistakenly stated that she had sent all required notices in her affidavit to the Supreme Court, she was not hiding anything and simply made a mistake. The delay in providing notice to some clients and opposing counsel was not the result of any deception on her part, but merely due to

the staggering number of cases she had to review to identify proper recipients of such notice.

Similarly, Standard 6.1 recognizing disbarment as appropriate when a lawyer intentionally makes a false statement to deceive the court is not applicable. Respondent acted with innocent intent at all times.

The mitigating factors which the Referee should consider far outweigh the single, much smaller, aggravating factor. Specifically, under Standard 9.32(b) the record establishes the "absence of a dishonest or selfish motive." Respondent also provided "full and free disclosure to disciplinary board or cooperative attitude toward proceedings" to satisfy Standard 9.32(e).

Several of Respondent's witnesses testified in mitigation (and she produced numerous letters which were received in evidence) to establish her outstanding "character or reputation," to the Referee under Standard 9.32(g). In addition, at the final hearing, Respondent displayed significant "remorse" to satisfy Standard 9.32(l). (T. p. 496 Lines 12-13)

A REASONABLE SUSPENSION SUPPORTS THREE GOALS OF ATTORNEY DISCIPLINE

The first case cited by the Bar in support of its recommended sanctions is *The Florida Bar v. Lord*, 433 So. 2d 983 (Fla. 1983). The *Lord* case identified the

three purposes of attorney discipline that should be considered in determining the imposition of discipline.

The first of those purposes identified by the *Lord* case is "fairness to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer." That objective greatly supports the Respondent's position that she should not be disbarred or suffer a lengthy suspension. All of the letters from clients and other members of the legal community demonstrate that Respondent is providing a needed service to a very large client base that is difficult to find: defense of mortgage foreclosure cases for very low pay against very well-financed banks prosecuting these cases with highly paid corporate litigators. Foreclosure defense is not a type of practice that has a great deal of attorney interest, and clients who are losing their homes to foreclosure need a fair opportunity to retain dedicated counsel like Respondent to preserve their property rights.

By removing from the practice of law for an extended period of time any attorney who is willing to stand up to predatory lenders who take advantage of unsophisticated homeowners would not be in keeping with the objective of "fairness to society." There was no harm to the public from the alleged conduct of Respondent, so there is no need to balance the fairness to society element with a need for "protecting the public from unethical conduct."

The second purpose of attorney discipline is "fairness to the respondent," by imposing discipline sufficient to punish, while encouraging reformation and rehabilitation. This purpose certainly does not support a lengthy suspension or disbarment in this case. Respondent already has been punished for the alleged breach of ethics by defending these difficult proceedings, and the Referee should have recognized that there is no need for a lengthy suspension in order for Respondent to reform and rehabilitate herself in order to continue providing services to the public.

The third purpose recognized by the *Lord* court, deterrence, will be satisfied by a suspension of 90 days. The Court should be mindful of the fact that the only category of attorneys to be deterred by imposition of sanctions of Respondent is the category of lawyers who are already serving suspensions. Disbarment of Respondent certainly would not deter attorneys from other sorts of conduct, such as trust account violations, neglect of legal duties, and so forth. Therefore, because the category of attorneys to be deterred are those who already are experiencing suspension, their familiarity with the disciplinary process and experience with the hardships of prior suspension does not require a severe punishment to this Respondent to deter them.

FLORIDA STANDARDS FOR IMPOSING LAWYER SANCTIONS

A. Standard 3.0:

This Standard does not warrant the imposition of severe sanctions such as disbarment. The duty allegedly violated was the duty to recognize a very fine line between legitimate activities as a non-lawyer legal assistant from those activities which constitute the practice of law if performed in a slightly different manner. The duty was not one with clear demarcations.

Standard 3.0(b), the "lawyer's mental state," does not apply only to the situation when a lawyer is "suffering from any mental or emotional impairment" as argued by the Bar in its Memorandum of Law for Sanctions (R. Tab 43). Respondent's "mental state" in connection with the activities alleged herein was that of a dedicated servant to her clients and the legal system who only wanted to do what was right for everyone. Respondent did not have an evil mental state and did not know what she was doing was impermissible.

Subsection (c) of Standard 3.0—the potential or actual injury caused by the lawyer's misconduct—is inapplicable. Respondent caused no harm to anyone whatsoever. None of the Bar's witnesses could identify a single act or omission that led to any detriment to a client, or to the judicial system. Therefore, disbarment is not supported by this standard.

B. Bar Failed to Demonstrate Lack of Candor:

The Bar's Sanctions Memorandum quotes Standard 4.6 in its argument for disbarment, but fails to offer any evidence that would satisfy the definition of "Lack of Candor" under that Standard. That definition limits applicability of the lack of candor standard to situations involving deception of a "client." Therefore, the alleged deception of the Supreme Court in Respondent's motion seeking additional time to provide her affidavit and alleged failure to timely notify other courts and opposing counsel does not count toward this standard.

The only alleged lack of candor to clients was in failure to notify them about her suspension until a short time following the commencement of that suspension. However, any such failure does not satisfy the definition of lack of candor for two reasons. First, any such failure to timely notify a client was not done "knowingly or intentionally." The record is clear that Respondent did the best she could in good faith to notify all of her clients, and only missed a couple of notifications when her filing system did not yield their identities immediately.

Finally, there is absolutely no evidence of the final element of Standard 4.6: "the intent to benefit the lawyer or another." Respondent had no intent to benefit herself or anyone else by failure to provide prompt notification in all of her cases. Any misunderstanding about her status as a suspended lawyer was purely the product of an innocent oversight, not lack of candor. This Court should look to the analogous body of law in JQC proceedings for the appropriate definition of lack of

candor. In *In Re Davy*, 645 So. 2d 398 (Fla. 1994), a case involving a recommendation of the Judicial Qualifications Commission to remove a judge from office, the court rejected the JQC recommendation of removal from office, holding in part that the JQC had failed to establish the elements of "lack of candor." The court noted that the JQC failed to properly allege lack of candor, and stated that "finally, the lack of candor must be knowing and willful." *Id*. at 406. The court imposed only a public reprimand, notwithstanding testimony which had been given by the Respondent judge which was found to be have been "not to be worthy of belief," but not shown to have been deliberately false. Likewise, in the present case, this standard does not support disbarment.

C. Standard 6.1 Not Established by Bar:

Standard 6.1 is inapplicable for a variety of reasons. To begin with, the record compels the conclusion that Respondent's mistaken statement concerning notification to clients was not made "with the intent to deceive the courts." Second, those statements were not shown to have been "knowingly" false. Third, any such misstatement that was made was not shown to have caused "serious or potentially serious injury to a party" or to cause "a significant or potentially significant adverse effect on the legal proceeding." There was absolutely no injury to any party from the actions of Respondent in this matter and no adverse effect on any legal proceedings from her actions.

D. Standard 9.22(a) Prior Disciplinary Offenses:

This Court should not treat Respondent's prior disciplinary record as an aggravating factor to enhance discipline in the present case. To begin with, it would be double-dipping for the Bar to utilize Respondent's 2016 suspension as an aggravating factor, because this case is based solely on her alleged violation of that suspension by practicing law. Because the prior suspension is an essential element of her current contempt proceeding, the fact of that suspension should not also be utilized to enhance the punishment found from a violation of the prior suspension order.

Further, the mere fact that an attorney has a prior disciplinary suspension on his or her record as an aggravating factor does not compel the conclusion that disbarment is appropriate. In *Florida Bar v. Ross*, 140 So. 3d 518 (Fla. 2014), although disapproving of the referee's recommended sanction of a six-month suspension based in part upon the aggravating factor of a prior 30-day suspension, the Supreme Court did not disbar the attorney but imposed instead a longer period of suspension. Other cases involving discipline less than disbarment where a prior disciplinary suspension was of record includes *Florida Bar v. Walkden*, 950 So. 2d 407 (Fla. 2007). The court in the *Walkden* case disbarred the attorney, but noted: "This is the second time Walkden has come before the Court on contempt charges for continuing to practice law while suspended. The first time, the Court

suspended him for an additional year." *Id*. at 411. In *Florida Bar v. Nowacki*, 697 So. 2d 828 (Fla. 1997), the Court noted that the respondent had a prior disciplinary record that acted as an aggravating factor and characterized the case as one which "involves a persistent pattern of client negligent and mismanagement by the respondent." *Id*. at 833. However, the Court in disciplining the attorney accepted the referee's report recommending a ninety-one day suspension for the subsequent violation. Likewise, in the present case, disbarment is not appropriate even if the prior suspension is considered as an aggravating factor.

This Court should not consider Respondent's prior admonishment by the grievance committee as an aggravator sufficient to enhance discipline beyond a reasonable suspension. That admonishment was for unrelated actions of a very minor nature and Respondent was previously subjected to enhanced sanctions by the admonishment being considered as an aggravator in connection with the 45-day suspension which allegedly was violated in the present case.

E. Standard 9.22(b) Dishonest or Selfish Motive:

The Bar demonstrates a misunderstanding of 9.22(b) by alleging that the standard was satisfied by a showing that Respondent incorrectly stated in a motion filed before the Supreme Court that she had provided all required notifications to clients, opposing counsel, and courts. Although Respondent has clearly established that her misstatement was innocent and as a result of her very large

client base, even assuming that her misstatement was made with knowledge of its falsity, that does not establish a "dishonest or selfish ***motive***," for making the statement. It is not the fact of making a false statement that satisfies this aggravating factor, but an analysis of the reason underlying the false statement: "the respondent's ***motive***."

There is absolutely no evidence in the record (much less clear and convincing evidence) that Respondent was acting out of selfishness or any other self interest in mistakenly advising the Court that all clients had been timely notified. Therefore, this aggravating factor should not be considered in recommending discipline for any violation found by the Referee.

F. Standard 9.22(d) Multiple Offenses:

This aggravator is inapplicable to Respondent. She was charged with only a single offense: violating her prior disciplinary suspension order. The particular activities which the Bar claims establish that single offense should not be double counted: once to establish an intentional violation of the suspension order and again as an aggravator to enhance the penalty therefor.

G. Standard 9.22(g) Refusal to Acknowledge Wrongful Nature of Conduct:

Respondent strongly disagrees that she refused to acknowledge the wrongful nature of her conduct in this case. She testified convincingly at the Hearing that she took action that she should have avoided. Respondent simply has

taken the position that she did not intentionally violate her suspension order because—at the time of the actions complained of—she believed that she was timely complying with the Court's Order suspension Order and engaging in permitted activities. By the time of the trial of this action, she knew that she should not have crossed the line by sending emails to clients in an effort to assist them while they were unrepresented.

H. Standard 9.22(i) Substantial Experience in the Practice of Law:

Although Respondent has been practicing law for more than thirty years, this standard should not act as an aggravator because she has much less experience as a litigator representing individuals in court proceedings. As noted by The Florida Bar, "[s]he spent the majority of her time as a tax attorney, mostly at a large firm." That type of experience does not translate into great awareness of the limitations upon suspended attorneys in litigation matters representing individuals.

MITIGATION UNDER STANDARD 9.3

This Court should find that the mitigating factors established by the evidence outweigh the aggravating factors warranting light discipline, if any.

I. Standard 9.32(e) Full and Free Disclosure/Cooperative Attitude:

The Referee should reject the Bar's argument that Respondent did not satisfy the standard of *The Florida Bar v. Herman*, 8 So. 3d 1100 (Fla. 2009), because her cooperation with the disciplinary proceedings did not go "above and beyond the

normal cooperation expected of every member of the Bar." *See id.* at 1107. Respondent certainly did exceed that level in both of The Bar cases. Respondent did not object to any discovery taken by the Bar, require foundational witnesses for documents introduced into evidence, or otherwise go through the normal procedures of requiring the moving party to establish every element of its case. Instead, Respondent waived objections to discovery and evidence and proceeded openly through the proceedings. She cooperated in every respect, more so than would be an ordinary litigant in a Bar proceeding.

J. Standard 9.210(g) Character or Reputation:

Each of the witnesses called by Respondent attested to her reputation in the legal community and with her clients, and her good character as a zealous advocate for distressed homeowners. Those witnesses included people from various walks of life such as Mark Davis, a realtor; Howard Hayes, a mortgage broker; Respondent's client Erika Deparedes; and attorneys Ann Pellegrino and Andrea Roebuck.

Respondent's numerous letters from clients and others satisfying this mitigation factor include Exhibit H, a letter from Andrew Bernstein, which noted in pertinent part: "Not only do I find Respondent's acumen more than professional, but I feel that important to point out that Respondent has always treated me with complete respect, has always been forthright in our discussions, and has always

made sure to include ***integrity as an underlying factor*** when making decisions." (Emphasis added).

Respondent's Exhibit I is a letter from attorney John G. Pierce. Mr. Pierce, a member of the Florida Bar for more than fifty years who has been recognized as an outstanding attorney, also characterized Respondent as "an outstanding attorney here in Florida . . . [who] has made herself available to both [him] and to the client on a continuous basis for a period of several years." He said that she is "one of the best practicing attorneys [he] have come to know in [his] more than fifty years practicing as a member of The Florida Bar."

Exhibit J, a letter from Linda Nash, says a lot of good things about Respondent, including information about her reputation and character: "Being an honest lawyer in the eyes of the public, is not an easy reputation to acquire. However, Kelley ***has achieved that*** and so much more. She has won the trust and devotion of her clients and the respect of her piers [sic] for over 30 years." (Emphasis added).

Exhibit K is a letter attesting to Respondent's character and reputation from Madra Christian. She states in pertinent part that she has "found [Respondent] to have the most amazing character qualities: honesty, compassion, empathy for her clients, and a great working knowledge of the law. She cares about her clients and always goes the extra mile for them."

A letter from Malcolm Chisolm, in evidence as Exhibit N, establishes that Respondent is of fine character in that she had considered and rejected legal arguments and theories suggested by Mr. Chisolm in which "the end result would simply be expense for [him] and a waste of time for the courts." Mr. Chisolm found that "Respondent has been fully professional in her many interactions" with him, as well as in "her interactions with opposing counsel and appearances in court."

Respondent's good character has been reflected by her working with distressed homeowners to put them on low payment plans they can afford to fight the big banks. Former client James Trow, himself a real estate specialist, wrote in Exhibit O that Respondent is different from other foreclosure defense attorneys, in that she did not make promises she could not keep. While being "very sympathetic toward the homeowners," she had the character to "set up a small monthly payment plan so they could have proper representation."

The Bar attempts to argue that Respondent's evidence concerning her good character was presented in part through the testimony of witnesses who may not have been aware of the full scope of the allegations against her. However, Respondent's character and reputation exist independently of the allegations against her in this case, and there is no evidence that the opinions about any of Respondent's witnesses would be changed as a result of those witnesses'

knowledge of the claims made by the Bar in this case. This mitigating factor was amply established.

K. Standard 9.32(l) Remorse:

Respondent broke down crying at the final hearing when asked to testify whether she held remorse for her behavior which led to these proceedings. She sincerely and genuinely expressed grave regret for her actions and this important mitigation factor should be found.

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All of the mitigators in combination outweigh the aggravating factors, so any punishment should not exceed a reasonable suspension.

IV. WHETHER RESPONDENT PRACTICED LAW DURING THE SUSPENSION

Respondent asserts that the activities she engaged in during the suspension period did not constitute the practice of law. As indicated by the Record, Respondent did emails and made phone calls to request extensions for filings and to request hearing times. These are functions regularly performed by legal assistants/paralegals. Respondent did not represent that she was an attorney during the suspension. Respondent did contact Erica Deparedes by phone during the suspension to advise her that a Reply Brief had been filed and that a response was

due June 27, 2017. Respondent advised Deparedes that she was suspended and that Deparedes should retain an attorney to handle the Reply Brief. Respondent contacted Deparedes so that at an important deadline would not be missed and to protect Deparedes' best interest. Respondent advised that she was suspended. How can this be improper given an attorney's responsibilities under the Rules?

The Bar did not present any evidence that would constitute the unauthorized practice of law during Respondent's suspension. She did not provide legal advice to any clients, file any papers in any pending cases, assist clients with the preparation of any legal documents, or otherwise violate the terms of her suspension. Any technical deviation in the form or timing of the notices of Respondent's suspension to courts, opposing counsel, and clients, was unintentional and harmless. Throughout the course of the proceedings The Bar has failed to adduce any evidence of any harm to any client from the alleged violations, much less any harm from her actions during her suspension.

To begin with, The Florida Bar attempted to establish during the Hearing that Respondent violated Bar rules by failing to properly notify the Bar that she was employed during her suspension period. However, the Court should ignore any such allegation because it was improperly raised for the first time at the final hearing, and was not contained in the Bar's Petition. The Bar knew about

Respondent performing unpaid work for other attorneys for several months, but never attempted to amend its Petition to allege such a violation.

The first case in which Respondent has been accused of practicing law during her suspension is *U.S. Bank Nat'l Ass'n. v. Rucker*. Nothing was filed by or on behalf of Rucker during Respondent's suspension period, and the only action taken by the Plaintiff bank during that time involved substitution of counsel. The first line of Respomdent's email requesting an extension to file an amended counterclaim was " I am currently suspended from The Bar. (Exhibit 11 to Petition, Tab 1)

The Bar relied upon language in the notice letter sent to Rucker stating that Respondent "will monitor your cases during the suspension period," as circumstantial evidence that Respondent in fact had engaged in impermissible activities during that suspension. However, the only evidence in the record is the unimpeached testimony of Respondent that she did not monitor the *Rucker* case during her suspension, did not contact her clients during that period, and did not take any other action that would constitute the practice of law.

The fact that Respondent filed her notice of appearance immediately before her suspension began, as well as a notice of unavailability that did not reference her suspension, do not constitute violations of the suspension order and do not, without more evidence presented by The Bar, establish any sanctionable

misconduct. *See* Mr. Rucker's notarized affidavit filed with Respondent's Response to the Bar's Petition (R. Tab 7) Although Respondent should have handled those matters differently, those actions do not warrant the imposition of discipline.

The second case in which Respondent is accused of violating the suspension order is *Bank of New York Mellon v. Hodge*. In that case, the Defendants/Appellants filed in the trial court a pro se Emergency Motion to Stay Application for Writ of Possession on June 1, 2016, reflecting that the filing was done pro se "due to the temporary suspension of their attorney from The Bar." Thus, that filing demonstrates that Respondent's clients had been notified of her suspension. When that motion was denied, Mr. Hodge filed a pro se Emergency Motion to Stay Application for Writ of Possession with the trial court on June 2, 2016. There is no evidence that Respondent assisted the Hodges with those filings or communicated with the clients during the suspension period.

Attorney Ann Pellegrino had, prior to the suspension commencing, agreed to appear in the case and represent the Hodges during Respondent's suspension. Mr. Pellegrino on June 8, 2016 filed her notice of appearance and supervised Respondent in performing clerical and administrative tasks. She stated that had authorized Respondent to contact the JA for a hearing time prior to the filing of her Notice of Appearance. (T. p.389, Lines 8-17) Respondent's email contact with

the court's judicial assistant in an effort to schedule a hearing constituted non-lawyer activity properly performed under the supervision of counsel of record, not the improper practice of law.

When Judge Minkoff testified about the case, he did not state that he received Respondent's suspension notice late. (T. p. 195, Lines 16-18 and T. p. 198, Lines 16-18) Thus, the Court could not have construed Respondent's actions as practicing law because it was on notice that she was suspended.

The third case that forms the basis of the Bar's Petition is *JP Morgan Chase Bank, N.A. v. Investor Trustee Services, LLC*. In that case The Bar accuses Respondent of having contacted judicial assistant Linda Holm by email and voicemail requesting hearing times on behalf of the defendant. Ms. Holm did not testify that Respondent represented herself as an attorney. (T. p. 297, Lines 17-21, and T. p. 298, Lines 10-13)

Further, the record is clear that Ms. Pellegrino had directed Respondent to attempt to obtain the hearing dates. Exhibit 22 to Petitioner's Petition (R. Tab 1) is Ms. Pellegrino's email correspondence to Grace Fagan, general counsel for the Fifth Judicial Circuit, confirming that Ms. Pellegrino would be appearing in the case and that Respondent had inquired about scheduling the hearing on Ms. Pellegrino's behalf.

Respondent testified without contradiction that she did not have client contact in that case during the period of her suspension, and that the client was notified on May 10, 2016, before the effective date of this suspension, that Respondent's suspension had been ordered by the court. Therefore, there is nothing about this case that would warrant disciplinary sanctions.

Nor did Respondent behave improperly in connection with the case of *Deparedes v. Green Tree Servicing, LLC*. Although Judge Torpy was suspicious whether Respondent had ghost-written a motion for extension of time to file reply brief in the *Deparedes* case, there was absolutely no evidence presented to support such suspicion. Furthermore, Judge Torpy agreed that his suspicion only was based upon speculation due to similarities between the formatting of the motion and previous filings by Respondent. (T. p. 290, Lines 14-25 and T. p. 291, Lines 1-9) However, Ms. Deparedes provided detailed testimony that the motion for extension had been prepared by Titans Reserve Group, and had been filed pro se by her. (T. p. 318, Lines 20-22, T. p. 320, Lines 1-4) When the Court directed the parties to research the details concerning that filing, the information obtained was that Ms. Deparedes had obtained efiling login credentials as an individual and that she and Titans Reserve had filed the motion, not Respondent.

Further, Attorney Andrea Roebuck was retained by the Appellants in the *Deparedes* case for the purpose of dealing with the filing of the reply brief. Ms.

Roebuck appeared in that case and successfully sought an extension for the reply brief. Any action taken by Respondent once Ms. Roebuck agreed to handle the appeal was taken in a clerical or administrative capacity under Ms. Roebuck's supervision. Therefore, the Petition should be denied insofar as it is based upon the *Deparedes* case.

Nor did The Bar establish any violation of the suspension order in connection with the case of *Investor Trustee Services v. PNC Bank*. That was a case in which attorney Andrea Roebuck appeared on behalf of Respondent's client and handled substantive law matters including reinstatement of the appeal. Respondent did not appear in the case until after the suspension on July 21, 2016. Respondent only acted under Ms. Roebuck's supervision in a paralegal capacity contacting opposing counsel by email to obtain her position regarding a motion to be filed by Ms. Roebuck. There is no evidence that Respondent performed any legal work in connection with the case, had improper client contact, held herself out to be an attorney in good standing, or otherwise violated the suspension order in any way.

One of the allegations in The Bar's Petition is that "The Bar did not receive any notice from Ms. Roebuck pursuant to Rule 3-6.1(c) indicating whether Respondent was employed by Ms. Roebuck during the period of her suspension." Complaint at 10 ¶42. There was testimony at the final hearing that Ms. Roebuck,

as well as the other attorney who "employed" Respondent during her suspension, Ann Pellegrino, were unaware of that requirement under the Rules of Discipline. There was no evidence tending to implicate Respondent in any sort of plan to skirt the notice requirement of the subject rule, so Respondent submits that the allegation and evidence concerning such a rule violation by her employing attorneys should be disregarded by the Referee and should not be taken into consideration in deciding this case.

Respondent did not engage in the practice of law in taking any action with regard to loan modifications. There was no testimony presented that such work constituted the practice of law and testimony presented by the Respondent that non-lawyers properly engage in loan modification activities. (T. p. 382, Lines 23-25, T. p 383, Lines 1-25, T. p. 384, Lines 1-3, T. p. 387, Lines 2-4, T. p. 388, Lines 8-23) It is very common for non-lawyers to assist borrrowers to obtain loan modifications. FS 507.1377 specifically addresses foreclosure rescue consultants who do not have to be attorneys.

Paragraph 44 of the Petition alleges improper client contact during Respondent's suspension. The Bar's position espoused by Bar paralegal employee Melissa Mara—that a suspended lawyer simply answering the telephone in an employing lawyer's firm in a clerical role is a violation of the "direct client contact" rule—should be rejected by the Court. Any contact Respondent may have

had with a client during her suspension was purely a scheduling and administrative matter of the same type that is performed by legal secretaries, paralegals, law students, and other non-lawyers on a regular basis without any unlicensed practice implications.

There was certainly no substantive contact of any nature between Respondent and her clients. She did not provide legal advice, participate in drafting legal documents, or otherwise work with her clients as an attorney during her suspension.

Paragraph 45 of The Bar's Petition alleges that "Respondent engaged in improper and prohibitive [sic] discussions with opposing counsel during her period of suspension." This Court should reject the testimony of The Bar's witness Alicia Whiting-Bozich to the effect that she considered Respondent's emails (Bar Exhibit 12e) to constitute the practice of law. Respondent's email of June 30, 2016 to Ms. Whiting-Bozich and Matthew Flicker commences with the clear disclaimer: "Hi Matt-as I believe you know ***I am suspended from The Bar*** until July 11 and prior to this suspension I filed an extension for providing the requested discovery and filing the amended counterclaim." (Emphasis added). There could be no misunderstanding from that email concerning Respondent's status, and her communication with opposing counsel was only pertaining to a routine administrative matter that legal secretaries and paralegals handle on a routine basis.

With respect to the Reed case, as indicated by the testimony of Respondent and Atty. Pellegrino at the Hearing, it is very common for legal assistants and non-lawyers to perform services for individuals to assist them to attain a loan modification with a lender. Respondent asserts that any assistance she provided to the Reeds during the suspension period was not the practice of law.

V. WHETHER THE REFEREE'S SANCTIONS RECOMMENDATION DENIES RESPONDENT EQUAL PROTECTION OF LAW

The Florida Constitution's Declaration of Rights, section 1, which reads "all men are equal before the law ...," is the source of Florida's equal protection inhibition. Respondent that the Rules applicable to the activities of suspended lawyers and their application in this case violate Respondent's rights to equal protection under the law. The Rules treat suspended attorneys that are working as a legal assistant differently than individuals who are not lawyers and working as legal assistants. If a legal assistant was prohibited from having contact with clients, there usefulness would be substantially limited. Respondent asserts that it is improper for the Rules to treat suspended attorneys differently than non-attorney legal assistants in the regular course of business.

"Although the state has power to regulate the practice of medicine for the benefit of the public health and welfare, this power is not unrestricted. The regulations imposed must be reasonably related to the public health and welfare

amd must not amount to an arbitrary or unreasonable interference with the right to practice one's profession which is a valuable property right protected by the due process clause." State Bd of Medical Examiners v. Rogers, 387 So. 2d 937 (1980), referring to Doe v. Bolton, 410 US 179 (1973 and Dent v. West Virginia, 129 US 114 (1889). This same principle surely applies to the practice of law.

The right to pursue a career has been held to be a liberty interest protected by the Due Process Clause of the Constitution. Therrien v. State, 1D01-3403 (Fla. 1st DCA 2003) citing Meyer v. Nebraska, 262 US 390 (1923), State ex rel. Fulton v. Ives, 167 So. 394 (1936), Cummings v. Missouri, 71 US 277 (1867) and Lane v. Chiles, 698 So. 2d 260 (1997). In the Lane case this Court stated " a state regulation violates a protected liberty interest if it completely interferes with the right to engage in the a lawful occupation." Respondent requests that the Court note that in the Rogers case, infra., this Court states that the law must not result in "an arbitrary or unreasonable intereference". It doesn't say there must be total or complete interference.

In the Thierren case infra., Judge Benton in his dissenting opinion cites the case of Dupuy v. McDonald, 141 F. Supp. 2d 1090 (N. D. I'll. 2001). In Dupuy the Court stated " It is within the power of the Legislature to regulate some occupations and not regulate others, but private rights secured by the Constitution

must not be invaded and the regulations must operate with substantial fairness upon all persons similarly situated."

Respondent asserts that the Rules and the application of the Rules to Respondent in this case by Petitioner and the Referee violate Respondent's rights to equal protection under the law compared to non-lawyer legal assistants. Respondent's activities caused no harm to her clients, the legal system or the public. The effect of the application of the Rules to Respondent resulted in the recommendation of a sanction much to harsh.

VI. WHETHER THE REFEREE ERRED IN DENYING RESPONDENT'S MOTION TO RE-OPEN EVIDENCE TO ALLOW INTRODUCTION OF TWO MITIGATION EXHIBITS

Respondent asserts that the Referee erred in denying Respondent's Motion to Re-Open the Evidence to admit additional client letters. How would the Petitioner be prejudiced by the consideration of the letters?

Unfortunately, as indicated by the tone and contents of the Report, the Respondent believes Referee was biased against Respondent during the entire proceedings. It is apparent that the Referee does not like Respondent and that this dislike affected the Referee's decisions in this case. A Referee should make an unbiased decision based on the application of the applicable law.

CONCLUSION

Respondent requests that this Court reconsider the penalty of disbarment imposed on Respondent by the Referee's Report and impose a lesser sanction. Respondent understands that applicable case precedent of this Court is not to overturn decisions of the referee in these cases if there is a reasonable basis for the decision in the applicable laws. However, Respondent asserts that the penalty is too harsh given the facts and circumstances of this case. Respondent requests that this Court review Respondent's letter to Referee (R. Tab 48) in making its decision in this case.

CERTIFICATE OF SERVICE AND FONT

I HEREBY CERTIFY that true and correct copies of the foregoing has been mailed this 9th day of October, 2017 to Chardean Mavis Hill and Katrina Brown, Esq, Bar Counsel, The Florida Bar, Tampa Branch, 400 George J. Bean Parkway, Suite 2580, Tampa, FL 33607; Adria E. Quintela, Staff Counsel, The Florida Bar, 651 East Jefferson Street Tallahassee, FL 32399-2300.

I FURTHER CERTIFY that this Brief complies with the requirements that will be in force as of October 9, 2017, in that the Font is Times New Roman, 14 Point.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing were served by email upon Chardean Mavis Hill and Katrina Brown, Esq, Bar Counsel, The Florida Bar, Tampa Branch, 400 George J. Bean Parkway, Suite 2580, Tampa, FL 33607, chill@floridabar.org, kschaffhouser@floridabar.org, nstanley@floridabar.org, nchristopherson@floridabar.org, tampaoffice@floridabar.org; Adria E. Quintela, Staff Counsel, The Florida Bar, 651 East Jefferson Street Tallahassee, FL 32399-2300, aquintela@floridabar.org; on October 27, 2017.

/s/Kelley A. Bosecker, Esq.
Kelley A. Bosecker