

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ROBERT JOSEPH RATINER,

Respondent.

Supreme Court Case
No. SC13-539

The Florida Bar File
No. 2012-70,012 (11E)

THE FLORIDA BAR'S INITIAL BRIEF

Tonya L. Avery, Bar Counsel
The Florida Bar - Miami Branch Office
444 Brickell Avenue
Rivergate Plaza, Suite M-100
Miami, Florida 33131-2404
(305) 377-4445
Florida Bar No. 190292
tavery@flabar.org

Adria E. Quintela, Staff Counsel
The Florida Bar
Lakeshore Plaza II, Suite 130
1300 Concord Terrace
Sunrise, Florida 33323
(954) 835-0233
Florida Bar No. 897000
aquintel@flabar.org

John F. Harkness, Jr., Executive Director
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600
Florida Bar No. 123390
jharkness@flabar.org

RECEIVED, 12/29/2016 11:08:26 AM, Clerk, Supreme Court

TABLE OF CONTENTS

TABLE OF CONTENTS ii
TABLE OF CITATIONS iii
PRELIMINARY STATEMENT1
STATEMENT OF THE CASE AND OF THE FACTS.....2
SUMMARY OF ARGUMENT17
ARGUMENT.....18
**DISBARMENT IS THE APPROPRIATE SANCTION
WHERE RESPONDENT HAS REPEATEDLY ENGAGED
IN RUDE, DISRUPTIVE, ANTAGONISTIC, AND
UNPROFESSIONAL BEHAVIOR TOWARDS THE
COURT AND OPPOSING COUNSELS, AND WHERE HE
EXHIBITS NEITHER REMORSE NOR ACCEPTANCE OF
RESPONIBLITY FOR HIS MISCONDUCT.....18**
CONCLUSION.....32
CERTIFICATE OF SERVICE34
**CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-
VIRUS SCAN35**

TABLE OF CITATIONS

Cases

<i>Claire J. Sidran et al., v. DuPont</i> , Case No. 92-18377	4, 5, 13, 15
<i>Code for Resolving Professionalism Complaints</i> , 116 So. 3d 280 (Fla. 2013)	25, 27
<i>Fla. Bar v. Rotstein</i> , 835 So.2d 241, 246 (Fla.2002)	26
<i>Florida Bar v. Pahules</i> , 233 So.2d 130, 131 (Fla.1970)	27
<i>The Florida Bar v. Adler</i> , 126 So.3d 244 (Fla. 2013)	26
<i>The Florida Bar v. Anderson</i> , 538 So.2d 852 (Fla. 1989)	19
<i>The Florida Bar v. Heptner</i> , 887 So.2d 1036, 1045 (Fla. 2004)	26
<i>The Florida Bar v. Norkin</i> , 132 So.3d 77 (Fla. 2014)	25, 27
<i>The Florida Bar v. Norkin</i> , 183 So.3d 1018 (Fla. 2016)	25, 27
<i>The Florida Bar v. O’Connor</i> , 945 So.2d 1113, 1120 (Fla. 2006).....	19
<i>The Florida Bar v. Ratiner</i> , 46 So.3d 35 (Fla. 2010)	27
<i>The Florida Bar v. Robert Ratiner</i> , Supreme Court Case No. SC12-393 ..	2, 3
<i>The Florida Bar v. Shoureas</i> , 892 So.2d 1002 (Fla. 2004)	27
<i>The Florida Bar v. Simring</i> , 612 So.2d 561, 570 (Fla.1993).....	27
<i>The Florida Bar v. Springer</i> , 873 So.2d 317, 324 (Fla. 2004, concurring opinion)	26
<i>The Florida Bar v. Temmer</i> , 753 So.2d 555 (Fla. 1999)	19
<i>The Florida Bar v. Vining</i> , 761 So.2d 1044 (Fla. 2000).....	26
<i>The Florida Bar v. Walkden</i> , 950 So.2d 407, 410 (Fla. 2007)	26
<i>The Florida Bar v. Williams</i> , 604 So.2d 447, 452 (Fla.1992)	27

Rules Regulating The Florida Bar

4-3.5(c)	2, 16
4-8.4(a)	2, 16
4-8.4(d).....	2, 16

Florida Constitution

Art. V. §15, Fla. Const.	19
-------------------------------	----

Florida's Standards for Imposing Lawyers Sanctions

9.22(a) 15, 24
9.22(b) 15
9.22(c) 15, 24
9.22(g) 15, 24
9.22(h) 15
9.22(i) 15, 24
9.32(g) 15

PRELIMINARY STATEMENT

For the purpose of this Brief, Robert Ratiner may be referred to as “Respondent.” The Florida Bar may be referred to as “The Florida Bar” or the “Bar.” The referee may be referred to as the “Referee.” Additionally, the Rules Regulating The Florida Bar may be referred to as the “Rules” and the Florida Standards for Imposing Lawyer Sanctions may be referred to as the “Standards.”

References to the Final Report of Referee will be by the symbol “ROR” followed by the corresponding page numbers(s). References to the transcript of the final hearing held on August 25, 2016, August 26, 2016, and August 29, 2016 will be by the symbol “TR” followed by the corresponding page number(s). The parties were further convened on September 23, 2016. Reference to this transcript will be set forth as “TR” 9/23/2016 followed by the corresponding page number(s). References to the hearing transcript of Respondent’s Motion for Rehearing held on October 4, 2016, will be set forth as “TR” 10/4/2016 followed by the corresponding page number.

References to The Florida Bar’s Exhibits will be designated “TFB Ex” followed by the corresponding exhibit number. Reference to Respondent’s Exhibits will be designated by “Resp Ex” followed by the corresponding exhibit number.

STATEMENT OF THE CASE AND OF THE FACTS

The Florida Bar seeks review of the disciplinary sanction set forth in the Report of Referee recommending Respondent's suspension for a period of three (3) years, to run consecutively to the three (3) year suspension he is currently serving as a result of his conviction in *The Florida Bar v. Robert Ratiner*, Supreme Court Case No. SC12-393. (TFB. Ex. 10)

On March 23, 2013, The Florida Bar filed its formal complaint against Respondent, alleging his violation of Rule 4-3.5(c) (A lawyer shall not engage in conduct intended to disrupt a tribunal); Rule 4-8.4(a) (A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); and Rule 4-8.4(d) (A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic) of the Rules Regulating The Florida Bar.

The matter was referred to the Eleventh Judicial Circuit for appointment of a referee and the Honorable Thomas J. Rebull was appointed on June 11, 2013.

Procedurally most relevant, Respondent filed a Motion for Stay and For an Extension of time with this Court on September 21, 2013. Said motion was predicated upon Respondent's contention that discovery in the instant disciplinary proceeding could be detrimental to his clients in the civil proceeding underlying the disciplinary action. On October 24, 2013, this Court directed Judge Rebull to consider the issue and provide a recommendation. Following an evidentiary hearing, Judge Rebull concluded that the Bar's disciplinary proceedings would not negatively impact Respondent's ability to represent his client nor would it harm the client; however, the Referee did nonetheless recommend a stay pending final disposition of an earlier case then pending before this Court, to wit: *The Florida Bar v. Robert Joseph Ratiner*, Supreme Court Case No. SC12-393. On January 28, 2014, this Court agreed and entered an Order approving the Referee's recommendation of a stay.

Subsequently, on September 2, 2015, this Honorable Court entered its final disposition Order in Supreme Court Case No. SC12-393, effectively lifting the stay in the instant matter. Thereafter, on October 24, 2015, Respondent filed a Renewed Verified Motion for Disqualification of Judge Rebull which was granted

on November 3, 2015. On November 10, 2015, the Honorable Jorge Rodriguez-Chomat was appointed as referee to preside over the instant disciplinary proceedings.

The following evidence was presented at the Final Hearing in this Cause:

The current disciplinary proceedings against Respondent arose out of an underlying civil case wherein Respondent represented the plaintiff against E.I. Dupont Nemours & Co., Inc., (“*Sidran*”).¹ (TR at 51, 95-96, 177, ROR at unnumbered pages 5 -7). The Honorable Amy Steele Donner was the presiding judge in the *Sidran* matter. (TR at 51, 178, ROR at unnumbered page 6). Respondent’s opposing counsel was Andrew Brenner who served as lead counsel for DuPont. (TR at 175, ROR at unnumbered pages 5, 7).

For over twenty years, Lea Souza-Rasile, an attorney who at the time worked for Shook, Hardy, and Bacon, worked on the Dupont case doing discovery and conducting depositions of expert witnesses. (TR at 47, 50, 63-64).

The Honorable Jacqueline Hogan Scola an Eleventh Judicial Circuit Court Judge in Miami Dade County, Florida was also present at a hearing in the *Sidran* case at which alleged misconduct occurred. Judge Hogan Scola was there as an

¹ *Claire J. Sidran et al., v. DuPont*, Case No. 92-18377.

observer in anticipation of taking over Judge Donner's division at some point in the future. (TR at 18, 291, ROR at unnumbered page 4).

At final hearing in this cause, the Referee heard testimony from both Judge Donner and Judge Hogan Scola, Ms. Souza-Rasile, Mr. Brenner, and Respondent.

Throughout various stages of the *Sidran* proceedings, Respondent displayed rude, outrageous, disruptive, antagonistic, and unprofessional behavior which formed the basis of the Bar's complaint. (TFB Ex 1 at 886-887, 993-995, 997-998, TFB Ex 2 at 3411-3412, 3415, TR at 135, 145, ROR at unnumbered pages 5 - 8, 10). For instance, during closing arguments, a side bar took place during which the following exchanged occurred:

The Court: Mr. Ratiner, you need to obey orders of the court. This has been unbelievable. No matter what order I give to you, Mr. Ratiner, you have violated it.

Mr. Ratiner: And if you ordered me to jump five feet high, I will violate that also Judge because I just can't.

The Court: Mr. Ratiner, I am only talking about rules of court. I'm not talking about you doing exercises. You are rude, and I am sending you to the Bar. I want this transcribed.

(TFB Ex. 2 at 3411, 3415).

The above exchange occurred after the clerk, who was responsible for keeping the time during the parties closing arguments, advised Respondent that his time was up. (TFB Ex 2 at 3411, TR at 101). Rather than stop, Respondent

advised the clerk that he would take another five minutes. He then continued to present his closing argument to the jury. (TFB Ex 2 page 3411-3412, TR at 101-102,133). A side bar was called. (TR at 101). Following the side bar, Respondent told the jury “folks sorry for the interruption again.” (TFB Ex 2 at 3412). Judge Donner found Respondent’s comments rude since she had ordered the side bar to address Respondent’s inappropriate behavior. (TR at 133, TFB Ex2 at 3411-3412, 3415).

Notwithstanding Judge Donner’s admonishments, Respondent attempted to justify his behavior by pointing to the clerk’s miscalculation of the time remaining for his closing argument. (TR at 351). After a brief recess, Judge Donner conceded that there may have been a miscalculation of time by the clerk. (TR at 103, 351). Nonetheless, she testified that had Respondent politely requested additional time, rather than telling the court that he was going to “*take*” the additional time, she would have allowed him to continue. (TR at 101, 102, 165).

Judge Donner further explained, rightly or wrongly, when a judge speaks, he or she speaks for the “*court*” and not as an individual. (TR at 112-113). A lawyer has an ethical responsibility to obey an order of the court, except for an order that is immoral, indecent, or illegal. (Resp Ex F at 38-39). Judge Donner’s order was none of these things. Here, Respondent told the court what he was going to do and

Judge Donner found that highly inappropriate. (TR at 101,102, 165, ROR at unnumbered page 7).

By no means was Respondent's forgoing trial conduct an isolated occurrence. Rather, his rude, antagonistic, unprofessional, and bullying conduct continued well into the post-trial hearings. (TFB Ex1 at 886-888, 993-995, 997-998). The post-trial hearings took place over a six day period. (TR at 179). One such hearing occurred on December 14, 2011, during which Respondent's behavior spun out of control. (TFB Ex1 at 886-888, 993-995, 997-998). This was particularly perplexing given that, first, this was a hearing on Respondent's motion for sanctions against Dupont. (TR at 53, 179). Second, the jury had already ruled against DuPont and in favor of Respondent's client. (TR at 110). Third, Judge Donner believed in Respondent's cause. (TR at 96, 108-110). She was in his corner. (TR at 110). Things were going in Respondent's favor. (TR at 383).

Still, Respondent's behavior became increasingly worse. For example, Respondent muttered the words lie-lie-lie during a witness examination by his opposing counsel, Mr. Brenner. (TR at 283, TFB Ex1 at 993, ROR at unnumbered pages 6,11). His voice was loud enough to be heard by the presiding judge. (TR at 107). Respondent would rip, crinkle, and throw documents that were handed to him by opposing counsel. (TFB Ex 1 at 993, TR at 197-198, ROR at unnumbered

pages 5-8). At that point, Respondent's behavior proved too much for Mr. Brenner to simply ignore. (TR at 106, 199, 202, 283-284, 286,287). He alerted the court to Respondent's ongoing antics. (TR at 199, TFB Ex 1 at 993-994).

Unbeknownst to Mr. Brenner, Judge Donner was acutely aware of what was happening. She chastised Respondent. Respondent denied muttering such words, or throwing any documents, to which Judge Donner replied, "*actually, Mr. Ratiner, then you are calling me a liar because I watched you do it.*" (TFB Ex 1 at 995, TR at 105-107, 199-200, 289, ROR unnumbered page 6). Despite Respondent's denial, at final hearing before the Referee he did admit that he may have tossed documents. (TR at 375- 377). He also admitted to ripping documents because he wanted to separate those from the duplicates he had. (TR at 373-374, ROR at unnumbered page 9). Respondent's explanation belies logic. As Judge Donner succinctly explained at trial in this cause, it is appropriate to show documents to opposing counsel before handing them to a witness, even if the opposing party already has their own copy. (TR at 105, 197). Even Respondent acknowledged this to be true. (TR at 373).

Moments after being chastised by Judge Donner, Respondent began kicking the counsel table where he was seated. (TR at 106-107, 200-201, 295-299, ROR at unnumbered pages 7, 11) Respondent kicked the table multiple times. (TR at 106-

107, 284). The sound was very loud. (TR at 107, ROR at unnumbered pages 7, 11) A side bar was held. (TR at 106-107) Judge Donner felt the situation was becoming volatile. (TR at 106 -107) She was amazed that Respondent was unable to control himself in her courtroom and behave as an officer of the court should. (TR at 109, 112) Eventually, Judge Donner terminated the proceedings as Respondent's behavior became increasingly bizarre. (TFB Ex 1 at 997-998, TR at 18-19,135, 201).

While Judge Donner was not always pleased with the DuPont attorneys, they, unlike Respondent, remained professional and respectful towards the court. (TR at 131). This was true despite the court's adverse rulings against Dupont, including striking DuPont's pleadings. (TR at 109). Judge Donner further testified that Mr. Brenner was polite and gentlemanly throughout the proceedings. (TR at 108-109, 144). Respondent was not. In fact, Respondent was disrespectful towards her throughout the entire proceeding. (TR at 128). At one point, Respondent's behavior spun so out of control that Judge Donner had to contact The Florida Bar to request someone from the Bar sit in her courtroom in hopes that Respondent's behavior would improve. (Resp Exhibit F at 27, TR at 115-116).

Judge Donner described Respondent's behavior as excessively aggressive, downright disrespectful, disobedient, and obnoxious. (TR at 120). Even more

concerning was Respondent's blatant disrespect towards Judge Donner herself. (TR at 128-129). Normally, lawyers are very well behaved in her courtroom. She controls her courtroom. (TR at 145). This time was different. (TR at 145). She had never experienced an attorney behaving this way in her twenty seven years on the bench. (TR at 112). She was distressed and apologetic to her colleague, Judge Hogan Scola, who had the misfortune of witnessing such outrageous and unprofessional behavior from a member of The Florida Bar. (TFB Ex1 at 997-998).

While her view was obstructed from where she was seated, Judge Hogan Scola testified that she heard the crunching of the paper, and the sound of paper as if it were being thrown, right after opposing counsel turned around and handed documents to Respondent. (TR at 21-22, 39). Opposing Counsel turned and complained to the judge about Respondent's behavior. (TR at 21-22, 39-40). Thus, using her common sense, the circumstances suggested to her that this is what occurred. (TR at 21-22, 39). Subsequently, Judge Donner terminated that hearing. (TFB Ex1 at 997, TR at 18-19, 201).

Respondent was not only rude to the court. He also directed his rudeness and anger to the parties involved in the proceedings. (TR at 135). He ripped, crumbled, and threw documents handed to him by his opposing counsel. (TR at 283, 375-

377). He was rude to Ms. Souza-Rasile because he believed that she was responsible for the ills he had suffered at the hands of DuPont. (TR at 119, 126). In fact, he was rude to Ms. Souza-Rasile even when he would walk past her in court. (TR at 120). He did not like her. (TR1 at 126). Judge Donner further explained that Respondent is a big man who, when he became upset or angry, would pace back and forth from the podium. As a woman, she could understand how Ms. Souza-Rasile could be intimidated by all of this. (TR at 154-155).

Judge Donner was not alone in her observations of Respondent. Judge Hogan Scola, a neutral witness in these proceedings, agreed. She described Respondent's examination of Ms. Souza-Rasile as acerbic, rude, and hostile. (TR at 24). For example, Respondent was standing close by the witness, raising his voice, and waving his hands to intimidate her. (TR at 35-36). Ms. Souza-Rasile was rattled by this. (TR at 36). Judge Hogan's Scola viewed this as an intimidation technique by Respondent. (TR at 36). This offended her. (TR at 36). In Judge Hogan Scola's opinion, there was absolutely no reason for Respondent to behave that way. (TR at 36). There was no jury present to impress. (TR at 24, 36). Judge Hogan Scola also stated that she would not have allowed this type of cross examination to continue and would have ordered Respondent to remain behind the podium. (TR at 36). She further described Respondent's level of offensiveness as

an 8 out 10, with 10 being the maximum. (TR at 36, ROR at unnumbered page 5). Judge Hogan Scola hoped that this matter would be resolved before taking over Judge Donner's division because she did not want to be involved in such contentious proceedings. (TR at 26). Fortunately for her, she did not have to. (TR at 26).

Ms. Souza-Rasile described her own interactions with Respondent as intimidating, humiliating, and abusive. (TR at 80). Mr. Brenner also described Respondent's conduct as counterproductive, highly unprofessional, outrageous, and disrespectful towards a witness. (TR at 189, 232, 288). He further described Respondent's deliberate act of ripping, crumbling and throwing documents, as the kind of thing he never seen an attorney do in his twenty three years of practicing law. (TR at 279-280).

Following the termination of the post-trial hearing on December 14, 2011, another post-trial hearing was conducted on January 30, 2012. (TFB Ex 3). One of the motions heard by the court was Respondent's request for attorney's fees and costs. (TFB Ex 3 at 4-5). Respondent was called as a witness. (TFB Ex 3 at 72, TR at 210). Even as a witness, Respondent's rude, disruptive, and unprofessional behavior continued. (TR at 104, 210). For example, during cross examination of Respondent the following exchanged occurred:

Mr. Brenner: Good afternoon, Mr. Ratiner.

Mr. Ratiner: No, it's not; it's been rather inconvenient.

The Court: Excuse me. Mr. Ratiner, Go ahead, Mr. Brenner

(TFB Ex 3 at 72)

Judge Donner was simply amazed that the Respondent would come into her courtroom to request a sum of money, then turn around and be belligerent, rude, and insulting towards the court, as well as to opposing counsel. (TFB Ex 3 at 104-105). Respondent would engage in speaking soliloquies instead of answering the questions posed to him. (TFB Ex 3 at 104). He would make his own objections from the witness stand. (TR at 213, 215). Judge Donner threatened to terminate this hearing too if Respondent's behavior continued. (TFB Ex 3 at 105, TR at 211-212). Respondent's behavior continued and the hearing was terminated. (TFB Ex 3 at 109).

Throughout the *Sidran* proceedings, Respondent created a hostile, antagonistic, and unprofessional environment. His behavior towards the court, as well as to the lawyers involved in the proceedings, was offensive and disrespectful. (TR at 135). Indeed, no one was spared Respondent's lack of courtroom decorum and etiquette. (TR at 135). Respondent's behavior led to numerous side bars and hours upon hours of unnecessary interruptions, resulting from his inability or

unwillingness to conform his behavior to professional standards despite being ordered by the court to do so. (TR at 114).

Robert Ratiner described the *Sidran* litigation as hard fought. (TR at 342). He had filed a motion directed to potential criminal sanctions against Dupont and its lawyers. (TR at 359). Respondent explained that he made reference to Ms. Souza-Rasile possibly serving jail time because all the Shook, Hardy and Bacon lawyers were subject to his sanctions and criminal contempt motions. Respondent suggested that his statement was similar to reminding a witness of the significance of being under oath and the potential consequences of perjury to someone who doesn't honestly respond to a question. (TR at 361-362). Those were the consequences the Dupont lawyers were potentially facing. (TR at 363). Respondent offered that he wouldn't do it again knowing all the attention his statement had brought. (TR at 363). Although he apologized to Ms. Souza-Rasile as the court instructed him to do, he did not feel that he had done anything wrong. (TR at 367-368). His apology was sincere. (TR at 371). He conceded that when presented with a duplicate document by opposing counsel, he would make a rip in it and put it to the side. He did not recall crumbling documents or throwing documents, but he could have tossed documents to the side or threw them to the side. (TR at 374-375). He acknowledged speaking to his

paralegal at counsel table, saying something close to “lie, lie, lie or liar, liar, liar” and Mr. Brenner relaying what he heard to Judge Donner. (TR at 380). It was not meant to be overheard by anybody. (TR at 380). He did not think Judge Donner was being deliberately untruthful in saying she heard his comments, but rather, believed she was “filling in the blank of an old war story with whatever she – whatever she kind of wants with how she remembers it now, not what she actually knew or observed or heard then.” (TR at 379-380). Respondent has a loud voice. (TR at 381). Respondent testified that he did not kick counsel table intentionally, but asked whether if he turned around and knocked the table, is that a kick? (TR at 382).

Following presentation of the evidence and argument of counsel, the Referee found the following aggravating factors to be applicable: 9.22(a) prior disciplinary offenses; 9.22(c) a pattern of misconduct; 9.22(g) refusal to acknowledge wrongful nature of conduct; and 9.22(i) substantial experience in the practice of law. (ROR at unnumbered page 12).

In mitigation, the Referee found 9.22(b) absence of dishonest or selfish motive; 9.32(g) character or reputation; and 9.22(h) physical problems². (ROR

² At the final hearing, Respondent testified that he had the flu on the day of closing arguments in the *Sidran* matter. He requested a continuance from Judge Donner. She denied his request. (TR3 at 345-346).

unnumbered page 12). Regarding character evidence, Respondent relied on character testimony submitted in an earlier prosecution. (Resp Ex A, ROR unnumbered page 12).

The Bar argued that Respondent had engaged in repeated, cumulative, and similar acts of misconduct spanning more than a decade, coupled with a failure to comprehend the wrongful nature of his behavior and his unwillingness or inability to control, modify or conform his behavior to professional standards. The Bar urged the Referee to recommend disbarment. (ROR at unnumbered page 10). Respondent argued that if the referee found him guilty, then he should be suspended. (ROR at unnumbered page 10). Respondent further argued that any suspension should run concurrently with the current suspension Respondent is serving. (ROR at unnumbered page 10).

Following argument of counsel, the Referee issued his Report of Referee on September 23, 2016. The Referee found Respondent guilty of violating Rule 4-3.5(c) (A lawyer shall not engage in conduct intended to disrupt a tribunal); Rule 4-8.4(a) (A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); and Rule 4-8.4(d) (A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including

to knowingly or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic) of the Rules Regulating The Florida Bar. (ROR at unnumbered pages 10-13)

Further, the Referee recommended that Respondent be suspended for three years, to run consecutive to the three year suspension Respondent is currently serving. (ROR at unnumbered page 13).

Thereafter, The Florida Bar filed its Petition for Review as to the Referee's discipline recommendation. Respondent has filed a Cross Notice of Intent to Seek Review. The Florida Bar's Initial Brief on Appeal follows.

SUMMARY OF ARGUMENT

The Referee's recommendation of three (3) years suspension to run consecutively to the three (3) year suspension Respondent is currently serving, is not an appropriate discipline for a lawyer who has engaged in repeated, cumulative, and similar acts of misconduct spanning more than a decade. Moreover, Respondent's comments and actions demonstrate that even today, he refuses to acknowledge the wrongful nature of his actions. Under such

circumstances, where a Respondent is either unwilling or unable to control, modify or conform his behavior to acceptable professional standards, or acknowledge the wrongful nature of his behavior, the only appropriate sanction is disbarment.

ARGUMENT

DISBARMENT IS THE APPROPRIATE SANCTION WHERE RESPONDENT HAS REPEATEDLY ENGAGED IN RUDE, DISRUPTIVE, ANTAGONISTIC, AND UNPROFESSIONAL BEHAVIOR TOWARDS THE COURT AND OPPOSING COUNSELS, AND WHERE HE EXHIBITS NEITHER REMORSE NOR ACCEPTANCE OF RESPONSIBILITY FOR HIS MISCONDUCT.

The Referee in this matter recommended that Respondent be suspended for a period of three (3) years to run consecutive to the three year suspension Respondent is currently serving. However, even while making that recommendation, the Referee explicitly addressed the fact that he came very close to recommending disbarment due to Respondent's history of discipline and his inability to control himself. (TR 10/4/2016 at 8). This Court should not ratify the Referee's recommendation when disbarment is clearly the appropriate sanction and where Respondent has engaged in repeated, cumulative, and similar acts of misconduct, spanning more than a decade. Respondent's comments and actions demonstrate that, even today, he refuses to acknowledge the wrongful nature of his actions. Under such circumstances, there is no hope for rehabilitation, as

Respondent does not recognize that his behavior is wrong and he is either unwilling or unable to control or modify his behavior to professional standards. The only appropriate sanction in this case is disbarment.

The Supreme Court shall have exclusive jurisdiction to regulate...the discipline of persons admitted [to the practice of law].” Art. V. §15, Fla. Const. Therefore, “unlike the referee’s findings of fact and conclusions as to guilt, the determination of the appropriate discipline is peculiarly in the province of this Court’s authority.” *The Florida Bar v. O’Connor*, 945 So.2d 1113, 1120 (Fla. 2006).

As ultimately it is this Court’s responsibility to order the appropriate discipline, this Court enjoys broad latitude in reviewing a referee’s recommendation. *The Florida Bar v. Anderson*, 538 So.2d 852 (Fla. 1989). The Court usually will not second-guess a referee’s recommended discipline as long as that discipline has a reasonable basis in existing case law and in the Florida Standards for Imposing Lawyer Sanctions. *The Florida Bar v. Temmer*, 753 So.2d 555 (Fla. 1999).

In the instant case, this Honorable Court is presented with a lawyer who has engaged in similar, cumulative acts of misconduct, spanning a period of time from at least 2002 through to the present events. In the case sub judice, Respondent

engaged in rude, antagonistic, disruptive, bullying, and unprofessional behavior during the pendency of a product liability action wherein Respondent represented the plaintiff against E.I. DuPont. (TR at 177). He refused to follow oral instructions given to him by the presiding judge and/or her clerk. (TR at 131). He attempted to embarrass the court when the court called side bars to address the Respondent's behavior. (TR at 133). He muttered the words "lie, lie, lie" during his opposing counsel's examination of a witness, done for no other purpose than to distract and disrupt the proceedings. He created a hostile and antagonistic environment by ripping, crinkling, and throwing documents handed to him by opposing counsel and by kicking the leg of counsel's table where he was seated. He was rude and belligerent to the court and to opposing counsel during at least two post-trial hearings that he, himself, had requested. (Resp Ex F at 27, TR at 53, 157).

His disruptive conduct resulted in the court calling side bars to address Respondent's ongoing rude and inappropriate behavior and/or terminating the proceedings. Respondent's disruptive conduct escalated to the point that the presiding judge contacted the Florida Bar to request someone from the Bar sit in on a hearing in hopes that Respondent's behavior would improve. Judge Donner described Respondent's behavior as nothing like anything that she had ever seen in

her twenty seven years on the bench. Respondent's litigation antics and misconduct delayed, thwarted, and prejudiced the administration of justice in this case.

Respondent's behavior in this case is not an isolated occurrence. Indeed, he has exhibited this same type of behavior in each of the prior cases in which his conduct has been brought to the attention of the Bar and this Court. (TFB Ex 4, TFB Ex 8, TFB Ex 9). The Report of Referee issued by Judge Reynolds in one of Respondent's prior discipline cases makes clear that Respondent's similar and cumulative acts of misconduct date back to at least 2002. (TFB Ex 4 at 21). Judge Reynolds, writing back in 2008, and reviewing the depositions placed in evidence in the case then at bar, as well as depositions at issue in another of Respondent's grievance matters for which he received Diversion to an Anger Management Workshop, found that:

It is clear that Mr. Ratiner's approach in a deposition is nothing short of warfare. Aggression, intimidation, and insults are seemingly the hallmarks of a Ratiner deposition. He lets opposing counsel and the witness know it's not going to be pleasant or easy.

(TFB Ex 4 at 19, see also TFB Ex 4 at 16, 20, 21).

Five years later, in the case then at bar, Judge Rebull made similar findings regarding Respondent's conduct in a document review. Judge Rebull found that "Mr. Ratiner simply fails to recognize that not only were his comments

inappropriate and unprofessional, but they were also disrespectful, not only to Ms. Souza-Rasile, but to women in general. (TFB Ex 9 at 11). At that Final Hearing, Respondent testified regarding his physically taking an index page from opposing counsel Daboll, stating that he did not believe his conduct to be contrary to justice or unlawful because he believed that his letting go of the papers Daboll was holding would be contrary to his client's interest. Judge Rebull found that:

Mr. Rainer's notion that he can and should do whatever is necessary to protect his client's interest, even if it means physically taking without consent the property of another member of The Florida Bar, is irrational, unprofessional, and inappropriate. Perhaps most disturbing is that Mr. Rainer seems to have no understanding whatsoever that this conduct is not acceptable. When questioned by his own attorney regarding this incident ... it was his conclusion that he did himself and his client the best service he possibly could. (TFB Ex 9 at 15 and 16)

Judge Rebull further stated, "[i]n my review of the evidence and the presentation of the parties ... I see no evidence of an ability on his part to evaluate the effect of his actions on third parties and the legal system". (TFB Ex 9 at 23). Judge Rebull found "[w]ith regard to Mr. Rainer's mental state, it is clear that he does not accept or believe that he did anything wrong. (TFB Ex 9 at 25).

Significantly, these comments do not merely reflect Respondent's past state of mind. Rather, Respondent's statements in the case sub judice demonstrate the same mentality. At the final hearing in the instant case, Respondent referred to Judge Donner as a seventy something year old lady who couldn't quite remember

what happened yesterday. (TR 10/4/2016 at 8, TR 9/23/2016 at 17). The Referee noted that those comments were uncalled for and very disrespectful. (TR 10/4/2016 at 8). He further noted that Respondent was incapable of controlling himself. (TR 10/4/2016 at 8). Interestingly, Respondent made those comments shortly after the Referee recommended that he be found guilty and recommended a consecutive three year suspension. (TR 9/23/2016 at 12, 17). Thus, his present “attitude” indicates that he will continue to engage in his present “course of conduct”, said conduct being inconsistent with Florida’s standard for professional conduct.

Moreover, Judge Reynolds predicted this would happen back in 2008 when he stated, “without a change of attitude, there is nothing to rehabilitate. It gets worse”. (TFB Ex 4 at 22). Indeed, Respondent’s behavior did get worse. For example, he insisted on taking additional time for his closing argument when the clerk advised him that his time was up. He embarrassed the court when the court called a side bar to correct his inappropriate behavior. He caused ongoing interruption of court proceedings by muttering the words lie, lie, lie during his opposing counsel’s examination of a witness. He ripped, crinkled, and threw documents handed to him by his opposing counsel and then kicked the leg of counsel’s table after the court chastised him. He further created a hostile and

antagonistic environment by using intimidation techniques to conduct an examination of a witness.

Simply put, from 2002 through the present day, Respondent has continually demonstrated an attitude and a course of conduct which is abhorrent to the proper functioning of the judicial system. His conduct caused significant harm to those forced to litigate with him, and to the system of justice as a whole.

In addition to the unprofessional conduct at issue herein, the Referee in the present case also found the following aggravating factors in the instant case: 9.22(a) prior disciplinary offenses; 9.22(c) a pattern of misconduct; 9.22(g) refusal to acknowledge wrongful nature of conduct; and 9.22(i) substantial experience in the practice of law. (ROR dated September 23, 2016 unnumbered page 12). These aggravating factors, coupled with the serious nature of the misconduct at issue, the harm caused by such misconduct and Respondent's absolute refusal to accept responsibility for same, demonstrates that disbarment is the only appropriate sanction in this case.

The Florida Bar concedes that the existing case law relevant to the particular actions of Respondent in the instant case, in and of itself may not support disbarment. Typically, a rehabilitative suspension is imposed, as was

recommended by the Referee in this case.³ Nonetheless, it is the Bar's position that disbarment is appropriate in this matter given Respondent's prior discipline for similar conduct and his unrepentant attitude in this matter.

This Court has been faced with an epidemic of unprofessional conduct by members of The Florida Bar. In response, this Court has added the following language to the Oath of Admission:

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.

This Court has also issued its Opinion in *In re Code for Resolving Professionalism Complaints*, 116 So.3d 280 (Fla. 2013), making clear its objective of "ensuring that the practice of law remains a high calling with lawyers invested in not only the service of individual clients but also service to the public good as well."

In addition to these indications of the heightened scrutiny to be applied to cases involving incivility and unprofessional behavior, this Court has made clear

³ See *The Florida Bar v. Norkin*, 132 So.3d 77 (Fla. 2014) (suspending an attorney for two years with a public reprimand for his relentless unethical and unprofessional behavior towards judges and opposing counsel); Norkin was permanently disbarred in *The Florida Bar v. Norkin*, 183 So.3d 1018 (Fla. 2016) for his contemptuous conduct. Further, the Court noted, that Norkin had an unrepentant attitude, was incapable of changing his pattern of misconduct, and was not amenable to rehabilitation, and; therefore, he was deserving of permanent disbarment.

that it will not necessarily be bound by its prior more lenient precedent. In *The Florida Bar v. Adler*, 126 So.3d 244 (Fla. 2013), this Court stated that it “has moved towards stronger sanctions for attorney misconduct.” *Id.* at 247(citing *Fla. Bar v. Rotstein*, 835 So.2d 241, 246 (Fla.2002) (stating that some of the cited cases “are dated and do not reflect the evolving views of this Court... In recent years, this Court has moved towards stronger sanctions for attorney misconduct.”). Similarly, this Court “should not subscribe to the view that disbarment may not occur if this Court has not previously rendered an opinion of disbarment on identical facts.” *The Florida Bar v. Springer*, 873 So.2d 317, 324 (Fla. 2004, concurring opinion).

Additionally, this Court has long held that, in determining the appropriate sanction, it considers a respondent’s prior misconduct and cumulative misconduct, and punishes cumulative misconduct more severely than isolated instances of misconduct. Disbarment is appropriate where there is a pattern of misconduct and a history of discipline. *The Florida Bar v. Walkden*, 950 So.2d 407, 410 (Fla. 2007), quoting *The Florida Bar v. Vining*, 761 So.2d 1044 (Fla. 2000). *See also*, *The Florida Bar v. Heptner*, 887 So.2d 1036, 1045 (Fla. 2004).

It is well settled that disbarment is an appropriate discipline when the “cumulative misconduct demonstrates an attitude and course of conduct that is

inconsistent with Florida's standards for professional conduct.” *The Florida Bar v. Simring*, 612 So.2d 561, 570 (Fla.1993) (citing *The Florida Bar v. Williams*, 604 So.2d 447, 452 (Fla.1992)). See also *The Florida Bar v. Shoureas*, 892 So.2d 1002 (Fla. 2004); *Florida Bar v. Pahules*, 233 So.2d 130, 131 (Fla.1970).

Applying the above referenced authority to the instant case, it is clear that disbarment is the only appropriate sanction in this case. Respondent’s rude, unprofessional, aggressive, and bullying litigation tactics have no place in the practice of law and cannot be tolerated by the legal community or this Court. Such misconduct is “wholly inconsistent with Florida’s standards for professional conduct,” as highlighted in the new Oath of Attorney, this Court’s opinion in *In re Code for Resolving Professionalism Complaints*, 116 So. 3d 280 (Fla. 2013), and recent case law such as *The Florida Bar v. Norkin*, 132 So.3d 77 (Fla. 2014), and *The Florida Bar v. Norkin*, 183 So.3d 1018 (Fla. 2016).

Indeed, in Respondent’s 2010 disciplinary action, this Court ordered the videotape of the events underlying that case be played for all law students as an example of how *not* to behave. *The Florida Bar v. Ratiner*, 46 So.3d 35 (Fla. 2010). As such, it would be difficult to find a better example of “conduct wholly inconsistent with Florida’s standards for professional conduct.”

There also can be no real dispute that Respondent's cumulative misconduct meets the first prong of this standard for disbarment and comprises "*an attitude and course of conduct*" that is inconsistent with the standards required of our Profession. The similarity of Respondent's past actions and cumulative misconduct, dating back to at least 2002, is well documented in the three Reports of Referee authored by Judges Reynolds, Rebull, and Rodriguez-Chomat. Respondent's behavior in the underlying proceedings is entirely consistent with his normal manner and litigation style.

A comparison of the present and past disciplinary cases highlights and underscores Respondent's "attitude and course of conduct." In all three cases, Respondent has been disrespectful, rude, and inappropriate towards the women (Debra Naylor, Randi Lazarus, Bonnie Daboll, Lea Souza Rasile, and Judge Donner) involved in his underlying civil cases and in the Bar disciplinary proceeding. (TFB Ex 4 at 9-10, TFB Ex 4 at 28-29, TFB Ex 9 at 11, TR at 23-24, 35-36, 119, 120, 126, 128, 154-155, TR 10/4/2016 at 8). In all three cases, Respondent became physically intimidating and aggressive with opposing counsel over the handling of documents and/or exhibits. In all three cases, he made rude, disrespectful, and/or inappropriate comments about opposing counsel and/or witnesses. In all three cases, Respondent ranted and raved at perceived injustices,

even when the judge indicated she was inclined to rule in his favor, rather than proceed through normal channels of making appropriate objections or appeals, and if necessary seeking guidance from the court. In all three cases, Respondent's conduct was brought to the attention of the underlying court and the trial judge indicated that his behavior was inappropriate and an ongoing problem. Most significantly, in all three cases additional security measures had to be instituted due to Respondent's behavior. For instance, in the civil proceedings underlying the present case, the trial judge had to contact The Florida Bar to request someone from the Florida Bar sit in her courtroom in hopes that Respondent's behavior would improve. In the 2002 case leading to the Diversion Report, the trial court below required the presence of a special master at all future depositions or document reviews, and at the 2009 document review, a security guard's presence was necessary. Finally, and most compellingly, in all three cases the trial judge, opposing counsel and witnesses, described Respondent's behavior as like nothing they had ever experienced from a member of The Florida Bar.

However, for purposes of determining that disbarment is the only appropriate discipline in this case, the most significant similarity between all of Respondent's prior disciplinary actions is his complete and absolute refusal to acknowledge that his behavior is wrong, or that he requires rehabilitation. Both

Judge Reynolds and Rebull found this to be a particularly troubling factor in the prosecutions they presided over. Judge Reynolds wrote that disbarment is “necessary to protect the public, bench and bar from the manner in which Mr. Ratiner practices law since he has not shown any indication, belief or self-reflection, that any changes are necessary or forthcoming. (TFB Ex 4 at 6). He continued:

The egregiousness of the misconduct and the lack of professionalism exhibited by the respondent are only outweighed by the fact that Mr. Ratiner fails to recognize either. I carefully listened to and observed the respondent’s demeanor during his testimony, which exceeded four hours. Not once did the respondent express remorse for any of his multiple acts of misconduct. (emphasis in the original).

(TFB Ex 4 at 7, emphasis added).

There is neither hope nor indication that Respondent can be rehabilitated. He is incapable of controlling his actions, crosses the line constantly, and fails to take responsibility for same. (TR 10/4/2016 at 8, TR at 109, 145,) For example, in the case sub judice, Respondent’s numerous improper comments and misconduct, especially during closing arguments, created significant disruption and delay in the proceedings. Rather than acknowledge responsibility for same, Respondent blamed the court and opposing counsel for the constant side bars and interruptions. He had the audacity to apologize to the jury for the interruptions, as though he had not caused them. (TFB Ex2 at 3412, TR at 133) Indeed, at Final Hearing in the instant

case, Respondent told the Referee that he found the constant interruptions quite distracting to himself and the jury, without ever even acknowledging that he himself was responsible for those interruptions. (TR at 358-359). Respondent also blamed Ms. Souza-Rasile for being a difficult witness; however, he never once requested that she be declared a hostile witness. (TR at 358-359) Rather, in his mind, this gave him the permission to be rude, hostile, and intimidating towards her. (TR at 23, 26, 35-36, 80, 119-120, 126, 154-155). It is clear that since he does not perceive his conduct to be wrong, he does not believe he needs to change the conduct. He has already had the benefit of professional intervention from FLA on several occasions, in the Court's efforts to rehabilitate Respondent's course of conduct. It has not worked. Thus, rehabilitation is not a viable option.

In 2006, Respondent received a Diversion to an Anger Management program. As Judge Reynolds found, "clearly, he got nothing out of the workshop. He testified that the only insight he gained from the course was to note that no one from a big firm has attended the course." (TFB Ex 4 at 20). Thereafter, Respondent was required to undergo two years of mental health counseling as a condition of the probation imposed in his prior disciplinary action. Even with that counseling, Respondent continues to engage in rude, inappropriate, and disruptive

behavior inconsistent with our standard of conduct. Respondent is beyond redemption and must be disbarred.

Accordingly, Respondent's cumulative misconduct demonstrates an attitude and course of conduct that is inconsistent with Florida standards for professional conduct. His similar behavior in all his prior discipline cases, coupled with the lack of success of the counseling and rehabilitative services previously provided, as well as his present day comments indicating his inability or unwillingness to recognize the wrongful nature of his conduct, taken together demonstrate that disbarment is the only appropriate sanction in this case. No lesser sanction can protect the public and the legal system from the harm perpetrated by Respondent.

CONCLUSION

In consideration of this Court's broad discretion as to discipline and based upon the foregoing reasons and citations of authority, The Florida Bar respectfully requests that this Court accept and adopt each of the Referee's findings of fact and conclusions as to guilt. However, the Referee's recommended discipline of a three (3) year suspension to run consecutive to the three (3) year suspension he is currently serving is inadequate in light of Respondent's attitude and course of conduct that is wholly inconsistent with Florida standards for professional conduct. This Honorable Court should instead impose disbarment, as it is the only discipline

sufficient to protect the public and the legal system from Respondent's method of practicing.

A handwritten signature in black ink, appearing to read 'Tonya L. Avery', with a stylized, sweeping flourish extending to the right.

Tonya L. Avery, Bar Counsel

CERTIFICATE OF SERVICE

I certify that this document has been e-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, using the E-Filing Portal and that a copy has been furnished to Kevin P. Tynan, Attorney for Respondent, at ktynan@rtlawoffice.com; and to Robert Joseph Ratiner, Respondent, at ratiner@ratinerlaw.com and to Respondent's other known e-mail address, at bobthelegend1@gmail.com; and to Adria E. Quintela, Staff Counsel, The Florida Bar, at aquintel@flabar.org, on this 29th day of December, 2016.



Tonya L. Avery, Bar Counsel
The Florida Bar - Miami Branch Office
444 Brickell Avenue
Rivergate Plaza, Suite M-100
Miami, Florida 33131-2404
(305) 377-4445
Florida Bar No. 190292
tavery@flabar.org

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.

A handwritten signature in black ink, appearing to read 'Tonya L. Avery', written over a horizontal line.

Tonya L. Avery, Bar Counsel