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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 REPLY/CROSS-ANSWER BRIEF

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TABLE OF CONTENTS

TABLE OF CONTENTS ii
TABLE OF CITATIONS iii
PRELIMINARY STATEMENT 1
SUMMARY OF ARGUMENT 2
ARGUMENT 4
I. THERE IS COMPETENT, SUBSTANTIAL, AND CLEAR AND CONVINCING EVIDENCE IN THE RECORD TO SUPPORT THE REFEREE'S FINDINGS OF FACT AND GUILT AS TO RULES 4-3.5(c), 4-8.4(a), 4-8.4(d) OF THE RULES REGULATING THE FLORIDA BAR. 4
II. DISBARMENT IS THE APPROPRIATE SANCTION WHERE RESPONDENT HAS REPEATEDLY ENGAGED IN RUDE, DISRUPTIVE, ANTAGONISTIC, AND UNPROFESSIONAL BEHAVIOR TOWARDS THE COURT AND THOSE INVOLVED IN THE JUDICIAL PROCESS AND WHERE RESPONDENT IS NEITHER REMORSEFUL NOR ACKNOWLEDGES HIS MISCONDUCT. 13
CONCLUSION 22
CERTIFICATE OF SERVICE 24
CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN ..25

TABLE OF CITATIONS

Cases

The Florida Bar v. Barley, 831 So.2d 163 (Fla. 2002)............10
The Florida Bar v. Batista, 846 So.2d 479, 483 (Fla. 2003)............5, 6
The Florida Bar v. Centurion, 801 So.2d 858, 861 (Fla. 2000)............16
The Florida Bar v. Fredericks, 731 So.2d 1249 (Fla. 1999)............10
The Florida Bar v. Hayden, 583 So.2d 1016 (Fla. 1991)............5
The Florida Bar v. Heptner, 887 So.2d 1036, 1045 (Fla. 2004)............21
The Florida Bar v. MacMillan, 600 So.2d 457, 459 (Fla. 1992)............6
The Florida Bar v. Marable, 645 So.2d 438 (Fla. 1994)............5
The Florida Bar v. McClure, 575 So.2d 176 (Fla. 1991)............5
The Florida Bar v. McKenzie, 442 So.2d 934 (Fla. 1984)............5
The Florida Bar v. Pahules, 233 So.2d 130, 131 (Fla. 1970)............22
The Florida Bar v. Rue, 643 So.2d 1080 (Fla. 1994)............5
The Florida Bar v. Schultz, 712 So.2d 386 (Fla. 1998)............5
The Florida Bar v. Shoureas, 892 So.2d 1002 (Fla. 2004)............22
The Florida Bar v. Simring, 612 So.2d 561, 570 (Fla. 1993)............22
The Florida Bar v. Thomas, 698 So.2d 530 (Fla. 1977)............13
The Florida Bar v. Vannier, 498 So.2d 896 (Fla. 1986)............5
The Florida Bar v. Varner, 992 So.2d 224, 230 (Fla. 2008)............3, 16
The Florida Bar v. Vinning, 761 So.2d 1044 (Fla. 2000)............21
The Florida Bar v. Walkden, 950 So.2d 407, 410 (Fla. 2007)............21
The Florida Bar v. Williams, 604 So.2d 447, 452 (Fla. 1992)............22
The Florida Bar v. Wolf, 930 So.2d 574 (Fla. 2006)............17

Rules Regulating The Florida Bar

4-3.5(c)............2, 4, 13
4-8.4(a)............2, 4, 13
4-8.4(d)............2, 4, 13

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.

SUMMARY OF ARGUMENT

The Referee's findings of guilt as to Rules Regulating The Florida Bar 4-3.5(c), 4-8.4(a), and 4-8.4(d) are supported by competent and substantial evidence. Review of the record demonstrates significant evidence supporting the Referee's conclusions that Respondent was rude and belligerent to the court and opposing counsel, used techniques to intimidate a witness on the stand, and muttered the words lie, lie, lie, during his opposing counsel's closing argument. Furthermore, the record reflects competent and substantial evidence that Respondent continuously disrupted and distracted the proceedings by ripping, crinkling, and throwing documents handed to him by opposing counsel, and by kicking the leg of counsel's table multiple times. In fact, the Referee found that during the entirety of the underlying civil proceedings, Respondent was rude, overly aggressive, and at times attempted to intimidate a witness. In that the Referee's findings enjoy a presumption of correctness and Respondent has failed to establish error or lack of evidentiary support for these findings, they should be upheld.

Similarly, the Referee made appropriate recommendations concerning aggravating and mitigating factors, all of which are also amply supported by competent and substantial evidence. The Referee, sitting as fact finder, did not find unreasonable delay in the disciplinary proceedings as a mitigator. The record

evidence reflects that Respondent filed various motions, all of which were granted, including motions for disqualification, for stay, and for continuance of final hearing. These motions substantially contributed to any delay in these proceedings. Clearly, if anybody was to blame for prolonging this matter, it would be the Respondent. Consequently, Respondent's argument is without merit and must fail.

Neither should this court entertain Respondent's contention that remoteness of his prior offenses be considered in mitigation. Specifically, Respondent's prior discipline cases are substantially similar to the facts of the instant case which is indicative of Respondent's continued pattern of conduct. Thus, any suggestion of remoteness of Respondent's prior misconduct is insufficient to mitigate the current matter. *The Florida Bar v. Varner*, 992 So.2d 224, 230 (Fla. 2008). Accordingly, Respondent's assertion that remoteness of prior offense be considered as a mitigator must also fail.

Neither Respondent's plea for a suspension to run concurrent with the three year suspension he currently serves, nor the Referee's recommendation of a three year consecutive suspension, is appropriate given Respondent's repetitive pattern of misconduct and unrepentant attitude. Rather, disbarment is the 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, including disparaging and mocking the Senior Circuit Court Judge who gave testimony in these proceedings, demonstrate that Respondent is incapable of acknowledging 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

I. THERE IS COMPETENT, SUBSTANTIAL, AND CLEAR AND CONVINCING EVIDENCE IN THE RECORD TO SUPPORT THE REFEREE'S FINDINGS OF FACT AND GUILT AS TO RULES 4-3.5(C), 4-8.4(A), 4-8.4(D) OF THE RULES REGULATING THE FLORIDA BAR.

Respondent contends that the Referee failed to make any specific findings as to his "generalized belief" that Respondent was rude, overly aggressive, unprofessional, and periodically attempted to intimidate a witness. However, there is no rule or case which mandates that a Referee identify each and every instance of misconduct provided there is substantial and competent evidence in the record to support the Referee's findings. In the present case, Respondent has not and

cannot satisfy his burden. Consequently, the Referee's findings of fact and guilt must be affirmed.

A referee's findings of fact and guilt carry a presumption of correctness. *The Florida Bar v. Vannier*, 498 So.2d 896 (Fla. 1986). They should not be disturbed barring a showing that they are clearly erroneous or lacking in evidentiary support. *The Florida Bar v. McClure*, 575 So.2d 176 (Fla. 1991). Where a party contends that a referee's findings of fact and conclusions of guilt are erroneous, that party must demonstrate that there is no evidence in the record to support those findings or that the record evidence clearly contradicts the conclusions made. *The Florida Bar v. Rue*, 643 So.2d 1080 (Fla. 1994). In the absence of such a showing, the referee's findings will be upheld. *The Florida Bar v. Hayden*, 583 So.2d 1016 (Fla. 1991); *The Florida Bar v. McKenzie*, 442 So.2d 934 (Fla. 1984).

This burden is not satisfied by simply pointing to contradictory evidence in the record where there is also competent, substantial evidence in the record which supports the Referee's findings. *The Florida Bar v. Schultz*, 712 So.2d 386 (Fla. 1998). The referee is in a better position to evaluate the demeanor and credibility of the witnesses. For this reason, the referee's findings of fact will be upheld where supported by competent, substantial evidence. *The Florida Bar v. Marable*, 645 So.2d 438 (Fla. 1994). See also *The Florida Bar v. Batista*, 846 So.2d 479,

483 (Fla. 2003)("Because the Referee is in the best position to judge the credibility of the witnesses, we defer to the Referee's assessment and his resolution of the conflicting testimony."). Consequently, this Court will not reweigh the evidence and substitute its judgment for that of the referee. *The Florida Bar v. MacMillan*, 600 So.2d 457, 459 (Fla. 1992). In the present case, Respondent has not and cannot satisfy his burden. Consequently, the Referee's findings of fact and guilt must be affirmed.

In the case at hand, the record evidence reflects that Respondent ignored the clerk who was keeping time during closing arguments and who informed him that he had exceeded his time limitations. (TFB Ex 2 at 3411). Rather than stop, Respondent advised the clerk that he would take another five minutes. (TFB Ex 2 at 3411). Despite the clerk's advises, he continued to present his closing argument to the jury. (TFB Ex 2 at 3411-3412, TR 101-102, 133). A side bar resulted. (TFB Ex 2 at 3411). Judge Donner sharply admonished Respondent, stating, "*that consistent with this entire trial there is not one thing you've listened to that I asked you or ordered you to do pursuant to law, not one thing, Mr. Ratiner and this is consistent*." (TFB Ex 2 at 3411). Following the side bar, Respondent told the jury *"folks, apologize 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 Ex 2 at 3411-3412).

Another side bar resulted at the request of opposing counsel. (TFB Ex 2 at 3414- 3415). At that side bar, Respondent accused opposing counsel of suggesting to the court that he was *"winking"* at the jury. (TFB Ex 2 at 3411). Once again, the judge admonished Respondent that no matter what order she gave, Respondent refused to follow it. (TFB Ex 2 at 3415). Respondent rudely responded, *"if you ordered me to jump five feet high, I will violate that also Judge because I just can't."* (TFB Ex 2 at 3415). The judge informed Respondent that he was rude and that she was reporting him to the Bar. (TFB Ex 2 at 3415).

Judge Donner further testified that Respondent showed a lack of disrespect towards her throughout the entire proceedings. (TR at 128). Judge Donner described Respondent's behavior as excessively aggressive, downright disrespectful, disobedient, and obnoxious. (TR at 120). The Referee agreed as evidenced by his findings.

Notwithstanding same, Respondent's inability or unwillingness to obey orders of the court began long before the case herein. At her deposition, Judge Donner testified that beginning around 1994-1995, she presided over various cases where Respondent represented plaintiffs against DuPont. (Resp. Ex F at 37-39,

TFB Ex 4 at 16). From the very start, Respondent has consistently violated orders of the court. (Resp. Ex F 37-39). Judge Donner explained that while those orders were not necessarily written, but included orders in which she instructed Respondent regarding a particular conduct, he nonetheless continued on. (Resp. Ex F at 37-39, TFB Ex 2 at 3411).

Judge Donner correctly explained that 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 unless it is immoral, indecent, or illegal. (Resp. Ex F at 39). Judge Donner's directives was none of these things. Yet, Respondent ignored them. Once again, there is ample support in the record to support the Referee's findings that Respondent was blatantly disrespectful, disobedient, and obnoxious to the court. (TR at 120). For Respondent to characterize his conduct as a simple "exchange" between himself and the presiding judge is misguided. Whether an attorney agrees or disagrees with a judge, that attorney should always show deference and a level of respect to the court. Respondent did neither. Instead, Respondent remained disrespectful towards the court throughout the entire proceedings. (TR at 128, TFB Ex 2 at 3411).

Furthermore, at one point, Respondent's behavior spun so out of control that Judge Donner had to contact The Florida Bar and request someone from the Bar sit in her courtroom in the hope that Respondent's behavior would improve. (Resp. Ex F at 27, TR at 115-116). This was particularly perplexing given that it was a hearing on Respondent's motion for sanctions against Dupont and the jury had already ruled against Dupont and in favor of Respondent's client. (TR at 110). What's more, 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). Even so, Respondent displayed contemptuous conduct towards his opposing counsel.

Specifically, Respondent, muttered the words lie-lie-lie during a witness examination by opposing counsel, Mr. Brenner. (TR at 283, TFB Ex 1 at 993, ROR at unnumbered pages 6,11). Respondent's voice was loud enough to be heard by the presiding judge. (TR at 107). Respondent ripped, crinkled, and threw documents handed to him by opposing counsel. (TFB Ex 1 at 993, TR at 197-198, ROR at unnumbered pages 5-8). Moments after being chastised by Judge Donner, Respondent began kicking counsel table where he was seated. (TR at 106-107, 200-201, 295-299, ROR at unnumbered pages 7, 11). He did so multiple times. (TR at 106-107, 284). The sound was very loud. (TR at 107, unnumbered pages 7,

11). A side bar resulted. (TR at 106-107). Eventually, Judge Donner terminated the proceeding due to Respondent's inability or unwillingness to control himself in her courtroom. (TFB Ex 1 at 997-998, TR at 18-19, 109, 112, 135, 201).

As recognized by Respondent in his own Cross-Appeal, the Referee determined not to discount Judge Donner's testimony. Such was properly within the province of the Referee as trier of fact charged with making determinations of credibility.

While Respondent contends that he did not intentionally engage in misconduct, the record evidence overwhelmingly indicates otherwise. See *The Florida Bar v. Fredericks*, 731 So.2d 1249 (Fla. 1999) wherein it was held that intent is established by showing the attorney acted "deliberately" and "knowingly." Motive is not the determinative factor. *The Florida Bar v. Barley*, 831 So.2d 163 (Fla. 2002). Respondent's conduct was deliberate and knowing. His utterance of the words lie, lie, lie was not an accident. He said them. They were heard by those who sat in the courtroom. He deliberately kicked counsel's table where he was seated, not once, but multiple times. The sound was loud. He ripped, crumbled, and threw documents handed to him by opposing counsel. Despite his protestations to the contrary, any suggestion that Respondent's actions were unintentional belies the record evidence. Anyone would know that such actions

could be seen, as well as heard, when made in the courtroom and, in fact, the testimony established that they were.

The record evidence further reflects that Respondent endeavored to intimidate a witness, Lea Souza-Rasile, who at the time worked as an attorney for Shook, Hardy, and Bacon. (TR at 47, 50, 63-64). While Respondent is correct that the Referee did not find that Respondent threatened Ms. Souza-Rasile with jail time; the referee did find, that, at times, Respondent tried to intimidate this witness. (ROR at unnumbered page 11). For example, he stood close by her, raised his voice, and waved his hands during his examination of this witness. (TR at 35-36). Judge Hogan Scola, another witness in these proceedings, viewed this as an intimidation technique by Respondent. (TR at 36). She described Respondent's examination of Ms. Souza-Rasile as acerbic, rude and hostile. (TR at 24). 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 have ordered Respondent to remain behind the podium. (TR at 36). She further described Respondent's level of offensiveness as an 8 out of 10, with 10 being the maximum. (TR at 36, ROR at unnumbered page 5). Once again, there is evidentiary support for the Referee's findings.

Ms. Sousa-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, and outrageous, and disrespectful towards a witness. (TR at 189, 232, 288). Judge Donner further explained that Respondent was rude to Ms. Souza Rasile because he believed 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. (TR at 126). Judge Donner succinctly sums up Respondent's interaction with Ms. Souza-Rasile as follows: "*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). Respondent clearly intimidated this witness. Others observed it. Two judges, including the presiding judge observed it. Not only was Respondent rude and overly aggressive to this witness, but the evidence overwhelmingly indicates that he was intent on unnerving and undermining her even if it meant crossing the boundaries of his ethical responsibilities to do so.

The record evidence clearly reflects that Respondent deployed techniques to intimidate Ms. Souza-Rasile in violation of his ethical obligation to interact with

all parties and witnesses civilly, courteously, and respectfully. Respondent created what can only be described as a hostile, antagonistic, and unprofessional environment. His behavior towards the court, as well as lawyers involved in the proceedings, was offensive and disrespectful. 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 instructed by the court to do so. (TR at 114).

The record evidence before the Referee provides clear and convincing evidences Respondent's violation of Rules 4-3.5(c), 4-8.4(a) and 4-8.4(d) of the Rules Regulating The Florida Bar and the Referee's finding should not be disturbed.

II. DISBARMENT IS THE APPROPRIATE SANCTION WHERE RESPONDENT HAS REPEATEDLY ENGAGED IN RUDE, DISRUPTIVE, ANTAGONISTIC, AND UNPROFESSIONAL BEHAVIOR TOWARDS THE COURT AND THOSE INVOLVED IN THE JUDICIAL PROCESS AND WHERE RESPONDENT IS NEITHER REMORSEFUL NOR ACKNOWLEDGES HIS MISCONDUCT.

The responsibility for ordering the appropriate disciplinary sanction rests with this Court which enjoys broad discretion when reviewing disciplinary recommendations. *The Florida Bar v. Thomas*, 698 So.2d 530 (Fla. 1977). The

Florida Bar maintains that Respondent should be disbarred for his ongoing pattern of disrespectful and unprofessional conduct. The Referee, even while recommending a three year consecutive suspension to the one Respondent currently serves, explicitly took note of the fact that he came very close to recommending Respondent's disbarment. (TR 10/4/2016 at 8). This "close call" was due to Respondent's history of repetitive misconduct and his inability to control himself. (TR 10/4/2016 at 8). This was not the first time a referee gave serious consideration to such as a sanction. (TFB Ex. 4).

Respondent contends that the appropriate discipline, if any, is a suspension to run concurrent with the Respondent's current suspension. (ROR at unnumbered page 10). However, neither Respondent's plea for a concurrent suspension, nor the Referee's recommendation of a consecutive three year suspension, is appropriate. Rather, disbarment is the appropriate sanction where Respondent has engaged in repeated, cumulative, and similar acts of misconduct spanning more than a decade. Even today, Respondent's comments and actions demonstrate his refusal and/or inability to recognize the wrongful nature of his actions. Specifically, at 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 9/23/2016 at 17, TR 10/4/2016 at 8). The Referee noted those comments as

being uncalled for and very disrespectful. (TR at 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). The Referee further noted that Respondent was incapable of controlling himself. (TR 10/4/2016 at 8). Respondent did not apologize for his comments. Simply put, this is who he is. Thus, his present "attitude" indicates that he will continue to engage in the same "course of conduct," said conduct being inconsistent with Florida's standard for professional conduct. Under such circumstances, there is no hope for rehabilitation as Respondent does not recognize that his behavior is wrong. He is either unwilling or unable to control or modify his behavior to professional standards. Thus, the only appropriate sanction is disbarment.

When imposing discipline, consideration must be given to both aggravation and mitigation. The Referee found the following in aggravation: prior disciplinary offenses, pattern of misconduct, refusal to acknowledge wrongful nature of conduct, and substantial experience in the practice of law. (ROR at unnumbered page 12). Respondent does not contest these findings.

In mitigation, the Referee found absence of dishonest or selfish motive, character or reputation, and physical problems.[1] (ROR unnumbered page 12). However, the significant aggravators, coupled with the repetitive conduct at issue and the resulting harm to the judicial process and the individuals involved, as well as Respondent's unrepentant attitude, indicate that disbarment is the appropriate sanction.

Respondent urges this Court to consider unreasonable delay in the disciplinary proceeding and remoteness of prior offense, as additional mitigating factors in the present case. However, findings of aggravation and mitigation are findings of fact and as such must be upheld unless clearly erroneous or unsupported by record evidence. *The Florida Bar v. Centurion*, 801 So.2d 858, 861 (Fla. 2000), See also, *The Florida Bar v. Varner,* 992 So.2d 224 (Fla. 2008). The Referee, after hearing all the evidence, did not find these mitigators.

As to Respondent's suggestion of unreasonable delay, even Respondent himself has acknowledged that it would have been difficult for the Referee to give any weight to this contention. (TR at 507-508). To begin, three months after the Referee was appointed in this case, Respondent filed a Motion for Stay and For an

[1] 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. (TR 3 at 345-346).

Extension of Time dated September 25, 2013.[2] The Bar opposed that Motion but Respondent's request was granted by Order dated October 24, 2013. Following a subsequent hearing before the Referee as to that stay, this Honorable Court followed the Referee's recommendation and per Order dated January 28, 2014, stayed this matter further. The stay was not lifted until September 2, 2015. Thereafter, on October 22, 2015, Respondent sought to disqualify Judge Rebull for the second time. That motion was granted on November 3, 2015. Discovery commenced, but thereafter Respondent sought a continuance from the new Referee which was granted on April 4, 2016. There is no question that any unreasonable delay in this case was cause by Respondent himself. In *The Florida Bar v. Wolf*, 930 So.2d 574 (Fla. 2006), this Court stated that delay may only be considered in mitigation if respondent did not substantially contribute to the delay **and** provided further that the respondent has demonstrated specific prejudice resulting from the delay. *Id.* at 578. Since Respondent was himself the cause of any delay, there is no need to advance to the second prong. Nonetheless, Respondent has established neither harm nor prejudice.

[2] The Bar filed its complaint with The Supreme Court of Florida on March 22, 2013 and Judge Rebull was appointed as the first referee in this matter on June 11, 2013.

Next, Respondent suggests that remoteness of prior offenses be considered in mitigation. That argument is also without merit. Simply put, Respondent's prior discipline is as follows: In June 2010, Respondent received sixty days suspension for his misconduct occurring in or about May 2007. In September, 2015, Respondent received three years suspension for misconduct occurring in late 2009. The instant misconduct occurred in 2011. The timeline of Respondent's prior misconduct and sanctions reflects a continuing pattern of unacceptable behavior which he has failed to remedy. The facts of the instant case are further indication of Respondent's continued pattern of unacceptable misconduct.

In the case at bar, the Referee astutely recognized that Respondent's prior offenses were strikingly similar to the facts of this case and he posed the following question at Final Hearing:

> **The Court**: In one of those cases your client received a suspension, for, among, other things, for crumpling documents and throwing them.
> **Mr. Tynan**: Different, I'm going to give you my detail analysis of both of those cases.
> **The Court**: Now, that sounds very similar to what allegedly happened in this case about the wrinkling and throwing.
>
> (TR at 494)
>
> ******************
>
> **The Court**: So, if he has already been found guilty and sanctioned for the crumbling of papers, wouldn't you change your behavior then and not do it anymore?

Mr. Tynan: Good question.

(TR at 497).

Counsel's question is the exact question that the Bar has asked for years. Respondent has been warned that his behavior is unacceptable, inappropriate, and wholly inconsistent with Florida standards for professional conduct. Dating back to 2007, Judge Donner warned Respondent that his rude comments he made to witnesses and opposing counsel were unprofessional and inappropriate. (TFB Ex 4 at 16). Respondent refused to heed the warnings then and he refuses to do so now. Moreover, his history reflects that he has failed to rehabilitate himself. In 2006, as part of a diversion recommendation, he was directed to a mental health evaluation which recommended that he attend an Anger Management class. Yet, after attending the class, Respondent testified that the only insight he gained was to note that no one from a big firm had attended same. (TFB Ex 4 at 20). Clearly, Respondent has not changed. He will not and/or cannot. Consequently, nothing short of disbarment will stop him.

At final hearing in the instant case, the Referee addressed Respondent's refusal to accept responsibilities for his actions. The following exchange occurred:

> **The Court**: But do you understand—do you realize that throughout the whole closing basically it's everybody's fault except Mr. Ratiner? And he didn't deny some of the allegations, like the lie, lie, he said he didn't remember using those words, but he was talking to his co-counsel. He didn't

> deny that he said lie, lie, lie, but Judge Donner testified that she heard it. On the kicking of the table, Mr. Brenner demonstrated what happened and there were some loud noises through the demonstration. And Judge Donner said she saw it. So, going to the admission of guilt or remorse…I haven't heard anything that says if I did it, I'm sorry. It hasn't happened.
>
> (TR at 504-505)

A similar course of refusing to accept responsibility can be found in Respondent's prior discipline cases. For example, in the Report of Referee issued by Judge Rebull in 2013, he found that Respondent referred to his opposing counsel as a "dominatrix." (TFB Ex 9 at 5-8). But, even more disturbing to that referee was Respondent's testimony that his first reaction to the Bar's complaint referencing the "dominatrix" comment, was "so, what?" (TFB Ex 9 at 7). Previously, other crass remarks by Respondent were noted in the Report of Referee issued by Judge Reynolds in 2008. For example, during a deposition Respondent stated, "*I wish the witness would quit scratching her crotch*." (TFB Ex 4 at 9). At trial, Respondent claimed to have been simply making a comment to his consultant. If such were the case, Judge Reynolds reasonably questioned why Respondent did not immediately apologize for his comment. (TFB Ex 4 at 10). Likewise, at final hearing in the instant matter, Respondent claimed to have no recollection of saying lie, lie, lie and stated he was speaking to his associate. (TR at 504, ROR unnumbered page 9). Nonetheless, again, no apologies were offered.

The instant case demonstrates that despite his history with the discipline process, Respondent continues his practice of subjecting the courts, opposing counsel, and witnesses to the same rude. outrageous, and offensive behavior. Respondent never stops, hits the pause button, or consciously thinks about his actions. His continued behavior demonstrates that he is either unwilling or unable to control, modify, or conform his behavior to acceptable standards, just as he is unwilling to acknowledge the wrongful nature of his behavior. Such blatant and unprofessional behavior should not be allowed to continue and should not have to be tolerated by those involved in the judicial process.

The record before this Court demonstrates that the nature of the conduct at issue herein was the same or similar in each of Respondent's cases. In keeping with the spirit of the precedent established in the *Walkden*, *Heptner*, and *Vinning* line of cases, disbarment is the appropriate sanction because despite the several opportunities to reform his conduct, Respondent has not done so. Instead, he continues to engage in the exact same type of misconduct. *The Florida Bar v. Walkden,* 950 So.2d 407, 410 (Fla. 2007) (Disbarment is appropriate where there is a pattern of misconduct and history of discipline); *The Florida Bar v. Heptner*, 887 So.2d 1036, 1045 (Fla. 2004); *The Florida Bar v. Vinning*, 761 So.2d 1044 (Fla. 2000). Most significantly, Respondent's recent comments before Judge

Rodriguez-Chomat disparaging Senior Circuit Court Judge Amy Donner who gave testimony in these proceedings, further demonstrates Respondent's inability to recognize the wrongful nature of his conduct. 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 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); *The Florida Bar v. Pahules*, 233 So.2d 130, 131 (Fla. 1970). Accordingly, disbarment is appropriate in this matter. No lesser sanction can protect the public and legal system from the harm perpetrated by Respondent.

CONCLUSION

The record is replete with competent and substantial evidence to support the Referee's findings of fact and conclusions of law and same should be adopted by this Court. Recognizing this Court's broad discretion as to discipline and based upon Respondent's continuing unrepentant conduct, The Florida Bar respectfully requests that this Court reject the Referee's recommendation of three years (3) suspension to run consecutive to Respondent's current suspension and instead impose disbarment. Respondent's approach to the practice of law is wholly

inconsistent with Florida standards for professional conduct. Disbarment is the only sanction that will protect the public and the legal system from Respondent, who is either unable or unwilling to conform or modify his behavior to the acceptable standards of professionalism and civility.

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 7th day of April, 2017.

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

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

Tonya L. Avery, Bar Counsel