IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

DENNIS L. HORTON,

Respondent.

_____/

Supreme Court Case
No. SC17-782

The Florida Bar File
No. 2017-30,371 (07B) (CES)

INITIAL BRIEF

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PRELIMINARY STATEMENT

The Complainant, The Florida Bar, is seeking review of a Report of Referee recommending a twenty-four-month suspension *nunc pro tunc* to the date of the emergency suspension entered by the Florida Supreme Court on May 3, 2017.

Complainant will be referred to as The Florida Bar, or as the bar. Dennis L. Horton, respondent, will be referred to as respondent throughout this brief.

References to the Report of Referee shall be by the symbol RR followed by the appropriate page number.

References to specific pleadings will be made by title. References to the transcript of the final hearing are by symbol T, followed by the volume, followed by the appropriate page number. (e.g., T Vol. I, p. 289). References to the sanction hearing held on October 23, 2017 are by T followed by the date and then appropriate page number. (e.g., T October 23, 2017 p. 10).

References to the bar's exhibits shall be by symbol TFB Ex. followed by the appropriate exhibit number and, where appropriate, Bates Number (e.g., TFB Ex. 1, Bates Number 000040). References to respondent's composite exhibit number 1 shall be by the symbol R Ex. 1 followed by the appropriate tab number and the page number (e.g., R Ex. 1, A-15).

STATEMENT OF THE CASE

On May 1, 2017, The Florida Bar filed its Petition for Emergency Suspension against respondent to initiate these proceedings. On May 3, 2017, this Court issued its order suspending respondent from the practice of law pursuant to Rule 3-5.2. Thereafter, respondent filed an Emergency Motion for Relief and Clarification Regarding Order of Suspension on May 8, 2017. On May 9, 2017, the bar filed its response, and the referee was appointed on May 9, 2017. On May 12, 2017, respondent filed a Motion to Dissolve or Modify Order of Emergency Suspension. The hearing on respondent's motions was held on May 19, 2017. The interim Report of Referee was issued on May 26, 2017 recommending that the emergency suspension order not be modified as to respondent, but that respondent's law partner be permitted to access the law firm's trust account. On June 16, 2017, this Court entered its order approving the interim Report of Referee and denying respondent's Motion to Dissolve or Modify Order of Emergency Suspension and granting his Emergency Motion for Relief and Clarification Regarding Order of Suspension to the extent that respondent's law partner was given access to the law firm's frozen trust account.

The final Report of Referee was required to be filed within ninety days of the order appointing the referee pursuant to R. Regulating Fla. Bar 3-5.2. The

Report of Referee was due on or before August 7, 2017. The final hearing was set for July 20, 2017 and July 21, 2017. On July 3, 2017, respondent moved for a continuance of the final hearing. On July 11, 2017, respondent provided a written waiver of the time requirements set forth in rule 3-5.2 and the referee granted respondent's motion for continuance of the final hearing. The matter was rescheduled for final hearing on August 24 and 25, 2017. On July 13, 2017, respondent moved for an extension of time for the referee to file his report. On July 21, 2017, this Court entered its order granting the referee until November 9, 2017 to file his report. The evidentiary hearing was held on August 24 and 25, 2017. The sanction hearing was held on October 23, 2017. On November 7, 2017, a motion for extension of time to submit the referee's report was filed by the bar on behalf of the referee. On November 15, 2017, this Court entered its order granting the referee until November 29, 2017 to file his report. The referee issued his final Report of Referee on November 29, 2017 finding respondent guilty of violating the following Rules Regulating The Florida Bar: 4-1.8(a); 4-1.8(b); 4-1.8(c); 4-1.15; 4-8.4(c); 5-1.1(a)(1); 5-1.1(b); 5-1.2(b); and 5-1.2(d).

The Board of Governors of The Florida Bar considered the Report of Referee at its meeting ending January 26, 2018 and voted to seek review of the referee's recommendation as to a twenty-four-month suspension *nunc pro tunc* to

the date of respondent's emergency suspension and, instead, seek disbarment and payment of the bar's costs. The bar filed it Notice of Intent to Seek Review of Report of Referee on January 29, 2018.

STATEMENT OF THE FACTS

Respondent was a long-time practitioner in the area of elder law. (ROR 28; TFB Ex. 20, Bates Number 000528; T Vol. I p. 56). When respondent began experiencing financial distress, he took loans and fees from elderly clients, none of whom had support from either family or friends (ROR 28; TFB Ex. 5, Bates Numbers 000024-000026, 000029, 000047; TFB Ex. 21, Bates Numbers 000724; T Vol. II pp. 236, 274-275) and who lived in assisted living facilities and/or nursing homes (ROR 14; TFB Ex. 1, Bates Number 000003; TFB Ex. 5, Bates Numbers 000029-000030; T Vol. I pp. 65-67, 69; T Vol. II p. 254). Respondent ultimately paid back the funds or accounted for the funds after the bar investigation had begun. (ROR 8-9, 18, 30).

Respondent represented Edward Lowman, a seventy-four-year-old client, in drafting a revocable living trust and a power of attorney (ROR 3; TFB Ex. 1, Bates Number 000003; TFB Ex. 5, Bates Numbers 000020, 000024-000025; T Vol. I pp. 57-60; 62). Respondent drafted the Fifth Amendment to the Edward A. Lowman Revocable Living Trust wherein respondent named himself, at Mr. Lowman's request, as a fifty percent beneficiary (ROR 4; TFB Ex. 5, Bates Numbers 000028-000029, 000092; T Vol. I pp. 60-62). On July 19, 2011, Mr. Lowman executed the document and returned it to respondent for storage (ROR 4; TFB Ex. 5, Bates

Number 000028). Mr. Lowman's wife died in 2008 (TFB Ex. 5, Bates Number 000023) and he had no relatives (TFB Ex. 5, Bates Number 000026). In August 2016, Mr. Lowman suffered a stroke and was hospitalized (TFB Ex. 5, Bates Number 000042; T Vol. I p. 65). After his release from the intensive care unit, he was transferred to a nursing home for rehabilitation where he remained until November 2016 (TFB Ex. 5, Bates Numbers 000042, 000053). While Mr. Lowman was in the nursing home, no one came to visit him other than respondent (T Vol. I pp. 66-67).

Between September 2016 and October 2016, Mr. Lowman agreed to make three loans to respondent totaling $90,000.00 (ROR 4, 14; TFB Ex. 6, Bates Numbers 000109, 000113, 000116; TFB Ex. 5, Bates Numbers 000031-00033). With each of these loans, respondent failed to advise Mr. Lowman in writing to seek the advice of independent counsel prior to making the loan, failed to provide Mr. Lowman with a written full disclosure of the terms of the loans and failed to receive Mr. Lowman's informed written consent to the loans (ROR 14; TFB Ex. 5, Bates Number 000033; T Vol. I pp. 69-70, 72-73, 76).

Thereafter, utilizing the power of attorney previously granted to respondent by Mr. Lowman, respondent issued three checks to himself from Mr. Lowman's checking account totaling $90,000.00 between September 2016 and October 2016

(ROR 4; TFB Ex. 6, Bates Numbers 000109, 000113, 000116; T Vol. I pp. 69, 71-72). On October 14, 2016, respondent wrote another check to himself from Mr. Lowman's checking account in the amount of $15,000.00 and attempted to deposit it to his personal checking account (ROR 4; TFB Ex. 6, Bates Number 000120; T Vol. I p. 76). Although Mr. Lowman expressed a desire to provide no further loans to respondent (TFB Ex. 5, Bates Numbers 000036, 000038-000039), the referee found insufficient evidence to prove respondent intended to misappropriate the $15,000.00 from Mr. Lowman (ROR 4-5). The referee found confusion may have resulted concerning the meaning of Mr. Lowman's statement with respect to when the termination of further "authorized loans" would begin and demonstrated the necessity of advising a client to seek the advice of independent counsel in such matters (ROR 5; TFB Ex. 5, Bates Numbers 000038-000039, 000049; TFB Ex. 20, Bates Numbers 000559-000560). Ultimately, the $15,000.00 check was dishonored because Mr. Lowman had closed the account (ROR 5; TFB Ex. 5, Bates Numbers 000035-000036, TFB Ex. 6, Bates Number 000121). Respondent admitted that initially he did not provide Mr. Lowman with promissory notes to secure the loans nor did he advise him to seek the advice of independent counsel regarding any portion of the transaction (ROR 5; TFB Ex. 7; TFB Ex. 20, Bates Number 000563; T Vol. I pp. 69-73). After the bar's investigation commenced,

respondent fully repaid the loans he received from Mr. Lowman, with interest (ROR 29, 30; TFB Ex. 5, Bates Number 000045).

Respondent also represented seventy-five-year-old Christa M. Barry and held a power of attorney prepared by him and granted to him by her (ROR 5-6; TFB Ex. 21 Bates Numbers 000670-000671). Ms. Barry was estranged from her two children and directed respondent to disinherit them in the will he prepared for her in 2012 (T Vol. II pp. 236, 275). In August 2016, Ms. Barry's neighbor advised respondent that Ms. Barry was in hospice care (T Vol. II p. 239). Pursuant to the power of attorney, respondent transferred $30,000.00 of the $32,066.34 balance in Ms. Barry's money market account to her checking account on August 30, 2016 (ROR 5-6, 17; TFB Ex. 21, Bates Numbers 000673-000677; TFB Ex. 22, Bates Number 001138). On that same day, respondent then transferred the $30,000.00 from Ms. Barry's checking account to his law office trust account (ROR 6, 17; TFB Ex. 21, Bates Numbers 000675-000677; TFB Ex. 22, Bates Number 001138). This was only a few days prior to respondent obtaining the first loan from Mr. Lowman on September 9, 2016 in the amount of $50,000.00 (ROR 14; TFB Ex. 6, Bates Number 000109). Ms. Barry died on September 5, 2016 (TFB Ex. 12) and, on the next day, respondent transferred $17,500.00 of her funds from his trust account to his operating account with the notation that it was

payment for one-half of his attorney and personal representative fees (ROR 6, 17; TFB Ex. 13; TFB Ex. 20, Bates Numbers 000575; T Vol. I pp. 87-88) (the bar notes there appears to be a typographical error in the Report of Referee on page 6 concerning this fact that was corrected on page 17). On September 8, 2016, three days later, the probate judge appointed respondent as personal representative (TFB Ex. 14). The bar's audit revealed that respondent utilized the $17,500.00 from Ms. Barry to cover an overdraft of $5,677.39 in his operating account and transferred portions of the funds to his other business accounts, a personal account, and paid various operating expenses of his law firm (ROR 6-7; TFB Ex. 22, Bates Number 001139). Thereafter, on October 19, 2016, respondent wrote a check to himself from Ms. Barry's Estate account in the amount of $15,500.00 for his personal representative's fee (ROR 7, 17; TFB Ex. 15; TFB Ex. 20, Bates Numbers 000580-000581).

Based on the testimony and the bank records, respondent took these funds later in the same day the bank dishonored the check respondent had drawn on Mr. Lowman's checking account in the amount of $15,000.00 (ROR 7, 17; TFB Ex. 20, Bates Number 000581; TFB Ex. 22, Bates Number 001139). During his sworn statement on January 10, 2017, respondent testified under oath that the check he drew on Ms. Barry's Estate account that same day ". . . wasn't a coincidence . . . I

needed that money, so I thought I would take my -- take a portion of my personal representative's fee." (ROR 7; TFB Ex. 20, Bates Number 000581). At the final hearing, respondent testified that he needed the funds in order to pay his IRS taxes, mortgage payments and loan payments. (T Vol. II pp. 249-250). Respondent admitted he knowingly took these fees prior to being appointed by the court as personal representative for Ms. Barry's estate (ROR 16-17; TFB Ex. 21, Bates Number 000686; T Vol. II pp. 246-247). Respondent used the funds from Ms. Barry to cover the overdraft of $5,677.38 in his account (ROR 17; TFB Ex. 22, Bates Number 001139).

Respondent represented Richard O'Connell, age eighty-five, who resided in an assisted living facility (ROR 7; TFB Ex. 21, Bates Numbers 000723, 000729-000730; T Vol. II p. 254). Mr. O'Connell was estranged from his family and respondent prepared a power of attorney for Mr. O'Connell naming himself as power of attorney. (ROR 7; TFB Ex. 21, Bates Number 000724; T Vol. II p. 274). At Mr. O'Connell's request, respondent used the power of attorney to change the name on Mr. O'Connell's financial accounts to reflect respondent's name as power of attorney and changed the mailing address to respondent's office (ROR 7; TFB Ex. 21, Bates Number 000743).

Although respondent invoiced Mr. O'Connell in 2014, he did not invoice him during 2015 and 2016 (ROR 8; TFB Ex. 16; TFB Ex. 21, Bates Numbers 000734-000737; T Vol. I pp. 80-81; T Vol. II p. 256). In 2015, respondent issued thirty-four checks totaling $43,000.00 from Mr. O'Connell's accounts either to respondent's personal checking account or his operating account (ROR 8; TFB Ex. 17). During this same time, respondent deposited a total of $4,800.00 back into Mr. O'Connell's checking account (ROR 8; TFB Ex. 17; TFB Ex. 21, Bates Number 000731) for a net total of $38,200.00 (ROR 9; TFB Ex. 17; T Vol. I pp. 123-125). One of the checks respondent wrote to Mr. O'Connell came from respondent's personal account shared with his wife rather than from his law office operating account (ROR 8; TFB Ex. 17, Bates Number 000446; TFB Ex. 21, Bates Number 000731).

In 2016, respondent wrote thirty-three checks totaling $82,840.00 from Mr. O'Connell's accounts either to respondent's personal checking account or operating account (ROR 8; TFB Ex. 17). During this same time period, respondent deposited funds back into Mr. O'Connell's checking accounts totaling $40,050.00 (ROR 8; TFB Ex. 17) for a net total of $42,790.00 (ROR 9; TFB Ex. 17; T Vol. I pp. 123-125).

According to respondent, there were times when Mr. O'Connell's checking account "would fall short" and respondent would return his fees to Mr. O'Connell's checking account to cover Mr. O'Connell's medical and caregiver bills (ROR 8; TFB Ex. 21, Bates Numbers 000731-000732, 000734-000735; T Vol. II pp. 261, 264, 267). After the bar commenced its investigation, respondent wrote a letter to Mr. O'Connell on November 22, 2016 informing him, for the first time, of respondent's compensation for 2015 and 2016 (ROR 8-9; TFB Ex. 18). In the letter, respondent attempted to explain his fees (ROR 9; TFB Ex. 18). Respondent failed to disclose the total amount he paid himself in 2015 and 2016 and the amounts he returned to Mr. O'Connell (ROR 9; TFB Ex. 18). Respondent represented to Mr. O'Connell in his letter that his compensation for 2015 was $38,200.00 and for 2016 it was $39,760.00 (ROR 9; TFB Ex. 18). Respondent enclosed in his letter timesheets previously not sent to Mr. O'Connell and offered to provide free legal services to Mr. O'Connell in 2017 (ROR 9; TFB Ex. 18).

Mr. O'Connell also maintained a brokerage account (ROR 9; TFB Ex. 22, Bates Number 001145). On February 12, 2016, Mr. O'Connell signed a letter, prepared by respondent, authorizing respondent to "liquidate and use monies for my care from my JP Morgan Chase Brokerage Account." (ROR 9; TFB Ex. 19, Bates Number 000505; TFB Ex. 22, Bates Number 001145). Between February

2016 and January 2017, the brokerage account statements were addressed to respondent's office address (ROR 9; TFB Ex. 21, Bates Numbers 000743, 000950-000951). Between February 2016 and December 2016, respondent made sixteen transfers totaling $66,500.00 from Mr. O'Connell's brokerage account to Mr. O'Connell's savings account (ROR 10; TFB Ex. 22, Bates Numbers 001145-1147, and attachments H, I and J, Bates Numbers 001291-001345). Respondent testified under oath during his sworn statement on April 6, 2017 that he made these transfers whenever Mr. O'Connell ran short of money (ROR 10; TFB Ex. 21, Bates Number 000744). Respondent testified that he used the funds to pay for Mr. O'Connell's expenses, such as his certified nursing assistant and to respondent (ROR 10; TFB Ex. 21, Bates Number 000745). Respondent used some of the funds from Mr. O'Connell's brokerage account for his own benefit (ROR 10; TFB Ex. 22, attachment H, Bates Numbers 001291-001309; T Vol. I pp. 121-122, 130-133). On February 17, 2016, respondent transferred $5,000.00 from Mr. O'Connell's brokerage account to Mr. O'Connell's savings account. On the next day, he transferred this sum from the savings account to Mr. O'Connell's checking account (ROR 10; TFB Ex. 22, attachment H, Bates Number 001294). That same day, respondent then transferred the $5,000.00 from Mr. O'Connell's checking account to respondent's operating account by check number 1982 (ROR 10; TFB

Ex. 22, attachment H, Bates Numbers 001294, 001296). Respondent used Mr. O'Connell's $5,000.00 to cover an overdraft in respondent's operating account, to pay overdraft charges in the operating account, to pay the Internal Revenue Service and to pay Thomson Reuters (ROR 10; TFB Ex. 22, attachment H, Bates Number 001296). The referee found there was ". . . an apparent free flow of monies in and out of Mr. O'Connell [sic] account(s) controlled by respondent, particularly in 2016." (ROR 19).

The bar's audit of respondent's accounts included his three trust accounts, operating account and personal checking accounts (ROR 11-12; TFB Ex. 22, Bates Number 001136; T Vol. I pp. 99-101). Respondent admitted that he commingled client funds in his operating account by receiving credit card payments for cost deposits into that account. He also admitted that he failed to timely transfer those cost funds from his operating account into his trust account. (ROR 12; TFB Ex. 21, Bates Numbers 000758-000762). The bar's audit revealed that respondent repeatedly and significantly overdrafted his operating account due to insufficient funds during 2015 and 2016 (ROR 12; TFB Ex. 9, Bates Numbers 000153-000154; TFB Ex. 10, Bates Numbers 000227-000230; TFB Ex. 22, Bates Numbers 001136-001137). Respondent incurred overdraft fees against his operating account totaling $5,565.00 in 2015 and $6,265.00 in 2016 (ROR 12; TFB Ex. 10, Bates Number

000230; TFB Ex. 22, Bates Number 001137). Due to these deficiencies in his operating account, client cost funds on deposit therein were utilized for purposes other than those for which they were entrusted to respondent (ROR 12-13; TFB Ex. 22, Bates Number 001137). The bar's audit also revealed that respondent failed to follow the minimum required trust accounting procedures and failed to maintain the minimum required trust accounting records (ROR 12, 20-21; TFB Ex. 22, Bates Numbers 001137-001138; T Vol. I pp. 101-103).

SUMMARY OF ARGUMENT

Respondent intentionally and knowingly engaged in a pattern of conduct over a period of years where he sought to remedy his financial issues in a variety of ways involving three particularly vulnerable clients. Respondent also drafted a revocable living trust wherein he named himself as a beneficiary. Compounding respondent's inappropriate transactions with these clients was his failure to maintain his trust accounts in substantial minimum compliance with the Rules Regulating The Florida Bar despite his many years spent handling estate matters and real estate transactions. Respondent delegated full responsibility for maintaining his trust account records to his two nonlawyer employees who created their own unique system for their recordkeeping convenience (TFB Ex. 20, Bates Numbers 000533, 000536-000539; T Vol. II pp. 290-293, 311-312, 315-316, 323). Respondent also knowingly commingled client cost deposits in his operating account, thus rendering it a *de facto* trust account, and misused those funds to cover shortages in his operating account (T Vol. I pp. 106, 143-145; TFB Ex. 20, Bates Number 000542; TFB Ex. 21, Bates Numbers 000755-000756, 000758-000000763).

The referee's detailed and well-reasoned findings of fact, the significant number of serious rule violations, including dishonesty, and the aggravating factors

found by the referee warrant disbarment. Further, the mitigating factor of remorse found by the referee lacks support in the record (T October 23, 2017 pp. 87, 96, 99-103). None of the mitigating factors outweigh the serious misconduct present here.

This Court long has held that misuse of client funds held in trust is one of the most serious offenses an attorney can commit, and that disbarment is the presumed sanction absent significant mitigation. The Florida Bar v. Schiller, 537 So. 2d 992 (Fla. 1989); The Florida Bar v. Tillman, 682 So. 2d 542 (Fla. 1996); The Florida Bar v. Riggs, 944 So. 2d 167 (Fla. 2006). Further, respondent's own testimony at the sanction hearing clearly and convincingly demonstrated his lack of remorse and, more alarmingly, his lack of understanding as to the wrongfulness of his misconduct (T October 23, 2017 pp. 99-103). "Lawyers must be extremely careful in their personal dealings with clients. Lawyers act in a special fiduciary capacity with their clients and must avoid using that relationship for personal gain." The Florida Bar v. Black, 602 So. 2d 1298 (Fla. 1992). Respondent intentionally violated that fundamental duty and used his personal and professional relationship with his clients for his own personal gain.

ARGUMENT

ISSUE I

THE REFEREE'S RECOMMENDATION OF A TWENTY-FOUR MONTH SUSPENSION NUNC PRO TUNC TO THE DATE OF THE EMERGENCY SUSPENSION ORDER IS NOT SUPPORTED BY THE CASE LAW AND STANDARDS AND THE APPROPRIATE SANCTION IS DISBARMENT

This Court's scope of review of a referee's recommendation as to discipline is broader than that afforded the factual findings because the ultimate responsibility for imposing the appropriate sanction rests with the Court. The Florida Bar v. Bischoff, 212 So. 3d 312, 319 (Fla. 2017). Generally, however, this Court does not alter the referee's disciplinary recommendation if it is supported by the case law and the Florida Standards for Imposing Lawyer Sanctions. Bischoff, 212 So. 3d at 319.

A twenty-four-month suspension is not appropriate given the referee's findings of fact, the significant number of serious rule violations, including dishonesty, and the aggravating factors found by the referee. Respondent engaged in an extensive pattern of misconduct involving multiple clients who were particularly vulnerable. Respondent wrote himself into a client's revocable living trust as a fifty percent beneficiary despite the long-standing rule prohibiting him from drafting such a document for a client. He borrowed a significant amount of

money from this same client despite the long-standing rule prohibiting him from engaging in business transactions with clients when a conflict of interest exists. Respondent also paid himself a portion of the personal representative fee in another client matter from an estate. Respondent was not entitled to these funds because he had not yet been appointed as personal representative by the court. He used another client's financial accounts to pay his personal obligations and attempted to conceal his activities by claiming the payments were for fees. Respondent then provided the client with an untimely explanation that failed to accurately reflect the flow of money in and out of the accounts. He routinely commingled client funds in his operating account where they were used to cover chronic shortages. He failed to maintain his trust accounts in compliance with the rules. Respondent claimed ignorance of these rules despite having practice law for forty-three years in the areas of estate planning, probate and real estate (T Vol. I pp. 56, 63-64; T Vol. II pp. 202, 227).

The prohibition against preparing testamentary instruments wherein the attorney names himself or herself as a beneficiary has existed since 1987 when rule 4-1.8 was amended. The first case considering a violation of this rule was The Florida Bar v. Anderson, 638 So. 2d 29 (Fla. 1994), where an attorney prepared numerous testamentary instruments naming himself or his wife as a beneficiary in

the estate in violation of rule 4-1.8(c). The referee found that Mr. Anderson neither intended to benefit from the bequest nor received any benefit from it. Anderson, 638 So. 2d at 30. Mr. Anderson merely was attempting to effectuate his client's desire to shield the funds from the creditors of the true intended beneficiary, a local festival. Like respondent, Mr. Anderson was a long-time practitioner who had no prior disciplinary history. Id. This Court noted that the rule was clear about the conduct it prohibited and that the prohibition was express and mandatory. Given Mr. Anderson's lack of intent to benefit from the bequest, and the fact he was attempting to carry out his client's wishes, this Court determined that a ninety-day suspension was the appropriate sanction. Id.

In contrast, respondent would have benefitted from Mr. Lowman's revocable living trust as he was a fifty percent beneficiary. Despite his forty-three years of practice, most of which were concentrated on estate planning, respondent professed ignorance of this prohibition that dates back to 1987. See Anderson, 638 So. 2d at 29. Respondent testified in his sworn statement that he drafted Mr. Lowman's initial trust before the rule change prohibiting respondent from naming himself therein as a beneficiary (TFB Ex. 21, Bates Number 000668). Respondent drafted the first trust around 2005, wherein he was not named as a beneficiary. However, respondent did draft an amendment in 2009 wherein he was named as a

four percent beneficiary (T Vol. I pp. 58, 62-63; TFB Ex. 21, Bates Number 000668). In 2011, upon request of Mr. Lowman, respondent drafted another amendment naming himself a fifty percent beneficiary in the distribution. (TFB Ex. 5, Bates Number 000092). Respondent also testified that he knew it was improper to name himself as a beneficiary under a trust (T Vol. II pp 226-227).

In The Florida Bar v. Poe, 786 So. 2d 1164 (Fla. 2001), this Court again considered a violation of rule 4-1.8(c). Mr. Poe drafted a will for a client he knew to be mentally ill and suicidal wherein Mr. Poe named himself as a beneficiary and personal representative for the estate. Poe, 786 So. 2d at 1165. Unlike respondent, Mr. Poe had a prior disciplinary history. This Court determined that disbarment was the appropriate sanction because Florida Standards for Imposing Lawyer Sanctions 4.31(a) called for this sanction where a lawyer engaged in representation of a client despite knowing that the lawyer's interests were adverse to the client's with the intent to benefit the lawyer or another, and caused serious or potentially serious injury to the client. Id. at 1166. Unlike respondent, this was the only charge brought against Mr. Poe, as two other cases against him were dismissed by the bar. Mr. Poe was also not found to have misused client funds, nor did he engage in dishonest conduct. Because respondent's misconduct is more egregious than that of Mr. Poe, disbarment should be the presumed sanction.

This Court has long held that it is never permissible for an attorney to use client funds entrusted to his or her care, irrespective of where those funds are on deposit, to pay his or her personal obligations and then to conceal his or her activities under the guise of fees. These are serious breaches of respondent's ethical obligations to his clients. Although much of the case law concerning engaging in improper business transactions with clients calls for long term suspensions, respondent's unfettered access to the affected clients' accounts in his fiduciary capacity makes his actions more similar to those of an attorney who misuses client funds on deposit in a trust account. Respondent freely wrote checks to himself from their accounts with little or no meaningful supervision.

The referee found that respondent used some of Mr. O'Connell's funds primarily for respondent's own benefit (ROR 10, 18-19). This finding, standing alone, warrants a harsh sanction, especially in light of the fact that Mr. O'Connell was a vulnerable elderly client who resided in an assisted living facility and reposed great trust in respondent to handle his financial affairs (ROR 7, 14-15). Mr. O'Connell did not have an opportunity to challenge respondent's withdrawals from his accounts as fee payments because respondent failed to advise him of the withdrawals in advance and did not prepare any billing statements until long after the fact (ROR 8-9; TFB Ex. 18). Although neither Mr. O'Connell's funds nor

those of Edward Lowman were on deposit in respondent's trust account, because respondent was managing their financial assets pursuant to powers of attorney granted to him, he owed these clients the same fiduciary duty that he owed every client whose funds were on deposit in his trust account. By using his clients' assets to pay his own obligations, respondent violated his fiduciary and professional duties owed to his clients.

Respondent's violation of the fiduciary duty owed his clients is not unlike that presented in The Florida Bar v. Rousso, 117 So. 3d 756 (Fla. 2013). Mr. Rousso and his partner, Mr. Roth, employed a bookkeeper who embezzled a large sum of money from the law firm's trust account. Rousso, 117 So. 3d at 759-60. When the attorneys learned of the shortage in the trust account, they took a variety of actions to try and remedy the situation. Id. at 760. One of those actions, however, involved obtaining a loan from a client. Id. Mr. Roth solicited the loan from the client, who traded a portion of his trust account credit for a promissory note amounting to more than $231,000.00. Mr. Roth failed to advise his client in writing to seek the advice of independent counsel prior to agreeing to the transaction. Id. at 761-62. Although Mr. Rousso did not solicit the loan, he did benefit from promissory note. Id. at 760. Mr. Rousso and Mr. Roth eventually defaulted on the promissory note, which became uncollectable. Id. The referee

found that both Mr. Rousso and Mr. Roth were found to have violated Rule 4-1.8, among other rules.

Although the attorneys' transaction with their client involved a liquidity crisis in their trust account, in Rousso, the solicitation of the loan from the client was very similar to respondent's solicitation of the loan from his client to address his own personal liquidity crisis. This Court's analysis of the issues is enlightening and applicable in this matter. Id. at 761-62. Ordinarily, such transactions are conducted at an arm's length where the parties have no duty to advise whether the deal is fair to the other. "However, the attorney/client relationship necessitates an exception to the general rule. A lawyer as a negotiating party with a client for a loan, is a lawyer first. Lawyers have advantages. They possess legal skills and training beyond those of their clients. They benefit by the clients' expectation of loyalty and consequent trust. These advantages create the possibility that lawyers, in business transactions with their clients, will overreach. The Bar rules address these concerns. Lawyers are not to enter into a business transaction with their clients unless the requirements of rule 4-1.8(a) are met." Rousso, 117 So. 3d at 761-762. Neither Mr. Rousso nor Mr. Roth complied with rule 4-8.1(a).

This client, similar to Mr. Lowman, could not give informed consent because he was not provided with sufficient information and independent legal

advice. Respondent's client, unlike in Rousso, was an elderly, infirm individual who entrusted respondent not with a portion of his funds on deposit in his trust account, but with his entire life savings to which respondent had unfettered access. In considering the case against Mr. Rousso and Mr. Roth, this Court found that their seeking the loan from their client was a serious breach of conduct. In considering the appropriate sanction to recommend, the referee found in Rousso that the attorneys engaged in dishonest conduct by obtaining the loan from their client despite being aware it would be difficult, if not impossible, to repay it. This Court deemed disbarment for both attorneys to be the appropriate sanction. Id. at 767. Similarly, at the time he solicited the loan from Mr. Lowman, the possibility existed that the loan could not be repaid given respondent's liquidity crisis.

Respondent violated 4-8.4(c) of the Rules Regulating The Florida Bar by engaging in dishonest conduct. This Court also stated in Rousso, 117 So. 3d at 767 that it "does not view violations of rule 4-8.4(c) as minor." "[B]asic fundamental dishonesty . . . is a serious flaw, which cannot be tolerated." Id. at 767 [quoting The Florida Bar v. Rotstein, 835 So. 2d 241, 426 (Fla. 2002)]. Respondent, like Mr. Rousso and Mr. Roth, engaged in dishonesty. The referee, in the instant matter, found respondent's conduct in connection with his payment of fees to himself prior to his appointment by the probate judge in Christa Barry's estate was

dishonest (ROR 16-17). Likewise, his dealings with Mr. O'Connell were dishonest (ROR 17-18). The referee found that given respondent's dire financial circumstances, he was taking additional funds from Mr. O'Connell and no rationale existed as to why respondent collected over $40,000 above what he indicated he earned. (ROR 18). Mr. Rousso and Mr. Roth were disbarred despite the fact they were, in good faith, attempting to cover the money stolen by their bookkeeper. In contrast, respondent was attempting to cover his personal financial problems. Because respondent's dishonest misconduct was similar to Mr. Rousso and Mr. Roth, this Court should also deem disbarment as the appropriate sanction.

In The Florida Bar v. Maynard, 672 So. 2d 530 (Fla. 1996), an attorney was disbarred for violating his fiduciary duties as a trustee by loaning himself money from the trust, neglecting a legal matter, obtaining a loan from a client, entering into improper business transactions with another client, and for making a false statement to the bankruptcy court in connection with his personal bankruptcy case. There were two discipline cases that were consolidated for purposes of appeal. The first case involved Mr. Maynard's misuse of funds in his capacity as a trustee. Mr. Maynard was asked by a long-time client and friend to serve as trustee for the client's trust for his minor children. Maynard, 672 So. 2d at 531. Mr. Maynard failed to provide his client with accurate and regular accountings of the trust's

assets and loaned himself and others substantial sums of money from the trust without collateral. Maynard, 672 So. 2d at 532. Some of these loans were not repaid and Mr. Maynard misled his client with respect to the true financial condition of the trust. Ultimately, he was unable to account for all the funds withdrawn from the trust. Id. at 533-534. He was also found to have neglected a legal matter and obtained a loan from a client and the referee recommended a ninety-one-day suspension. Maynard, 672 So. 2d at 536. In the second matter, encompassing the remainder of the allegations, the referee recommended a ninety-day suspension to run concurrent with the suspension in the first matter. Id. at 539. This Court found that disbarment was the appropriate sanction due to Mr. Maynard's misuse of client funds. Id. at 540. This Court did not make a distinction between his misuse of funds maintained in his capacity as a trustee and those maintained by him in his capacity as an attorney in his law office trust account.

Mr. Maynard and the client had a relationship not unlike that of respondent and Mr. Lowman. Similarly, respondent abused the trust and friendship of Mr. Lowman to obtain unsecured loans from him. Respondent also abused this position with Mr. O'Connell to freely access all of Mr. O'Connell's accounts and to pay himself undocumented fees without providing Mr. O'Connell

contemporaneous invoices and without providing him with timely, meaningful and accurate accountings. Like Mr. Maynard, respondent did not invade his attorney trust account. He invaded his clients' personal financial accounts over which he had control.

Mr. Maynard also solicited loans from a second client. Maynard, 672 So. 2d at 535. Mr. Maynard, like respondent, did not reduce the terms of the loans to writing nor did he advise his client to seek the advice of independent counsel prior to making the loans. The client considered Mr. Maynard to be both his attorney and friend. Id. Unlike respondent, Mr. Maynard did not repay the loans and, instead, sought to discharge them through bankruptcy. Mr. Maynard also engaged in other business transactions with various clients where he abused his position of trust as their attorney to benefit himself.

Similar to Maynard, the referee found respondent used Mr. O'Connell's funds primarily for respondent's own benefit (ROR 10). Respondent, like Mr. Maynard, took advantage of his clients who, unlike Mr. Maynard's sophisticated clients, were vulnerable and trusting of his guidance. As such, this Court should disbar respondent for soliciting loans from his clients and misusing client funds for his own financial crisis.

In The Florida Bar v. Prevatt, 609 So. 2d 37 (Fla. 1992), an attorney was disbarred for obtaining improper loans from an elderly client. After the client suffered a stroke and was hospitalized, the client executed both a general power of attorney, prepared by Mr. Prevatt, and a joint savings account signature authorization in favor of Mr. Prevatt. Prevatt, 609 So. 2d at 37. After the client was placed in a nursing home, Mr. Prevatt managed his financial affairs, despite the family seeking the appointment of a guardian due to the client's questionable competence. Id. Thereafter, Mr. Prevatt loaned himself and others money from his client's account using the power of attorney and the joint checking account. Mr. Prevatt memorialized his loans by an arbitrary guardianship fee schedule, promissory notes and amortization schedules. Id. Mr. Prevatt admitted that he failed to prepare any statements of services rendered to his client in support of the fee schedule. Id. This Court found that Mr. Prevatt's alcoholism was not sufficient to overcome the presumption of disbarment for his misuse of client funds. Prevatt, 609 So. 2d at 38.

Respondent misused funds similar to Mr. Prevatt by loaning himself fees from Mr. O'Connell using the power of attorney and failing to prepare any invoices regarding his legal services until after the bar investigation had occurred. (ROR 18). Respondent breached his fiduciary duty owed as an attorney in fact and

misused Mr. O'Connell's funds for his own purposes. The misuse of a client's funds is one of the most serious offenses a lawyer can commit, and disbarment is the presumed sanction, especially where the misuse is the result of intentional, rather than negligent or inadvertent, acts.

The Florida Standards for Imposing Lawyer Sanctions also support disbarment given the facts in this case.

Under Standard 4.1, Failure to Preserve the Client's Property, Standard 4.11 calls for disbarment when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury. Blacks' Law Dictionary defines conversion as: "The wrongful possession or disposition of another's property as if it were one's own; an act or series of acts of willful interference, without lawful justification, with an item of property in a manner inconsistent with another's right, whereby that other person is deprived of the use and possession of the property."

Clearly respondent converted Mr. O'Connell's funds in that he used the money from the accounts, without Mr. O'Connell's full knowledge or informed consent, as if the funds were respondent's own. When Mr. O'Connell's checking account was insufficient to pay his bills, respondent would return some of the money he had taken to cover Mr. O'Connell's expenses. Because respondent intentionally converted Mr. O'Connell's funds, Standard 4.12, which calls for a

suspension when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client, is not applicable.

Under Standard 4.3, Failure to Avoid Conflicts of Interest, Standard 4.31(a) calls for disbarment when a lawyer, without the informed consent of the client, engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client.

Respondent admitted he did not advise Mr. Lowman, in writing, of the potential conflict of interest and to seek the advice of independent counsel before agreeing to loan respondent money on three occasions. Standard 4.32, which calls for a suspension when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client, is not applicable because respondent did not make any disclosures to Mr. Lowman. The wording of this Standard provides that the lawyer has made a partial or ineffective disclosure. Therefore, Standard 4.31(a) should apply and respondent should receive the discipline of disbarment.

Under Standard 4.6, Lack of Candor, Standard 4.61 calls for disbarment when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another regardless of injury or potential injury to the client.

The referee found that respondent admitted that he knowingly and intentionally paid himself personal representative fees from Ms. Barry's estate prior to being appointed as the personal representative. He previously had transferred virtually all of her funds from her money market account to his trust account while she was still alive. Respondent accessed those funds the day after Mr. Barry died by transferring $17,500.00 from the trust account to his operating account as payment of his attorney's fees and personal representative's fees, even though he was not yet the personal representative. The following month, after being appointed as personal representative, respondent also transferred an additional $15,500.00 from the trust account to his operating account, claiming it was for additional personal representative's fees. The referee noted in his report that the timing of this transfer and the amount coincided with the $15,000.00 check respondent wrote from Mr. Lowman's checking account that was dishonored by the bank. Respondent needed the funds to cover overdraft fees in his operating account (ROR 17). Respondent's use of these funds, and his attempt to conceal his activities by claiming the transfers were for fees he was owed, was disingenuous.

Respondent needed the money from Ms. Barry's assets to cover his personal obligations.

Respondent additionally was dishonest with respect to his characterization of his use of Mr. O'Connell's funds, again claiming it was for payment of fees. Respondent did not provide any documentation to support the appropriateness of the funds he removed and returned to Mr. O'Connell's accounts until after the bar commenced its investigation (ROR 18-19). The letter he wrote to Mr. O'Connell outlining his payment of Mr. O'Connell's funds is, at best, confusing (TFB Ex. 18). Respondent blamed Mr. O'Connell for his decision not to provide him with timely and meaningful invoices. Respondent testified that there was no pressing need to provide timely accountings to Mr. O'Connell because Mr. O'Connell periodically went to the bank or would send his personal nursing assistant to respondent's office to obtain copies of his bank statements and thus was able to review respondent's activities in his accounts (T Vol. II p. 256). Respondent also testified that, although he was not certain he had a specific conversation with Mr. O'Connell regarding invoices, the personal nursing assistant advised respondent that Mr. O'Connell did not want to receive any paperwork at his assisted living facility, which respondent interpreted as including invoices for respondent's services (T Vol. II p. 257).

Standard 4.62, which calls for a suspension when a lawyer knowingly deceives a client, and causes injury or potential injury to the client, is not applicable because respondent's actions were intended for his benefit. Respondent used Mr. O'Connell's funds to remedy respondent's liquidity crisis. Even assuming Mr. O'Connell had at least some periodic access to his financial statements, he had no ability to ascertain the purposes of respondent's withdrawals from his accounts. Respondent did not provide him with timely and meaningful accountings or billing statements for two years. Because respondent knowingly and intentionally deceived his clients in order to benefit himself, Standard 4.61 for disbarment is applicable.

Under Standard 5.1, Failure to Maintain Personal Integrity, Standard 5.11(f) calls for disbarment when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice. All of respondent's actions with respect to Ms. Barry's estate and Mr. O'Connell's funds were intentional and clearly reflected adversely on his fitness to practice law. These clients trusted respondent to handle their financial and final affairs because they had no family or other persons to look after their interests. Respondent abused that trust by using their

funds, in Ms. Barry's case after her death, to benefit himself. In his report, the referee found this Standard applicable (ROR 27).

Under Standard 7.0, Violations of Other Duties Owed as a Professional, Standard 7.1 calls for disbarment when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

Respondent's actions were taken to address his financial crisis and thus were intended for his benefit. Standard 7.2, which calls for a suspension when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system, is not applicable.

ISSUE II

THE REFEREE'S FINDING OF REMORSE AS A MITIGATING FACTOR IS NOT SUPPORTED BY THE EVIDENCE AND TESTIMONY

A referee's findings as to mitigation and aggravation carry a presumption of correctness and will be upheld unless clearly erroneous or without support in the record. The Florida Bar v. Johnson, 132 So. 3d 32, 37 (Fla. 2014). The party seeking to challenge the referee's findings cannot merely point to contradictory evidence in the record if it otherwise contains competent, substantial evidence supporting the referee's finding. The Florida Bar v. Irish, 48 So. 3d 767, 773 (Fla. 2010). Respondent's own testimony and admissions establish that he had no remorse for his misconduct.

The referee found in mitigation that respondent was "contrite and generally remorseful." (ROR 30). Black's Law Dictionary defines remorse as a "strong feeling of sincere regret and sadness over one's having behaved badly or done harm; intense, anguished self-reproach and compunction of conscience, esp. for a crime one has committed." The Merriam-Webster Dictionary defines contrite as "feeling or showing sorrow and remorse for a sin or shortcoming. Respondent's testimony at the sanction hearing clearly demonstrated he felt neither sincere regret nor sorrow for his long-standing pattern of using client funds for his own benefit

(T October 23, 2017 pp. 86-103). In fact, respondent's testimony demonstrated that he failed to appreciate the wrongfulness of seeking loans from his client. Respondent did not believe his handling of Mr. O'Connor's funds was inappropriate. Respondent justified his actions by arguing that he fully repaid the monies and his clients were satisfied. The referee specifically noted in his report that "[r]espondent has engaged in representing clients within the specialized area of elder law for far too long to conduct himself in this manner. It is unquestionable that respondent's activities and the timing of activities were not a coincidence. Respondent admitted as much. It is abundantly clear that respondent's pattern of activity during the relevant period of time were focused on his best interest, i.e. to address immediate concerns of his own financial distress." (ROR 29).

At the final hearing, respondent's testimony clearly demonstrated his lack of remorse. Respondent testified as follows:

> You asked me how I felt, and I just feel like maybe some rules have been violated, but not intentionally. No money is missing. No one was harmed. The punishment I've received so far with the suspension and what I was ascribed to was not fit for the rule violations alleged on a six month suspension. Newspaper articles, TV's clip. Today was like trying to kill an ant with a sledge hammer, or it feels like. Throughout the Bar investigation and being looked at by the Bar, prosecuted as a trophy being hunted for the kill so my head could be mounted on their wall as trophy killing, trophy to hunt. . . It's like facing a firing squad for a traffic violation and

> being paraded through Clermont in handcuffs in prison clothes before any opportunity to be heard. Taking away from me my 43-year good reputation before I have the ability to be heard. . . Even a person accused of a crime has more rights than I was given. . . Yes, I technically violated some rules unintentionally, but does that justify the punishment I received already. . . Was I a great public harm to my community and to my clients that I've served for 43 years? I don't think so. I don't think I was. . . . Because you're attaching a motive to me when there really isn't a motive. . . No harm done to the public, to individuals, no loss of money to anyone. I just feel like I was mistreated in this whole case by the way -- there was an emergency suspension when there was nothing alleged the last few months that I was doing wrong, and to lose my reputation over what they were alleging, 43 years, it's tough. (T October 23, 2017 pp. 99-103).

The referee found little merit to respondent's argument at the final hearing that this was a "generational" case in that the practice of law has changed and the interaction between attorney and client has changed significantly over the years (ROR 29; T Vol. II pp. 341, 349). Clearly, the referee found that respondent fully understood that his actions were improper. Further, this Court has long held that it is impermissible for attorneys to enter into such business transactions with their clients as respondent did. His clients' interests were clearly in conflict as respondent possessed more knowledge of his clients' financial conditions than they had of his financial needs. Respondent's argument at the final hearing that this type of financial transaction with a client was permissible in the past and he simply

was not aware of current ethical requirements does not support a finding of remorse. Rather than acknowledging his actions were unethical and demonstrating a commitment to refrain from such conduct in the future, respondent attempted to excuse his misconduct based on his ignorance of the Rules Regulating The Florida Bar and on the fact that Mr. Lowman was a friend, who also happened to be a client, who insisted on loaning respondent money. Respondent's argument demonstrates a lack of awareness of his ethical obligations as an attorney.

Respondent presented little or no evidence of remorse on which the referee could have based a finding of this mitigating factor. From his arguments and testimony throughout these proceedings, respondent still considers himself an innocent victim of the bar's disciplinary proceedings against him and still believes that, because his clients ultimately were not harmed, he should not be disciplined (T October 23, 2017 pp. 87, 99-103). Respondent did not merely assert his innocence, a right to which he is entitled, The Florida Bar v. Germain, 957 So. 2d 613, 622 (Fla. 2007). He demonstrated a fundamental lack of understanding of his ethical obligations when dealing with vulnerable, elderly clients. Respondent characterized his misconduct as being technical violation of some of the Rules Regulating The Florida Bar that did not warrant the imposition of an emergency suspension (T October 23, 2017 pp. 101-102). Respondent minimized the

seriousness of his misconduct, testifying that no money was missing, no one was harmed and, therefore, the emergency suspension imposed on him never was warranted (T October 23, 2017 p. 99). Respondent only repaid Mr. Lowman back and provided a letter of his fees to Mr. O'Connell after the bar investigation began on October 24, 2016 (TFB Ex. 1; TFB Ex. 7; TFB Ex. 18). The referee disagreed with respondent's arguments finding that respondent knowingly and intentionally engaged in a pattern of activity that was focused on his own best interests (ROR 29) and utilized his clients' funds to alleviate his personal financial distress (ROR 15). A cursory review of the Rules Regulating The Florida Bar would have alerted respondent to his duty to advise his client to seek the advice of independent counsel prior to agreeing to make any loans to respondent and prior to naming respondent as a beneficiary in a trust and/or will.

Respondent not only insisted he did nothing wrong, he blamed the bar for prosecuting this action against him and damaging his reputation (T October 23, 2017 pp 99-101). Respondent expressed considerable unhappiness with the fact he had been suspended six months at the time of the sanction hearing in October 2017 (T October 23, 2017 pp. 90, 101) despite the fact respondent filed on July 7, 2017 a Notice of Waiver of his rights under rule 3-5.2(l) to have this matter heard and a report of referee issued within ninety days.

"The fact that there is some evidence in the record to support a finding that a mitigating factor might apply does not mean that the referee should necessarily found it applicable." The Florida Bar v. Shankman, 41 So. 3d 166, 174 (Fla. 2010) [citing to The Florida Bar v. Herman, 8 So. 3d 1100, 1106 (Fla. 2009)]. Throughout these proceedings, respondent has evinced resentment at having his integrity questioned while, at the same time, admitting he failed to fully comply with the Rules Regulating The Florida Bar regarding advising his clients in writing to seek the advice of independent counsel, by paying himself personal representative fees prior to being appointed by the court and failing to comply with the trust accounting rules. Respondent minimized these violations. Respondent argued Mr. Lowman was not harmed because respondent repaid the loan in full with interest. Respondent also maintained that he would have eventually been appointed as the personal representative for Ms. Barry's estate and no harm was done by taking his fees a little earlier than technically permitted. Lastly, respondent contended that he admittedly created an "unorthodox" trust account recordkeeping system that did not comply with the Rules Regulating The Florida Bar (T Vol. II p. 342) but his staff understood their system. Respondent's testimony clearly contradicts the referee's conclusion that respondent was remorseful.

CONCLUSION

When choosing to increase discipline recommended by a referee, this Court has stated that "if the discipline does not measure up to the gravity of the offense, the whole disciplinary process becomes a sham to the attorneys who are regulated by it." The Florida Bar v. Wilson, 425 So. 2d 2, 4 (Fla. 1983). The referee's recommendation of a twenty-four-month suspension *nunc pro tunc* to the date of respondent's emergency suspension is disproportionate to the level of respondent's egregious misconduct. The nature of respondent's misconduct reflects adversely on the reputation and dignity of the legal profession and, coupled with his lack of remorse of his acts of self-dealing to address his financial distress, dishonesty to his elderly clients, misuse of client funds and serious trust account violations warrants disbarment.

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact and recommendation of a twenty-four-month suspension *nunc pro tunc* to the date of respondent's emergency suspension order and instead impose as a sanction immediate disbarment and payment of costs currently totaling $24,881.07.

Carrie Constance Lee, 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 by United States Mail via Certified Mail No. 7160 3901 9843 2748 4617, return receipt requested to Brett Alan Geer, The Geer Law Firm, L. C., 3030 North Rocky Point Drive West, Suite 150, Tampa, Florida 33607-7200 and via E-Mail to brettgeer@geerlawfirm.com; and to Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323 via E-mail at aquintel@floridabar.org on this 28th day of February, 2018.

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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 E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, using the E-Filing Portal. 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.

Carrie Constance Lee, Bar Counsel