
IN THE SUPREME COURT OF FLORIDA

Case No. SC20-1027
The Florida Bar File Nos. 2019-70,706 (11E)

THE FLORIDA BAR,

Complainant,

v.

ALAN HOWARD RAMER,

Respondent.

THE FLORIDA BAR'S INITIAL BRIEF

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STATEMENT OF THE CASE AND FACTS

A. Nature of the Case

This is a reciprocal discipline action against Respondent Alan Howard Ramer based on the Southern District of Florida's (the "Southern District") Order of Suspension (Tab 1, Ex. A (May 23, 2019) (Doc. No. 9)),¹ which suspended Mr. Ramer for six months and required remediation prior to readmission.

Complainant The Florida Bar ("TFB") seeks review of the Report of Referee (the "Report"), which found Mr. Ramer guilty of multiple acts of misconduct and recommended that this Court suspend Mr. Ramer from the practice of law for 90 days. Mr. Ramer's conduct warrants a harsher sanction. TFB respectfully requests that this Court suspend Mr. Ramer from the practice of law for at least 91 days so that he will be required to prove rehabilitation.

¹ Citations are to the Record, including to the appropriate "Tab" number in the Index of Record. Citations to "ROR" refer to the Report of Referee dated February 18, 2021 (Tab 60 in the Index of Record). Citations to "MSJ Tr." are to the transcript of the October 16, 2020 hearing on The Florida Bar's motion for partial summary judgment and Mr. Ramer's cross-motion for summary judgment. Citations to "S. Tr." are to the transcript of the December 4, 2020 final hearing on sanctions.

Mr. Ramer has filed a notice of intent for cross-review and plans to challenge numerous rulings by the Referee.

B. The Southern District's 2019 Order of Suspension

The Southern District's Order of Suspension stems from Mr. Ramer's conduct as defense counsel in *Coach, Inc. v. Chung Mei Wholesale*, No. 1:15-cv-22829-CMA (S.D. Fla.), a trademark infringement case before U.S. District Court Judge Cecilia Altonaga. (See ROR at 3-4). After a jury found in the plaintiffs' favor on most counts, the plaintiffs filed a motion seeking attorney's fees under the Lanham Act, which authorizes the recovery of fees by a prevailing party in "exceptional cases." (See *id.* at 4; see also Tab 51, TFB Ex. 8 (Doc. No. 179)).

Judge Altonaga granted the plaintiffs' motion and concluded that Mr. Ramer bore "significant responsibility in multiplying litigation costs." (Tab 1, Ex. B (Doc. No. 182 at 9 n.3)). The district court found that "nearly all of the unacceptable litigation conduct is directly attributable to [Mr.] Ramer" and that "[t]he record in this case reflects counsel needs remedial assistance." (*Id.*). Consequently, the court referred Mr. Ramer to the Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance for the Southern

District of Florida (the “Ad Hoc Committee”), “for mentoring, supervision, and monitoring to ensure that his conduct meets the standards of professionalism the Court expects from attorneys practicing before it.” (*Id.*).

1. *The Ad Hoc Committee’s Investigation and Report and Recommendation*

Mr. Ramer met with an investigative committee on November 16, 2017, and testified before the full Ad Hoc Committee on March 13, 2018. (Tab 1, Ex. A, Report & Recommendation (“First R&R”), at 2 (Apr. 12, 2018) & Ex. A thereto (Tr. of Ad Hoc Committee testimony (“Ad. Hoc. Tr.”) (Mar. 13, 2018))). As a result of its investigation, the Ad Hoc Committee found that Mr. Ramer failed to comply with numerous court orders and the Local Rules of the Southern District of Florida in the *Coach* case and had committed misconduct in other cases. (ROR at 4; *see also* Tab 1, Ex. A, First R&R, at 2-8).

First, the Ad Hoc Committee found that Mr. Ramer failed to respond to multiple written discovery requests without court intervention—and often failed to respond even after court intervention. (ROR at 4; *see also* Tab 1, Ex. A, First R&R, at 2). Mr. Ramer told the Ad Hoc Committee that if his clients did not send him

responsive records on a timely basis, it was “[u]sually” his practice to ignore discovery requests until he was contacted by opposing counsel. (Tab 1, Ex. A, Ad Hoc Tr. 28:22-29:6, 30:4-10; *see also* Tab 1, Ex. A, First R&R, at 3). In *Coach*, it took numerous court orders compelling Mr. Ramer’s clients’ discovery responses and awarding sanctions before his clients partially complied. (*See* Tab 1, Ex. A, First R&R, at 2; Tab 47, TFB Composite Ex. 4 (collecting orders)).

Second, Mr. Ramer and his clients in *Coach* failed to attend a court-ordered mediation. (Tab 1, Ex. A, First R&R at 3-4; *see also* Tab 1, Ex. C, Mediation Report (Doc. No. 46); Tab 48, TFB Ex. 5 (Doc. No. 23)). Mr. Ramer testified that the defendants’ and his failure to attend the mediation was the result of a calendaring error. (Tab 1, Ex. A, First R&R, at 4). Judge Altonaga, however, concluded that the defendants “failed to prove their noncompliance . . . was substantially justified,” particularly given the defendants’ “history of noncompliance” in the case. (Tab 50, TFB Ex. 7, Order (May 9, 2016) (Doc. No. 63 at 3)). The court ordered the defendants to reimburse the plaintiffs’ costs and fees expended in connection with the mediation. (*Id.* at 4).

Third, the defendants failed to respond to numerous court orders directing them to respond to the plaintiffs' motions. (Tab 1, Ex. A, First R&R, at 4; Tab 52, TFB Ex. 9 (collecting orders)). The Ad Hoc Committee concluded that "Mr. Ramer did not have thoughtful reasons as to why he missed filing deadlines or failed to comply with the Court's orders or otherwise advise the Court of the client-related issues he was apparently facing." (Tab 1, Ex. A, First R&R, at 5).

Fourth, Mr. Ramer ignored the district court's directive to remain within 15 minutes of the courtroom during the jury's deliberation after the *Coach* trial. (ROR at 7). The Ad Hoc Committee found that the court, jury, and opposing counsel waited more than an hour for Mr. Ramer to return to court before the jury could announce its verdict. (*Id.*).

The Ad Hoc Committee also found that Mr. Ramer often failed to comply with the Local Rules for the Southern District of Florida. (Tab 1, Ex. A, First R&R, at 5-6). For example, Mr. Ramer "repeatedly failed to comply with Local Rule 7.3," which requires attorneys to make a good faith effort with opposing counsel to resolve issues by agreement. (*Id.* at 6). The Ad Hoc Committee noted that "Mr. Ramer failed to respond to multiple emails and telephone calls to confer on

motions and discovery disputes to the point where Plaintiffs' counsel had to resort to titling emails that required a response with 'RESPONSE REQUESTED.'" (*Id.*) Even then, Mr. Ramer "[o]ften times . . . still failed to respond." (*Id.*).

Mr. Ramer has been admitted to practice law in Florida since 1988. (ROR at 15). The Ad Hoc Committee asked Mr. Ramer if "since 1988 have you never had any other case where you had difficulty getting documents from your client on a timely basis where you had to file a motion for an extension?" (Tab 1, Ex. A, Ad Hoc Tr. 27:25-28:4). Mr. Ramer responded, "Yeah, never." (*Id.* 28:7).

In addition to *Coach*, the Ad Hoc Committee found that Mr. Ramer had exhibited similar unprofessional conduct in two other cases. First, in *LBC Compass Group LLC v. Nova Marine Co. Ltd.*, No. 0:02-cv-60862-WCT (S.D. Fla.), U.S. Magistrate Judge William Turnoff entered a July 1, 2004 order striking Mr. Ramer's motion for failing to comply with Local Rule 7.1, which required memoranda of law and certificates of pre-filing conferences. (Tab 1, Ex. A, First R&R, at 7; *see also* Tab 53, TFB Ex. 10 (Doc. No. 118 at 4-5)). In doing so, the magistrate judge observed that Mr. Ramer's filings "demonstrate[d] an overwhelming non-compliance with the Federal

Rules of Civil Procedure and the Local Rules.” (Tab 1, Ex. A, First R&R, at 7; *see also* Tab 53, TFB Ex. 10 (Doc. No. 118 at 4)). According to Judge Turnoff, as a result of Mr. Ramer’s “poor drafting,” which included “elementary grammatical and spelling errors” and “non-compliance with the rules, four judges have spent an extraordinary amount of court time deciphering the procedural posture of the parties’ submissions and the merits of the parties’ filings.” (Tab 1, Ex. A, First R&R, at 7; *see also* Tab 53, TFB Ex. 10 (Doc. No. 118 at 4)).

Second, in *Mystique, Inc. v. 138 International, Inc.*, No. 1:07-cv-22937-EGT (S.D. Fla.), Magistrate Judge Edwin Torres found that “Mr. Ramer’s clients willfully and intentionally violated three discovery Orders.” (Tab 1, Ex. A, First R&R, at 7). Though the magistrate judge concluded that he lacked sufficient evidence to show that Mr. Ramer obstructed the discovery process, he concluded that Mr. Ramer and other defense counsel “surely could have done more to determine whether their clients possessed any information that was responsive to Plaintiff’s discovery requests” but instead “made no effort to independently investigate the various inconsistencies in the clients’ written and oral responses.” (Tab 54,

TFB Ex. 11 (Doc. No. 233 at 21)). The defendants were sanctioned \$37,959 in fees and costs for violating the discovery orders. (*Id.* at 32). The Ad Hoc Committee observed that “[s]imilar to the *Coach* case, Mr. Ramer argued” in *Mystique* “that many of the issues concerning his client’s testimony and their efforts to comply with court-ordered discovery were the result of them being native Mandarin Chinese speakers and not completely fluent in English.” (Tab 1, Ex. A, First R&R, at 8; *see also* Tab 54, TFB Ex. 11 (ECF No. 233 at 17 n.8)).

The Ad Hoc Committee issued the First R&R on April 12, 2018, concluding that Mr. Ramer “lacks the requisite familiarity with federal court practice and the Local Rules for the Southern District of Florida.” (Tab 1, Ex. A, First R&R, at 8-9). The Ad Hoc Committee recommended that the Southern District suspend Mr. Ramer for six months, during which time he should: (1) complete certain specified CLE courses; (2) read the Federal Rules of Civil Procedure and the Southern District’s Local Rules in full; and (3) complete an evaluation by TFB’s Practice Resource Institute. (*Id.* at 9). The Ad Hoc Committee also wanted Mr. Ramer to appear before the full

committee for further report and recommendation before he could be reinstated to the Southern District. (*Id.*).

2. The Southern District's Entry of the Order of Suspension

Mr. Ramer objected to the Ad Hoc Committee's First R&R, and the court issued an order to show cause allowing Mr. Ramer to have "a full and fair opportunity to review the Committee's recommendation and respond." (Tab 1, Ex. A, Order of Suspension, at 1-2). Mr. Ramer filed an untimely response to the show cause order on September 21, 2018, arguing, *inter alia*, that "the committee has . . . already provided sufficient mentoring for the undersigned to be enlightened as to past imperfection and any suspension is draconian, excessive, and beyond the scope of the referral." (*Id.* at 2; Tab 16, Respondent's Notice of Filing Documents, Response to Order to Show Cause, at 6).

Notwithstanding the untimeliness of the response, the court requested that the Ad Hoc Committee address "Mr. Ramer's objection regarding notice of a possible suspension." (Tab 1, Ex. A, Order of Suspension, at 2). In response, on May 1, 2019, the Ad Hoc Committee filed a Second Report and Recommendation ("Second

R&R”), which concluded “that Mr. Ramer knew or should have known that a recommended suspension was a possible consequence of his being referred to the Committee” and that Mr. Ramer had the opportunity, and did, file objections to the First R&R. (*Id.*) The Ad Hoc Committee recommended that if Mr. Ramer had performed the remedial requirements ordered more than one year earlier in the First R&R, the Southern District would not need to suspend him further. (*Id.*) If Mr. Ramer had not performed the remedial requirements, however, the Ad Hoc Committee again recommended a six month suspension, compliance with the remedial requirements, and meeting with the full committee prior to reinstatement. (*Id.*)

On May 23, 2019, Chief Judge of the Southern District K. Michael Moore adopted the Second R&R. (*Id.* at 3). Because Mr. Ramer had not shown that he had completed the remedial requirements, the court suspended him from the practice of law in the Southern District for six months and prohibited Mr. Ramer from resuming practice in the Southern District until he had complied with the requirements in the First R&R and appeared before the full Ad Hoc Committee. (*Id.*) The court forwarded the Order of Suspension to TFB. (MSJ Tr. 5:18-21).

C. TFB Disciplinary Proceedings

On July 16, 2020, TFB filed the formal complaint for reciprocal discipline (the “Complaint”) against Mr. Ramer based upon the Southern District’s Order of Suspension. (Tab 1). TFB charged Mr. Ramer with violating the following Rules Regulating The Florida Bar (“RRTFB”): Rule 3-4.3 (Misconduct and Minor Misconduct); Rule 4-1.1 (Competence); Rule 4-1.3 (Diligence); Rule 4-3.4(a) (Unlawful Obstruction); Rule 4-3.4(c) (Disobeying Obligations Under Tribunal Rules); and Rule 4-8.4(d) (Actions Prejudicial to the Administration of Justice). (*Id.* at 9-10).

This Court referred the Complaint to the Eleventh Judicial Circuit Chief Judge, who appointed the Honorable Victoria del Pino as Referee. (Tab 3). Mr. Ramer filed an answer and affirmative defenses on August 7, 2020, asking the Referee to strike portions of TFB’s Complaint and moving to have it dismissed. (Tab 4). TFB moved to strike Mr. Ramer’s affirmative defenses, because they were not recognized affirmative defenses or were arguments regarding sanctions, as opposed to arguments regarding whether Mr. Ramer violated the RRTFB. (Tab 5). TFB also argued that Mr. Ramer’s requests to strike portions of and to dismiss the Complaint lacked

merit and any basis in law. (*Id.* at 6-7). Mr. Ramer responded that TFB had “overlooked or misinterpreted several rules of court” that required him to assert his affirmative defenses. (Tab 6, Respondent’s Reply to TFB’s Motion to Strike). The Referee heard argument on September 15, 2020, and granted TFB’s motion to strike Mr. Ramer’s affirmative defenses without prejudice. (Tab 8, Order on TFB’s Motion to Strike Respondent’s Affirmative Defenses).

1. *Proceedings on Guilt*

On September 18, 2020, TFB moved for partial summary judgment on the issue of guilt and requested a final hearing on only the issue of sanctions. (Tab 7, TFB’s Partial Motion for Summary Judgment). TFB argued that Rule 3-4.6 of the RRTFB provides that a federal court order imposing discipline is conclusive proof of guilt that a respondent committed the misconduct. (*Id.* at 2, 13). Moreover, TFB noted that such reciprocal discipline could be imposed without a hearing under the Florida Standards for Imposing Lawyer Sanctions (“Florida Standards”) 2.9, though a respondent should be given an opportunity to assert a due process challenge and/or to show that a different sanction is warranted than what was imposed in the other jurisdiction. (*Id.* at 2). TFB explained how the

Southern District's Order of Suspension was conclusive proof of each of the six alleged rule violations charged in TFB's Complaint. (*Id.* at 13-17).

Mr. Ramer filed a competing motion for partial summary judgment, seeking dismissal of the Complaint for numerous reasons. (Tab 10, Respondent's Motion for Partial Summary Judgment). First, Mr. Ramer argued that the reciprocal discipline rule should not apply because the Ad Hoc Committee operated under a probable cause standard and not a clear and convincing standard. (*Id.* at 1-7). Second, Mr. Ramer argued that TFB violated his due process rights because TFB's Complaint was the first notice he received that his conduct violated the RRTFB. (*Id.* at 7-9, 12).

Third, Mr. Ramer argued that TFB should have sought to impose reciprocal discipline sooner and that it was unfair that he might face additional discipline more than one year after entry of the Southern District's Order of Suspension. (*Id.* at 9-12). Mr. Ramer argued that reciprocity should not apply and the Order of Suspension should not be proof that he committed the rule violations alleged in the Complaint. (*Id.* at 12). Furthermore, Mr. Ramer argued that he

could not be found guilty of violating the RRTFB without a finding of intentional misconduct. (*Id.*).

Fourth, Mr. Ramer again argued to strike portions of the Complaint referencing the Southern District's orders in *LBC Compass Group* and *Mystique*, which Mr. Ramer argued were irrelevant, "could be found by any court micro-examining any docket in many civil cases," and were barred by RRTFB Rule 3-7.16(a)'s statute of limitations. (*Id.* at 12-13). Finally, Mr. Ramer argued that a six-month suspension was too severe, that "the suspension from the Southern District of Florida was of no practical consequence to" him, and that he should not have to apply for reinstatement as a 67-year-old attorney. (*Id.* at 14, 16).

TFB and Mr. Ramer filed responses to the motions for partial summary judgment. (Tabs 11 & 13-16). The Referee held a hearing on October 16, 2020, during which Mr. Ramer's counsel raised many of the same arguments as found in Mr. Ramer's motion for partial summary judgment. His counsel also stated that Mr. Ramer "didn't really care if the trial Bar of the federal court suspended him, because he didn't want to even go through the remediation. . . . He wasn't going back." (MSJ Tr. 25:3-9). Nevertheless, he argued that Mr.

Ramer did not receive “a fair hearing.” (MSJ Tr. 25:17-19). His attorney argued that Mr. Ramer would have possibly brought “in his co-counsel to say, ‘Yes, these people only spoke Chinese. I was the interpreter and they’re the ones who didn’t comply. Mr. Ramer is trying his best to get them to give over the documents.’” (MSJ Tr. 25:17-26:1). Mr. Ramer’s counsel questioned the veracity of the findings in the Ad Hoc Committee’s First and Second R&Rs, but the Referee asked him to address the key issue: the application of Rule 3-4.6’s reciprocal discipline provisions in light of the Order of Suspension. (MSJ Tr. 30-33).

The Referee granted TFB’s motion for partial summary judgment, finding Mr. Ramer guilty of all six rule violations, and denied Mr. Ramer’s motion. (MSJ Tr. 40:2-4, 40:22-24; *see also* Tab 17, Order on TFB’s Motion for Partial Summary Judgment (Oct. 20, 2020)). The Referee found Mr. Ramer guilty because “the rule is extremely clear” when “[t]here is an order from a federal Judge specifically stating that he’s being sanctioned.” (MSJ Tr. 39:23-40:2, 41:12-14; *see also* Tab 17, Order on TFB’s Motion for Partial Summary Judgment). The Referee stated that she would “listen to the seriousness or lack thereof of the violations that [Mr. Ramer was]

being found guilty of” during the final hearing on sanctions. (MSJ Tr. 40:7-10). But, the Referee noted, “Mr. Ramer made a huge gamble” by not taking the courses and “did not think of whatever repercussions there may be.” (MSJ Tr. 40:14-21).

2. Proceedings on Sanctions

Mr. Ramer’s counsel filed a motion for reconsideration of the Referee’s ruling on Mr. Ramer’s guilt (Tab 20, Respondent’s Motion for Reconsideration of the Referee’s Ruling on Alleged Rule Violations), which the Referee denied after argument during the December 4, 2020 final hearing on sanctions (S. Tr. 4:20-13:1). TFB then presented its case on sanctions and admitted 11 exhibits into evidence. (S. Tr. 14-21; *see also* Tabs 44-54 (TFB Exhibits 1-11)).

After TFB rested its case, Mr. Ramer’s counsel “move[d] for an involuntary dismissal,” arguing that TFB had not shown a factual basis for the rule violations and had not proven that Mr. Ramer had done anything intentionally wrong. (S. Tr. 21-23). The Referee denied the motion, as she had already ruled on Mr. Ramer’s guilt, and the subject of the final hearing was potential sanctions, not guilt. (*Id.*).

During the sanctions hearing, Mr. Ramer testified that he was never apprised that his conduct violated any TFB rules until TFB filed the Complaint. (S. Tr. at 27-31). He stated that he “was more than happy to accommodate” the Ad Hoc Committee’s “interpretation . . . of the general procedural practices when you have a client who is not responding to discovery” but “at the time” they “seemed, let’s say, irrational.” (S. Tr. 32:13-20). He testified that his actions in the *Coach* case reflected “the way we proceed in state court.” (S. Tr. 32:20-22). He conceded that he had not taken CLE classes or completed an evaluation with TFB Practice Resource Institute as ordered by the Southern District. (S. Tr. 64:2-10, 77:15-78:10).

In closing arguments, TFB directed the Referee to several Florida Standards, which recommend suspension when a lawyer commits certain offenses that cause injury or potential injury to a client:

- 4.4(b)(2)—lack of diligence, when a lawyer engages in a pattern of neglect regarding client matters (S. Tr. 90:7-91:4).

- 4.5(b)—lack of competence, when a lawyer engages in an area of practice where the attorney knowingly lacks competence (S. Tr. 91:15-93:1, 94:1-95:21, 96:6-100:11).
- 6.2(b)—abuse of the legal process, when a lawyer knowingly violates a court order or rule (S. Tr. 101:4-102:2, 103:9-14, 104:6-107:25, 108:16-109:25).
- 7.1(b)—when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional (S. Tr. 110:1-16).

TFB also requested the Referee to consider the following aggravating factors under Florida Standard 3.2:

- 3.2(b)(3)—pattern of misconduct (S. Tr. 112:17-24).
- 3.2(b)(4)—multiple offenses (S. Tr. 112:25-113:5).
- 3.2(b)(7)—refusal to acknowledge the wrongful nature of conduct (S. Tr. 113:6-14).
- 3.2(b)(9)—substantial experience in the practice of law (S. Tr. 113:15-19).

TFB argued that only one mitigating factor was present: Florida Standard 3.3(b)(1)—absence of a prior disciplinary record (S. Tr. 113:20-23). Moreover, the fact that Mr. Ramer’s clients did not

complain about his conduct or that the court forced or compelled restitution are neither aggravating nor mitigating factors under Florida Standard 3.4. (S. Tr. 113:25-114:5). Based on the case law, TFB argued that a 91-day suspension was the appropriate discipline for Mr. Ramer's misconduct. (S. Tr. 114:12-118:25).

Mr. Ramer's counsel moved to strike TFB's argument about aggravating factors and to reopen his case to allow Mr. Ramer to testify about TFB's closing argument, which the Referee denied. (S. Tr. 119:3-120:15). Mr. Ramer's counsel argued that Mr. Ramer's and his clients' payment of restitution should not be considered as a neutral factor under Florida Standard 3.4 but rather, as a mitigating factor under Florida Standard 3.3(b)(11) for imposition of other penalties or sanctions. (S. Tr. 124:2-125:7).

Mr. Ramer's counsel argued that TFB had failed to prove that Mr. Ramer's conduct was intentional and claimed that "some of these things are just not even actionable." (S. Tr. 125:20-126:8, 128:21-22). He argued that the motions to compel against Mr. Ramer "should be non-issues" because Mr. Ramer and his clients eventually complied with them and offered that Mr. Ramer and his clients prevailed in the case because the verdict against them was only

\$21,000. (S. Tr. 129:23-130:3). He argued that the district court's order scheduling mediation was confusing and that Mr. Ramer should be given credit for paying the sanctions ordered after he and his clients missed the mediation. (S. Tr. 130:22-131:10). His attorney also questioned how Mr. Ramer's failure to follow Local Rule 56.1 on summary judgment was an ethical matter. (S. Tr. 131:11-23). He called it "a simple paragraphing error" and argued that Mr. Ramer did not ask for extensions on the plaintiffs' discovery requests because Mr. Ramer did not know if he would receive the documents from his clients within that timeframe. (S. Tr. 133:25-135:7).

When asked to address the aggravating factor of multiple offenses, Mr. Ramer's attorney argued the *LBC Compass Group* and *Mystique* cases were not relevant to TFB's disciplinary proceedings and were barred from consideration by the Florida Standards' statute of limitations. (S. Tr. 132:4-133:4). He argued that the Southern District was "a voluntary Bar association" and that Mr. Ramer's decision to reject the Southern District's remediation directives was "thoughtful" because "he's going to be retiring in a couple of years." (S. Tr. 135:8-136:6). He criticized TFB's prosecution as "overzealous" and "beyond belief," and argued that Mr. Ramer should not be

suspended. (S. Tr. 138:6-24). And he urged the Referee to find up to 13 additional mitigating factors. (S. Tr. 136:9-11).

At the close of argument, the Referee recommended that Mr. Ramer receive a 90-day suspension. (S. Tr. 139:8-11). The Referee noted that if she gave Mr. Ramer a 91-day suspension, he would have to prove his rehabilitation and possibly retake portions of the bar exam. (S. Tr. 139:11-17). The Referee did not want “to saddle [Mr. Ramer] at this stage of the game of [his] practice with having to reapply and go through that whole process.” (S. Tr. 140:10-13). She explained that “at this time it’s going to be a 90-day suspension, not the 91-day which the Bar is seeking, because I know what that tags on and I’m hoping that’ll do it.” (S. Tr. 141:4-8).

The Referee made her decision on the length of Mr. Ramer’s suspension without ruling on which aggravating and mitigating factors she found in the case. The Referee directed the parties to submit separate proposed orders, but told them to leave the portions on aggravating factors section blank because she needed to do more research on those issues. (S. Tr. 145:12-23, 149:14-19). The Referee also directed the parties to provide their input on what the mitigating factors should be. (S. Tr. 149:1-6).

3. Report of Referee

The Referee issued the Report on February 18, 2021.² The Report found Mr. Ramer guilty on all six counts in the Complaint. (ROR at 11). The Report found all four of the aggravating factors argued by TFB, and, despite Mr. Ramer's argument, found only one mitigating factor—the absence of a prior disciplinary record. (*Id.* at 13-14).

TFB's request for review, and Mr. Ramer's request for a cross-review, of the Report followed.

SUMMARY OF ARGUMENT

This Court should impose a 91-day suspension on Mr. Ramer.

The Southern District suspended Mr. Ramer for six months due to his failure to exercise basic diligence in a number of cases and ordered him to complete CLE and other rehabilitative measures prior to reinstatement. Mr. Ramer refused to complete the rehabilitative training, and planned to avoid satisfying that rehabilitation requirement by never again practicing in federal court. TFB now

² The Report was filed February 18, 2021, and docketed on May 5, 2021.

seeks to impose reciprocal discipline for the same conduct that warranted Mr. Ramer's suspension from the Southern District.

Mr. Ramer earned his federal court suspension for repeatedly missing numerous discovery and court-ordered deadlines, among other failures. Indeed, Mr. Ramer testified that his usual practice was to ignore deadlines and then afterward try to negotiate agreed extensions with opposing counsel.

Following a hearing on the merits of TFB's Complaint, the Referee recommended that this Court find Mr. Ramer guilty of violating six Rules of the RRTFB. Following a second hearing on sanctions, however, the Referee recommended only a 90-day suspension, because she wanted to ensure that Mr. Ramer would not have to complete rehabilitative measures prior to resuming his legal practice. The Referee made her decision about the discipline Mr. Ramer would receive prior to making any findings on aggravating or mitigating factors. Thus, even though the Referee found multiple aggravating factors, and only one mitigating factor, she was cautious to recommend only a 90-day suspension. Respectfully, this was error.

Mr. Ramer's lackadaisical attitude, repeated acts of similar misconduct, unwillingness to admit error, and his refusal to voluntarily take remedial steps to improve his practice warrant at least a 91-day suspension. He should not be allowed to avoid rehabilitation simply because he is near the end of his career—indeed, the Florida Standards provide that a lawyer with substantial experience in the practice of law who commits multiple offenses presents at least two aggravating factors, and certainly not any mitigating ones. Mr. Ramer also does not have multiple mitigating factors that help explain his circumstances—the Referee found only one—and Mr. Ramer's defense that he has always practiced this way misses the mark. Moreover, a 91-day suspension is supported by this Court's prior case law and move toward imposing stronger sanctions.

Accordingly, this Court should reject the Referee's recommendation for a 90-day suspension, and instead suspend Mr. Ramer from the practice of law for at least 91 days.

ARGUMENT

I. MR. RAMER SHOULD RECEIVE A 91-DAY SUSPENSION.

A. Standard of Review

This Court has a broad scope when reviewing a referee's recommended discipline. *See Fla. Bar v. Altman*, 294 So. 3d 844, 847 (Fla. 2020) (explaining that such review is broader than that given to a referee's findings of fact). “[U]ltimately, it is the Court’s responsibility,” not the referee’s, “to order the appropriate sanction.” *Id.*; *see also* art. V, § 15, Fla. Const.

Though the Florida Standards instruct when a suspension is the appropriate discipline, the Court determines “the length of the suspension . . . guided by case law and the Court’s discretion.” *Fla. Bar v. Marcellus*, 249 So. 3d 538, 545 (Fla. 2018). Where the referee’s recommended sanction is insufficient, as is the case here, this Court does not hesitate to impose harsher discipline. Florida lawyers have long been on notice that “since . . . [1994], the Court has moved toward imposing stronger sanctions for unethical and unprofessional conduct.” *Fla. Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015); *see also Altman*, 294 So. 3d at 847 (“Significantly, this Court has moved towards imposing harsher standards.”). The Court has also

advised that “cumulative misconduct of a similar nature warrants an even more severe discipline than might dissimilar conduct.” *Fla. Bar v. Picon*, 205 So. 3d 759, 766 (Fla. 2016).

B. The Referee Erred by Determining the Sanction Prior to Making Findings on the Applicable Aggravating and Mitigating Factors.

Based on the operation of Rule 3-4.6 of the RRTFB,³ the Referee recommended that this Court find Mr. Ramer guilty of the following Rules of the RRTFB:

- Rule 3-4.3 (Misconduct and Minor Misconduct);
- Rule 4-1.1 (Competence);
- Rule 4-1.3 (Diligence);
- Rule 4-3.4(a) (Unlawful Obstruction);
- Rule 4-3.4(c) (Disobeying Obligations Under Tribunal Rules); and
- Rule 4-8.4(d) (Actions Prejudicial to the Administration of Justice).

(ROR at 11). The Florida Standards are clear that suspension is the appropriate discipline, given Mr. Ramer’s violations of the above

³ Rule 3-4.6(a) of the RRTFB states, *inter alia*:

A final adjudication in a disciplinary proceeding by a court or other authorized disciplinary agency of another jurisdiction, state or federal, that a lawyer licensed to practice in that jurisdiction is guilty of misconduct justifying disciplinary action will be considered as conclusive proof of the misconduct in a disciplinary proceeding under this rule.

RRTFB. See Fla. Standards 4.4(b)(2) (Lack of Diligence); 4.5(b) (Lack of Competence); 6.2(b) (Abuse of the Legal Process); and 7.1(b) (Violations of Other Duties Owed as a Professional).

During the final hearing on sanctions, however, the Referee did not make findings with regard to aggravating and mitigating factors. (S. Tr. 145:12-23, 149:1-6, 14-19). Instead, the Referee announced her ultimate recommendation on sanctions—that Mr. Ramer receive only a 90-day suspension—because she wanted to make sure Mr. Ramer was not forced to complete rehabilitative or remedial work.⁴ (S. Tr. 139:10-17).

Specifically, the Referee said she did not want “to saddle [Mr. Ramer] at this stage of the game of [his] practice with having to reapply and go through that whole process.” (S. Tr. 140:10-13). She explained that “at this time it’s going to be a 90-day suspension, not

⁴ Florida Standard 2.3 states that a 90-day (or less) suspension “does not require proof of rehabilitation,” but a suspension exceeding 90 days “requires proof of rehabilitation and may require passage of all or part of the bar examination.” See *also id.* cmt. (noting that a lawyer “suspended for 90 days or less is reinstated automatically on completion of the suspension” while a lawyer “suspended for more than 90 days may not be reinstated without showing by clear and convincing evidence rehabilitation, compliance with all applicable orders or rules, and fitness to practice law”).

the 91-day which the Bar is seeking, because I know what that tags on and I'm hoping that'll do it." (S. Tr. 141:4-8).

Respectfully, it was error for the Referee to recommend Mr. Ramer's ultimate discipline prior to determining and considering the applicable aggravating and mitigating factors. The Referee's concern that Mr. Ramer should not have to submit to rehabilitative or remedial training was misplaced.

In fact, Mr. Ramer is precisely the type of lawyer who needs rehabilitative and remedial training the most. Mr. Ramer repeatedly violated court orders and failed to follow court rules. (ROR at 4-8). His counsel minimizes Mr. Ramer's mistakes as "simple paragraphing error[s]." (S. Tr. 134:1). More concerning, Mr. Ramer fails to appreciate the significance of multiple federal judges expressing their frustration with his conduct. Far from motivating him to correct course and improve, Mr. Ramer's counsel claims such judicial frustration "could be found by any court micro-examining any docket in many civil cases." (Tab 10, Respondent's Motion for Partial Summary Judgment at 13).

Even in the face of the Southern District's Order of Suspension, Mr. Ramer's apathy was unwavering. Indeed, Mr. Ramer conceded

that the federal court's six month suspension "was of no practical consequence to [him]." (*Id.* at 14, 16). Mr. Ramer "didn't really care if the trial Bar of the federal court suspended him, because he didn't want to even go through the remediation. . . . He wasn't going back." (MSJ Tr. 25:3-9). In short, Mr. Ramer appears to believe that he should not have to change his usual course of conduct or take any actions to ensure his compliance with court rules because of his substantial experience as a 67-year-old attorney and proximity to retirement. (Tab 10, Respondent's Motion for Partial Summary Judgment at 14, 16; S. Tr. 135:14-16).

Ultimately, the Referee found four aggravating factors: Florida Standards 3.2(b)(3) (a pattern of misconduct); 3.2(b)(4) (multiple offenses); 3.2(b)(7) (refusal to acknowledge the wrongful nature of the conduct); and 3.2(b)(9) (substantial experience in the practice of law). (ROR at 13-14). The Referee found only one mitigating factor (ROR at 14), despite the fact that Mr. Ramer's attorney urged the Referee to consider them all (S. Tr. 136:9-11). These aggravating and mitigating factors "carry a presumption of correctness and will be upheld unless clearly erroneous or without support in the record." *Marcellus*, 249 So. 3d at 544.

But a proper evaluation of the RRTFB, the Florida Standards on suspension, and the applicable aggravating and mitigating factors—conducted prior to making an ultimate decision on suspension of only 90 days—would have led to the recommendation that Mr. Ramer face a suspension of at least 91 days.

C. Case Law Counsels That a Minimum 91-Day Suspension is Warranted Given the Gravity of Mr. Ramer’s Offenses.

This Court’s case law also demonstrates that the Referee’s recommended 90-day suspension is insufficient. Indeed, the Court’s views on attorney misconduct have been “evolving,” and “the Court has moved toward imposing stronger sanctions for unethical and unprofessional conduct.” *Fla. Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015); *see also Fla. Bar v. Adler*, 126 So. 3d 244, 247 (Fla. 2013) (holding that the Court’s older cases are “dated and do not reflect the evolving views of this Court” and noting that “[i]n recent years, this Court has moved towards stronger sanctions for attorney misconduct.” (internal quotation marks and citation omitted)).

For example, this Court rejected a Referee’s recommendation and instead imposed a one-year suspension where the attorney’s “repeated failures to comply with court orders and his bad faith

conduct, together with the [four]⁵ aggravating factors found by the referee, warrant[ed] a suspension longer than ninety-one days.” *Rosenberg*, 169 So. 3d at 1162. This Court also imposed an 18-month suspension, as opposed to the referee’s recommended one-year suspension, in a case that similarly involved repeated failures to respond to discovery requests and court orders regarding same.⁶ See *Marcellus*, 249 So. 3d at 543-45. Finally, this Court has “previously imposed long-term rehabilitative suspensions in cases where an attorney has committed multiple acts of client neglect.” *Picon*, 205 So. 3d at 766 (imposing a one-year suspension instead of the referee’s recommended 91 days). “[F]ailing to provide competent representation [is a] serious deficienc[y].” *Id.*

Mr. Ramer has previously argued that he cannot be suspended without a court order expressly finding that any misconduct was

⁵ Three of the four aggravating factors found here were also found in *Rosenberg*: multiple offenses, refusal to acknowledge the wrongful nature of the misconduct, and substantial experience in the practice of law. See *id.* at 1162.

⁶ To be sure, *Marcellus* also involved significantly more egregious conduct. But *Marcellus* shows that this Court often imposes stronger discipline than that recommended by referees when warranted based on repeated failures by attorneys to comply with rules and obligations.

intentional, but this is wrong for three reasons. First, this Court has previously rejected this argument, concluding that, for example, simply “failing to respond to discovery requests in the face of orders compelling responses is grounds for a violation of Bar Rule 4-3.4(c).” *Marcellus*, 249 So. 3d at 543. Second, the Florida Standards do not require intentional misconduct prior to this Court’s imposition of a suspension. *See, e.g.*, Fla. Standards 4.4(b)(2) & 4.5(b).

Third, the determinations of any court on Mr. Ramer’s prior conduct do not control whether this Court should impose discipline. *See* RRTFB 3-4.4 (“[T]he findings, judgment, or decree of any court in civil proceedings is not necessarily binding in disciplinary proceedings.”); *see also Fla. Bar v. Carricarte*, 733 So. 2d 975, 978 (Fla. 1999) (holding that “even if the issue had been specifically raised and a judge had specifically found no wrongdoing and refused to refer this matter to the Bar, such action would not . . . prevent the Bar from investigating [a] complaint and taking the appropriate action”); *Therriault v. J.S. & G. Asphalt, Inc.*, 617 So. 2d 437, 438 (Fla. 4th DCA 1993) (holding that a trial court’s failure to sanction a lawyer does not “present[] an[y] impediment to any investigation or further action the Bar may deem appropriate”).

Ultimately, Mr. Ramer has demonstrated that he will not voluntarily participate in rehabilitation and remediation efforts. More than two years have passed since the Southern District's entry of the Order of Suspension in May 2019 (Tab 1, Ex. A), and yet Mr. Ramer has shown no interest in ever completing the court-ordered rehabilitation necessary to resume his federal court practice. If this Court does not order a suspension of at least 91 days, there is no evidence that Mr. Ramer will alter his "usual" practice or participate in any remediation to benefit his state court practice.

CONCLUSION

The Referee correctly recommended that Mr. Ramer be found guilty of violating six Rules of the RRTFB as a result of the rule on reciprocal discipline, and suspension was the correct sanction. But the length of the suspension recommended by the Referee is far too lenient given the gravity of Mr. Ramer's offenses. For the foregoing reasons, this Court should approve the Referee's findings of fact, recommendations of guilt, and findings of aggravation and mitigation, and disapprove the Referee's recommended discipline and impose a 91-day suspension against Mr. Ramer.

Respectfully submitted on August 2, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was served via the Florida Courts E-Portal and by email on August 2, 2021:

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CERTIFICATE OF COMPLIANCE

I certify this document complies with the applicable font and word count limit requirements. See Fla. R. App. P. 9.045 & 9.210. This brief contains 6,819 words, excluding the parts of the brief exempted by Rule 9.045(e).

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