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IN THE SUPREME COURT OF FLORIDA

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

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**THE FLORIDA BAR,**  
*Complainant,*

*v.*

**ALAN HOWARD RAMER,**  
*Respondent.*

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**THE FLORIDA BAR'S ANSWER BRIEF AND REPLY BRIEF**

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## **STATEMENT OF THE CASE AND FACTS**

This is a reciprocal discipline action against Respondent Alan Howard Ramer based on an order of suspension (the "Order of Suspension") entered by the U.S. District Court for the Southern District of Florida (the "Southern District"). (Tab 1, Ex. A, Order of Suspension (May 23, 2019) (Doc. No. 9)).<sup>1</sup> The 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.) (the "*Coach* Litigation") in failing to comply with court orders, failing to comply with Local Rules for the Southern District, and failing to respond to discovery and other filings requiring responses. (*See id.* at 1). As a result of that conduct—and Mr. Ramer's failure to appreciate the conduct's significance—the Southern District ordered Mr. Ramer to complete CLE and other rehabilitative measures because it found that Mr. Ramer needed remedial assistance before continuing

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<sup>1</sup> Citations are to the Record, including to the appropriate "Tab" number in the Index of Record. Citations to "Ad Hoc Tr." are to the transcript of the March 13, 2018 hearing held by the Southern District's Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance for the Southern District Committee. Citations to "S. Tr." are to the transcript of the December 4, 2020 final hearing on sanctions.

practice in that court. (*See id.* at 1–2). Mr. Ramer, however, refused to complete the required rehabilitative training, and, consequently, the Southern District suspended Mr. Ramer from practicing law in that court for six months. (*See id.* at 3). The Southern District further ordered that Mr. Ramer would not be reinstated to practice in that court until he completed the remedial requirements set forth in the First Report and Recommendation ("First R&R") issued by the Southern District's Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance (the "Committee"). (*Id.*).

Complainant The Florida Bar ("TFB") initiated disciplinary proceedings against Mr. Ramer (the "Florida Proceedings") after receiving a copy of the Order of Suspension. Based on the same misconduct set forth in the Southern District's Order of Suspension, the Referee found Mr. Ramer guilty of 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). (Tab 60, Report of Referee ("ROR"), at 11). In determining her recommended sanction,

the Referee found one mitigating factor under the Florida Standards for Imposing Lawyer Sanctions ("Florida Standards") present—Florida Standard 3.3(b)(1) (absence of a prior disciplinary record)—and found the following four aggravating factors present: Florida Standard 3.2(b)(3) (pattern of misconduct); Florida Standard 3.2(b)(4) (multiple offenses); Florida Standard 3.2(b)(7) (refusal to acknowledge the wrongful nature of conduct); and Florida Standard 3.2(b)(9) (substantial experience in the practice of law). (*Id.* at 11). The Referee recommended that this Court suspend Mr. Ramer from the practice of law for 90 days. (*Id.* at 14).

TFB contends that the Referee correctly found Mr. Ramer guilty of the foregoing violations of the RRTFB and correctly found the foregoing aggravating factors and mitigating factor present, but respectfully requests that this Court suspend Mr. Ramer from the practice of law for at least 91 days. Based on the undisputed facts in the record, the aggravating factors under the Florida Standards, and pertinent case law, Mr. Ramer should be required to prove rehabilitation before he is reinstated to the practice law.

In support of its request for review, TFB filed its Initial Brief on August 2, 2021. Mr. Ramer filed a notice of intent for cross-review

and, in support thereof, filed his Answer and Cross Appeal Brief ("Mr. Ramer's Brief") on December 30, 2021. In his Brief, Mr. Ramer argues that no suspension is warranted for his conduct.

In its Initial Brief, TFB fully recites the facts applicable to the Florida Proceedings and the underlying disciplinary proceedings in the Southern District (the "Federal Proceedings"). TFB incorporates those facts herein by reference.

### **SUMMARY OF THE ARGUMENT**

The Referee found that Mr. Ramer's misconduct set forth in the Southern District's Order of Suspension constituted violations of Rule 4-1.1, Rule 4-3.4(a), Rule 4-3.4(c), Rule 4-1.3, Rule 3-4.3, and Rule 4-8.4(d) of the RRTFB and recommended that Mr. Ramer be suspended from the practice of law for 90 days. Although Mr. Ramer does not dispute that he in fact committed the misconduct set forth in the ROR, and does not give any analysis of why that misconduct does not constitute violations of the foregoing RRTFB, he nonetheless argues in his Brief that no suspension is warranted. As outlined below, each argument in Mr. Ramer's Brief lacks merit. Moreover, as explained in TFB's Initial Brief, contrary to Mr. Ramer's contentions, suspension is not only the appropriate sanction here, but the

suspension should be for at least 91 days. Indeed, Mr. Ramer's rejection of rehabilitative training required by the Southern District to address the numerous problems identified in that proceeding illustrate why a 91-day suspension requiring proof of rehabilitation is appropriate here.

First, Mr. Ramer contends that the Order of Suspension should not be considered conclusive proof of his misconduct under Rule 3-4.6(a) of the RRTFB because he was not afforded sufficient due process in the Federal Proceedings. But as the record shows, Mr. Ramer was given notice of his own misconduct predicated the Order of Suspension from the outset of the Federal Proceedings, he had the opportunity to and did testify on his own behalf during those proceedings, and he was given the opportunity to and did present arguments in response to the Committee's First R&R. Mr. Ramer, therefore, was afforded sufficient due process and his arguments on that point fail.

Second, Mr. Ramer argues that Rule 3-4.6(a) of the RRTFB should not have applied during the Florida Proceedings because the standard of proof applied in the Federal Proceedings was less stringent than the clear and convincing evidence standard that

applies to Florida disciplinary proceedings. Contrary to that contention, however, this Court has held that "a foreign jurisdiction's different standard of proof [for purposes of Rule 3-4.6(a) of the RRTFB] is inconsequential as to both guilt and discipline." *The Florida Bar v. Mogil*, 763 So. 2d 303, 309 (Fla. 2000).

Third, Mr. Ramer contends that Rule 3-4.6(a) of the RRTFB should not have applied because the Order of Suspension was not entered by a court or other authorized disciplinary agency. That argument cannot stand as there is no question that the Order of Suspension is an order from a court (the Southern District) in which Mr. Ramer was suspended from the practice of law in a foreign jurisdiction. The plain language of Rule 3-4.6(a) applies to Mr. Ramer's disciplinary proceedings.

Fourth, Mr. Ramer asserts that he was not afforded sufficient notice in the Florida Proceedings because TFB did not file its Complaint until 13 months after receiving the referral from the Southern District and never charged him with any violations of the RRTFB until filing that complaint. But Mr. Ramer cites no authority requiring TFB to file its complaint within a year of receiving a referral or requiring TFB to notify an accused attorney regarding the specific

rules violated prior to filing its complaint, and no such authority exists.

Fifth, although Mr. Ramer has offered a myriad of purported justifications for his misconduct, he admitted committing that misconduct in response to TFB's partial motion for summary judgment ("TFB's Partial MSJ") in the Florida Proceedings. Thus, in addition to TFB's Partial MSJ being correctly granted because the Order of Suspension is "conclusive proof" of Mr. Ramer's commission of the misconduct charged in that order under Rule 3-4.6(a) of the RRTFB, TFB's Partial MSJ was also properly granted because there is no disputed issue of material fact that Mr. Ramer committed the misconduct at issue.

Sixth, Mr. Ramer contends the Referee erred in considering argument or evidence related to his conduct in two Southern District cases other than the *Coach* Litigation because those cases are barred by the six-year statute of limitations on when TFB may open an investigation and are irrelevant to the misconduct charged in the Florida Proceedings. But evidence regarding Mr. Ramer's misconduct in the other cases is not barred by the statute of limitations because TFB did not discover or have reason to discover

the conduct until it received the referral from the Southern District. And, regardless, Mr. Ramer's conduct in the other cases is relevant to the Referee's determination of what sanction to recommend.

Finally, although Mr. Ramer contends that the Florida Standards are "totally incongruous" with the sanction of suspension for his conduct, he does not provide any analysis or case law supporting that contention. Instead, as explained in TFB's Initial Brief, both the Florida Standards and pertinent case law demonstrate that Mr. Ramer should be suspended for 91 days—one day longer than the discipline recommended in the Referee's ROR—so he will be required to undergo rehabilitation before his reinstatement to The Florida Bar.

## **ARGUMENT**

### **I. THE ORDER OF SUSPENSION SERVES AS CONCLUSIVE PROOF THAT MR. RAMER COMMITTED THE MISCONDUCT CHARGED IN THAT ORDER.**

"Under Rule Regulating TFB 3–4.6, when an attorney is adjudicated guilty of misconduct by the disciplinary agency of another jurisdiction, the adjudication serves as conclusive proof of

commission of the misconduct charged."<sup>2</sup> *The Florida Bar v. Kandekore*, 766 So. 2d 1004, 1007 (Fla. 2000). The foreign jurisdiction's adjudication will be accepted as "conclusive proof of guilt of the misconduct charged" unless the accused attorney proves that

the proceeding in the foreign state was so deficient or lacking in notice or opportunity to be heard, that there was such a paucity of proof, or that there was some other grave reason which would make it unjust to accept the foreign judgment as conclusive proof of guilt of the misconduct involved Florida can elect not to be bound thereby.

*Id.* (quoting *The Florida Bar v. Wilkes*, 179 So.2d 193, 198 (Fla. 1965)). "The burden [] rests with the accused attorney to demonstrate why the foreign judgment is not valid or why Florida

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<sup>2</sup> Rule 3-4.6(a) of the RRTFB states:

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct. 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.

should not accept it and impose sanctions based thereon." *The Florida Bar v. Friedman*, 646 So. 2d 188, 190 (Fla. 1994).

Mr. Ramer urges in his Brief that the Order of Suspension should not have been accepted by the Referee as conclusive proof of the misconduct charged against him because (a) the Federal Proceedings failed to afford him sufficient due process and (b) the Order of Suspension does not constitute an adjudication "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" as required under Rule 3-4.6(a) of the RRTFB. Each of Mr. Ramer's contentions lack merit and fall woefully short of demonstrating that the Federal Proceedings were "so deficient or lacking in notice or opportunity to be heard" that the plain language of Rule 3-4.6(a) of the RRTFB should not have applied in the Florida Proceedings. *See Friedman*, 646 So. 2d at 190.

**A. Mr. Ramer Was Afforded Sufficient Due Process During the Federal Proceedings.**

Mr. Ramer challenges the underlying Federal Proceedings on due process grounds, arguing that (a) he was not given sufficient notice regarding his own misconduct at issue in the proceedings, (b)

he was not sufficiently notified that the proceedings could result in discipline, and (c) he was not provided a second hearing following the Committee issued its First R&R. (See Resp't's Br. at 16–17, 19). As a general matter, any argument that Mr. Ramer was denied due process during the Federal Proceedings is negated by the fact that Mr. Ramer was aware of his own misconduct at issue in the proceedings, he testified on his own behalf regarding that misconduct, and he submitted two written objections to the Committee's First R&R. (See Tab 1, Ex. A, Order of Suspension, at 1–2). Moreover, as explained below, each of Mr. Ramer's specific complaints regarding the Federal Proceedings lacks merit.

**1. Mr. Ramer had actual notice of his own misconduct at issue in the Federal Proceedings.**

Mr. Ramer challenges the sufficiency of notice provided to him during the Federal Proceedings regarding the basis for those proceedings, arguing that the referral order by U.S. District Court Judge Cecilia Altonaga (the "Referral Order") "did not contain a recitation of facts," and the Referral Order and the Committee's First R&R do not "mention that any Florida Bar rule violation occurred." (See Resp't's Br. at 16–17; see also *id.* at 19). But Mr. Ramer does

not dispute that, from the outset of the Federal Proceedings, he has had notice of "the actual conduct which formed the basis" of those proceedings. See *The Florida Bar v. Fredericks*, 731 So. 2d 1249, 1253 (Fla. 1999) ("[A]n attorney c[an] be found guilty of violating a rule not specifically charged in the complaint where the complaint alleged the actual conduct which formed the basis of the violation and, therefore, put the attorney on notice.").

In the Referral Order, after stating that Mr. Ramer had engaged in "unacceptable litigation conduct" and bore "significant responsibility in multiplying litigation costs" during the *Coach* Litigation, Judge Altonaga concluded that the "record in th[e] case reflect[ed] [Mr. Ramer's] need[] [for] remedial assistance." (Tab 1, Ex. B, Order (Feb. 10, 2017) (Doc. No. 182 at 9 n.3)). Judge Altonaga further cited to pages 1–2 of Plaintiffs Coach, Inc. and Coach Services, Inc.'s Reply in Support of Their Motion to Recover Attorneys' Fees and Non-Taxable Costs (the "Coach Plaintiffs' Reply Brief"), (*id.*), which chronicled Mr. Ramer's failures to comply with court orders and local rules for the Southern District (the "Southern District of Florida Local Rules") during the course of the *Coach* Litigation, (see Tab 51, TFB Ex. 8, the Coach Pls.' Reply Br. (Jan. 30, 2017) (Doc.

No. 179 at 1–2)).<sup>3</sup> Mr. Ramer, therefore, "certainly knew about his [own] misconduct" at issue in the Federal Proceedings. *Cf. Matter of Calvo*, 88 F.3d 962, 967 (11th Cir. 1996) (stating the disciplined attorney was aware of his own misconduct at issue in rejecting the

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<sup>3</sup> For example, the Plaintiffs' Reply Brief states:

Throughout the entirety of this litigation, Defendants failed to confer with Coach and otherwise comply with requirements under the Local Rules. *See, e.g.*, Order Striking Defendants' Response to Plaintiffs' Motion for Partial Summary Judgment ("[T]he Response fails to comply with Local Rule 56.1.") [D.E. 69]; *Sua Sponte* Order Extending Time for Defendants to Respond to Plaintiff's Motion for Order to Show Cause ("To date, Defendants have failed to file their response or request an extension of time within which to do so.") [D.E. 81]; Order Granting Coach's Motion for Permanent Injunction ("On September 13, 2016, the Court entered an Order [ECF No. 129], noting [Defendants] failed to file a response to the Motion. The Court required Defendants to respond to the Motion by September 15, 2016. . . . To date, Defendants have failed to respond.") [D.E. 130]. At each step of the way, Coach has had to send multiple emails and leave multiple voicemails for Defendants' counsel in order to get any sort of response, whether to clear a mutually agreeable date for a discovery hearing, or confer on jury instructions (which the Court had to specifically order Defendants to do). Coach resorted to titling each email that required a response with "RESPONSE REQUESTED," and often still did not receive responses until followup emails were sent, if any response was sent at all . . . .

(Tab 51, TFB Ex. 8, Pls.' Reply Br. (Doc. No. 179 at 1–2)).

attorney's contention that he was given inadequate notice regarding the charges against him).

Indeed, during the Federal Proceedings, Mr. Ramer demonstrated his awareness of what specific misconduct was at issue. *Cf. The Florida Bar v. Carricarte*, 733 So. 2d 975, 979 (Fla. 1999) ("[C]ontrary to respondent's claim of complete surprise, his testimony at the hearing revealed that he was aware that his mental state had come into question."). At the hearing conducted by the Committee (the "Committee Hearing"), Mr. Ramer testified regarding the misconduct at issue and did not indicate that he was uninformed as to what misconduct formed the basis for the proceedings. (See, e.g., Tab 1, Ex. A, Ad. Hoc. Tr. at 7:11–8:20 (discussing sanctions imposed on the Coach Defendants for discovery violations); *id.* at 9:16–11:19 (discussing his and the Coach Defendants' failure to attend mediation); *id.* at 14:14–18:15 (discussing his failure to remain within 15 minutes of the courthouse while the jury deliberated as instructed by Judge Altonaga); *id.* at 20:22–22:6 (discussing his failure to seek an extension of deadlines or inform the court regarding his client difficulties)). In fact, during the Committee Hearing, Mr. Ramer was asked if he "dispute[d] any of the factual

representations made in the order of the referral," and he responded with full understanding of the "factual representations" to which the Committee referred, specifically referencing the statements of his misconduct set forth in the Coach Plaintiffs' Reply Brief. (*See id.* at 22:11–24:16 (including Mr. Ramer's contention that the statements of misconduct in the "opposing side's pleadings that the judge was referring to were all postjudgment issues"))).

Following the Committee Hearing, the Committee detailed the misconduct at issue in its First R&R. (*See* Tab 1, Ex. A, First R&R). Mr. Ramer submitted two written objections to the First R&R, yet did not mention any alleged lack of notice regarding such misconduct in either objection, other than an alleged lack of notice regarding his failure to prepare a particular statement of disputed facts in accordance with the Southern District Local Rules. (*See* Tab 32, Resp.'t's Ex. E, Ltr. From Mr. Ramer to J. Moore, at 3 (June 13, 2018) (stating that the First R&R "inform[ed] [him] for the first time that there existed an issue [the Committee] deemed significant with the form of [his] Statement of Disputed facts in [his] Response to Plaintiff's Motion for Summary Judgment," but not indicating any alleged lack of notice of any of the other misconduct detailed in the

First R&R); Tab 33, Resp.'t's Ex. F, Resp. to Order to Show Cause, at 5 (June 13, 2018) (same)).

In sum, from the start of the Federal Proceedings, Mr. Ramer was provided sufficient notice—and in fact had actual notice—of the specific misconduct at issue. Such notice satisfied the "reasonable notice . . . necessary to afford due process in disciplinary proceedings," and Mr. Ramer's challenge on that point falls flat. See *The Florida Bar v. Daniel*, 626 So. 2d 178, 183 (Fla. 1993).

**2. Mr. Ramer had notice that the Federal Proceedings could result in discipline.**

Mr. Ramer's complaint that the "Committee never gave notice that [the Federal Proceedings] would be converted to a disciplinary proceeding," (Resp't's Br. at 16), is unavailing because the Federal Proceedings followed the procedure for investigation and review in the Southern District's Local Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys (the "Attorney Regulation Local Rules") and put Mr. Ramer on notice that such procedure could result in discipline.

Pursuant to Attorney Regulation Local Rule 6(c), after a judge refers an attorney to the Committee, the Committee conducts an

"initial investigation" and, thereafter, "determine[s] the type of review" to be completed, if any. See L.R. 6(c)(1)–(2). During the investigation and review proceedings, "[u]nless otherwise ordered by the Chief Judge, the Committee has discretion to proceed with peer review or undertake disciplinary action," and such "discretion continues throughout the proceedings to allow the Committee to elevate a peer review action to a disciplinary action or vice versa depending on the facts discovered during the investigation." L.R. 6(c)(3).

The Federal Proceedings followed that procedure. In the Referral Order, Judge Altonaga "refer[red] [Mr. Ramer] to the Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance **for investigation of his actions in [the Coach Litigation].**" (Tab 1, Ex. B, Order (Doc. No. 182 at 10–11) (emphasis added)). In turn, the Committee investigated Mr. Ramer's conduct in the *Coach* Litigation and determined that both peer review and disciplinary review were appropriate. (See Tab 1, Ex. A, First R&R, at 9) (recommending both remediation and suspension)). Mr. Ramer then objected to the First R&R on the grounds, among others, that the recommended suspension was "beyond the scope of the referral." (Tab 1, Ex. A, Order of Suspension, at 2). In response, the Committee

stated that Mr. Ramer "knew or should have known that a recommended suspension was a possible consequence of his being referred to the Committee," (Tab 1, Ex. A, Order of Suspension, at 2), specifically noting that both the old Local Rule 5 (which was in effect on February 10, 2017 when the Referral Order was entered) and Local Rule 6 (which was in effect for most of the Federal Proceedings) "allow[] the Committee to elevate a peer review proceeding to a disciplinary proceeding," (*id.* at 2 n.2).<sup>4</sup> Nonetheless, in the Committee's Second Report and Recommendation (the "Second R&R"), the Committee concluded that "if Mr. Ramer ha[d] performed

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<sup>4</sup> The Order of Suspension states:

The Committee specifically noted that both the old rules and newly amended rules have provisions allowing the Committee to elevate a peer review proceeding to a disciplinary proceeding. See Rule 5(c), Special Rules Governing the Admission and Practice of Attorneys (2016) (The Committee may "recommend that the Court consider limiting or otherwise imposing appropriate restrictions on the attorney's continued practice in the District Comt."); Rule 6(c)(1) and 6(c)(3), respectively, Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys (2018) (The Committee has "the discretion to determine the type of review after its initial investigation," and "has the discretion to proceed with peer review or undertake disciplinary action.").

(*Id.* at 2 n.2).

the remedial requirements set out in the first Report and Recommendation then there is no reason for him to be further suspended." (*Id.* at 2). Ultimately, Mr. Ramer was suspended by the Southern District because he failed and refused to comply with the Committee's remedial requirements. (*See id.* at 3).

Accordingly, given the Committee's discretion under the Attorney Regulation Local Rules to investigate attorney referrals and determine the type of review and recommended actions, Mr. Ramer was on notice from the outset of the Federal Proceedings that Judge Altonaga's referral to the Committee could result in recommended discipline. Moreover, after the Committee entered its First R&R recommending suspension in addition to remedial requirements, Mr. Ramer was given "a full and fair opportunity to review the Committee's recommendation and respond." (Tab 1, Ex. A, Order of Suspension, at 2).

**3. In accordance with the Attorney Regulation Local Rules, Mr. Ramer could have requested a hearing during the Federal Proceedings, but did not do so.**

Mr. Ramer contends that he was denied due process because "[Attorney Regulation] Local Rule 6(c)(2)(B) requires a probable cause determination and then under 6(c)(2)(B)(iv) notice of an opportunity

to appear with counsel and present witnesses and evidence and to confront and cross-examine witnesses (but not the Court or members of the Committee)." (Resp't's Br. at 17; *see also id.* at 19). Mr. Ramer's contentions fall flat because the procedure in Attorney Regulation Local Rule 6 was followed, and Mr. Ramer did not request such a hearing in accordance with that procedure.

Under Attorney Regulation Local Rule 6(c)(2)(B), if the Committee determines probable cause exists that the attorney has committed misconduct warranting discipline after the Committee conducts its initial investigation, the Committee "shall provide the attorney with a written Report and Recommendation specifying: (1) its findings of fact supporting a finding of misconduct; and (2) its proposed recommendations as to the disciplinary measures to be applied by the Court." *See* L.R. 6(c)(2)(B)(i). The attorney may then file a written response objecting to the Committee's Report and Recommendation and may request a hearing. *See* L.R. 6(c)(2)(B)(ii)–(iv). Attorney Regulation Local Rule 6(c)(2)(B)(iv) specifically provides that "[i]f the attorney serves a written response **and requests a hearing**, the Committee **may, in its discretion**, hold a hearing." L.R. 6(c)(2)(B)(iv) (emphasis added). Where the attorney requests a

hearing in response to the Report and Recommendation and the Committee determines in its discretion to hold one, "the attorney shall be entitled to be represented by counsel, to present witnesses and other evidence on his or her behalf, and to confront and cross examine witnesses against the attorney . . . ." *Id.* However, "[i]f no hearing is requested, the Committee shall review the response and make a final Report and Recommendation to the Court." *Id.* Thus, under Attorney Regulation Local Rule 6, a hearing involving the cross-examination of witnesses after the Committee issues its Report and Recommendation is only held if the attorney has specifically requested a hearing and the Committee has decided in its discretion to hold a hearing. *See id.*

That procedure was followed here. Specifically, the Committee investigated Mr. Ramer's conduct in the *Coach* Litigation, holding a hearing to permit Mr. Ramer to testify on his own behalf. (See Tab 1, Ex. A, First R&R; *see also* Tab 1, Ex. A, Ad. Hoc. Tr.). Based on its investigation, the Committee determined that Mr. Ramer was guilty of misconduct warranting discipline and issued its First R&R setting forth "its findings of fact supporting a finding of misconduct; and (2) its proposed recommendations as to the disciplinary

measures to be applied by the Court," see L.R. 6(c)(2)(B); (see also Tab 1, Ex. A, First R&R). Thereafter, Mr. Ramer submitted two written objections to the First R&R, **but did not request a hearing in either written objections or in any other document.** (See Tab 32, Resp.'t's Ex. E, Ltr. from Mr. Ramer to J. Moore; Tab 33, Resp.'t's Ex. F, Resp. to Order to Show Cause). Thus, in accordance with Attorney Regulation Local Rule 6(c)(2)(B), the Committee's First R&R, along with Mr. Ramer's written objections, were evaluated by Southern District Chief Judge K. Michael Moore without an additional hearing. (See Tab 1, Ex. A, Order of Suspension, at 1–2). In turn, the Committee submitted its Second R&R, as Judge Moore requested, and, "[h]aving reviewed the Report and Recommendation, Responses, the attachments, hearing transcript, and having otherwise considered the matter," the Southern District entered its Order of Suspension. (See *id.* at 3).

Accordingly, the procedures in Attorney Regulation Local Rule 6 were followed during the Federal Proceedings, and Mr. Ramer's failure to request a second hearing after the Committee issued its First R&R forecloses his contention that his due process rights have been violated. See *Daniel*, 626 So. 2d at 183 ("Daniel clearly was

afforded an opportunity to be heard; the fact that he voluntarily chose not to take advantage of that opportunity does not offend due process."); *see also In re Surrick*, 338 F.3d 224, 235–36 (3d Cir. 2003) ("[D]espite having advance notice that the ruling in *Price* might be applied to his case, Surrick never requested either an evidentiary hearing or the reopening of the record during the state proceedings. Thus, any due process violation that might have resulted from the failure to hold a second hearing was waived.").

In sum, because Mr. Ramer "was made aware of the conduct alleged by [the Committee] to be unethical and had the opportunity to be heard as to this conduct, there was no violation of due process" during the Federal Proceedings. *See Fredericks*, 731 So. 2d at 1254 (Fla. 1999).

**B. Rule 3-4.6(a) of the RRTFB Was Properly Applied in the Florida Proceedings.**

Mr. Ramer argues that the Referee should not have applied Rule 3-4.6(a) of the RRTFB during the Florida Proceedings because (a) the probable cause standard applied during the Federal Proceedings was insufficient for reciprocal discipline, (*see Resp't's Br.* at 17–19); (b) the Order of Suspension was not entered by a court or other

authorized disciplinary agency as required by Rule 3-4.6(a) of the RRTFB, (*see id.*); and (c) the Order of Suspension should not be the basis of reciprocal discipline because "[h]ad Ramer completed the remedial requirements, which he chose not to undertake, there would not have been any suspension from the Southern District," (*see id.* at 41–42). Each of Mr. Ramer's contentions is without merit.

**1. For purposes of Rule 3-4.6(a) of the RRTFB, a foreign jurisdiction's different standard of proof is inconsequential.**

This Court has held that, for purposes of Rule 3-4.6(a) of the RRTFB, "a foreign jurisdiction's different standard of proof in this context is inconsequential as to both guilt and discipline." *Mogil*, 763 So. 2d at 309; *see also Friedman*, 646 So. 2d at 189–90 (holding that a foreign jurisdiction's judgment finding an attorney guilty of misconduct justifying discipline is conclusive proof of such misconduct even if the judgment was based on a lower standard of proof than the clear and convincing evidence standard). In *Mogil*, the referee granted TFB's partial motion for summary judgment because, pursuant to Rule 3-4.6(a) of the RRTFB, *Mogil's* disbarment in New York was conclusive proof of his guilt for violations of the RRTFB. *See Mogil*, 763 So. 2d at 305–06. In his appeal to this Court, *Mogil*

argued, among other things, that "the clear and convincing evidence standard that applies in Florida disciplinary proceedings was not met (and the referee's report therefore should be rejected) because the referee's factual findings are based entirely on the New York proceedings, which apply the lower evidentiary standard of preponderance of the evidence." *Id.* at 309. The Court rejected Mogil's argument, stating that "[t]he plain language of rule 3-4.6 provides that when an attorney is found guilty in a foreign jurisdiction of misconduct, it 'shall be considered as conclusive proof of such misconduct in a disciplinary proceeding under this rule.'" *Id.*

Accordingly, based on this Court's holdings in *Mogil* and *Friedman*, the probable cause standard applied in the Southern District is "inconsequential" to the Referee's determination of Mr. Ramer's guilt for violations of the RRTFB here. *See Mogil*, 763 So. 2d at 309.

**2. The Order of Suspension was entered by a court as provided in Rule 3-4.6(a) of the RRTFB.**

For Rule 3-4.6(a) of the RRTFB to apply, there must be a "final adjudication in a disciplinary proceeding by a court or other authorized disciplinary agency of another jurisdiction." RRTFB 3-

4.6(a). Because the Order of Suspension was entered by a court—the Southern District—it clearly satisfies that requirement. (See Tab 1, Ex. A, Order of Suspension).

Mr. Ramer nonetheless urges the Court to find that the Order of Suspension is insufficient because the Southern District "merely adopted the probable cause recommendations of the Ad Hoc Committee and did not actually conduct any evidence proceedings" itself. (Resp't's Br. at 19). But the Southern District did not "merely adopt" the Committee's Report and Recommendation. (See *id.*) Instead, the court, "by a unanimous agreement of the Judges in attendance," determined that the adoption of the Committee's Second R&R was appropriate based on its "review[] [of] the Report and Recommendation, Responses, the attachments, [and] hearing transcript." (Tab 1, Ex. A, Order of Suspension at 3). Mr. Ramer does not cite to any authority for his contention that the Order of Suspension is insufficient, and none exists. To the contrary, the Court has approved of cases in which Rule 3-4.6(a) of the RRTFB was applied to federal sanction orders adopting or approving of

committees' reports and recommendation.<sup>5</sup>

**3. Mr. Ramer's contention that he chose to be suspended by the Southern District is irrelevant.**

Regardless of whether Mr. Ramer "chose" (as he contends) suspension by the Southern District over complying with the remedial requirements in the First R&R, the Order of Suspension is 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 . . . ." RRTFB 3-4.6(a). Under its plain language, therefore, Rule 3-4.6(a) of the RRTFB applies to the Order of Suspension. *Id.* Moreover, in addition to being irrelevant, Mr. Ramer's argument further shows his nonchalance

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<sup>5</sup> (See Tab 11, Ex. A, *The Florida Bar v. Speights*, SC18-1027 (Fla. Apr. 18, 2019) (unpublished) (involving a reciprocal discipline action based on the Report and Recommendation of the Board of Professional Responsibility dated November 22, 2017, upholding the Report and Recommendation of the Ad Hoc Hearing Committee, dated June 8, 2015, which imposed a six-month suspension); see also Tab 11, Ex. B, *The Florida Bar v. Simpson*, SC14-1731 (Fla. March 27, 2015) (unpublished) (involving a reciprocal discipline action based on the Order Adopting Report and Recommendation entered on June 5, 2014, by the Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance, which imposed a three year probation, amongst other restrictions)).

with the consequences of noncompliance with court rules and orders that led him to disciplinary proceedings in the first place.

Accordingly, Rule 3-4.6(a) of the RRTFB was properly applied in the Florida Proceedings, and Mr. Ramer's arguments to the contrary are refuted by the plain language of the Rule and Court precedent.

## **II. MR. RAMER RECEIVED SUFFICIENT NOTICE IN THE FLORIDA PROCEEDINGS.**

### **A. TFB's Complaint Specified the Violations of the RRTFB Charged Against Mr. Ramer.**

Without citation to any authority, Mr. Ramer contends that he was deprived due process in the Florida Proceedings because TFB "never noticed or charged Ramer with any rule violations" until "thirteen (13) months after the referral." (Resp't's Br. at 21–22). But the Complaint was sufficiently pled, as it set forth both the specific Rules of the RRTFB violated by Mr. Ramer and a description of Mr. Ramer's misconduct supporting such violations. (*See* Tab I, Compl. of TFB); *see also* RRTFB 3-7.6(h)(1)(B) ("The complaint shall set forth the particular act or acts of conduct for which the attorney is sought to be disciplined."). There is no legal or factual support for Mr. Ramer's apparent contention that TFB is required to file its formal complaint within a year of receiving a referral. Instead, the

Complaint was filed well within the only applicable time limitation on the Florida Proceedings: the six-year statute of limitations for when TFB "must open an investigation." See RRTFB 3-7.16(a)(1).

**B. TFB Was Not Required to Specify the Rules Mr. Ramer Violated Prior to Filing Its Complaint.**

Mr. Ramer contends that he received "insufficient notice at all stages until TFB's Formal Complaint" because he was not notified of the "charged violations of the Rules of Professional Conduct . . . until he received the Formal Complaint filed July 16, 2020." (Resp't's Br. at 21–22).

First, there is no requirement that TFB specify the Rules of the RRTFB violated by an attorney **prior to the filing of a complaint seeking for the attorney to be disciplined.** Cf. *The Florida Bar v. Swickle*, 589 So. 2d 901, 904 (Fla. 1991) ("The attorney under investigation is not entitled to a bill of particulars . . . .") In fact, under Supreme Court precedent, an attorney in disciplinary proceedings may have sufficient notice of the charges against him even where the attorney is found guilty of violating Rules of the RRTFB that were not identified in TFB's complaint. See *Fredericks*, 731 So. 2d 1249, 1253 (Fla. 1999) ("[S]pecific findings of uncharged

conduct and violations of rules not charged in the complaint are permitted where the conduct is either specifically referred to in the complaint or is within the scope of the specific allegations in the complaint."); *see also The Florida Bar v. Nowacki*, 697 So. 2d 828, 832 (Fla. 1997) ("We find that the conduct referenced by the referee in his report in this case, though not specifically pled in the Bar's complaint, was clearly within the scope of the Bar's accusations and respondent was clearly notified of the nature and extent of the charges pending against her."); *The Florida Bar v. Vaughn*, 608 So. 2d 18, 20 (Fla. 1992) ("Although the bar's complaint did not specifically charge Vaughn with a violation of rule 4-8.1(b), paragraph 6 of the complaint certainly put Vaughn on notice that his lack of cooperation was at issue.").

Second, Mr. Ramer had actual notice of the conduct giving rise to the RRTFB violations charged in TFB's Complaint, as it is the same conduct specified in the Committee's First R&R issued during the underlying Federal Proceedings. (*Compare* Tab I, Compl. of TFB, *with* Tab 1, Ex. A, First R&R). Indeed, the factual allegations asserted in the Complaint come directly from the First R&R. (*Id.*).

Under these undisputed facts, there is no merit to Mr. Ramer's claim that the Florida Proceedings deprived him of due process. See *The Florida Bar v. Committe*, 916 So. 2d 741, 745 (Fla. 2005) ("[D]ue process is satisfied where the attorney has notice and an opportunity to be heard.").

**III. IN ADDITION TO THE ORDER OF SUSPENSION SERVING AS CONCLUSIVE PROOF THAT MR. RAMER VIOLATED THE RRTFB, MR. RAMER'S CONDUCT IS ALSO UNDISPUTED.**

As provided above, in Argument, Section I, because Mr. Ramer has failed to prove that the Federal Proceedings were "so deficient or lacking in notice or opportunity to be heard," the Order of Suspension properly "serve[d] as conclusive proof of [Mr. Ramer's] commission of the misconduct charged" in that order. See *Kandekore*, 766 So. 2d at 1007. TFB's Partial MSJ that Mr. Ramer was guilty of the conduct giving rise to violations of the RRTFB was therefore properly granted on that ground alone. See *Mogil*, 763 So. 2d at 308 ("Mogil did not meet his burden under *Wilkes* and *Friedman* and, under all the circumstances at issue here, the referee did not err in granting TFB's Partial MSJ as to guilt based on his finding under rule 3-4.6 that the New York disbarment order was conclusive proof of Mogil's misconduct.").

However, in addition to the Order of Suspension serving as conclusive proof of the misconduct charged therein, TFB's Partial MSJ was also properly granted because Mr. Ramer did not dispute that he committed the misconduct asserted in TFB's Partial MSJ. As provided further below, in TFB's statement of undisputed facts ("SUF") in its Partial MSJ, TFB set forth the misconduct committed by Mr. Ramer. TFB supported its undisputed facts with evidence, including documents from the Federal Proceedings and documents filed in the *Coach* Litigation. In response to TFB's Partial MSJ, Mr. Ramer was required to "come forward with counterevidence sufficient to reveal a genuine issue." *Mogil*, 763 So. 2d at 307. But, as provided further below, not only did Mr. Ramer fail to present sufficient counterevidence, in his Response to TFB's Partial MSJ, Mr. Ramer admitted that he had in fact committed the acts set forth in TFB's Partial MSJ. While Mr. Ramer gave purported justifications for why he committed the misconduct at issue, he did not in fact dispute that the conduct had been committed. As provided below, such undisputed facts conclusively established violations of the RRTFB.

**A. Mr. Ramer Admitted to Committing the Misconduct That Gives Rise to Violations of RRTFB.**

In the SUF set forth in TFB's Partial MSJ, TFB asserted that Mr. Ramer committed the following misconduct, among other facts and incidents of misconduct. And, in Mr. Ramer's "Section I - Response to Paragraphs of TFB Motion" (Mr. Ramer's "SUF Response"), Mr. Ramer admitted that he had in fact committed each act:

(a) TFB asserted: "[T]he Committee's investigation revealed that respondent failed to comply with court orders and the local rules for the Southern District." (Tab 7, TFB's Partial MSJ, SUF ¶ F). Mr. Ramer responded: "Denied it 'revealed' but admits with explanation the findings set forth." (Tab 13, Mr. Ramer's Resp. to TFB's Partial MSJ, SUF Resp. ¶ F). Mr. Ramer's response goes on to explain his excuses for his failures to comply with court orders and the Local Rules for the Southern District, but he does not deny that he committed misconduct. (*See id.*).

(b) TFB asserted: "[A]s counsel for the defendants, respondent failed to comply with multiple discovery requests by the plaintiffs. Initially, plaintiffs attempted to obtain the defendants' response without judicial intervention. When their efforts failed, the plaintiffs

sought recourse through the courts. The court then imposed a deadline of February 8, 2016, for the defendants to respond . . . The Respondent filed an untimely and incomplete response a day after the responsive pleading was due." (Tab 7, TFB's Partial MSJ, SUF ¶¶ G–H). Mr. Ramer responded: "Admitted with explanation." (Tab 13, Mr. Ramer's Resp. to TFB's Partial MSJ, SUF Resp. ¶¶ G–H).

(c) TFB asserted: "The court ordered defendants to provide complete responses to plaintiffs' discovery requests. The court also ordered defendants to pay a sanction of \$500.00 for plaintiffs' attorney fees on or before March 21, 2016 . . . Neither Respondent nor the defendants complied with the court order." (Tab 7, TFB's Partial MSJ, SUF ¶¶ I–J). Mr. Ramer responded: "Admitted with explanation." (Tab 13, Mr. Ramer's Resp. to TFB's Partial MSJ, SUF Resp. ¶¶ I–J).

(d) TFB asserted: "On or about March 22, 2016, a second discovery hearing was held. The court ordered the defendants to produce responsive pleadings to the plaintiffs' discovery request. The court also ordered defendants to pay an additional sanction of \$500.00 for attorney fees to the plaintiffs by April 12, 2016 . . . It was not until after the plaintiffs requested yet another discovery hearing

that the defendants paid the \$1000.00 sanction to the plaintiffs for their attorney fees." (Tab 7, TFB's Partial MSJ, SUF ¶¶ K-L). Mr. Ramer responded: "Admitted with explanation." (Tab 13, Mr. Ramer's Resp. to TFB's Partial MSJ, SUF Resp. ¶¶ K-L).

(e) TFB asserted: "[Mr. Ramer] also failed to comply with court ordered mediation. Specifically, on or about October 16, 2015, the court scheduled the mediation for April 4, 2016. Counsel for the plaintiffs flew from New York to Miami, Florida to attend the court scheduled mediation. However, neither the respondent nor his clients appeared." (Tab 7, TFB's Partial MSJ, SUF ¶ M). Further, "[o]n or about May 9, 2016, the court granted plaintiffs' Motion for Sanctions [for the defendants' failure to attend the mediation]. The court found the defendants had a history of noncompliance and that their failure to attend the mediation was not substantially justified." (*Id.* ¶ P). Mr. Ramer responded to both allegations: "Admitted with explanation." (Tab 13, Mr. Ramer's Resp. to TFB's Partial MSJ, SUF Resp. ¶¶ M, P).

(f) TFB asserted: "[P]ursuant to an order entered by the court on or about May 18, 2016, the court struck Defendants' response to the plaintiffs' motion for partial summary judgment due to

noncompliance with Local Rule 56.1 (Tab 7, TFB's Partial MSJ, SUF ¶ R). Mr. Ramer responded: "Admitted with explanation." (Tab 13, Mr. Ramer's Resp. to TFB's Partial MSJ, SUF Resp. ¶ R).

(g) TFB asserted: "Similarly, the Committee found that [Mr. Ramer] failed to comply with Rule 7.3(b) (Good Faith Effort to Resolve Issues by Agreement) of the Local Rules for the Southern District Court of Florida. [Mr. Ramer] repeatedly failed to respond to plaintiffs' telephone calls and emails attempting to confer on motions and discovery disputes." (Tab 7, TFB's Partial MSJ, SUF ¶ S). Mr. Ramer responded that he denied that he failed to comply with that local rule, but his explanation for the denial does not present any facts supporting his denial. (See Tab 13, Mr. Ramer's Resp. to TFB's Partial MSJ, SUF Resp. ¶ S).

(h) TFB asserted: "[Mr. Ramer] failed to file responsive pleadings to Plaintiff's motions that required a response, such as, Plaintiffs' Motion for Order to Show Cause and Plaintiff's Motion for Permanent Injunction. In both instances, defendants did not respond, resulting in the court granting the Plaintiffs' Motion for Permanent Injunction on or about September 15, 2016." (Tab 7, TFB's Partial MSJ, SUF ¶

T). Mr. Ramer responded: "Admitted with explanation." (Tab 13, Mr. Ramer's Resp. to TFB's Partial MSJ, SUF Resp. ¶ T).

(i) TFB asserted: "[Mr. Ramer] repeatedly failed to comply with court orders up to and including the conclusion of the trial. For instance, during the jury's deliberation the court directed all counsel to remain within fifteen minutes of the courtroom. Yet, [Mr. Ramer] failed to comply forcing the court, jury, and plaintiffs' counsel to wait over an hour before the jury verdict could be published." (Tab 7, TFB's Partial MSJ, SUF ¶ U). Mr. Ramer responded: "Denies [Mr. Ramer] 'repeatedly failed to comply with court order,'" but "[a]dmitted with explanation the single event alleged in this Paragraph." (Tab 13, Mr. Ramer's Resp. to TFB's Partial MSJ, SUF Resp. ¶ U).

(j) TFB asserted: "The Ad Hoc Committee detailed similar instances of misconduct engaged in by [Mr. Ramer] in other cases before the United States District Court for the Southern District. Specifically, in *LBC Compass Group. v. Nova Marine Co. Ltd.*, Case NO. 02-60862-CV, the court heavily criticized [Mr. Ramer's] client, *Nova*, and other defendants for failing to comply with the local rules for the United States District Court for the Southern District and the Federal Rules of Civil Procedure. Here [Mr. Ramer] and other defense

counsel repeatedly filed papers that were mislabeled as ex parte motions, contained grammatical and spelling errors, and failed to contain memorandum of law. (Tab 7, TFB's Partial MSJ, SUF ¶ V). "Likewise, in *Mystique Inc. v. 138 International, Inc.*, Case No. 07-22937 CV-Torres, the court found that [Mr. Ramer's] client willfully and intentionally violated discovery orders. (*Id.* ¶ W). Mr. Ramer responded that he "denie[d] that th[e] alleged conduct in [the *Nova* and *Mystique* cases] is relevant, probative, legally or fairly considered by th[e] Court," but Mr. Ramer did not deny that he committed the particular acts at issue. (See Tab 13, Mr. Ramer's Resp. to TFB's Partial MSJ, SUF Resp. ¶¶ V-W).

**B. Mr. Ramer's Undisputed Misconduct Conclusively Established His Guilt for the RRTFB Violations.**

As set forth in TFB's Partial MSJ, the misconduct Mr. Ramer admitted to committing constitutes violations of Rule 4-1.1, Rule 4-3.4(a), Rule 4-3.4(c), Rule 4-1.3, Rule 3-4.3, and Rule 4-8.4(d) of the RRTFB.

Specifically, as provided in TFB's Partial MSJ, Mr. Ramer's "repeated[] fail[ure] to comply with court orders and with the local rules governing the United States District Court for the Southern

District" and his "lack[] [of] familiarity with federal court practice" constitute a violation of "Rule 4-1.1 of the [RRTFB], which requires a lawyer to provide competent representation to a client." (Tab 7, TFB's Partial MSJ, at 14). TFB explained that "[t]he rule defines competent representation as the legal knowledge, skill, thoroughness, and preparation necessary for the representation," and "[w]hether [Mr. Ramer's] actions stemmed from ignorance of the rules, or an inability to comply with same due to lack of skill or preparation, or both," Mr. Ramer's lack of competence was evident. (*Id.*).

Similarly, TFB explained that Mr. Ramer's "fail[ure] to timely provide full and complete responses to plaintiff's discovery requests on at least four occasions" constitutes a violation of Rule 4-3.4(a) of the RRTFB, which prohibits conduct that obstructs another party's access to evidence. (*Id.*).

The TFB further explained that Mr. Ramer's failure to timely comply with the court's orders to produce full and complete discovery responses, failure to respond to filings when a response was required, and failure to comply with the Local Rules of the Southern District constitutes a violation of Rule 4-3.4(c) of the RRTFB, which prohibits a lawyer from knowingly disobeying an obligation under the rules of

a tribunal, except for an open refusal based on an assertion that no valid obligation exists. (*See id.* at 14–15).

In addition, TFB provided that Mr. Ramer's "repeated failure to timely comply with court orders and to timely file discovery responses and other required pleadings frustrated and delayed the litigation process" in violation of Rule 4-1.3 of the RRTFB, which "requires a lawyer to act with reasonable diligence and promptness in representing a client." (*Id.* at 15–16). TFB explained that, under the foregoing undisputed facts, Mr. Ramer "was neither diligent nor prompt in his conduct of the underlying proceedings." (*Id.* at 16).

Finally, TFB provided that [t]he entirety of [Mr. Ramer's] actions and inactions in the federal court demonstrated a lack of respect for the process, his opposing counsel, the rules of court, and the administration of justice." (*Id.*). Such conduct constitutes a violation of Rule 4-8.4(d), which prohibits a lawyer from "engag[ing] in conduct in connection with the practice of law that is prejudicial to the administration of justice." *See* RRTFB 4-8.4(d). TFB explained that "the standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts," rather "[t]he commission by a lawyer of any act that

is unlawful or contrary to honesty and justice may constitute a cause for discipline." (Tab 7, TFB's Partial MSJ, at 16).

Accordingly, because the misconduct set forth in the SUF in TFB's Partial MSJ constitutes violations of Rule 4-1.1, Rule 4-3.4(a), Rule 4-3.4(c), Rule 4-1.3, Rule 3-4.3, and Rule 4-8.4(d) of the RRTFB—and Mr. Ramer does not dispute that he committed the misconduct—there is no genuine issue of material fact that Mr. Ramer is guilty of violating the RRTFB. *See Mogil*, 763 So. 2d 303, 307 (upholding the referee's partial summary judgment on the issue of Mogil's guilt because Mogil failed to meet his burden of refuting TFB's evidence of guilt with anything more than unsupported assertions).

#### **IV. MR. RAMER'S MISCONDUCT DURING THE NOVA LITIGATION AND MYSTIQUE LITIGATION ARE RELEVANT EVIDENCE REGARDING THE APPROPRIATE SANCTION.**

Mr. Ramer contends the Referee erred in considering any argument or evidence related to Mr. Ramer's conduct in *LBC Compass Group LLC v. Nova Marine Co. Ltd.*, No. 0:02-cv-60862-WCT (S.D. Fla.) (the "*Nova* Litigation") and *Mystique, Inc. v. 138 International, Inc.*, No. 1:07-cv-22937-EGT (S.D. Fla.) (the "*Mystique* Litigation"). (See Resp't's Br. at 32–37). Specifically, Mr. Ramer

argues in his Brief that the Referee erred in denying his motion to strike and Partial MSJ and erred in granting TFB's motion to strike Mr. Ramer's laches and delay defenses in his Answer because the *Nova* Litigation and *Mystique* Litigation should not have been considered during the Florida Proceedings. (*See id.*). Mr. Ramer contends that evidence regarding his misconduct in those cases is "barred by the six-year Statute of Limitations" and is not relevant to Mr. Ramer's conduct at issue in the Florida Proceedings. (*See id.*).

First, evidence related to Mr. Ramer's misconduct in the *Nova* Litigation and *Mystique* Litigation is not barred by the six-year statute of limitations for disciplinary proceedings by TFB. Rule 3-7.16(1) provides in pertinent part that "The Florida Bar must open an investigation initiated by The Florida Bar within 6 years from the time the matter giving rise to the investigation **is discovered or, with due diligence, should have been discovered.**" RRTFB 3-7.16(1) (emphasis added). There is no dispute here that TFB did not discover or have reason to discover Mr. Ramer's misconduct in these Southern District cases until the Order of Suspension was referred to TFB.

Second, Mr. Ramer's conduct in the *Nova* Litigation and *Mystique* Litigation is relevant as aggravating factors in the Referee's

determination of the appropriate sanction for Mr. Ramer's violations of the RRTFB. *See The Florida Bar v. Williams*, 753 So. 2d 1258, 1262 (Fla. 2000) ("In assessing discipline, 'this Court also considers prior misconduct and cumulative misconduct as relevant factors, and deals more severely with cumulative misconduct than with isolated misconduct.'" (quoting *The Florida Bar v. Adler*, 589 So. 2d 899, 900 (Fla. 1991))). In addition, at the final hearing on sanctions, Mr. Ramer's counsel presented argument for the Referee's consideration regarding the alleged remoteness of the *Nova* Litigation and *Mystique* Litigation, so the Referee could evaluate the probative value of that evidence. (*See* S. Tr. 132:4-133:4).

Third, there was more than sufficient evidence to show that Mr. Ramer committed misconduct warranting discipline from Mr. Ramer's conduct during the *Coach* Litigation without reference to his misconduct during the *Nova* Litigation and *Mystique* Litigation. Thus, even if Mr. Ramer could show that evidence regarding the *Nova* Litigation and *Mystique* Litigation should not have been presented during the Florida Proceedings (which he cannot), that error would be harmless. *See Fredericks*, 731 So. 2d at 1251 ("[T]he referee's findings were not based solely upon this evidence, and his report

makes clear that he used this evidence only as corroboration of Winston's testimony. Therefore, even if there was error, it was harmless . . . .").

**V. THE FLORIDA STANDARDS AND CASE LAW DEMONSTRATE THAT MR. RAMER SHOULD RECEIVE A 91-DAY SUSPENSION.**

In his Brief, Mr. Ramer recites several Florida Standards, but he does not argue why any particular standard is, as he contends, "totally incongruous" with the sanction of suspension for his misconduct. (See Resp't's Br. At 30–32). Nor does Mr. Ramer cite to any case law to demonstrate that the sanction of suspension is inappropriate here. (See *id.*).

Instead, as provided in TFB's Initial Brief, both the Florida Standards and pertinent case law demonstrate that Mr. Ramer should be suspended for 91 days—one day longer than the discipline recommended in the Referee's ROR—so he will be required to undergo rehabilitation before he is readmitted to The Florida Bar. Indeed, 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)—and only found one mitigating factor—Florida Standard 3.3(b)(1) (absence of a prior disciplinary record). (ROR at 13–14). Based on those aggravating factors, the case law fully supports a suspension of 91 days. *See, e.g., The Florida Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015) (rejecting a Referee’s recommendation and instead imposing a one-year suspension where the attorney’s “repeated failures to comply with court orders and his bad faith conduct, together with the [four] aggravating factors found by the referee, warrant[ed] a suspension longer than ninety-one days”); *The Florida Bar v. Marcellus*, 249 So. 3d 538, 543–45 (Fla. 2018) (imposing 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); *The Florida Bar v. Picon*, 205 So. 3d 759, 766 (Fla. 2016) (noting that the Court has “previously imposed long-term rehabilitative suspensions in cases where an attorney has committed multiple acts of client neglect” in imposing a one-year suspension instead of the referee’s recommended 91 days).

Instead of citing any authority to support his contention that suspension is not warranted, Mr. Ramer's Brief merely reiterates his

purported justifications for his misconduct and continues to evince a misunderstanding as to the importance of following court orders and local rules. The contentions in Mr. Ramer's Brief, which seek to minimize the significance of failing to comply with court orders, violating court rules, and delaying litigation, only further demonstrate that Mr. Ramer needs rehabilitative and remedial training, and he will not voluntarily participate in any such training if his sanction does not require him to do so. *Cf. Rosenberg*, 169 So. 3d at 1162 ("It is particularly significant that Rosenberg has refused to accept the wrongful nature of his misconduct. Rather, he continues to attempt to relitigate Judge Gerber's order imposing sanctions.").

### **CONCLUSION**

For the foregoing reasons, and those provided in TFB's Initial Brief, this Court should approve the Referee's findings of fact, recommendations of guilt, and findings of aggravation and mitigation. However, the Court should disapprove the Referee's recommended discipline and, instead, impose a 91-day suspension against Mr. Ramer so he will be required to undergo rehabilitation before his admission to The Florida Bar is reinstated.

Respectfully submitted on February 8, 2022.

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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 February 8, 2022:

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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 9,409 words, excluding the parts of the brief exempted by Rule 9.045(e).

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