

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

BRUCE JACOBS,
Respondent.

Supreme Court Case
No. SC20-1602

The Florida Bar File
No. 2019-70,188 (11H)
No. 2019-70,358 (11H)
No. 2020-70,056 (11H)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On November 3, 2020, The Florida Bar filed its Complaint against Respondent. Respondent filed his Answer and Defenses on November 25, 2020. On December 7, 2020, The Florida Bar filed its Request for Admissions. Respondent filed his Answer to Request for Admissions on January 6, 2021. Additionally, on March 24, 2021, Respondent filed his First Amended Answer and Affirmative Defenses. A Final Hearing was held on April 22, 2021 and April 23, 2021. A sanctions hearing was held on May 5, 2021 and May 6, 2021.

FLORIDA SUPREME COURT

11/16/2021

RECEIVED

All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

On behalf of The Florida Bar: Tonya Avery, Bar Counsel
444 Brickell Avenue, Suite M-100
Miami, Florida 33131

On behalf of the Respondent: Benedict P. Kuehne
100 SE 2nd Street, Suite 3105
Miami, Florida 33131

Roy D. Wasson
28 West Flagler Street, Suite 600
Miami, Florida 33130

These witnesses testified during the trial, including at the sanctions hearing:

For The Florida Bar:

A. Sanctions Phase:

- Michael A. Hanzman, Circuit Judge

For Respondent:

A. Liability Phase:

- Bruce Jacobs
- Maria Jacques
- Hon. David Miller, Circuit Judge
- Ryan Atkin
- Ian Chan Hodges

For Respondent:

- Maria Williams
- David Winker

B. Sanctions Phase:

- Hon. Pedro Echarte, Circuit Judge
- Hon. Michelle Barakat, Circuit Judge
- Maria Jacques
- Rabbi Yochanon Klein
- Hon. Jose Rodriguez, Circuit Judge
- Ricardo Corona
- Rabbi Klein
- Hon. Lawrence Schwartz, Circuit Judge (Ret.)
- James Pann
- Brandon Maakawabaa
- Margery Golant
- Brian Barakat
- Ana Lazara Rodriguez
- Court Keeley
- Genny Rodriguez

These exhibits were admitted into evidence during the trial, including at the sanctions hearing: (Exhibits shall be referred to throughout this report)

For The Florida Bar:

- Exhibit 1: *Aquasol v. HSBC*, 3D17-352, Opinion, 8/15/2018
- Exhibit 2: *Aquasol v. HSBC*, 3D17-352, Order to Show Cause, 9/26/2018
- Exhibit 3: *Aquasol v. HSBC*, 3D17-352, Jacobs Amended Verified Response to Order to Show Cause, 11/1/2018
- Exhibit 4: *Aquasol v. HSBC*, 3D17-352, Order Imposing Sanctions, 12/5/2018
- Exhibit 5: *Bank of America v. Atkin*, 3D18-1840, Opinion, 12/14/2018

- Exhibit 6: *Bank of America v. Atkin*, 3D18-1840, Order to Show Cause, 12/14/2018
- Exhibit 7: *Bank of America v. Atkin*, 3D18-1840, Jacobs Verified Response to Order to Show Cause, 1/7/2019
- Exhibit 8: *Bank of America v. Atkin*, 3D18-1840, Order of Referral, 4/10/2019
- Exhibit 9: *BONYM v. Atkin*, 2009-087096-CA-01 (Miami-Dade County), Verified Motion for Judicial Disqualification, 7/26/2019
- Exhibit 10: *BONYM v. Atkin*, 2009-087096-CA-01, Order Denying Motion for Judicial Disqualification, 7/29/2019
- Exhibit 11: *BONYM v. Atkin*, 2009-087096-CA-01 (Miami-Dade County), Order Denying Attorney's Fees (Containing Referral to The Florida Bar), 7/31/2019
- Exhibit 12: *TFB v. Jacobs*, SC20-1602, Jacobs Answer and Defenses, 11/25/2020
- Exhibit 13: *TFB v. Jacobs*, SC20-1602, Jacobs Answers to Requests for Admission, 1/6/2021
- Exhibit 14: *TFB v. Jacobs*, SC20-1602, Jacobs First Amended Answer and Affirmative Defenses, 3/24/2021
- Exhibit 15: *BONYM v. 35D Team, LLC*, CACE16008540 (Broward), Fourth/Fifth Wave of Verified Motions for Judicial Disqualification of Judge Gundersen, 3/15/2021
- Exhibit 16: *BONYM v. Persaud*, 48-2019-CA-000891-O (Orange County), Emergency Motion for Disqualification
- Exhibit 17: *BONYM v. Jakubow*, 2016-19900-CA (Broward); Motions for Judicial Disqualification
- Exhibit 18: *EMC v. BJJP Holdings, LLC*, Case No. 13-21851-CA-01 (22) (Miami-Dade); Omnibus Order

For Respondent:

- Jacobs Exhibit 1: Jacobs Bar Complaints (Composite)
- Jacobs Exhibit 5: Judge Gundersen Disqualification Orders (Composite)
- Jacobs Exhibit 30: Genny Rodriguez (Composite)
- Jacobs Exhibit 53: Jacques, Maria Letter Report
- Jacobs Exhibit 54: *Nugent v. Michelis*

- Jacobs Exhibit 55: *BONYM v. 35D Team, LLC*, CACE16008540 (Broward), Motions for Disqualification (Composite)
- Jacobs Exhibit 56: *BNYM v. Jakubow*, Circuit Case No. 2016-19900-CA-01, Defendant's Emergency Motion for Evidentiary Hearing on the Parties' Cross-Motions for Contempt for Fraud on the Court
- Jacobs Exhibit 57: SPDR Gold Shares (GLD) Fund printout

II. FINDINGS OF FACT:

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary of Case. The current proceedings against Respondent arose out of three separate complaints, two of which were referred by The Third District Court of Appeal for the State of Florida and a third was a referral by the Honorable Michael A. Hanzman of the Eleventh Judicial Circuit Court in Miami-Dade County.

COUNT I THE FLORIDA BAR FILE NO. 2019-70, 188 11H

Respondent represented the defendant in a civil lawsuit in the case styled *HSBC Bank et. al, v. Aquasol Condominium Association, Inc.*,

CaseNo.:13-29724-CA-01, in Miami-Dade County Circuit Court. (TFB Ex 1).

After a final judgment of foreclosure was entered in favor of the bank, respondent filed an appeal to the Third District Court of Appeal. (TFB Ex 1 at page 2).

One of the issues raised by respondent on appeal was that the bank lacked standing to foreclose against his client because the bank was not both the *holder and owner* of the note. Yet, that issue had been addressed and ruled on in the seminal case *HSBC Bank, USA, NA v. Buset*, 241 So.3d 882 (Fla. 3d DCA 2018), which held that to establish standing in a foreclosure action you must prove only that you were either the *holder or owner* of the note. (TFB Ex 1 at page 9-14).

Respondent did not cite to, acknowledge, or address, the controlling adverse decision in *Buset* in his briefs, even though respondent was counsel of record in both the trial court and on appeal and was, therefore, fully aware of *Buset's* holding and its binding nature on the court. (TFB Ex 1 at page 10, See also Footnote 7 at page 10).

The Third District Court of Appeal affirmed the trial court's decision, finding no merit in the arguments raised by the appellant. (TFB Ex 1 at page 1 and page 14).

Respondent then filed a motion for rehearing and rehearing en banc. (TFB Ex 2 at page 2). In his motion, respondent made numerous comments impugning the integrity of the Judiciary. Excerpts of his comments are highlighted below: (TFB Ex 2 at page 3-6, See also TFB Ex 13 at paragraph 6, and TFB Ex 14 at paragraph 9).

- Most disturbing, the opinion sends the wolves after Aquasol's counsel personally by commending the trial court's 'patience' for not holding him in contempt of court. Truthfully, no court should dare make the front page of the paper for jailing an attorney for asking about a false document in evidence. ***This Court's opinion intentionally emboldens judges to abuse their contempt powers.***
- "This Court's insistence ***on ignoring established Florida Supreme Court law to benefit bad corporate citizens*** is certain to cause chaos."
- "Fla. Stat. § 673.3011 controls enforcement of negotiable instruments, not mortgages. Ownership controls the right to enforce the mortgage. ***This Court is acting illegally by instructing the law is otherwise.***"
- "I refuse to accept the idea that you cannot win when you are right. This is a biblical, spiritual journey for me. I have faith I will be protected ***because I am acting so clearly within the law and this Honorable Court is not.***"
- "Banks have all the resources to do it right but made business decisions to do it fraudulently. ***It's as if they knew the Courts would always let them get away with it. Some out of fear as elected officials. Some out of indifference. Some out of belief that banks and bad corporate citizens got them to their position and they are on that team. The banks should always win. I call those judges traitors to the constitution.***"

- “It’s become clear to me that the ‘powers that be’ support this fraudulent foreclosure system that took so long to put in place. If only the Courts enforced the 2001 amendments to Article 9 and forced Banks to bring their contracts to prove their purchase of the debt to prove standing. . . ***This foreclosure crisis was such an interesting phenomenon. Courts kept covering up for Banks that were intentionally doing it wrong.***”
- “These banks have so much and keep taking more. They don’t care if you are rich or poor, white or black. . . ***It is easy to win when the game is rigged.***”
- “In the decade that I’ve fought on the trenches of foreclosure court, I’ve been blessed to help so many clients save their homes. Yet, I’ve had to warn them this broken system is riddled with fraud and perjury. ***The judges decide the rule of law, and whether any rule of law exists. Maybe the rule of law only applies to the rest of us.***”
- ***“This Court is sworn to protect and defend the constitution of the United States of America, not the foreclosure fraud of Bank of America or HSBC.”***
- ***“Why would anyone sworn to protect and defend the constitution stay silent while domestic enemies destroy our democracy from within? Is this really the world Americans should live in where those in power do not do what is right?”***
- “I’m fighting the modern-day monopoly. I am calling all the patriots who swore the oath to protect and defend the Constitution to join me. ***Any court that protects the monopoly over the rule of law is a traitor to the constitution and should be tried for treason.***”
- “This Court should not ignore Florida Supreme Court precedent and the actual facts of the dispute ***to reach a pre-determined***

result of blow the dogwhistle for judges to attack Aquasol's counsel with contempt and jail for doing his job."

On or about September 26, 2018, following the Court's consideration of respondent's motion for rehearing, which included a review of his initial and reply briefs, the Court issued an Order to Show Cause as to why sanctions should not be imposed against respondent for filing a motion and briefs which violated both the Florida Rules of Appellate Procedure and The Rules Regulating The Florida Bar. (TFB Ex 2 at pages 2-9).

On or about December 5, 2018, the court entered its order imposing sanctions against the respondent and his law firm. (TFB Ex 4). Specifically, the December 5, 2018 Order reflects the Court's findings that respondent violated R. Regulating Fla. Bar 4-8.2(a) by impugning the qualifications or integrity of the court without any objectively reasonable basis for doing so. (TFB Ex 4 at page 2). The court further found that respondent filed a motion that was frivolous or in bad faith, and was subject to sanctions pursuant to Fla R. of App. P. 9.410(a), which provides:

"After 10 days' notice, on its own motion, the court may impose sanctions for any violation of these rules, or for the filing of any proceeding, motion, brief, or other document that is frivolous or in bad faith. Such sanctions may include reprimand, contempt, striking of briefs or pleadings, dismissal of proceedings, costs, attorneys' fees, or other sanctions." (TFB Ex 4 at page 3).

Additionally, the Order found that not only did respondent's conduct violate the Rules Regulating the Florida Bar, but it also violated the elementary norms of civility and professionalism, was beyond the pale, and was egregious misconduct which can be neither excused nor ignored. (*TFB Ex 4 at page 5*)

As such, the court imposed reasonable attorney's fees against respondent not to exceed \$5,000.00 and referred this matter to The Florida Bar. (*TFB Ex 4 at page 6*).

At trial on liability, The Florida Bar proved by clear and convincing evidence that Respondent, Bruce Jacobs, violated Rule 4-8.2(a) Impugning Qualifications and Integrity of Judges or Other Officers.

COUNT II
THE FLORIDA BAR FILE NO. 2019-70, 358 11H

Respondent represented the defendant in a civil lawsuit in Miami-Dade styled *Bank of America N.A. v. Ryan Atkin*, Case No. 09-87096. (*TFB Ex 5*).

On August 20, 2018, the trial court denied Bank of America's motion to disqualify the trial judge. Thereafter, Bank of America filed a petition for writ of prohibition with the Third District Court of Appeal. (*TFB Ex 5*).

On or about September 17, 2018, respondent filed his Respondent's Response to Petition for Writ of Prohibition and a Motion to Disqualify the Third DCA from ruling. *(TFB Ex 6 at page 2)*.

In his Response, respondent made comments regarding the judges of the Third District Court of Appeal and circuit court judges. Excerpts of his comments are highlighted below: *(TFB Ex 6 at page 4- 6, TFB Ex 14 at page 3 paragraph 19, TFB Ex 13 paragraph 14)*.

- In Simpson [sic], this Court violated the standard of review, ignored Florida Supreme Court precedent, and falsified the facts in contradiction to the record.”
- The impartiality of this Court is objectively questioned and it cannot issue a ruling with integrity in this case.”
- A named circuit court judge acted with “blatant disregard for the rule of law and the client’s constitutional rights” in an unrelated case and was upheld by this Court.
- The same circuit court judge has “recently escalated her illegal conduct.”
- A different, unnamed circuit court judge changed a favorable ruling because opposing counsel “threw a fundraiser for the new judge who rotated into the division.

The Third District Court of Appeals found a reasonable basis to conclude that respondent violated R. Regulating Fla Bar 4-8.2(a) by virtue of the foregoing statements identified above which they deemed to have recklessly impugned and disparaged the judges of that court, and two circuit court judges. *(TFB Ex 6 at page 3-4)*.

Similarly, respondent made the following comments regarding the judges of the Third District Court of Appeal, as well as the justices of the Florida Supreme Court, in his jurisdictional brief to the United States Supreme Court, which he attached as Appendix 1 to his Response to the Writ: (*TFB Ex 6 at page 4-5*).

- The opinion [of this Court] misrepresented facts, ignored Florida Supreme Court law, and disregarded evidence showing fraud. The Florida Supreme Court declined jurisdiction to address this factually and intellectually dishonest result.”
- “The Third District Misrepresented the Amended Rule 1.540(b) Motion to reach a pre-determined result – foreclosure.”
- “... the Dishonesty of the Third DCA’s opinion.”
- “The Florida Supreme Court has repeatedly declined to protect the constitutional rights of foreclosure defendants.”
- “[I]n virtually every appeal where the trial judge ruled in favor of undersigned counsel’s client, including Simpson, the Third DCA reversed with intellectually and factually dishonest opinions.”
- This Court “attempt[ed] to cover up, protect, and ignore well-documented fraud on the court in foreclosures. All to ensure a predetermined result – foreclosure.”
- “The Third DCA’s Opinion is pretextual and arbitrary.”
- “This Court is called on to act because the Florida Supreme Court has taken no action to prevent the Third DCA from improperly ignoring fraudulent conduct in foreclosures.”
- “It is objectively reasonable to fear the Third DCA acted to reach a predetermined outcome that favors banks over

homeowners – foreclosure. If the Florida Supreme Court will not act, this Court must.”

- “Democracy will not fail if financial institutions are held to the rule of law. To the contrary, democracy falls if the public is allowed to believe Courts are biased in favor of bad corporate citizens and a fraudulent foreclosure process.”

The Court also found a reasonable basis to conclude that respondent's foregoing statements violated R. Regulating Fla. Bar 4-8.2(a). *(TFB Ex 6 at pages 3-4).*

Upon review of respondent's Response and its appendix, the Third District Court of Appeal issued an Order to Show Cause on December 14, 2018, requiring respondent to address why the court should not impose sanctions against him for violations of both the Florida Rules of Appellate Procedure and Rules Regulating The Florida Bar. *(TFB Ex 6 at page 7).*

On or about April 10, 2019, the Court entered its Opinion referring respondent to The Florida Bar for Respondent's violations of the Rules regulating the Florida Bar. *(TFB Ex 8).*

At trial on liability, The Florida Bar proved by clear and convincing evidence that Respondent, Bruce Jacobs, violated Rule 4-8.2(a) Impugning Qualifications and Integrity of Judges or Other Officers.

COUNT III
THE FLORIDA BAR FILE NO. 2020-70, 056 11H

The Honorable Michael A. Hanzman of the Eleventh Judicial Circuit Court in Miami-Dade County referred respondent to the Florida Bar for similar misconduct during his representation of the defendant in *Bank of New York Mellon v. Ryan Atkin*, Case No. 2009-87096 CA. (TFB Ex. 11).

On or about July 26, 2019, respondent filed Defendant's Verified Motion for Judicial Disqualification. In his motion, respondent continued to make comments regarding a member of the judiciary. Excerpts of respondent's comments are highlighted below (TFB Ex 9):

- Judge Hanzman refused to respect the notice of unavailability and his office advised the hearing was still scheduled to move forward at this juncture. This is the latest of a series of improper actions by Judge Hanzman that gives rise to Mr. Atkin's objectively reasonable fears that he will not be given a fair hearing in this court.
- Judge Hanzman Has Repeatedly Ignored Obvious Fraud on the Court by Large Financial Institutions in Foreclosures While Abusing His Power to Chill Defense Counsel's Zealous Advocacy Against Those Financial Institutions.
- Judge Hanzman has made repeated statements on the record and off the record that reflect his indifference to large financial institutions presenting false evidence to the court to obtain the equitable relief of foreclosure. His personal finances appear to be heavily invested in the financial services sector which gives Mr. Atkin a reasonable fear Judge Hanzman will not be fair and impartial because it will negatively impact his significant personal financial holdings.

- Here, this Honorable Court has allowed the most rich and powerful segment of our society, the financial sector in which he is personally heavily invested in, to engage in felony misconduct and walk away without any punishment in violation of the Judicial Canons and the rule of law. The Court was "unimpressed" with these allegations of felony misconduct based on a prior foreclosure trial that involved entirely different misconduct which the Court similarly excused.

On July 29, 2019, respondent's motion for disqualification was denied as untimely and legally insufficient. *(TFB Ex 10)*.

In addition to the incident described above, on or about May 3, 2019 and July 14, 2019, respectively, respondent filed a Motion for Determination of Entitlement to Prevailing Party Attorneys' Fees and Re-hearing, and a Motion for an Award of Attorney's Fees and Costs for Order Determining Entitlement of Multiplier. *(TFB Ex 11)*.

In denying the motions, the court found that the defendant was not entitled to attorney's fees because same was neither plead nor requested in his pleadings. The Court further stated that pursuant to controlling authority which respondent failed to cite, his motion was being denied. *(TFB Ex 11)*.

Judge Hanzman's July 31, 2020, order further states in footnote 1 the following:

- Apparently Defendant's counsel-Bruce Jacobs-has not gotten the message or been deterred by our appellate court's issuance of an Order to Show Cause based upon its finding of "a

reasonable basis to conclude Mr. Jacobs violated his duty of candor to the tribunal ... by failing to disclose to this court controlling adverse case law, " Aquasol Condo Ass'n, Inc v. HSBC Bank USA, 43 Fla. L. Weekly D2271 (Fla. 3d Sept. 26 2018), or its later Order Imposing Sanctions" and referral to the Florida Bar for appropriate disciplinary proceedings based -in part-on Mr. Jacobs' 'extraordinary and corrosive ' attacks 'on the integrity of the trial court and this court. 'Aquasol Condo Ass 'n, Inc v. HSBC Bank USA, Nat'l Ass 'n, 43 Fla. L. Weekly D2699 (Fla. 3d DCA Dec. 5, 2018). Despite the appellate court's findings and Bar referral, Mr. Jacobs' recently filed a scurrilous motion to disqualify this Court and once again violated Rule 4-8.2(a) of the Rules and Regulation of the Florida Bar by impugning the integrity of this Court, and he has once again failed to cite controlling authorities. In sum, Mr. Jacobs is unrepentant, undeterred, and continues to engage in the exact same behavior he was sanctioned for and which is now presumably being investigated by the Bar. Accordingly, this Order will be sent to the Florida Bar so it may be considered as part of any disciplinary proceeding.
(TFB Ex 11 at page 2, Footnote1)

At trial on liability, The Florida Bar proved by clear and convincing evidence that Respondent, Bruce Jacobs, violated Rule 4-8.2(a) Impugning Qualifications and Integrity of Judges or Other Officers in Count III.

Furthermore, as to the charge that Respondent, Bruce Jacobs, had violated Rule 4-3.3(a)(3) False Evidence; Duty to Disclose in Count III, The Florida Bar did not meet its burden of proof in trial by clear and convincing evidence. Respondent, Bruce Jacobs' motion for Directed Verdict to Count III on the charge of violating Rule 4-3.3(a) was granted.

III. ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. Disparaging language

As summarized in the orders from the Third District Court of Appeal, as well as respondent's own Verified Motion for Judicial Disqualification, this referee, finds by clear and convincing evidence that respondent used reckless and disparaging language in his various pleadings to malign and impugn the qualifications and/or integrity of the judiciary.

Regarding the Third DCA rulings, the Court found as a matter of law that a plaintiff in a foreclosure action could demonstrate standing by proving it was either the *holder* or *owner* of the note, but not both. Respondent vehemently disagreed, persisting in his argument that the bank was required to show it was both the *holder* and *owner of the note*. Following the Court's ruling, respondent maligned and impugned the integrity of the entire Third District Court of Appeal by calling those judges "*traitors to the constitution*", claiming that the system was "*rigged*", and claiming "*that any court that protected the monopoly over the rule of law is a traitor to the constitution and should be tried for treason.*"

Moreover, the record evidence reflects that Respondent's repugnant and unprofessional misconduct is a deliberate and knowing litigation tactic, employed to manipulate the legal system. When respondent does not obtain the relief sought in his motions, he will thereafter file a disparaging and inflammatory motion to disqualify the judge and thereby achieve the desired result. The Third District Court Appeal in Atkin explained it best when it found that respondent's fourth motion to disqualify, appeared to have been designed to serve no other purpose than to allow respondent to *"express the bottomless depth of the displeasure that one might feel toward this judicial body as a rule of having unsuccessfully sought appellate relief."* (TFB Ex 6 at page 7).

While this Referee recognizes and appreciates an attorney's obligation to advocate zealously on behalf of his or her client, Respondent's actions crossed the line into name-calling and making unfounded attacks on the judiciary. Such attacks have no place in our system of justice and do nothing other than undermine public confidence in the judiciary. These statements constitute a clear violation of Rule 4-8.2(a).

I note, the practice of law is a privilege, and not a right. If Respondent wishes to avail himself of that privilege, he must follow the rules of professionalism and honor the Oath of Civility in his practice, not

only when things are going in his favor, but also when faced with adverse rulings. There is a process in place that provides a legal, professional, and permissible method to express disagreement with a judge's ruling; and that process does not include filing over-the-top scandalous accusations against judges to force recusals and/or to obtain a litigant's desired result. Indeed, attorneys have a higher calling. As such, a lawyer must always be conscious of his or her broader duty to the judicial system that serves both attorney and client.

In his response to the Order to Show Cause issued by the Third District Court of Appeal, respondent indicated that this was an isolated event, out of character with his ordinary method of practice. He indicated the conduct was not intentional, but rather an emotional reaction to what was occurring in the foreclosure cases, combined with childhood trauma that caused him to lash out at the court. As a part of his affirmative defenses and in his testimony before this Referee, respondent stated he was doing well in therapy and that these events would not reoccur.

However, both Count III of this complaint, and the Florida Bar's Exhibits 15 and 16, conclusively refute such testimony from respondent, and negate any contention that this was not intentional conduct. Indeed, Exhibit 15 demonstrates that, even as recent as one month ago,

Respondent continues to fall back on this abusive litigation tactic. He had filed a series of motions to recuse Broward County Circuit Court Judge Andrea Gunderson from presiding over his foreclosure cases. To begin, the motions were filed without the derogatory and inflammatory language at issue herein. Those motions were not sufficient to legally require recusal. (*See Respondent's Exhibit 55*). Thereafter, Respondent filed the motion identified as the Florida Bar Exhibit 15, in which he engaged in the same misconduct as in the case sub judice, to force the recusal that he could not otherwise legally obtain. (*See Respondent's Exhibit 5*).

Accordingly, this referee finds that respondent engaged in deliberate and knowing conduct in violation of Rule 4-8.2(a). *See The Florida Bar v. Fredericks*, 731 So. 2d 1249 (Fla. 1999) (In order to prove intent in a Bar disciplinary matter, it is only required to demonstrate that respondent's actions were deliberate or knowing). *Id* at 1253.

B. Selective Prosecution/Selective Enforcement Defense

Respondent asserts that he has been singled out for prosecution by the Bar because he is one of the few self-described foreclosure defense attorneys in Florida. In support of his broad assertion, he points to the complaints he himself has filed against his opponents, claiming the banks'

attorneys engaged in systemic fraud on the court, forgery, and fabricating evidence. In his complaints, he accused the bank attorneys of rubber stamping/robo signing bank endorsed documents, and points to sanction orders entered against plaintiffs and their attorneys for stone walling discovery, and bad faith litigation tactics under the “unclean hands” doctrine. However, based on the evidence presented at the Final Hearing in this cause, Respondent’s affirmative defense of selective prosecution must fail. He has not met his burden to establish the elements of a selective prosecution defense as articulated in *Thompson v. The Florida Bar*, 526 F. Supp. 2d 1264 (S.D. Fla. 2007). In *Thompson*, the Court explained that “[A] ‘similarly situated’ person for selective prosecution purposes [is] one who engaged in the same type of conduct, which means the same basic [disciplinary violation] in substantially the same manner as [Mr. Thompson]—so that any prosecution of that individual would have the same deterrence value and would be related in the same way to the [Florida Bar’s] enforcement priorities and enforcement plan—and against whom the evidence was as strong or stronger than that against [Mr. Thompson]. (internal citation omitted).

In the case at bar, respondent has been prosecuted for impugning the qualifications and/or integrity of the judiciary in violation of Rule 4-

8.2(a), and for failing to cite to adverse controlling authority in violation of Rule 4-3.3(a)(3). As shown above, the grievances filed by respondent against his counterparts dealt with entirely different rule violations, such as fabricating evidence, misrepresentations, and fraud.

Moreover, the case law is replete with lawyers from assorted and various practice areas who have been prosecuted and disciplined for the same rule violations as those which have been alleged against respondent herein. See i.e., *The Florida Bar v. Ray*, 797 So. 2d 556 (Fla. 2001) (immigration lawyer who made statements in letters questioning veracity and integrity of judge, as well as judge's fairness at hearing); *The Florida Bar v. Lynum*, SC19-745, 2020 WL 1061266 (Fla. Mar. 5, 2020) (dependency lawyer who made disparaging statements to impugn the integrity of the judiciary); *The Florida Bar v. Patterson*, 257 So. 3d 56 (Fla. 2018) (civil litigator who submitted filings to district court containing unprofessional statements disparaging those involved in his client's case and sent letter to judge and others in the judiciary that disparaged opposing counsel and accused judge of conduct unbecoming of a judge); *The Florida Bar v. Sutton*, SC15-499, 2018 WL 542324 (Fla. Jan. 24, 2018) (civil litigator who, among other violations, disparaged judges, lawyers, witnesses, and court personnel, threatened judges, and used racial slurs);

The Florida Bar v. Norkin, 132 So. 3d 77 (Fla. 2013) (civil litigator who showed a relentless unethical and unprofessional behavior toward judges and opposing counsel). The foregoing examples establish the futility of respondent's assertion that he has been treated differently than others similarly situated based on his views.

In the instant case, The Florida Bar received complaints referred to it by the Third District Court of Appeal as well as a local circuit court judge. The Bar was obligated to investigate same. Thompson at 1277. As previously mentioned, the practice of law is a privilege and not a right. To avail himself of that privilege, respondent must agree to follow the Rules Regulating the Florida Bar. Just as respondent has an ethical obligation to follow the rules, the Florida Bar has a duty to investigate and prosecute alleged violations of the rules. The Bar has done so in this matter. The instant case was investigated, presented to a grievance committee, and reviewed by the Board of Governor's designated reviewer. Respondent has been afforded due process at every stage of the proceedings.

For these reasons, respondent's affirmative defense of selective prosecution is rejected.

C. Mental Health, Remorse, and Corrective Actions are not Defenses to
Misconduct, But Rather will be Considered at the Sanctions Phase in
Mitigation

In response to the Court's order to show cause, respondent was afforded the opportunity to provide a factual basis to support his disparaging and unprofessional statements. Respondent could not and did not provide a single objectively reasonable factual basis for making such reckless remarks. (*TFB Ex 4 at page 3*). Instead, respondent admitted that his comments were inappropriate, unwarranted, and unprofessional and that he had taken corrective actions to curb his behavior. (*TFB Ex 3, and TFB Ex 7*). While this Referee appreciates respondent's expression of remorse, same cannot absolve respondent of liability in the instant disciplinary action. This Referee considered such testimony at the sanction phase of these proceedings.

Similarly, respondent's presentation of mental health testimony may assist this Referee in understanding why the misconduct occurred, it does not negate respondent's liability for his actions. The Florida Supreme Court has made clear that mental health may be considered as a mitigating factor at the sanctions phase, but that it does not act as a defense to violations of the Rules Regulating the Florida Bar. See *The Florida Bar v. Musleh*, 453 So. 2d 794 (Fla. 1984) (although lawyer was a criminal defendant who was

found not guilty in the criminal case by reason of insanity, the Florida Supreme Court found him guilty of the charged rule violations in the disciplinary proceedings, and his mental health was considered a mitigating factor). See also, *The Florida Bar v. Condon*, 647 So. 2d 823, 824 (Fla. 1994) (the referee considered as mitigation Condon's testimony and the affidavit of Dr. Joseph Rawlings, both of which indicated that Condon suffered from recurrent severe depression and had stopped taking prescribed antidepressant medication during the relevant time, causing him to suffer from forgetfulness and to be emotionally impaired. The court found that three-year suspension rather than disbarment was appropriate); and *The Florida Bar v. Feige*, 937 So. 2d 605 (Fla. 2006)(attorney's health problems were rejected as mitigators for his misconduct, which amounted to a complete lack of diligence in representing his clients; rather, if attorney's health was severe enough to prevent him from providing adequate representation, it was attorney's ethical duty to inform his clients of his condition and arrange for alternate counsel).

D. Other Affirmative Defenses Cited by Respondent

This referee has reviewed the affirmative defenses raised by respondent and finds that they are legally insufficient and without merit.

His defenses assert that he is remorseful and apologetic. He has publicly apologized. He is receiving therapeutic treatment. Same may be admissible as mitigators but they do not negate his guilt or innocence.

IV. RECOMMENDATIONS AS TO GUILT:

As to Count 1: The Florida Bar File No. 2019-70,188(11H), I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 4-8.2(a) (Impugning Qualifications and Integrity of Judges or Other Officers). A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member of the venire, or candidate for election or appointment to judicial or legal office.

As to Count 2: The Florida Bar File No. 2019-70,358 (11H), I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 4-8.2(a) (Impugning Qualifications and Integrity of Judges or Other Officers). A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator,

adjudicatory officer, public legal officer, juror or member of the venire, or candidate for election or appointment to judicial or legal office.

As to Count 3: The Florida Bar File No. 2020-70,056 (11H), I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rule 4-8.2(a) (Impugning Qualifications and Integrity of Judges or Other Officers). A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member of the venire, or candidate for election or appointment to judicial or legal office.

Additionally, I recommend that Respondent be found not guilty of violating Rule 4-3.3(a) (A lawyer shall not knowingly: fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly averse to the position of the client and not disclosed by opposing counsel).

V. STANDARDS FOR IMPOSING LAWYER SANCTIONS:

In making my disciplinary recommendation, I considered the following Standards for Imposing Lawyer Sanctions, case law, and aggravating and mitigating factors:

700 Violations of Other Duties Owed as a Professional

7.1(b) Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, of the legal system.

VI. CASE LAW:

I considered the following case law prior to recommending discipline:

In *The Florida Bar v. Norkin*, 132 So.3d 77 (Fla. 2013), the Florida Supreme Court imposed a two-year suspension and a public reprimand on Norkin for his relentless, unethical, and unprofessional behavior toward judges and his opposing counsel. Norkin screamed at judges and opposing counsel, personally attacked opposing counsel by disparaging him and attempting to humiliate him, and disrupted court proceedings to such an extent that it was impossible for judges to control their courtroom and properly conduct hearings.

Like the *Norkin* case, I find that Respondent in the instant case demonstrated a pattern of relentless, unethical, and unprofessional behavior towards judges in foreclosure cases. His pleadings continue unabated, even after he was sanctioned for same, and the instant disciplinary proceedings were initiated. Additionally, I find that Respondent's ongoing pattern of misconduct, even through the pendency of the instant disciplinary proceedings, requires imposition of a sanction.

I also considered *The Florida Bar v. Patterson*, 257 So.3d 56 (Fla. 2018), the Florida Supreme Court held that a one year suspension was warranted for an attorney who deliberately disregarded the loyalty he owed to his client, placed his personal and financial interests above those of his client, submitted filings to the district court containing unprofessional statements disparaging those involved in his client's case, and knowingly sent a letter to the judge and others in the judiciary that disparaged opposing counsel and accused the judge of conduct unbecoming a judge.

In *Patterson*, the Court disapproved the referee's recommendation of an admonishment even though Respondent had no prior disciplinary history. Considering that, and this Referee's mindfulness of the Supreme Court's trend in favor of imposing stronger sanctions against attorneys in bar disciplinary proceedings, a more severe sanction is clearly warranted in

the instant case. *The Florida Bar v. Adler*, 126 So.3d 244 (Fla. 2013), See also, *The Florida Bar v. Rotstein*, 835 So.2d 241, 246 (Fla. 2002); *The Florida Bar v. Rosenberg*, 169 So.3d 1155, 1162 (Fla. 2015); and *The Florida Bar v. Peterson*, 248 So.3d 1069 (Fla. 2018).

VII. AGGRAVATION AND MITIGATION:

After consideration of the evidence and the arguments of counsel, significant aggravating factors exist in this case, and that same outweigh the mitigation presented. Respondent's intentional and deliberate conduct to impugn the integrity and/or qualifications of the judiciary, occurred over time in various cases. There is clearly a pattern of misconduct and multiple offenses in the charged allegations alone.

However, this Referee has been presented with evidence that demonstrates this pattern of misconduct is ongoing even as recent as just the month prior to the Final Hearing in this cause. Respondent filed similarly disparaging motions to recuse Broward County Circuit Court Judge Andrea Gunderson on March 15, 2021. This was done after a series of filed motions did not yield the result desired by Respondent. Clearly, this is not an isolated incident, as Respondent professed to the Third District Court of Appeal.

Finally, I listened to respondent testimony's that he is remorseful, and that the instant behavior was uncharacteristic of him. Again, his ongoing intentional pattern of misconduct effectively refutes any suggestion of remorse or rehabilitation. Even with the benefit of ongoing counseling since 2018, those efforts have had no significant effect on his present-day conduct.

Respondent has suggested I should find remorse as a mitigating factor; I decline to do so. Respondent's ongoing pattern of misconduct, continuing through to the present day refutes any suggestion of remorse.

Respondent further suggests that I should find interim rehabilitation as a mitigating factor. While I note that Respondent has availed himself of counseling since the inception of the instant disciplinary matters, same seems to have had no effect, as demonstrated by the recent disparaging motions filed in the Broward Circuit Court.

However, I did take into consideration mitigation factors 3.3(b)(1) and 3.3(b)(7) to determine the period for suspension. Respondent's witnesses testified in the sanctions phase of the trial. I found that the testimony of these numerous witnesses was credible. They all testified to Mr. Bruce Jacobs' good character and reputation in the community.

For these reasons, a three (3) month suspension is appropriate in this case.

In summation, I find the following factors as aggravation:

- 3.2(b)(3) a pattern of misconduct.
- 3.2(b)(4) multiple offenses, and
- 3.2(b)(9) substantial experience in the practice of law.

Mitigation:

- 3.3(b)(1) absence of a prior disciplinary record.
- 3.3(b)(3) personal or emotional problems; and
- 3.3(b)(7) character or reputation.

VIII. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that be disciplined by:

- A. Three (3) month suspension.
- B. Public Reprimand
- C. Probation for a period of two (2) year during which time he is to refrain from any conduct constituting disparagement of the judicial system and judges. Additional terms of probation include

successful completion of The Florida Bar's Ethics School and Professionalism School. Respondent must complete at least ten (10) hours in additional ethics CLER, over the required minimum, including The Florida Bar's 2019 and 2020 Masters in Ethics courses.

D. Payment of The Florida Bar's costs in these proceedings.

IX. PERSONAL HISTORY, PAST DISCIPLINARY RECORD:

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

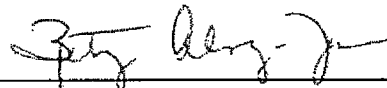
Age: 49

Date admitted to the Bar: September 24, 1997

Prior Discipline: None.

X. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

The Florida Bar, having been successful in this matter, shall be awarded their necessary taxable costs of this proceeding and shall submit their statement of costs, as well as a motion to assess costs against Respondent.

 11/10/2021

Honorable Betsy Alvarez-Zane, Referee
Richard E. Gerstein Justice Building
1351 NW 12th Street 609
Miami, FL 33125-1644

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