IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant, Case No. SC20-1777

v.

RAYMOND B. MITCHELL, The Florida Bar File No. 2019-10,038(20A)

Respondent.
_____/

THE FLORIDA BAR'S RESPONSE TO RESPONDENT'S MOTION FOR REHEARING

Complainant The Florida Bar ("TFB") opposes Respondent Raymond B. Mitchell's ("Respondent") Motion for Rehearing (the "Motion"). Because Respondent offers no basis to grant his requests for rehearing and a stay of his suspension, the Court should deny the Motion. In support, TFB states as follows:

1. On March 28, 2022, the Court approved the referee's findings of fact and recommendations as to guilt, and suspended Respondent from the practice of law for 91 days, effective 30 days from the date of the Court's order "so that Respondent can close out his practice and protect the interests of existing clients."

2. Through the Motion, Respondent asks this Court to reconsider its decision, and reduce his suspension to "60 or 30 days, or to a rebuke or admonition." (Motion at 22.)

3. A motion for rehearing must "state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its order or decision." Fla. R. App. P. 9.330(a)(2)(A). Respondent fails to meet his burden to show that this Court overlooked or misapprehended anything in accepting the referee's findings and recommendations. Indeed, the Court should deny Respondent's Motion for the simple reason that it largely reargues the points he has already made in challenging the report of referee. *See, e.g.*, *Boardwalk at Daytona Dev., LLC v. Paspalakis*, 212 So. 3d 1063, 1063 (Fla. 5th DCA 2017) ("Appellees' motion does what Florida Rule of Appellate Procedure 9.330(a) proscribes; it re-argues the merits of the case. . . . Motions for rehearing are strictly limited to calling an appellate court's attention—without argument—to something the court has overlooked or misapprehended. The motion for rehearing is not a vehicle for counsel or the party to continue its attempts at advocacy." (internal quotation marks and alterations omitted)).

4. First, Respondent contends that he violated no ethics rule because his motion to disqualify Judge Hawthorne was required to "state the bias and prejudice [his client] Mr. Varney feared, including the parts that it seemed Judge Hawthorne did not care about ignoring laws and entering very unfair judgments and orders." (Motion at 2.) He also contends that he did not violate Rule 4-8.4(d) of the Rules Regulating The Florida Bar because the rule does not expressly refer to "judges." (*Id.* at 5.) But Respondent made these arguments already (*see, e.g.*, Resp.'s Initial Br. at 17-23, 26-30; Resp.'s Reply Br. at 13), and the Court overlooked and misapprehended nothing in rejecting them.

5. Second, Respondent says, the ethics rules he was charged with violating "are not very clear at all," and "[t]o punish Respondent so severely for something that is very unclear and is vague seems to be rather a bit too much." (Motion at 5.) Respondent claims that the ethics rules are void for vagueness and any punishment premised on them would "likely be an excessive fine or unusual punishment forbidden" by the federal and state constitutions. (*Id.* at 13-17.) Even if these issues had merit—which they do not—they are new issues not properly raised through a motion for rehearing. Fla. R. App. P.

9.330(a)(2)(A) ("The motion shall not present issues not previously raised in the proceeding.").

6. Third, Respondent claims that the referee failed to credit the "substantial evidence" that the statements he made about Judge Hawthorne in the motion to disqualify were true. (Motion at 6-12.) This is again an argument Respondent has already made and lost, and rehearing should not be granted on that basis. (*See* Resp.'s Initial Br. at 12-13, 23-25; Resp.'s Reply Br. at 1-3, 7-10.)

7. Fourth, Respondent argues that the 91-day suspension ordered by the Court is disproportionate to the ethical violations found. (Motion at 17-20.) Again, this is an argument Respondent already made on the merits and cannot serve as a basis for rehearing. (*See, e.g.*, Resp.'s Initial Br. at 34-38; Resp.'s Reply Br. at 15.) The Court did not overlook or misapprehend any facts or law in accepting the referee's recommended sanction.

8. Finally, Respondent asks the Court to delay the timing of his suspension so that he may continue representing several of his existing clients until their cases are resolved or he is in a "better financial position" to help clients transition to other counsel. (Motion at 20-22.) Respondent offers no good cause to stay his suspension.

See Fla. Bar v. Lusskin, 661 So. 2d 1211, 1212 (Fla. 1995). The Court has already recognized that time might be needed for Respondent to close out his practice and protect the interests of his existing clients, and the Court has granted Respondent sufficient time to assist his clients in finding alternative counsel.

For all those reasons, TFB asks the Court to deny Respondent's Motion.

Respectfully submitted on April 11, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 11, 2022, a true and correct copy of the forgoing was filed through the Florida Courts E-Filing Portal and served by email to the following:

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