IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

DAVID LUTHER WOODWARD,

Respondent.

_____/

Supreme Court Case
No. SC20-1842

The Florida Bar File
No. 2020-00,232(1A)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to R. Regulating Fla. Bar 3-7.6, the following proceedings occurred:

On December 18, 2020, the Florida Bar filed its Complaint against Respondent and on December 21, 2020, a Motion for Clarification of the case number with the Court. On December 22, 2020, the Chief Judge of the Fourteenth Judicial Circuit issued an Order Appointing a Referee. On January 5, 2021, Respondent improperly filed a Motion to Extend Time to Answer with the Supreme Court. On January 13, 2021, the Florida Bar filed a Motion to Strike Respondent's Motion. On January 14, 2021, Respondent's counsel filed a Notice of Appearance, an Unopposed Motion to Withdraw Respondent's Motion and a

Motion to Extend Time to Answer with the Referee. Respondent filed an Answer to the Florida Bar's Complaint on January 22, 2021, and a Waiver of Venue. The Referee scheduled a Case Management Conference on March 1, 2021, setting a Final Hearing on May 19, 2021. Pursuant to an Agreed Pretrial Order entered by the Referee, the Florida Bar propounded discovery on Respondent and the parties submitted Witness and Document Lists to the Referee on April 1, 2021.

On April 22, 2021, Respondent filed an Unopposed Motion to Continue the Final Hearing for the reasons set forth in the Motion, and the Referee entered an Order Rescheduling the Final Hearing until September 8, 2021. The Florida Bar filed a Motion for Extension of Time to File a Report of Referee that was granted by the Court on May 3, 2021. Respondent filed a Stipulation to the Factual Allegations and Rules in the Florida Bar's Complaint on August 26, 2021. The Referee held a Status Conference on August 30, 2021, where the Final Hearing was cancelled and a Final Sanction Hearing set for October 5, 2021.

Pursuant to the Referee's Order on the Status Conference dated September 3, 2021, the Florida Bar submitted its Witness List on September 23, 2021, and its Exhibit List on September 28, 2021. On September 23, 2021, Respondent submitted a List of Witnesses and Exhibits for the Final Sanction Hearing. On September 30, 2021, Respondent filed a Motion to Reschedule the Final Sanction

Hearing, and on the same date, the Referee held a Status Conference cancelling the Final Sanction Hearing on October 5, 2021.

The Florida Bar filed a second Motion for Extension of Time to File Report of Referee that was granted by the Court, up to, and including, December 17, 2021. The Referee set a Status Conference on October 20, 2021, and set the Final Sanction Hearing for December 6, 2021. The Florida Bar filed a Motion to Strike Expert Witness on December 2, 2021, that was denied by the Referee. On December 8, 2021, the Florida Bar filed a Motion for Extension of Time to File Report of Referee that was granted by the Court on December 9, 2021, giving the Referee until January 14, 2022, to file his Report.

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

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of the Florida Bar, admitted on November 10, 1969, and subject to the jurisdiction and Rules Regulating the Florida Bar.

Narrative Summary Of Case. Based on Respondent's Stipulation to the Facts, I hereby make the followings findings of fact:

A. On or about November 18, 2019, the Rev. Dr. Barbara Simmons ("Dr. Simmons"), a retired pastor from Massachusetts, filed a Florida Bar complaint against respondent for failing to pursue a legal case initially filed by her and her six siblings.

B. In 2016, Dr. Simmons' mother died and left her home in Pensacola, Florida, in equal shares to her 8 children. The names of all the children were in her will and on the deeds.

C. Dwayne Simmons, one of the siblings, refused to move out of the house after residing rent-free for 3 years in his mother's home.

D. The remainder of the siblings, including Dr. Simmons, filed a petition for partition *pro se* on May 25, 2018, because they wanted their brother out of the house so they could sell it.

E. The court case proceeded until March 28, 2019, when, at a court hearing, the judge suggested that the plaintiffs needed a lawyer because he could not give them legal advice.

F. On that date, the court set the final hearing for on July 18, 2019.

G. Dr. Simmons and her siblings decided to hire Respondent to represent them on their petition for partition and paid him a retainer of $750.00 on April 10, 2019, and an additional $500.00 on August 7, 2019.

H. There was no written fee agreement between the parties.

I. On April 9, 2019, Respondent filed a notice of appearance in the petition for partition and motion to amend complaint which was granted by the Court on May 8, 2019.

J. The Court held a hearing on June 21, 2019, granting Respondent's motion for a case management conference and to reschedule trial, setting a new trial date for September 25, 2019.

K. Respondent failed to notify his clients of the new trial date.

L. After their initial consultation, Respondent failed to reply to the clients' phone calls or inquiries about their legal case.

M. On September 25, 2019, neither Respondent nor any of his clients appeared in Court at the final trial.

N. The judge's judicial assistant called Respondent to find out his whereabouts and inquired if he was going to appear at the trial.

O. Respondent represented to the judicial assistant that he intentionally did not appear because opposing counsel would not comply with discovery requests or the order for mediation.

P. On that same date, the circuit court judge issued an Order to Show Cause ("OSC"), returnable September 27, 2019, requiring Respondent to "show cause why the case should not be dismissed without prejudice and why he should not be assessed reasonable attorney's

fees incurred by defense counsel as a sanction for failing to appear at trial" and ordering Respondent to furnish a copy of the Order to Show Cause to his clients.

Q. Respondent failed to respond to the Circuit Court's OSC and did not provide his clients with a copy of the OSC as required by the order.

R. On October 4, 2019, the circuit judge issued a second OSC ("OSC 2") returnable October 11, 2019, giving Respondent a final opportunity to appear in court and explain his failure to appear at trial, why attorney's fees should not be imposed as a sanction, and required Respondent to provide a copy of OSC 2 to his clients.

S. Respondent did not provide any written response to the Court as to OSC 2, did not notify his clients of OSC 2, but advised that he would explain his position orally to the Court.

T. On October 10, 2019, the Court allowed Respondent to appear in person so he could explain orally to the Court the reasons for his nonappearance at the final hearing and his noncompliance with the Court's two Orders to Show Cause.

U. At the OSC hearing, when asked by the Court about his failure to appear at the final hearing, Respondent represented to the Court that

he missed the final hearing trial date because he did not properly calendar the date.

V. When questioned by the Court if he had provided the two Orders to Show Cause to his clients as ordered, he avoided the question stating as an excuse that, even if he did not notify his clients, the Clerk would send them to the clients because they were originally *pro se*, which the Court viewed as inaccurate.

W. On October 11, 2019, after considering Respondent's conflicting responses, the court found:

> Mr. Woodward's comment that this case is ripe for summary judgment is off point. It does not explain his willful failure to appear at trial. It does not explain his failure to respond with the first order to show cause. It does not explain his failure to comply with either order to show cause to alert his clients that his decision not to participate in the trial might result in the case being dismissed. And while this Court has concern regarding the impact of the Plaintiffs based on the actions or inactions of their counsel, this Court is attuned to the speedy, just and inexpensive disposition of actions and the expense as it relates to the Defendant and his counsel.

X. Consequently, the Court issued an Order Dismissing Without Prejudice the Plaintiffs' case, granting the Defendant's motion to dismiss and Defendant's motion for attorney fees (pending the filing of an affidavit by Defendant's counsel), and had the Order Dismissing

Without Prejudice, along with the two prior Orders to Show Cause sent to the Plaintiffs.

Y. Dr. Simmons and her siblings then hired another attorney who needed to refile the petition for partition and begin the case over again.

Z. On November 15, 2019, the Florida Bar sent Respondent a 15-day letter that Respondent failed to answer.

AA. On January 8, 2020, the Florida Bar sent a reminder letter to Respondent to answer Ms. Simmons' complaint via his record bar email address and a letter to two additional addresses.

BB. Respondent sent an acknowledgment email advising that he was very busy, but would respond at a later time.

CC. On April 8, 2020, Respondent's case was referred to the local grievance committee and a Notice of Assignment of Investigating Member was sent to Respondent, giving him ten days to contact the Investigating Member.

DD. When Respondent failed to reply to the Notice of Assignment of Investigating Member, the Investigating Member made attempts to reach Respondent, but to no avail.

EE. In June 2020, the Investigating Member received a telephone call from Respondent for the first time.

FF. On July 11, 2020, Respondent filed a written reply to the Florida Bar for the first time.

GG. Respondent failed to diligently and promptly represent his clients after the June 21, 2019, court hearing on his motions.

HH. Respondent failed to communicate with his clients after the initial consultation, failed to keep them informed on the status of their legal case, and failed to notify them of hearings, the final trial date and the court's orders to show cause.

II. Respondent failed to expedite the clients' litigation by not showing up for the final hearing and making excuses after the fact for his failure to appear on the final trial date. He also failed to file appropriate motions to obtain discovery and notify the court about mediation.

JJ. Respondent knowingly failed to respond to two Orders to Show Cause issued by the circuit judge in his clients' case and failed to notify his clients of the two Orders to Show Cause in noncompliance with the Court's order.

KK. Respondent's conduct is prejudicial to the administration of justice by delaying the clients' case and requiring them to hire another attorney.

LL. Respondent repeatedly failed to respond to the Florida Bar despite numerous attempts by the Bar to obtain a reply to their inquiries.

III. RECOMMENDATIONS AS TO GUILT.

Based on Respondent's Stipulation to having violated the Rules charged in the Florida Bar's complaint, I recommend that Respondent be found guilty of violating the following Rules Regulating the Florida Bar:

4-1.3 (Diligence), 4-1.4 (Communication), 4-3.2 (Expediting Litigation) 4-3.4(c) (Knowingly disobey an obligation under the rules of a tribunal), 4-8.4(d) (Conduct Prejudicial to the Administration of Justice), and 4-8.4(g) (Failure to Respond to the Florida Bar).

Respondent will eliminate all indicia of respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards, office signs or any other indicia whatsoever of respondent's status as an attorney during the suspension period.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

1.1 STANDARDS FOR IMPOSING LAWYER SANCTIONS
The Board of Governors of The Florida Bar (the board) adopted an amended version of the ABA Standards for Imposing Lawyer Sanctions, providing a format for bar counsel, referees, and the Supreme Court of Florida (the court) to consider each of these questions before recommending or imposing appropriate discipline:
(a) duties violated;
(b) the lawyer's mental state;
(c) the potential or actual injury caused by the lawyer's misconduct;
(d) the existence of aggravating or mitigating circumstances.

The Florida Bar (the bar) will use these standards to determine discipline recommended to referees and the court and to determine acceptable pleas under the Rules Regulating The Florida Bar.

1.2 DEFINITIONS

(a) "Injury" is harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from "serious" injury to "little or no" injury; a reference to "injury" alone indicates any level of injury greater than "little or no" injury.

(b) "Intent" is the conscious objective or purpose to accomplish a particular result.

(c) "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

(d) "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard care that a reasonable lawyer would exercise in the situation.

(e) "Potential injury" is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct.

1.3 PURPOSE AND NATURE OF SANCTIONS

(a) Purpose of Lawyer Disciplinary Proceedings. The purpose of lawyer disciplinary proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession.

(b) Public Nature of Lawyer Disciplinary Proceedings. Ultimate disposition of lawyer discipline is public.

(c) Purpose of These Standards. These standards are designed for use in imposing a sanction or sanctions following a determination by clear and convincing evidence that a member of the legal profession has violated a provision of the Rules Regulating The Florida Bar. Descriptions in these standards of substantive disciplinary offenses are not intended to create grounds for determining culpability independent of those rules. The standards constitute a model, setting forth a comprehensive system for determining sanctions, permitting flexibility and creativity in assigning sanctions in particular cases of lawyer misconduct. They are designed to promote:

(1) consideration of all factors relevant to imposing the appropriate level of sanctions in an individual case;

(2) consideration of the appropriate weight of these factors in light of the stated goals of lawyer discipline; and
(3) consistency in the imposition of disciplinary sanctions for the same or similar offenses.

2.3 SUSPENSION
Suspension is the removal of a lawyer from the practice of law for a specified minimum period of time. A suspension of 90 days or less does not require proof of rehabilitation. A suspension of more than 90 days requires proof of rehabilitation and may require passage of all or part of the bar examination. No suspension is ordered for a specific period of time in excess of 3 years.

2.8 OTHER SANCTIONS AND REMEDIES
Other sanctions and remedies which may be imposed include:
(a) restitution;
(b) assessment of costs;
(c) limitation on practice;
(d) appointment of a receiver under chapter 5 of The Rules Regulating The Florida Bar;
(e) requirement that the lawyer take the bar examination or Multistate Professional Responsibility Examination;
(f) requirement that the lawyer attend continuing legal education courses;
(g) evaluation or treatment for a substance-related disorder or personal and emotional problems; and
(h) other requirements that the court deems consistent with the purposes of lawyer sanctions.

4.4 LACK OF DILIGENCE
Absent aggravating or mitigating circumstances, and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

(b) Suspension. Suspension is appropriate when a lawyer causes injury or potential injury to a client and:
(1) knowingly fails to perform services for a client; or
(2) engages in a pattern of neglect with respect to client matters.

6.2 ABUSE OF THE LEGAL PROCESS
Absent aggravating or mitigating circumstances, and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

(b) Suspension. Suspension is appropriate when a lawyer knowingly violates a court order or rule and causes injury or potential injury to a client or a party or causes interference or potential interference with a legal proceeding.

V. CASE LAW

The Florida Bar presented case law on the three main issues in this case, namely, (1) neglect of client through respondent's lack of diligence and communication, (2) respondent's repeated failure to obey court orders and to appear for the scheduled final trial, resulting in an Order to Dismiss his clients' case without prejudice where the court found that respondent willfully failed to appear, and (3) failure to respond to the Florida Bar. I considered the following case law prior to recommending discipline:

- In The Florida Bar v. Pahules, 233 So.2d 130, 132 (Fla. 1970), it is a well-established maxim that a disciplinary sanction must serve three purposes: First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing the penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. See also, The Florida Bar v. Brake, 767 So.2d 1163, 1169 (Fla. 2000); The Florida Bar v. Lord, 433 So.2d 983, 986 (Fla. 1983).

- In TFB v. Polk 126 So.3d 240(2013), the attorney received a 90-day suspension and 3 years of probation for neglecting his client's postconviction appeal. The attorney failed to communicate with client and failed to return documents to the client despite numerous requests to do so. The attorney also failed to respond to the Florida Bar and misrepresented to the Referee during proceedings. The attorney had substantial mitigation including personal and emotional problems with alcoholism, severe depressive disorder, mental impairment and interim rehabilitation. He had no prior disciplinary history. The rules violated were: 4-1.3, 4-1.4, 4-1.16(d), and 4-8.4(g).

- In TFB v. Fortunato, 788 So.2d 201(Fla. 2001), the Court imposed a 90-day suspension for failure to respond to two related appellate court orders, resulting in the dismissal of the client's appeal and a sanction order being entered against Fortunato. She further made misrepresentations during the grievance proceedings. In aggravation, Fortunato had previously been publicly reprimanded. In mitigation, the Court accepted the referee's findings of the following factors: good character and reputation; remorseful and gave assurances that she would avoid further disciplinary proceedings; lack of dishonesty or selfish motive; she acknowledged the wrongful nature of her conduct; and she had personal or emotional problems at the time of the misconduct at issue. The rules violated were: 3-4.2, 3-4.3, 4-1.3, 4-3.4(c), and 4-8.4(a).

- In TFB v. Summers, 728 So.2d 739 (Fla. 1999), the Court imposed a 91-day suspension and attendance at Ethics School for failure to comply with orders of a federal judge, failure to respond to the Bar and failure to appear at final disciplinary hearing. Her only prior discipline was an administrative suspension plus 10 days thereafter for failing to comply with CLER. The rules violated were: 3-4.8, 4-1.1, 4-1.2, 4-1.3, 4-1.4, and 4-8.4(g).

- In The Florida Bar v. James M. Thomas, SC18-1391 [2018-10,134(06D)] – By Court order dated December 1, 2020, the Court disapproved the referee's recommended discipline and instead suspended respondent for 1 year. The referee initially found respondent not guilty. Upon appeal, the Court approved the referee's finding of fact but disapproved his recommendation of no guilt as to Rules 4-1.1 and 4-1.3 and remanded the case back to the referee to determine the appropriate sanction. The referee submitted an Amended Report of Referee recommending a 45-day suspension. Neither party appealed but the Court issued an order to show cause why the referee's

recommended sanction should not be disapproved and a more severe sanction up to, and including, a 1-year suspension be imposed. The rules violated were: 4-1.1, and 4-1.3.

The Respondent in this case represented a client in a civil matter involving damage to the client's condominium. The court entered summary judgment as to liability in favor of the client and reserved ruling on the amount of damages and attorney's fees and cost. Thereafter, respondent failed to appear at two properly noticed pre-trial conferences. As a result of respondent's failure to appear, the court entered an order dismissing the client's case without prejudice. Respondent contended that his failure to appear at the pre-trial conference was excusable neglect, however the trial court found that his failure to appear at the two pre-trial conferences could not be explained as a mere calendaring error and was more than excusable neglect. The consequence of the dismissal resulted in the client going from the prevailing party where certain damages and attorney fees could be awarded, to recovering nothing and being required to pay $30,563.10 in attorney's fees to the defendant. Respondent refiled a new case for the client but failed to pursue it.

- In TFB v. Picon, 205 So.3d 759 (Fla. 2016), the attorney appeared late for hearings, at a time not scheduled by the court, or not at all. The attorney failed to timely file a pretrial motion in one case and failed to schedule a hearing in another case. The attorney clearly had knowledge of the judge's order instructing her to file the motion and clearly knew when the hearing was scheduled having received court documents and emails about the time and date. The Referee cited the pattern of misconduct and impact on the attorney's clients, and imposed a 91-day suspension that was increased by the Court to one year. The rules violated were: 4-1.1, 4-1.3, 4-3.4(c) and 4-8.4(d).

- In TFB v. Gass, 153 So.3d 886 (Fla. 2014), the Court suspended the attorney for one year for failing to act with reasonable diligence, failing to adequately communicate with his client, and engaging in conduct prejudicial to the administration of justice. The attorney advised his clients not to attend a deposition in their civil case, repeatedly failed to inform them of the circuit court's orders to show cause and the show cause hearing, and did not attend the depositions and hearings on the client's behalf. Having failed to take any action when the circuit court issued capias and bench warrants for his clients, they were arrested and incarcerated. The attorney had one prior public reprimand in 2011. The Referee recommended a 60-day suspension

but, on appeal, the Court imposed one year suspension. The rules violated were: 4-1.3, 4-1.4 (a) (3) and (4), and 4-8.4(d).

- In TFB v. Grosso, 647 So.2d 840 (Fla. 1994), the Court held that failure to respond to investigative inquiry by the Florida Bar warrants a 10-day suspension. The attorney had unblemished record for 15 years. The rules violated 3-4.8, 4-8.4(g).

- In TFB v. Rosenberg, 169 So.3d 1155(Fla. 2015), the Florida Bar obtained a summary judgment and the Referee relied on TFB v. Bloom, 632 So.2d 1016(Fla. 1994) and imposed a 91-day suspension where the attorney, *inter alia*, failed to comply with discovery, failed to attend hearings and to comply with an order to show cause. The Court increased the discipline to one-year suspension. During the contract dispute case, the attorney failed to provide competent representation to a client, engaged in unethical conduct during discovery, and engaged in conduct prejudicial to the administration of justice. The attorney's misconduct led to 6 motions to compel and for sanctions, and an order to show cause by the trial court. The rules violated were: 4-1.1, 4-3.4(d), 4-8.4(d). Explaining the increased discipline, the Court cited to TFB v. Adler, 126 So.3d 244, 247 (Fla. 2013) stating the fact that the Court has moved toward imposing stronger sanctions for unethical and unprofessional conduct.

In this case, Mr. Woodward, the Respondent, has presented evidence of mitigation based on his claim of depression. The evidence of mitigation, however, is not sufficient to show that the attorney was so impaired to such an extent in 2019 at the time of the misconduct that it outweighs the misconduct. The Court has followed this principle in The Florida Bar v. Wolfe, 759 So. 2d 639 (Fla. 2000). In that case, the Court faced in-person solicitation of clients where homes damaged by tornadoes were offered contingency fee contracts by the attorney, which violated Bar rules on solicitation. The attorney offered mitigating evidence of a long-term addiction to cocaine. The Court, however imposed a one-year suspension, holding that, while a substance abuse problem may explain misconduct, it does not excuse it (Golub, 50 So. 2d 455(1989) and the addiction must impair the attorney's ability to practice law to such an extent that it outweighs the attorney's conduct.

Similarly, in The Florida Bar v. Horowitz, 697 So. 2d 78 (Fla. 1997) where the attorney in three cases failed to perform work for which he was paid, with more than 20 rule violations, the attorney did not co-operate with disciplinary process,

and claimed that he was suffering from clinical depression when the misconduct occurred. The attorney testified that he was suffering from depression but the referee rejected this testimony as a mitigating factor because there was no evidence to show depression, he had priors and numerous aggravating factors. The Court imposed disbarment holding that evidence of Horowitz' clinical depression helps to explain, but not to excuse his pattern of neglect of clients and his failure to respond to communications from the Bar.

Respondent presented his own testimony at the Final Sanction Hearing along with one character witness, and the testimony of a psychiatrist who submitted a one- page report on Respondent's mental health. Although respondent is claiming depression and anxiety led to his failure to appear and comply with court orders in 2019, his psychiatrist states in his letter that he met with him for the first time on September 14, 2021. The psychiatrist stated in his letter that he relied on what Mr. Woodward told him, along with pharmacy records, to come to his conclusion that Respondent had suffered from this problem for several years. When Respondent testified, however, he stated that he believed that he had these problems from an early age. Yet, it was not until September 14, 2021, that the Respondent did anything about his purported mental health problems. He has been practicing law since 1969, and his character witness testified that he was an excellent lawyer with whom he worked on many cases. Apparently, his mental health problems did not prevent him from practicing law at a high level over the course of his fifty plus year legal career, nor does it present current problems since he also testified that he has at least six current clients, including a complex bankruptcy case in the Southern District of Florida.

To support his recommendation of a public reprimand, Respondent presented four unpublished decisions based on consent judgments with the Florida Bar. The Court has considered each of those cases submitted, however, in only one of those cases were the facts similar to the allegations in this case: The Florida Bar v. Jaminette de Jesus-Felicier. There, the Court imposed a public reprimand based on the facts contained in the consent judgment. The consent judgment was also based in part on three other unpublished consent judgments. Even in the Jesus-Felicier case, however, where the attorneys appeared late or failed to appear for scheduled hearings, the attorneys provided substantial medical and mental health problems to the trial court. As a result, the court discharged the lawyers from the case and allowed the criminal defendant to obtain a public defender. In the present case, however, the judge wrote in his Order that there was willful failure to appear and comply with his orders and dismissed the case without prejudice, causing an actual and significant injury to the victims in terms of

financial loss and time loss in resolving their probate matter. Moreover, this Court cannot say that Respondent provided 'substantial medical and mental health' evidence in this case. Although there was *some* evidence of that type presented, it falls far short of what could be fairly characterized as 'substantial medical and mental health' evidence as mentioned in the Jesus-Felicier case.

Under the evidence, admissions, and circumstances presented here, a public reprimand, as suggested by Respondent, would not be appropriate – and is entirely insufficient – to sanction Respondent for his admitted misconduct in this case.

VI. RECOMMENDED ATTORNEY DISCIPLINE TO BE APPLIED

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

A. A 75-day suspension pursuant to R. Regulating Fla. Bar 3-5.1(e).

B. Two-years' probation during which Respondent shall attend Professionalism Workshop within 6 months of the issuance of the final order in this case. Respondent shall be responsible for any fees associated with Professionalism Workshop.

C. In addition, Respondent will contact Florida Lawyers Assistance, Inc. ("FLA") within 30 days of the issuance of the final order in this case to schedule a psychiatric evaluation by a mental health professional who is an FLA-approved evaluator. Respondent will be responsible for any costs associated with this evaluation. Then, based on that evaluation, Respondent will follow whatever FLA recommends, including entering into a rehabilitation contract. Respondent will

follow all recommendations by FLA during the entire probation period. If respondent's evaluation reveals that no further treatment is necessary, then respondent's probation will terminate after 6 months. If respondent is required to enter into a rehabilitation contract, and should FLA recommend early termination, then, after six months, respondent's probation can be terminated early without further order of the Court.

Respondent shall pay $250.00 for the FLA registration fee, and $100.00 monthly monitoring fee to FLA, no later than the end of each month in which the monitoring fee is due. The Florida Bar will monitor respondent's payments to FLA. If respondent fails to pay his monthly monitoring fee, then the Florida Bar can hold respondent in contempt for failure to pay his monthly monitoring fees. Failure to pay shall be cause to revoke probation.

D. Payment of the Florida Bar's costs in these proceedings in the amount of $ 1,456.75.

VII. 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: 79. Date admitted to the Florida Bar: November 10, 1969.

I considered the following Aggravating Factors-Standard 3.2(b):

(1) Prior disciplinary record – admonishment-2003:

Although a prior admonishment is present in Mr. Woodward's history, because it occurred over seven years ago, this Court completely disregarded the prior disciplinary record and gave said record zero consideration. For the purposes of this report, this Court considers there to be no prior disciplinary history; this factor was given no weight in the decision on this case.

(3) Pattern of misconduct – repeated failure to obey orders:

This case included a troubling pattern of misconduct that is simply inexplicable, especially considering Mr. Woodward's lengthy history as a Florida attorney. He failed to obey orders of the Circuit Court multiple times (giving rise to the Court issuing an Order to Show Cause and dismissing his client's case); he failed to meaningfully and promptly respond to the grievance committee; and he failed to meaningfully and promptly respond to Bar disciplinary inquires. An attorney is an officer of the court, and is expected to respond promptly and appropriately to orders issued by a Circuit Court, inquires of a grievance committee (which require a response), and inquires of the Florida Bar for disciplinary matters (which also require a response). The required responses are akin to an order and Mr. Woodward repeatedly failed to obey orders. Based upon the admitted conduct, this Court cannot say this was a one-off event, or an isolated incident. This pattern of misconduct occurred over months of time, which suggests more than simply an accident or excusable neglect. The misconduct here could be rightly be characterized as a pattern of culpably negligent conduct, that is Mr. Woodward consciously followed a course of conduct that he must have known, or reasonably should have known, was likely to cause injury to his clients and be in violation of his obligations as a Florida attorney. This factor was given moderate to significant weight in this decision.

(4) Multiple offenses – <u>six</u> admitted rule violations:

For the reasons expressed above, this Court is troubled by the number of significant, and varied, types of violations admitted to by Mr. Woodward. These violations were not all of the same nature, nor did they point to a singular type of shortcoming in Mr. Woodward's legal practice. As stated above, these varied and multiple violations,

occurring over months of time, suggest at least culpably negligent (if not intentional and purposeful) type misconduct by Mr. Woodward as to the **six** different admitted rule violations. This misconduct is not accidental, and appears to be more than ordinary negligence; that is significant to this Court. This factor was given moderate to significant weight in the decision of this case.

(8) Vulnerability of the victims:

The victims in the case were especially vulnerable. They had been without a lawyer and were at a significant disadvantage as *pro se* litigants, as recognized by the trial judge who recommended they obtain a lawyer before proceeding to the final hearing. They did exactly that and put their trust in Mr. Woodward to resolve a difficult intra-family probate matter. They were in tough circumstances, and their situation was made significantly *worse* by Mr. Woodward's repeated misconduct. This Court determines that the injuries inflicted upon the victims (including case dismissal, financial loss, and time delay until resolution) by Mr. Woodward's various misconduct was *significant* under these circumstances. This factor was given moderate weight in the decision of this case.

(9) Substantial experience in the practice of law:

Mr. Woodward has been a member of the Florida Bar for over 52 years. He has significant legal experience throughout this State, and in other states, over those years. He is experienced enough to know better than to engage in this type of repeated and varied misconduct. Considering the broad depth of his experience, his admitted violations here simply defy logic and reason. They are inexplicable. This type of misconduct cannot occur by any lawyer – much less by a veteran lawyer with the storied background of Mr. Woodward. This factor was given moderate to significant weight in the decision of this case.

I considered the following Mitigating Factors-Standard 3.3(b):

(1) Absence of prior disciplinary record:

As discussed above, this Court has considered Mr. Woodward as having had no prior disciplinary record. Being a member of the Florida Bar for more than 52 years is notable. To have been a member that long with no prior disciplinary history is perhaps, even more notable. Following the Florida Bar rules and guidelines

appropriately for 52 years does matter. This factor weighs in favor of Mr. Woodward, and mitigates the circumstances of this case. This factor was given moderate weight in the decision of this case.

(2) Absence of dishonest or selfish motive:

There is no evidence that Mr. Woodward's misconduct was driven by dishonest motives or selfishness. Although, there are hints of his answers to the Circuit Court's Order to Show Cause which were at best inconsistent, and at worst dishonest. Mr. Woodward stood to gain little to nothing by his course of conduct, so it does not appear to have been driven by any sort of selfish motive. This factor also mitigates in favor of Mr. Woodward and was given moderate weight in the decision of this case.

(4) Respondent made restitution to the victims:

Mr. Woodward did refund his fee to the victims, but only after the grievance committee was notified. The fee was relatively low at a total of $1,250. However, the victims still had to hire another lawyer to conclude the case, which was naturally delayed – at an additional (unknown) cost to the victims – due to the misconduct of Mr. Woodward. This factor mitigates somewhat for Mr. Woodward, and was given slight to moderate weight in the decision of this case.

(7) Character or reputation:

Mr. Woodward's character and reputation over his 52 years as a member of the Florida Bar is very good. This Court heard significant testimony from his character witness, and from Mr. Woodward, indicating that his character and reputation is solid, despite these admitted violations. This factor mitigates in Mr. Woodward's favor and was given slight to moderate weight in the decision of this case.

(8) Mental disability or impairment:

Mr. Woodward did present evidence through his expert witness of a mental health impairment that he claimed he had suffered from for years. However, he had not sought meaningful treatment until September of 2021 for these issues. Throughout his 52 year legal career, this mental disability or impairment has apparently only caused him professional difficulty during *this* pattern of misconduct – as evidenced by his high level of competence throughout the vast majority of his lengthy legal career. Nevertheless, he did receive a

mental health diagnosis, and worked with his expert to address his mental health medications and their appropriate dosing levels. He appears to have his mental health concerns addressed at this time. This factor also mitigates somewhat in favor of Mr. Woodward and was given slight to moderate weight in this decision.

(12) Remorse:

Mr. Woodward did express remorse for his conduct. However, it was difficult to assess whether the remorse was simply because he was before this Court on these admissions, or whether the remorse was genuine regarding his impact upon the victims. Regardless, he did take responsibility for his violations and expressed some remorse for his misconduct. This factor mitigates in favor of Mr. Woodward and was given slight to moderate weight in the decision of this case.

VIII. STATEMENT AND TAXING OF COSTS

Administrative Fee		$1,250.00
Investigative Costs		6.75
Court Reporter's Fees		200.00
	TOTAL	$1,456.75

I find the above listed costs were reasonably incurred by The Florida Bar.

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of the Florida Bar.

Dated this 12th day of January 2022.

Judge Dustin Scott Stephenson, Referee
PO Box 786
Panama City, FL 32402-0786

Original To:

Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927

Conformed Copies to:

Richard Adam Greenberg, Respondent's Counsel, at rgreenberg@rumberger.com, rgreenbergsecy@rumberger.com, docketingorlando@rumberger.com

Olivia Paiva Klein, Bar Counsel, at oklein@floridabar.org, dlee@floridabar.org

Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, at psavitz@floridabar.org