Filing # 148797381 E-Filed 05/02/2022 04:53:51 PM

IN THE SUPREME COURT OF FLORIDA

Case No. SC21-933
The Florida Bar File No. 2020-30,738 (9A)

THE FLORIDA BAR,

Complainant,

v.

ODIATOR ARUGU,

Respondent.

THE FLORIDA BAR'S ANSWER BRIEF ON CROSS-REVIEW AND REPLY BRIEF

Patricia Ann Toro Savitz
Florida Bar No. 559547
The Florida Bar
651 E. Jefferson St.
Tallahassee, FL 32399
(850) 561-5600
PSavitz@floridabar.org
Daniel James Quinn
Florida Bar No. 122435
The Florida Bar
Orlando Branch Office
1000 Legion Place, Suite 1625
Orlando, FL 32801
(407) 425-5425
DQuinn@floridabar.org

Tiffany A. Roddenberry
Florida Bar No. 92524
Kevin W. Cox
Florida Bar No. 34020
Kathryn Isted
Florida Bar No. 1005163
Holland & Knight LLP
315 South Calhoun Street,
Suite 600
Tallahassee, FL 32301
(850) 224-7000
kevin.cox@hklaw.com
tiffany.roddenberry@hklaw.com
kathryn.isted@hklaw.com

Counsel for Complainant, The Florida Bar

RECEIVED, 05/02/2022 04:54:21 PM, Clerk, Supreme Court

TABLE OF CONTENTS

Page

TABLE OF CITATIONS ii

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 3

I. THE RECOMMENDATIONS OF GUILT ARE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE 3

A. Standard of Review 3

B. The Record Supports the Recommendations of Guilt. 4

1. Competent, Substantial Evidence Supports the Finding that Mr. Arugu Violated Rule 4-3.4 4

2. Competent, Substantial Evidence Supports the Finding that Mr. Arugu Violated Rule 4-4.1 7

3. Competent, Substantial Evidence Supports the Finding that Mr. Arugu Violated Rule 4-8.4(c). 9

II. MR. ARUGU'S MISCONDUCT WARRANTS A REHABILITATIVE 91-DAY SUSPENSION. 15

CONCLUSION 20

CERTIFICATE OF SERVICE 22

CERTIFICATE OF COMPLIANCE 23

TABLE OF CITATIONS

Page(s)

Cases

Fla. Bar v. Adorno,
60 So. 3d 1016 (Fla. 2011) 10, 11

Fla. Bar v. Behm,
41 So. 3d 136 (Fla. 2010) 16

Fla. Bar v. Berthiaume,
78 So. 3d 503 (Fla. 2011) 13, 14, 18

Fla. Bar v. Brown,
905 So. 2d 76 (Fla. 2005) 12

Fla. Bar v. Cocalis,
959 So. 2d 163 (Fla. 2007) 19

Fla. Bar v. Dubow,
636 So. 2d 1287 (Fla. 1994) 11

Fla. Bar v. Forrester,
818 So. 2d 477 (Fla. 2002) 5, 6

Fla. Bar v. Frederick,
756 So. 2d 79 (Fla. 2000) 3, 4, 9

Fla. Bar v. Head,
27 So. 3d 1 (Fla. 2010) 9, 17

Fla. Bar v. Marrero,
157 So. 3d 1020 (Fla. 2015) 12

Fla. Bar v. Riggs,
944 So. 2d 167 (Fla. 2006) 12, 13

Fla. Bar v. Russell-Love,
135 So. 3d 1034 (Fla. 2014) 9, 17

Fla. Bar v. Schwartz,
334 So. 3d 298 (Fla. 2022) 17, 18, 19, 20

Fla. Bar v. Scott,
39 So. 3d 309 (Fla. 2010) 8

Fla. Bar v. Smith,
866 So. 2d 41 (Fla. 2004) 9, 10

Fla. Bar v. Tobkin,
944 So. 2d 219 (Fla. 2006) 4

Fla. Bar v. Watson,
76 So. 3d 915 (Fla. 2011) 10

Rules Regulating the Florida Bar

R. Regulating Fla. Bar 3-4.3 .... 1, 4, 19

R. Regulating Fla. Bar 4-3.4 .... *passim*

R. Regulating Fla. Bar 4-4.1 .... *passim*

R. Regulating Fla. Bar 4-8.4 .... *passim*

STATEMENT OF THE CASE AND FACTS

The Referee recommended that this Court find Respondent Odiator Arugu guilty of violating Rules 3-4.3, 4-3.4, 4-4.1, 4-8.4(c), and 4-8.4(d) of the Rules Regulating The Florida Bar ("RRTFB").[1] In Section I, The Florida Bar's ("TFB") Answer Brief on Cross-Review addresses Mr. Arugu's arguments that the Referee erred in her findings on Rules 4-3.4, 4-4.1, and 4-8.4(c). In Section II, TFB addresses the Referee's recommended discipline, both in answer to Mr. Arugu's Cross-Initial Brief and as a reply in support of TFB's own Initial Brief which advocates a 91-day suspension.

In its Initial Brief, TFB fully recites the facts applicable to these proceedings, including Mr. Arugu's notice of cross-review, and incorporates those facts herein by reference.

---

[1] Citations are to the record, including to the appropriate "Tab" number in the Index of Record. Citations to "ROR" refer to the Report of Referee dated December 9, 2021 (Tab 34 in the Index). Citations to "Tr." are to the transcript of the final hearing held on November 10, 2021. Citations to "TFB Ex." correspond to the exhibits TFB admitted into evidence at the final hearing. Citations to "Resp.'s Br." are to Mr. Arugu's Answer and Cross-Initial Brief.

SUMMARY OF THE ARGUMENT

This Court should accept the Referee's findings of fact and recommendations of guilt. However, contrary to the Referee's recommendation, Mr. Arugu's conduct warrants a rehabilitative suspension of 91 days.

First, competent, substantial evidence supports the Referee's recommended findings that Mr. Arugu violated Rules 4-3.4, 4-4.1, and 4-8.4(c) of the RRTFB. The record supports findings that Mr. Arugu obstructed the discovery process under Rule 4-3.4, and that his conduct was tantamount to a false statement of material fact to a third party in violation of Rule 4-4.1. Mr. Arugu's ignorance of the relevant procedural rules does not absolve him of guilt under Rule 4-8.4(c); his knowing and deliberate issuance of a subpoena that was different than the one he attached to his prior notice of production to nonparty is enough to sustain his guilt.

Second, the Court should reject the Referee's recommended sanction of a 60-day suspension and instead suspend Mr. Arugu for 91 days. Mr. Arugu does not dispute that under the pertinent Florida Standards for Imposing Lawyer Sanctions ("Standards"), suspension is appropriate. To support imposition of a suspension shorter than

91 or 60 days, Mr. Arugu cites older decisions by this Court which do not reflect its more recent move toward imposing stronger sanctions. Mr. Arugu argues that he is guilty of only negligence and ignorance, and not intentional misconduct, and thus the 60-day suspension recommended by the Referee is "an already-harsh sanction." (Resp.'s Br. at 6.) But given the Standards, the aggravating factors found—including Mr. Arugu's prior discipline—and this Court's case law, a rehabilitative suspension of 91 days is the appropriate sanction.

ARGUMENT

I. THE RECOMMENDATIONS OF GUILT ARE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE.

A. Standard of Review

This Court's review of a referee's findings of fact is limited. If a referee's findings of fact are supported by competent, substantial evidence in the record, this Court will not reweigh the evidence and substitute its judgment for that of the referee. *Fla. Bar v. Frederick*, 756 So. 2d 79, 86 (Fla. 2000). A party challenging "the referee's findings of fact and conclusions as to guilt . . . carries the burden of demonstrating that there is no evidence in the record to support

those findings or that the record evidence clearly contradicts the conclusions." *Fla. Bar v. Germain*, 957 So. 2d 613, 620 (Fla. 2017). A party will not meet that burden "simply by pointing to contradictory evidence where there is also competent, substantial evidence in the record that supports the referee's findings." *Frederick*, 756 So. 2d at 86 (internal quotation marks omitted). Moreover, a referee's "judgment regarding credibility" of witnesses "should not be overturned absent clear and convincing evidence that [the referee's] judgment is incorrect." *Fla. Bar v. Tobkin*, 944 So. 2d 219, 224 (Fla. 2006) (internal quotation marks omitted).

B. The Record Supports the Recommendations of Guilt.

Mr. Arugu challenges the recommendation that this Court find him guilty of violating Rules 4-3.4, 4-4.1, and 4-8.4(c) of the RRTFB. Mr. Arugu does not challenge the findings that he violated Rules 3-4.3 and 4-8.4(d). (Resp.'s Br. at 7, 17, 21.) Competent, substantial evidence supports the Referee's recommendations with respect to each of the rule violations he challenges.

1. Competent, Substantial Evidence Supports the Finding that Mr. Arugu Violated Rule 4-3.4.

Under Rule 4-3.4 of the RRTFB, a lawyer must not, among other

things, "unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending . . . proceeding," nor may a lawyer "knowingly disobey an obligation under the rules of a tribunal." R. Regulating Fla. Bar 4-3.4(a), (c). The Referee found Mr. Arugu guilty of violating Rule 4-3.4 because he submitted a "substituted subpoena contrary to the rules of the court," which "interfered with the rules provision permitting an objection" because the producing nonparty was unaware of the substitution and Mr. Luther's objection; thus, the nonparty produced documents pursuant to an unlawful subpoena. (ROR at 7-8.) The Referee specifically considered *The Florida Bar v. Forrester*, 818 So. 2d 477 (Fla. 2002), in finding Mr. Arugu's conduct obstructive to the discovery process under Rule 4-3.4.

Mr. Arugu argues that the Referee's finding lacks competent, substantial evidence because he "testified that he had received documents, that he realized the production was incomplete, and that he was attempting to secure the missing documents when he was discharged from the case. This is not obstructing access to evidence." (Resp.'s Br. at 17.) But Mr. Arugu's view of Rule 4-3.4 is far too

narrow. As this Court observed in *Forrester*, "one of the purposes of rule 4-3.4(a) is to secure fair competition in the adversary system" by discouraging "obstructive tactics in discovery procedure." 818 So. 2d at 481-82 (citing R. Regulating Fla. Bar 4-3.4(a), cmt.).

Mr. Arugu received an objection to the substituted subpoena the same day it was served, which correctly objected to the service of a subpoena different than the one initially noticed. (ROR at 4; TFB Ex. 6 at 047.) Mr. Arugu admits that he did not inform subpoena recipient Freedom Mortgage Corporation ("Freedom") of the objection—information relevant to the proceeding, as such information would have caused Freedom not to respond, *see* R. Regulating Fla. Bar 4-3.4(a)—nor did he withdraw the subpoena. (*See* Tr. 62:6-8, 132:12-134:1.) Mr. Arugu also admits that the relevant rules required him (a) to serve the same subpoena that was attached to the notice of production from nonparty, (b) not to serve the subpoena upon receiving a proper objection, and (c) to pursue resolution of any objection before serving the subpoena. (Tr. 104:18-105:8, 125:9-126:20.) Mr. Arugu admits he did not follow these rules. (*E.g.*, *id.* 126:4-20.) Mr. Arugu concedes that his conduct in sending a different subpoena than the one he had noticed foreclosed

Mr. Luther from making a timely objection before the subpoena's issuance. (*See id.* 124:13-20.) Ultimately, Freedom produced documents under an unlawful subpoena, and Mr. Arugu never took action to stop them. (ROR at 5; Tr. 105:18-106:1, 132:22-133:11; *see* Resp. Ex. 11.) And the family court found, in a written order agreed to by Mr. Arugu, that Mr. Arugu had "improperly sent a Subpoena to Freedom." (TFB Ex. 8 at 070; *see also* Tr. 109:6-15.)

Mr. Arugu contends that the responsive documents would have been to Mr. Luther's benefit too, as if that somehow absolves his obstructive conduct. Even then, the evidence before the Referee was that Mr. Arugu never provided those documents to Mr. Luther, despite Mr. Luther's request. (Tr. 134:15-136:6.) Although Mr. Arugu offers a number of less-than-convincing excuses for that, the bottom line is this: Freedom produced documents pursuant to a subpoena that Mr. Arugu improperly served and which he concedes failed to comply with the civil rules. That is sufficient to sustain the Referee's recommendation of guilt on Rule 4-3.4.

2. Competent, Substantial Evidence Supports the Finding that Mr. Arugu Violated Rule 4-4.1.

Rule 4-4.1 of the RRTFB provides, in relevant part, that a lawyer

shall not knowingly "make a false statement of material fact or law to a third person." R. Regulating Fla. Bar 4-4.1. The Referee found that Mr. Arugu had violated this rule, reasoning that "the failure to inform of the objection or alternatively withdraw[] the subpoena [is] tantamount to a false statement to the non-party." (ROR at 8.) In arguing his innocence, Mr. Arugu contends that there was no false statement to Freedom, as the information sought through the subpoena was relevant, Mr. Luther failed to substantiate the claim that the subpoena was inappropriate, and Mr. Arugu simply thought Mr. Luther was trying to "trip [him] up." (Resp.'s Br. at 17-18.)

But Mr. Arugu admits that he erroneously served the subpoena on Freedom, notwithstanding Mr. Luther's correct objection which, had Mr. Arugu honored it, would have required Mr. Arugu to refrain from serving the subpoena. (*See* Tr. 104:18-105:8, 125:9-126:20.) Yet Mr. Arugu served it, and Freedom responded to it, based on the implicit if not explicit representation that it was a valid subpoena. The evidence supports a finding that Mr. Arugu failed to disclose material information to a nonparty, in violation of Rule 4-4.1(a). *See, e.g.*, *Fla. Bar v. Scott*, 39 So. 3d 309, 317 (Fla. 2010) (respondent's failure to tell third party about several pieces of information violated

Rule 4-4.1(a), even though the information the respondent failed to disclose "was public and nonconfidential"); *see also* R. Regulating Fla. Bar 4-4.1, cmt. ("Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements.").

3. Competent, Substantial Evidence Supports the Finding that Mr. Arugu Violated Rule 4-8.4(c).

Mr. Arugu argues that the Referee erred in finding the requisite intent to establish a violation of Rule 4-8.4(c) of the RRTFB. For a number of reasons, the Court should reject Mr. Arugu's arguments and accept the Referee's finding of guilt.

Rule 4-8.4(c) provides that a lawyer shall "not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." R. Regulating Fla. Bar 4-8.4(c). TFB does not dispute "that in order to sustain a violation of rule 4-8.4(c), [TFB] must prove intent." *Fla. Bar v. Russell-Love*, 135 So. 3d 1034, 1038 (Fla. 2014). Importantly, however, the intent element can be satisfied merely by showing that the conduct was deliberate or knowing. *Id.*; *see also Fla. Bar v. Head*, 27 So. 3d 1, 9 (Fla. 2010); *Frederick*, 731 So. 2d at 1252; *see also Fla. Bar v. Smith*, 866 So. 2d 41, 46 (Fla. 2004) (recognizing that the

motive behind the attorney's action was not the determinative factor but instead the issue was "whether the attorney deliberately or knowingly engaged in the activity in question").

Mr. Arugu argues that his conduct should be excused because he "believed his actions permissible in that he had given notice of the intent to issue the Subpoena but omitted certain related items." (Resp.'s Br. at 18.) But neither his belief nor his motive is relevant. *See Smith*, 866 So. 2d at 46. What matters is whether he knowingly or deliberately engaged in the conduct giving rise to discipline. *See, e.g.*, *Fla. Bar v. Watson*, 76 So. 3d 915, 923 (Fla. 2011) ("Respondent deliberately or knowingly engaged in the conduct of authoring, signing, and providing the dishonest letters . . . . . Thus, his conduct satisfies the element of intent [and] Respondent is guilty of violating rule 4–8.4(c)." (internal citation omitted)).

Ignorance of the law, including the pertinent procedural rules, is not an excuse and does not defeat a finding of intent. For example, in *The Florida Bar v. Adorno*, 60 So. 3d 1016 (Fla. 2011), this Court rejected a respondent's argument that he lacked intent because he did not know his conduct violated any duty or disciplinary rule, *id.* at 1031. This Court reiterated that lawyers are "responsible for

knowing the Rules Regulating the Florida Bar" and "ignorance of the law, especially by lawyers in disciplinary proceedings, is no excuse." *Id.*; *see also Fla. Bar v. Dubow*, 636 So. 2d 1287, 1288 (Fla. 1994) ("Ignorance of the law is not an excuse. This maxim holds particularly true for lawyers who are charged with notice of the rules and the standards of ethical and professional conduct prescribed by the Court."). In *Dubow*, this Court rejected a respondent's argument that discipline was unwarranted where he was ignorant of the requirements of the pertinent Florida Rules of Civil Procedure that he had purportedly violated, and sustained claims that the respondent had violated a number of RRTFB, including Rule 4-8.4(c). *Dubow*, 636 So. 2d at 1288.

In short, it does not matter that the respondent "did not have an intent to engage in misconduct" or that he did not realize his subpoena failed to comply with the relevant procedural rules; what matters is that his "acts were deliberate and knowing." *See Adorno*, 60 So. 3d at 1032. Mr. Arugu concedes that he knowingly and deliberately served the subpoena on Freedom, and that he himself added the additional categories of documents to the subpoena not previously noticed. (Tr. 137:13-139:12.) And, as he now concedes,

his conduct was improper and in violation of court rules. (*See id.* 104:22-105:8, 125:1-126:20.) That he misunderstood the rules at the time he engaged in this conduct does not change the result. *See, e.g.*, *Fla. Bar v. Marrero*, 157 So. 3d 1020, 1024 (Fla. 2015) (rejecting respondent's argument that he did not have the necessary intent to violate Rule 4-8.4(c) because he was "unable to understand a HUD-1"); *see also, e.g.*, *Fla. Bar v. Brown*, 905 So. 2d 76 (Fla. 2005) (respondent was found guilty of violating Rule 4–8.4(c), after claiming that he did not have the necessary intent because he allegedly did not read the business agreement pledging a $420,000 certificate of deposit as security before he executed the agreement). None of the evidence Mr. Arugu cites (*see* Resp.'s Br. at 19-20) actually refutes the Referee's finding that Mr. Arugu acted with the necessary intent under Rule 4-8.4(c).

As another example, in *The Florida Bar v. Riggs*, 944 So. 2d 167 (Fla. 2006), a respondent blamed a former employee for many of the trust accounting violations leveled against him, *id.* at 170. The respondent conceded his guilt on some rule violations, but challenged the referee's finding that he had violated Rule 4-8.4(c), asserting that ***he*** lacked the requisite intent because it was his

employee's misconduct and not his own that gave rise to the trust account violations at issue. *Id.* at 171. The Court rejected this argument:

> [The respondent] Riggs's failure to supervise his employee constitutes intent because he knowingly assigned his trust account responsibilities to [his former employee] Campbell and then failed to manage her activities. Knowingly or negligently engaging in sloppy bookkeeping amounts to intent under rule 4–8.4(c). Thus, the referee's finding that Riggs violated rule 4–8.4(c) is supported by evidence in the record.

Id. Much like the respondent in *Riggs*, Mr. Arugu's ignorance does not absolve him of guilt.

Mr. Arugu next contends that *The Florida Bar v. Berthiaume*, 78 So. 3d 503 (Fla. 2011), has no bearing here, because the subpoena at issue in that case "was purely and unequivocally fraudulent, as there was not even an open case in which to issue the subpoena." (Resp.'s Br. at 19.) But the Court's determination that Berthiaume was guilty of violating Rule 4-8.4(c) did not rest on finding the subpoena at issue was fraudulent. *See Berthiaume*, 78 So. 3d at 509. Instead, the Court specifically stated that "there is no requirement that fraud must be proven" to establish a violation of Rule 4-8.4(c):

> Respondent argues that the referee is supported in recommending that she is not guilty because the Bar did

> not prove that Respondent engaged in fraud. ***This argument is misguided because there is no requirement that fraud must be proven to show that a respondent violated the rule.*** In fact, conduct involving any element, such as dishonesty, deceit, or misrepresentation, can result in a violation of rule 4–8.4(c).

78 So. 3d at 509 (emphasis added).

While the present case may not be on all fours with *Berthiaume*, Mr. Arugu cannot avoid the similarities. In *Berthiaume*, the Court found that the respondent was guilty of violating Rule 4-8.4(c) because she "knowingly sent an unauthorized subpoena to [a] bank that was clearly misleading and designed to obtain the bank's records" of a particular person. 78 So. 3d at 508. Here, Mr. Arugu knowingly and deliberately added additional categories of documents to a subpoena not previously noticed on the opposing party and served the unauthorized subpoena on Freedom. (Tr. 137:13-139:12.) Moreover, he continued to pursue the unauthorized subpoena notwithstanding Mr. Luther's objection and after being put on notice that something was amiss. Mr. Arugu kept his head in the sand, and refrained from changing course until a judge told him it was improper. (Tr. 133:12-19.) And again, the family court's order made an express finding that Mr. Arugu's conduct was "improper," which

it did not excuse based on negligence or ignorance. (ROR at 5-6; TFB Ex. 8 at 068-070.) Even then, Mr. Arugu was not prompted to actually review the relevant rules; he did not do that until after receiving TFB's complaint. (*Id.* 104:18-105:8.)

Mr. Arugu must meet a heavy burden in challenging the Referee's findings of fact and conclusions of guilt; he must demonstrate that "there is ***no*** evidence in the record to support th[e Referee's] findings or that the record evidence ***clearly contradicts*** the conclusions." *Germain*, 957 So. 2d at 620 (emphasis added). Mr. Arugu cannot meet that burden. For all these reasons, the Court should accept the findings of fact made by the Referee and determine Mr. Marcellus is guilty of violating Rules 4-3.4, 4-4.1, and 4-8.4(c).

II. MR. ARUGU'S MISCONDUCT WARRANTS A REHABILITATIVE 91-DAY SUSPENSION.

Mr. Arugu does not challenge the aggravating and mitigating factors found by the Referee, nor does he challenge the application of the Standards the Referee relied upon. He challenges only the Referee's recommendation of a 60-day suspension and instead advocates for a suspension of 30 to 60 days. (*See* Resp.'s Br. at 7.) But the applicable Standards and recent case law do not support Mr.

Arugu's arguments and, instead, show that Mr. Arugu's misconduct warrants a rehabilitative 91-day suspension.

First, Mr. Arugu seeks to make light of his misconduct by recounting his version of the facts, emphasizing the relevance of the information sought through the Freedom subpoena, his view that the substituted subpoena was a simple and harmless mistake, and the contentiousness of the litigation. (*See* Resp.'s Br. at 8-12.)[2] None of this, however, warrants imposition of a lesser sanction.

What Mr. Arugu fails to appreciate is the significance of the duties he violated, particularly the violations of Rule 4-8.4(c) and 4-8.4(d), the latter violation which he concedes. In imposing a sanction in an attorney discipline case, the Court considers the following factors: "(a) duties violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; [and] (d) the existence of aggravating and mitigating circumstances." Fla.

---

[2] Mr. Arugu also mentions (without elaboration) that "the grievance committee should not have even found probable cause." (Resp.'s Br. at 8.) To the extent Mr. Arugu now suggests that this disciplinary proceeding should have never gone forward for lack of probable cause, such argument was not raised with the Referee and is waived. *See Fla. Bar v. Behm*, 41 So. 3d 136, 143 (Fla. 2010) (concluding that attorney waived review of issue where the issue was not presented to the referee).

Stds. Imposing Law. Sancs. 1.1. Given the seriousness of the duties implicated in Rule 4-8.4(c) and 4-8.4(d), this Court usually treats violations of those rules as warranting significant sanctions. *See Fla. Bar v. Schwartz*, 334 So. 3d 298, 303 (Fla. 2022) (describing violations of Rule 4-8.4(c) and 4-8.4(d) as "rule violations that the Court has held are considered the most serious"); *Head*, 27 So. 3d at 8 (This Court does not view violations of "rule 4-8.4(c) . . . and rule 4-8.4(d) . . . as minor"). Indeed, a 91-day rehabilitative sanction for violating Rule 4-8.4(c) is likely on the lower end of sanctions. *See, e.g.*, *Russell-Love*, 135 So. 3d at 1037-40. The same treatment should apply here.

Second, Mr. Arugu disputes the relevance of *Berthiaume*, in which this Court similarly ordered a 91-day rehabilitative suspension. (Resp.'s Br. at 14.) But as discussed above, *Berthiaume* is relevant. Moreover, as the respondent must acknowledge, this Court has steadily trended toward imposing harsher sanctions for lawyer misconduct over the years. *See Schwartz*, 334 So. 3d at 302. Thus, the fact that the underlying conduct in the 2011 *Berthiaume* decision might be viewed as more egregious than Mr. Arugu's does

not mean that the sanction ordered more than a decade ago in *Berthiaume* is inappropriate here. *See id.* at 304.[3]

As a recent example, this Court in *Schwartz* rejected a referee's recommendation of a 90-day suspension and instead imposed a three-year suspension where a respondent used altered photocopies of a police lineup without disclosing the alterations, despite the fact that the prosecutor had access to the unaltered lineup. *Schwartz,* 334 So. 3d at 299-300, 303-05. Moreover, similar to the facts in *Schwartz,* Mr. Arugu was immediately put on notice of Mr. Luther's objection to the alterations in the subpoena from the version filed with the notice, but still did not take action to withdraw the subpoena before the documents were subsequently produced by Freedom.

Mr. Arugu does not have the significant prior disciplinary track record that the respondent did in *Schwartz* which justified the three-year suspension issued there. But Mr. Arugu does have prior disciplinary offenses, and he does not actually dispute the additional aggravating factors found: that he acted with dishonest or selfish

---

[3] And indeed, *Berthiaume* is distinguishable in that the referee found ***no*** aggravating factors and several mitigating factors, while the Referee here found three aggravating factors and three mitigating factors. 78 So. 3d at 506; (ROR at 11-12).

motive and that he has substantial experience in the law. (ROR at 11-12.)

Mr. Arugu urges the Court to follow *The Florida Bar v. Cocalis*, 959 So. 2d 163 (Fla. 2007), in which this Court "upheld a recommended public reprimand and ethics school" for the respondent. (Resp.'s Br. at 15.) But *Cocalis* is distinguishable because, in *Cocalis*, the referee did not find the respondent guilty of ***any*** RRTFB violations, concluding only that the respondent's conduct was "unprofessional, inappropriate, and sharp practice." 959 So. 2d at 164. Noting this, the Court recently found that *Cocalis* and other "case law imposing a public reprimand or nonrehabilitative suspension [were] inapposite" to its determination of the appropriate sanction for a respondent's violations of Rules 3-4.3 and 4-8.4. *See Schwartz*, 334 So. 3d at 304. The Court explained:

> *Cocalis* w[as] decided more than a decade ago. In addition, in *Cocalis* the referee recommended that the lawyer not be found to have violated a number of Bar rules, including Bar Rule 4-8.4, and the Court did not address whether that was erroneous, concluding "that Cocalis's conduct violated 3-4.3 and that his misconduct was more than 'minor,' making true diversion inappropriate."

Id. (citing *Cocalis*, 959 So. 2d at 166).

Unlike in *Cocalis*, the Referee here did find violations of most of the charged rules, including Rule 4-8.4(c), and did not recommend diversion. Accordingly, as this Court concluded in *Schwartz*, *Cocalis* is “inapposite” to determining the appropriate sanction for Mr. Arugu and should not be followed. *See Schwartz*, 334 So. 3d at 304.

In short, consistent with cases like *Berthiaume*—which involve violations of Rule 4-8.4(c) and 4-8.4(d)—Mr. Arugu’s conduct is deserving of no less than a rehabilitative suspension of 91 days.

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 rehabilitative suspension on Mr. Arugu.

Respectfully submitted on May 2, 2022.

HOLLAND & KNIGHT LLP

/s/Tiffany Roddenberry
Kevin W. Cox
Florida Bar No. 34020
Tiffany A. Roddenberry
Florida Bar No. 92524
Kathryn Isted
Florida Bar No. 1005163
Holland & Knight LLP
315 South Calhoun Street, Suite 600
Tallahassee, FL 32301
(850) 224-7000
kevin.cox@hklaw.com
tiffany.roddenberry@hklaw.com
kathryn.isted@hklaw.com

Patricia Ann Toro Savitz
Florida Bar No. 559547
The Florida Bar
651 E. Jefferson St.
Tallahassee, FL 32399
(850) 561-5600
psavitz@floridabar.org

Daniel James Quinn
Florida Bar No. 122435
The Florida Bar
Orlando Branch Office
1000 Legion Place, Suite 1625
Orlando, Florida 32801
(407) 425-5425
DQuinn@floridabar.org

Counsel for The Florida Bar

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 May 2, 2022:

Barry William Rigby
Law Offices of Barry Rigby, P.A.
1881 Lee Road
Winter Park, Florida 32789
barryrigbylaw@gmail.com
rigbylaw@yahoo.com

Counsel for Respondent

/s/Tiffany Roddenberry
Attorney

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.

/s/Tiffany Roddenberry
Attorney