IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Complainant,

Supreme Court Case
No.SC 21-976

v.

The Florida Bar File
No. 2021-10,403

MICHAEL ALAN STEINBERG

Respondent
_____/

APPELLANT/RESPONDENT"S INITIAL BRIEF

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PRELIMINARY STATEMENT

The Respondent is charged under Rules Regulating the Florida bar: (competence); 4–1.3 (diligence); 4–3.4 (c) (fairness to opposing party and counsel); 4–8. 4(a) (misconduct-a lawyer shall not violate or attempt to violate the rules of professional conduct) and 4-8.4(d) misconduct – a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice.

Florida's Standards for Imposing Lawyer Sanctions contain commentary as to situations which should result in disbarment, suspension, public reprimand, and admonishment. The following is an excerpt:

Suspension

In many cases, lawyers are suspended when they knowingly violate court orders. Knowing violations can occur when a lawyer fails to comply with a court order that applies directly to the lawyer, as in the case of lawyers who do not comply with a divorce decree ordering spousal maintenance or child support. Suspension is also appropriate where the lawyer interferes directly with the legal process. In The Florida Bar v. Gwynn, 94 So. 3d 425 (Fla. 2012), the respondent was suspended for 91 days for engaging in a pattern of misconduct which interfered with the legal

process and the administration of justice. Specifically, a bankruptcy judge found that the respondent had (1) filed frivolous claims to harass the opponent and opposing counsel; (2) failed to research and verify claims advanced in motions respondent filed; (3) engaged in willful abuse of the judicial system; and (4) continually made allegations, both in pleadings and in testimony before the bankruptcy court, that were incorrect or false. The judge found that the respondent's conduct was "objectively unreasonable and vexatious" and "sufficiently reckless to warrant a finding of conduct tantamount to bad faith ... for the purpose of harassing her opponent." Id. at 427.

Public Reprimand

The court imposes a public reprimand on lawyers who engage in misconduct at trial, who violate a court order or rule that causes injury or potential injury to a client or other party, or who cause interference or potential interference with a legal proceeding. In The Florida Bar v. Barcus, 697 So. 2d 71 (Fla. 1997), the respondent who ineptly handled a difficult client matter but did not engage in a pattern of neglect received a public reprimand. The respondent failed to appear for the client's deposition, filed a notice of appeal for the

sole purpose of delaying a foreclosure, failed to file the appellate brief, filed an untimely motion for extension of time to file the brief, and failed to file a motion for rehearing or to set aside or vacate a foreclosure. In The Florida Bar v. Martocci, 791 So. 2d 1074 (Fla. 2001), the respondent who repeatedly made disparaging and profane remarks to belittle and humiliate the opposing party and opposing counsel during a family law case received a public reprimand and 2-year probation. The court also imposes public reprimands when lawyers neglect to respond to orders of the disciplinary agency. In The Florida Bar v. Leacock, 192 So. 3d 44 (Fla. 2015) (unpublished disposition), the court publicly reprimanded a respondent who neglected to respond to the bar's investigative inquiries in a timely manner. The court noted that it takes seriously a lawyer's obligation to completely and timely respond to investigative inquiries made by the bar.

STATEMENT OF THE CASE AND FACTS

The discipline imposed by the USCAVC involved two cases.

Nelson Germer

The first case was for a claimant for VA compensation benefits, Nelson Germer. Mr. Germer was a longtime client of the Respondent. The

Respondent and his associate, Martin Cohen, had successfully handled Mr. Germer's Social Security disability claim in 2009. The Respondent has been handling his VA claim since 2008. Mr. Germer received a rating decision, which he appealed. A reconsideration decision was issued, and he continued to disagree with that decision and requested a hearing before the Board of Veterans' Appeals. In 2014, the BVA remanded the claim for a new decision. A Supplemental Statement of the Case was issued in October 2017, and the claim was returned to the BVA. On March 16, 2018, the BVA issued a decision denying Mr. Germer's claim for unemployability. He then appealed the decision to the USCAVC.

There is a form utilized by the USCAVC for the purpose of submitting appeals. Among other things, there is a check box to indicate whether a fee agreement is already in the claims file. Often, the attorney handling a matter before the USCAVC is not the same attorney that handled a claim before the BVA. Looking at the form, a reasonable person would surmise that if the fee agreement was not already in the file, the attorney handling the case at the USCAVC level would need to attach his or her fee agreement.

The aforesaid form also contains a blank for the attorney to list his or her e-mail address. Again, a reasonable person would conclude that the court and opposing council would use the email listed on the form.

The Clerk of the USCAVC sent 3 separate emails to the Respondent advising that the fee agreement needed to be submitted. Those emails were sent to the Respondent's personal email account. (which the Respondent listed with the USCAVC when he was admitted) The Respondent was not anticipating correspondence from the clerk about his fee agreement and did not see the emails. On February 15, 2019, the case was dismissed for failure to comply with the order to submit the fee agreement.

Upon learning of the dismissal, the Respondent filed a motion to reinstate, which was granted on April 17, 2019.

On August 14, 2019, the Respondent was sent a notice to file a brief within 60 days or 30 days after the briefing conference. A briefing conference was then scheduled for October 8, 2019 and then rescheduled for November 8, 2019. The brief was due within 30 days of the briefing conference.

The Record before the agency consisted of 7363 pages. The Respondent was working on the brief and intended to request an extension of time to complete the brief, but overlooked doing so.

On December 10, 2019, the clerk's office issued an order for the Respondent to file a brief within 7 days and to submit a motion to file brief out of time. This order was sent to the Respondent's personal e-mail account. The Respondent was working on the brief and upon its completion, discovered the December 10, 2019 order. (Exhibit F)

The Respondent then submitted the brief and motion to accept brief out of time on December 23, 2019. The Motion was granted and the brief deemed filed. The Appellee filed a motion for extension of time to file brief on March 19, 2020, which was granted. The Appellee's brief was then filed on May 7, 2020.

The Court found in the Appellant's favor and remanded the claim for a new decision.

Mr. Germer had a new hearing before the BVA. This time his claim for unemployability was granted and he was awarded these benefits retroactive to August 1, 2007. (Exhibit I)

Of the four orders for which the Respondent failed to comply, three

consisted of failure to file a fee agreement, which was already in the record before the agency. There is no reason for the Respondent not to have submitted a duplicate copy to the clerk, and the Respondent would have done so immediately had he been aware of the correspondence from the clerk.

Edwin Corley

The second case occurred around the same time as the first. It involved a veteran by the name of Edwin Corley.

Mr. Corley was also a long-time client of the Respondent. The Respondent had helped him obtain a rating of 100% service-connected benefits. The Veteran had an issue which did not pertain to his compensation claims. He was having chest pains and went to a local private hospital emergency room. At the emergency room he was told his condition was not heart related and they sent him home. He received a bill for the ER treatment and asked the VA to pay for the bill. The VA did not pay the bill, because it determined the use of the ER was not medically necessary. The veteran asked the Respondent to help him appeal the decision. The Respondent agreed to assist the veteran with this appeal at

no charge, since the veteran would not be entitled to any past due benefits and the only relief he was seeking was the payment of his hospital bill.

The BVA denied the appeal. The veteran asked the Respondent to appeal the decision to the USCAVC. The Respondent agreed to do so at no charge to the veteran. Although the veteran and the attorney had a general fee agreement, it did not apply in this situation.

The Respondent had never handled this type of appeal before and could not find any caselaw, either favorable or unfavorable, probably due to the fact that there is no avenue for an attorney to receive fees if the claim was favorably decided. Nonetheless the Respondent agreed to appeal the decision due to his longstanding relationship with the veteran.

This appeal was filed on January 25, 2019. The same scenario occurred regarding the fee agreement. The clerk sent an order on February 26, 2019 directing the Respondent to file the fee agreement, to the Respondent's personal email. After the incident with Germer, the Respondent checked his personal emails for orders regarding Corley, discovered the order and submitted the fee agreement. (Exhibits J and K)

On April 26, 2019 the Appellee filed a motion for extension of time to file the record before the agency (RBA). The RBA was filed on June 10,

2019. The order to file brief in 60 days or 30 days after the briefing conference was issued on July 2, 2019. The briefing conference was held on August 19, 2019.

The Respondent began working on the brief. The RBA consisted of 11,055 pages. Again, the Respondent intended to file a motion for extension of time to file brief, but inadvertently failed to do so. Had he filed the motion, it would have been granted.

On September 19, 2019, the clerk sent an order to Respondent to file brief in 7 days and a motion to file brief out of time. (Exhibit L) This order, again, was sent to the Respondent's personal email address, not the one listed on the Notice of Appearance.

On October 29, 2019 the Respondent submitted the brief. The Respondent had a difficult time preparing the brief, because it appeared that material evidence was missing. He pointed that out in the brief.

On October 31, 2019, the clerk's office sent a notice that the brief was non-conforming and directed the Respondent to file an amended brief within 7 days. The Respondent, assuming his briefing obligation was completed did not see that notice. (Exhibit M)

While checking the status of the case, the Respondent discovered

the October 31, 2019 notice. the Respondent then submitted a corrected brief and motion to file brief out of time. This was submitted on March 19, 2020.

On March 20, 2020, the Court issued the following order. ORDERED that within 21 days of the date of this order, appellant's counsel file an amended motion for leave to file appellant's brief out of time that provides a detailed justification for his actions concerning the various matters described above and provides sufficiently detailed reasons to grant the motion. It is further ORDERED that within 21 days of the date of this order, appellant's counsel file a statement separate from the motion described above showing cause why the Court should not refer him to the Court's Committee on Admission and Practice, or otherwise sanction him, based on his conduct in this matter. It is further ORDERED that appellant's counsel serve copies of this order and both documents described above on appellant and, within 28 days of the date of this order, file a certificate of compliance executed under the penalty of perjury with the Court. It is further ORDERED that no extensions of time will be granted absent extraordinary circumstances. In this regard, the Court notes the current national public health situation. We would have imposed significantly

stricter deadlines in this order without that situation and have, therefore, already accounted for the unusual situation we all face. And it is further ORDERED that appellant's motion for leave to file his brief out of time is held in abeyance pending appellant's counsel's compliance with this order. (ALLEN) (JC)

On April 21, 2020, the Court issued the following order

ORDERED that pursuant to 38 U.S.C. § 7265(a)(3) Michael A. Steinberg, Esq., of

Tampa, Florida is in civil contempt of this Court. It is further ORDERED that the Clerk of Court provide a copy of this order to appellant Edwin Corley. It is further ORDERED that the Clerk of Court provide a copy of this order to Susan Sandler, Esq., Managing Attorney, Michael Steinberg & Associates, P.A., 4925 Independence Parkway, #195, Tampa, FL, 33634. And it is further ORDERED that

this order be published electronically pursuant to the Court's usual practice for such publication. (ALLEN) (JC)

On June 25, 2020, the court granted the motion to file brief out of time and directed the Appellee to file a brief within 60 days.

On August 24, 2020, the Appellee filed a motion for extension of time

to file brief. On September 28, 2020, October 28, November 30, 2020, and December 21, 2020, Appellee filed motions to stay proceedings. On January 27, 2021 the Appellee filed a motion to file an amended RBA. (The reason the Respondent took so long to prepare his brief, was because the record was incomplete)

The Respondent was suspended by the USCAVC for 90 days and took no further action in this case. The brief of Appellee was filed on February 8, 2021. The Appellant died shortly thereafter and the Appellee filed a motion to dismiss due to the death of the Appellant.

Order of USCAVC

In its order, the USCAVC found that the respondent violated model rule 1.1 and 1.3 of the model rules of professional conduct adopted by the American Bar Association. These rules pertain to competence and diligence. It was found that the Respondent caused undue delay in his cases and demonstrated a lack of commitment and dedication to the interests of his clients and likely caused anxiety to his clients and unnecessary burdens on the court.

It was found that the Respondent violated duties to his clients by failing to provide competent representation and to act with reasonable

diligence and promptness.

It was determined that there was no evidence that the Respondent acted intentionally, but it was inferred that the pattern of misconduct and repeated warnings strongly suggested that the respondent acted with knowledge of wrongdoing.

Next it was found that the conduct caused or had the potential to cause serious injury.

Lastly it found that there was a pattern of misconduct and that the Respondent had been a member of the court bar since 1999, in those 21 years appeared approximately in 28 cases, had substantial experience before USCAVC, should be familiar with the court's rules on the duty he owes to his clients in the court, and has been admitted to the Florida Bar since 1982 and has 38 years of experience as a lawyer.

It was recognized that the Respondent had an absence of a prior disciplinary record and a presumed absence of selfish or dishonest motive.

The Respondent was suspended from practicing before the USCAVC for 90 days and ordered to complete six hours of ethics focused continuing legal education before seeking reinstatement.

The order was dated September 17, 2020. The Respondent has completed and provided proof he completed six hours of ethics focused continuing legal education, and over 14 months have passed since the date of the order.

With respect to the Respondent's experience before the USCAVC, this matter is a little nuanced. The Respondent handled two cases in 1999, two cases in 2000, one case in 2001, two cases in 2002, three cases in 2006, one case in 2007, two cases in 2008, one case in 2009, one case in 2013, one case in 2014, and one case in 2015. These cases were done before the USCAVC converted to an electronic filing system. The Respondent would receive orders and copies of pleadings by regular US mail. This averaged one case per year for 16 years.

Furthermore, a number of these cases were not appeals from decisions. They were complaints for Writ of Mandamus to compel the VA to make a decision. The Department of Veterans Affairs was taking years from the time a veteran made a claim or appeal, before a decision was made and the Respondent filed a complaint
for writ of mandamus to compel Department of Veterans Affairs to make a decision. In most or all of these cases, the filing of the complaint, triggered

the Department of Veterans Affairs to perform the actions sought to be compelled, rendering the complaint moot, resulting in a dismissal before briefing was due. In the other cases, the Respondent filed briefs the same way and in the same format he filed briefs in other jurisdictions.

Between 2015 and 2018, the Respondent did not file any appeals before the USCAVC. It was around this time that electronic filing was mandated.

In late 2018 and early 2019, the Respondent filed appeals in the cases of Nelson Germer and Edwin Corley. Since that time, the Respondent had handled 10 other appeals, and had not had issues regarding those other appeals.

Therefore, although technically the Respondent has appeared in 28 cases before the USCAVC, 17 of the cases were between 1999 and 2015, and 10 of the cases were after the two cases at issue in this matter.

The reason for pointing this out, is to demonstrate that the Respondent had a gap where he did not file any appeals before the USCAVC, and that was the period of time when it was transitioning to an electronic filing only system.

With respect to the potential to cause injury or serious injury, as set

forth above, neither of the two cases at issue, realistically had potential to be dismissed with prejudice. Nelson Germer ultimately prevailed in his appeal, and unfortunately, Edwin Corley died before his appeal was decided.

However, regardless of the Respondent's caseload, personal issues, issues with his employees, issues with email, etc., the bottom line is that he did miss deadlines to file briefs, and had to submit motions to file briefs out of time. The two cases were handled with less than the standards expected by an attorney and less than the standards the Respondent expects from himself.

For this reason, the Respondent has never posited that sanctions should not be imposed. Instead, it is posited that the sanctions should not exceed what is reasonable under the circumstances. A complete suspension from practicing law is not reasonable under these circumstances

SUMMARY OF ARGUMENT

The Respondent is a 63-year-old attorney, who will have been admitted to the Florida Bar for 40 years as of May 21, 2022. He has

primarily practiced in the area of Social Security disability and Veterans disability law. He has handled thousands of cases at the administrative level and hundreds of cases at the federal appeals level.

The Respondent has handled relatively few cases before the United States Court of Appeals for Veterans Claims. In two of such cases, the respondent erred in failing to timely file pleadings, resulting in orders to show cause by the United States Court of Appeals for Veterans Claims, and ultimately, a suspension for 90 days from the United States Court of Appeals for Veterans claims.

The Florida bar filed its complaint against the Respondent based on the United States Court of Appeals for veterans claims order. The Respondent admitted that his failure to timely comply with court orders constituted misconduct, but asserted that his failures were a result of not seeing emails from the clerk of the court and negligently failing to keep track of deadlines.

The Respondent is professionally embarrassed and extremely remorseful for his failures, however, he posits that suspension from the practice of law, constitutes excessive punishment.

The evidence in this case demonstrates that the Respondent's actions

were not willful, but negligent. They did not cause injury or potential injury to a client. They did not cause excessive delay in the adjudication of the appeal. Briefs were belatedly filed in both cases. In one case the client's appeal was successful, the case was remanded for a new decision, and the client was awarded all of the benefits for which he was potentially eligible. In the second case, unfortunately, the client died during the pendency of the appeal.

The Respondent is mindful of the importance of meeting deadlines. There is no good reason for missing a deadline, however, sometimes even with staff support and calendaring systems, the most experienced attorneys can miss a deadline. The rules of procedure provide equitable safeguards for an inadvertently missed deadline, which is what happened in these cases. The court permitted the briefs to be filed out of time, but sanctioned the attorney.

At the time the errors were made, the Respondent was dealing with employees with severe illnesses and a very busy caseload. The Respondent was the sole owner of a small law firm and not only responsible for management of his own cases, but also management of the office.

The Respondent has not accepted new cases since this matter was initiated. he has taken steps to have his clients appoint other attorneys to represent them, in cases which could not reasonably be concluded by the time a final ruling is made in this matter. He has taken steps to transfer ownership interest in the firm.

The Respondent posits that an appropriate sanction would be public reprimand, payment of costs, and attendance at ethics school.

ARGUMENT

Reason for Reprimand Rather than Suspension

The Respondent primarily handles Social Security disability cases at the administrative level, and appeals to the district court and 11th Circuit Court of Appeals. He has one secretary that only handles federal appeals. She is copied on all orders and notices, makes sure Respondent files briefs and memoranda timely, and prepares briefs dictated by the Respondent. The Respondent has handled hundreds of federal appeals regarding Social Security claims

The Respondent has handled hundreds of VA claims at the administrative level. He has a secretary that does nothing but handle VA cases at the administrative level. At the administrative level, the

Respondent receives notices and decisions in the regular mail, not via email.

The Respondent has only handled a few cases before the USCAVC. He does not have a secretary for this type of case and has handled the preparation of the pleadings and briefs himself. Unfortunately, the Respondent made errors in case management that resulted in filing briefs untimely. The errors did not result in unreasonable delays, and had the Respondent filed a motion for extension of time to file the brief, it almost certainly would have been granted.

From the perspective of the USCAVC, it must have appeared that the Respondent repeatedly fails to comply with deadlines and orders. However, if one considers the Respondent's overall practice, and the hundreds of cases for which he is responsible, and the fact that the Respondent has practiced law for almost 40 years, the 2 cases which are the subject matter of the disciplinary action, were isolated incidences and not a pattern.

According to the electronic case filing system for the United States District Court for the Middle District of Florida, the Respondent has handled 2837 cases since 1999.

The mistakes made by the Respondent were not intentional. They did

not result in actual harm to the client.

The USCAVC has only disciplined 3 attorneys. One was a private discipline and the other a public reprimand. The discipline which was a public reprimand involved similar conduct to the conduct for which the Respondent was suspended for 90 days. (Exhibit N)

The Respondent has acknowledged his errors and is embarrassed and remorseful. However, a suspension from practicing law exceeds what is a reasonable sanction. The Respondent has already been suspended from practicing before the USCAVC for over 1 year, as the USCAVC is awaiting a decision by the Florida Supreme Court, before reinstating the Respondent.

Suspension for even a short period of time would have a devasting impact on the Respondent, his employees and his clients. The Respondent is the owner of a small firm with about 15 employees. He has hundreds of clients who are awaiting Social Security hearings and VA hearings. He has dozens of federal appeals pending before the U.S. District courts.

The Respondent has not contested the claim of the Bar that discipline is warranted. He does contest the weight to be given to the sanctions given

by the USCAVC.

The Florida rules of professional responsibility indicate that if an attorney is disciplined by a state bar or federal court, the findings are conclusive proof of a violation of professional responsibility by the Florida Supreme Court.

The term, “Federal Court”, is not defined. Generally a Federal Court refers to the U.S. Supreme Court, the Circuit Courts of Appeals, and the District Courts. These are Article III courts. There are legislative courts created under Article I, which have limited jurisdiction and limited periods of appointment. The USCAVC is a court, and it does handle cases involving a federal act, but it may not be the type of court contemplated by the rules of professional responsibility. For example, the SEC has a tribunal that make rulings pertaining to federal issues, but the Florida Supreme Court has declined to find that this entity constituted the type of entity which is contemplated under the rules.

“The SEC is not "a court or other authorized disciplinary agency of another jurisdiction" within the meaning of rule 3-4.6. It is a federal administrative agency empowered by the United States Congress to regulate all aspects of securities

transactions. As part of its regulatory function, the SEC may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission ... (i) not to possess the requisite qualifications to represent others, or (ii) to be lacking in character or integrity or to have engaged in unethical or improper professional conduct, or (iii) to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws (15 U.S.C. § 77a to 80b-20), or the rules and regulations thereunder.

Rule 2(e)(1) of the SEC's Rules of Practice, 17 C.F.R. § 201.2(e)(1) (1991). While this authority certainly is similar to that of a court or agency authorized to discipline lawyers, the primary purpose for its exercise is not to ensure the qualification, supervision or regulation of lawyers." Florida Bar v. Tepps, 601 So.2d 1174 (Fla.1992)

Although Florida does not define the term "Federal Court" this court can look to other jurisdictions for guidance. The District of Columbia rules provide:

(a) *Definition.* As used in this section,

(1) "state" shall mean any state, territory, or possession of the United

States.

(2) "disciplining court" shall mean (a) any court of the United States as defined in Title 28, Section 451 of the United States Code;(b) the highest court of any state; and (c) any other agency, commission, or tribunal, however denominated, that is authorized to impose discipline effective throughout a state.

Title 28, Section 451 provides in part

As used in this title: The term “court of the United States” includes the Supreme Court of the United States, courts of appeals, district courts constituted by chapter 5 of this title, including the Court of International Trade and any court created by Act of Congress the judges of which are entitled to hold office during good behavior.

Under this definition. The USCAVC is not a court of the United States.

The above may be placing form over substance. The conduct is subject to discipline, regardless of whether the discipline is subject to

reciprocity, and the Respondent has acknowledged he filed fee agreements and briefs untimely, in the above referenced cases. And even if the findings of the USCAVC is entitled to reciprocity, the Florida Courts can impose different sanctions. However, often a body imposing reciprocal sanctions will impose the same sanctions as the primary disciplining body, unless there is a reason to deviate. For this reason the

Respondent posits that due to the fact that the USCAVC is not the type of entity whose primary purpose is to ensure the qualification, supervision or regulation of lawyers, the sanctions imposed should not be given great weight. In fact this entity allows non-lawyers to practice before it.

The Respondent has great respect for the authority of the USCAVC and the above position in no way is intended to minimize the authority of that tribunal to impose deadlines and sanctions against those who do not abide by those deadlines.

The usual discipline for the conduct committed by the Respondent is reprimand and payment of court costs. There are no aggravating factors

other than the Respondent is an experienced attorney. However, while the Respondent is experienced in handling VA cases at the administrative level and is experienced in handling federal appeals of Social Security disability claims, he is relatively inexperienced at handling cases before the USCAVC. The rules of practice before that tribunal are different than the rules of practice before a Federal District, Circuit Court of Appeals, or a state court. This inexperience with the procedural rules of that tribunal contributed to the Respondent's errors.

Case Law

In the case of The Florida Bar v. Mark Wilkins, SC 18- 689, the referee recommended a public reprimand. The referee found that the respondent filed a complaint in a civil case, and took no further action. The case had languished in the court system for approximately two years. Initially respondent stated that he did not know what action to take to bring the case to a conclusion. However, in his sworn statement, he clarified that he knew what to do, but he was waiting until the bar proceeding was concluded. The respondent failed to provide adequate communication to his client regarding the status or advancement of the case. After several

26requests by his client to take the offending parties to court as soon as possible, the respondent failed to serve the defendant in the case, stating that he was unable to hire a process server.

The referee recommended a public reprimand to be administered by publication and payment of disciplinary costs.

In the decision, the referee considered the following caselaw prior to recommending discipline:

The Florida Bar v. Jenkins, 2018 WL 387270 (Fla. Jan. 11, 2018)- Respondent received a public reprimand for neglect and inadequate communication. After being retained by a client, Jenkins failed to adequately communicate or provide any meaningful case status updates. The client and his family tried for years to get case information from respondent without success. Respondent failed to return most telephone calls, frequently was absent from the office and provided only occasional vague answers as to the status of the case. Respondent failed to accomplish anything substantive on the matter. It took four years for Jenkins to file a suit in court on the client's behalf. In mitigation, respondent had no prior disciplinary record, had no dishonest or selfish motive, made a

timely good faith effort to make restitution or to rectify the consequences of his misconduct, fully cooperated with the bar, and was remorseful. There were no aggravating factors.

The Florida Bar v. McHardy, 2017 WL 1406972 (Fla. Apr. 20, 2017)-Respondent received a public reprimand with required restitution to the complainant. Respondent neglected his client's foreclosure defense matter, and the client ultimately terminated respondent from the representation. Respondent did not move to withdraw from the case and remained counsel of record. He failed to take the necessary steps to protect his client's interests. Respondent had no prior discipline and presented significant mitigation. 2017 WL 140692

The Florida Bar v. Hampton, 2017 WL 443999 (Fla. Feb. 2, 2017)-Hampton was publicly reprimanded. In one case, Hampton began representing a client, then stopped communicating. In another matter, Hampton agreed to help a client with a case, but it was never resolved.

The Florida Bar v. Battisti, 2017 WL 57859 (Fla. Jan. 5, 2017)- The Court publicly reprimanded Mr. Battisti and required him to attend ethics school. The respondent was hired for a personal injury matter. After a

lawsuit was filed in the case, the respondent filed a voluntary dismissal with prejudice which dismissed the entire case instead of only dismissing the driver as respondent intended. Thereafter, the respondent failed to take any action to correct his error for several months. The respondent also sought permission to file a second amended complaint. However, the respondent did not seek to have his motion heard until nearly a year and a half later. The Motion to File Second Amended Complaint and Re-Open Case filed by the respondent was denied and the respondent did not appeal the court's order. In another matter, the respondent was hired to handle personal injury claims stemming from two automobile accidents. The respondent failed to adequately communicate with the client about the status of his cases. The respondent also failed to timely send demand letters to the insurance companies on the client's behalf. Respondent failed to properly supervise his nonlawyer assistant which led to the client being misinformed regarding the status of his cases.

The Florida Bar v. Carey, 2016 WL 834109 (Fla. Mar. 3, 2016)- Respondent received a public reprimand for neglecting his client's matter and for failing to adequately communicate with him. The client hired respondent to represent him in an attempt to negotiate a settlement of a

lien with his mortgage company in the amount of $152,609. The lender failed to receive documents which respondent had allegedly faxed. It is possible that the lender misplaced the documents, but respondent failed to confirm with the lender that the documents were received. Respondent also failed to respond to several of his client's follow up emails. The client ultimately resolved the lien himself for $95,000.

In the case of The Florida Bar v. Derek Lewis, S.C. 18-574, the referee made the following findings: Respondent represented Christopher Jackson ("Jackson") trial counsel in a criminal case. Jackson was convicted at trial. At Jackson's sentencing hearing Respondent confirmed that he would serve as Jackson's appellate counsel.

On or about April 1, 2013, Respondent filed a Notice of Appeal. On or about April 22, 2013, the Third District Court of Appeal entered an order

advising that the case would be dismissed unless the required fee was paid to the Clerk of Court on or before May 2, 2013.

On or about April 30, 2013, Respondent filed a motion to declare Jackson indigent/insolvent for purposes of appeal.

On or about May 2, 2013, Respondent filed a motion for an extension of time to pay the appellant's filing fee. On or about May 6, 2013, the Third District Court of Appeal entered an order granting the request for extension of time to pay the filing fee.

On or about October 17, 2013, the Third District Court of Appeal entered an order stating that the time for filing the initial brief had expired and that the cause would be subject to dismissal unless the initial brief was filed, or the court was otherwise notified that the matter was being diligently prosecuted, within ten (10) days from the date of the order.

Respondent failed to file anything responsive to the Third District Court of Appeal's October 17, 2013 order. On or about November 25, 2013, the Third District Court of Appeal entered an order dismissing the appeal for failure to comply with its order dated October 17, 2013 and with the Florida Rules of Appellate Procedure. Respondent failed to advise Jackson of the dismissal of the case. On or about February 23, 2015, Jackson filed a petition for writ of habeas corpus for belated appeal pro se.

On or about March 10, 2015, the Third District Court of Appeal granted Jackson's petition for belated appeal permitting Jackson to pursue his appellate remedies. Thereafter, counsel was appointed to represent

Jackson. Between September 20, 2016 and May 10, 2017, the grievance committee's investigating member sent Respondent numerous written communications in an attempt to obtain additional information related to his investigation. Respondent failed to respond to said communications. The referee recommended that Respondent be found guilty of violating rules 4-1.3 (Diligence); 4-1.4 (Communication) and 4-8.4(g) (A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency ...) of the Rules Regulating The Florida Bar.

The Sanctions recommended were Public Reprimand to be administered by publication in the Southern Reporter and that the Respondent shall attend and successfully complete The Florida Bar's Ethics School and Professionalism Workshop within six (6) months of the entry of the final order of discipline by the Supreme Court of Florida. The Respondent was further ordered to pay the one-time fee associated with the Ethics School and Professionalism Workshop in the amount of $1,000.00.

The Respondent would ask the court to compare this case to the case of

Florida Bar v. Kuchinsky SC03-1744. In that case, the Referee filed an Amended Report of Referee ("ARR"), in which the court found that the Respondent violated Rules 3-4.2, 4-1.1, 4-1.2(a), 4-1.3, 4-3.2, 4-1.4(a), 4-1.4(b), and 4-8.4(c) of the Rules Regulating The Florida Bar. The Referee made specific findings that: B. In or about December 2000, the Respondent was hired by Ji Fen Hong Sichewski to represent her in an appeal filed by her ex-husband of certain child support and custody issues. C. The Respondent accepted the representation and a $2,500 retainer. D. The Respondent agreed to file an answer brief on Sichewski's behalf. E. On or about February 14, 2001, the Respondent filed a Motion for Extension of Time in which to file the answer brief. F. The court granted such motion and respondent was given until March 28, 2001 to file the brief. G. The court stated in its order dated February 20, 2001 that "appellee is notified that the failure to serve the brief within the time provided herein may foreclose appellee's right to file a brief or otherwise participate in this appeal. "H. Despite having requested and having been granted an extension of time, Respondent failed to file the answer brief by March 28, 2001.

Because no brief was filed, opposing counsel filed Appellant's Notice

of Non-Compliance with Briefing Schedule and Motion to Preclude Answer Brief of Appellee/Cross Appellant and for Final Disposition of the Appeal. J. Such motion was granted on or about May 3, 2001.K. On or about October 10, 2001, The Fourth District Court of Appeal remanded the case to the trial court. L. As a result, the Court granted the former husband's Motion for Recoupment and Sanctions and ordered Sichewski to return $11,000 to the husband for payment of temporary attorney's fees on appeal. M. Sichewski made numerous attempts to contact the Respondent to ascertain the status of her appeal. N. The Respondent rarely returned her phone calls. O. When Sichewski was able to discuss her case with the Respondent, he continually told her not to worry, and reassured her that everything was being taken care of. P. Respondent failed to inform her that he missed the deadline for filing her appeal. Q. Moreover, he failed to inform her as to the consequences of his failure. R. He failed to detail any remedial steps that could be taken .S. Instead, the Respondent assured her that everything was fine. T. In fact, Sichewski did not know that an answer was never filed until she was informed by successor counsel on or about February 19, 2002. U. The Respondent knowingly failed to perform services for Sichewski as promised and knowingly deceived her as to the status of her

appeal.

In the Amended Report of Referee dated June 21, 2004, the court recommended that the Respondent be suspended from the practice of law for a period of sixty (60) days, and thereafter be placed on probation for two (2) years with the following rehabilitative conditions: 1. Attend and complete at Respondent's costs, The Florida Bar's Ethics school at the next course offering provided in Broward County.2. During a one (1) year period from the date of this report, pass the ethics portion of the Florida Bar Examination.3.During a one (1) year period from the dated of this report, attend and complete a Florida Bar-approved course on case management with specific emphasis on calendaring, tickler systems and prescription deadlines.4.During a one (1) year period from the date of this report, purchase, install and thereafter maintain a computer software program designed specifically to manage a reliable system of tracking all client and court-related deadlines.5.During a one (1) year period from the date of this report, purchase and thereafter maintain a manual program designed specifically to manage a reliable system of tracking all client and court-related deadlines.6.Pay any monitoring costs associated with this two (2)

year probationary period.7.During a one (1) year period from the date of this report, reimburse The Florida Bar for any costs and expenses associated with the prosecution of this matter, as more specifically listed in Section VI of this Report.

The Report and Recommendation was approved by the Florida Supreme Court on May 25, 2005.

Conclusion

In conclusion, the Respondent did not knowingly fail to perform services for a client and cause injury or potential injury to a client or engage in a pattern of neglect and cause injury or potential injury to a client. The errors were made unknowingly, and when discovered, corrected as soon as possible.

At the time the above errors were made, the Respondent was dealing with employees with severe illnesses, and a very busy caseload. The Respondent was working a minimum of 70 hours a week, including every Saturday and often past midnight. The Respondent was responsible for an active caseload of over 500 cases and management of the office. The Respondent takes full responsibility for the negligent handling of these two

matters. He advised the clients of the above orders of the USCAVC as they occurred, and had actual harm occurred to the clients, he would have reported the negligence to the clients and his malpractice insurance carrier and made the clients whole.

A suspension by the Florida Supreme Court will necessitate the Respondent to give up his all interest in his law firm, which he started in August 1982. He has already withdrawn from almost of the cases which he had been handling, and taken tentative steps to transfer ownership of the law firm.

The Respondent posits that a suspension under these circumstances is extremely harsh and is inconsistent with the guidelines for sanctioning attorneys. A private or public reprimand is the appropriate sanction.

Respectfully submitted

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REQUEST FOR ORAL ARGUMENT

The Appellant/Respondent requests oral argument in this matter.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing contains 7896 words, per the "word count" feature in Microsoft Word and was printed in 14-point Arial and thereby satisfies the requirements of Florida Rule of Appellate Procedure 9.045.

CERTIFICATE OF SERVICE

I certify that Respondent/Appellant has been furnished to The Honorable James Richard Stearns, Referee, 7530 Little Road, New Port Richey, FL 34654-5598, to his Judicial Assistant, Jessica Smith via email at jsmith@jud6.org; with a copy to Jennifer Robyn Dillon, Bar Counsel at rdillon@floridabar.org ; and to Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, at psavitz@floridabar.org on this 30th day of March, 2022

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