IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

TRACY BELINDA NEWMARK,

Respondent.

_____/

Supreme Court Case
No. SC18-1980

The Florida Bar File
No. 2017-50,664(17C)

AMENDED REPORT OF REFEREE

(Amended to correct typographical error regarding case number on p. 19, only)

I. SUMMARY OF PROCEEDINGS

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

On November 28, 2018, The Florida Bar filed its Complaint against Respondent in these proceedings. On April 23, 2019 and April 24, 2019, a final hearing was held in this matter. All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

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

With respect to Counts I and II, this Referee heard testimony from the Respondent, Vanessa Prieto, Natalie Kay, Nancy Brodski (who was also a character witness) and Kathleen Collins. This Referee has also reviewed the parties' exhibits as introduced in the final hearing. This Referee also heard character testimony from Richard Gaines and Kara Hanaka.

B. Narrative Summary of Case:

COUNT I

1. In December 2009, Respondent began representing the former husband, Jorge Prieto, in post judgment family law matters against the former wife, Vanessa Prieto, which included parenting and financial issues in a case styled *Vanessa Lynn Prieto v. Jorge Enrique Prieto*, Case no. FMCE07-015298, in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida (hereinafter referred to as the "Post Dissolution case").

2. In or about September 2011, Ms. Prieto sought an injunction against domestic violence against Mr. Prieto in Case no. DVCE11-006106, in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County,

Florida (hereinafter referred to as the "Domestic Violence case"). A temporary injunction was granted. Respondent represented Mr. Prieto in the Domestic Violence Case while Kathleen Collins represented Ms. Prieto in both matters during the relevant times at issue.

3. The post judgment dissolution proceedings were contentious, and the parties had a difficult time agreeing on matters without court intervention.

4. On or about September 16, 2011, an Ex-Parte Temporary Injunction for Protection Against Domestic Violence with Minor Children was entered against Mr. Prieto in the Domestic Violence case.

5. After several hearings, the court in the Domestic Violence case dismissed the injunction. The case was dismissed without prejudice by order dated October 6, 2011.

6. On or about November 11, 2011, Respondent on behalf of the former husband filed in the Domestic Violence case a Motion for Attorneys' Fees and Costs seeking attorneys' fees against Ms. Prieto (hereinafter referred to as "Motion for Attorneys' Fees"). Respondent alleged in the Motion for Attorneys' Fees that the former husband was entitled to an award of his reasonable and necessary attorney's fees incurred in "defending and defeating the initial *ex parte* temporary injunction, based on the extended defense of the injunction. Fla Stat. Sec. 741.31."

7. Respondent testified in these disciplinary proceedings that prior to filing the Motion for Attorneys' Fees, she spoke with her client, Mr. Prieto. She explained that her client was hurt because it was his belief that the injunction was his former wife's method of keeping him away from his children's track meet which meant a lot to him. Mr. Prieto wanted a punitive method to make his former wife pay for interfering in his timesharing. Respondent, an experienced family attorney, admitted during these proceedings that she knew if she went forward with the motion, she could get "spanked", as attorney's fees under these circumstances were a "stretch." She admitted that if she was unsuccessful, the sanction would be punitive and against both she and Mr. Prieto. Respondent acknowledged that at the time she filed and argued the motion, she was aware that there was no provision under Florida Statute section 741.31 nor any other provision she was aware of which allowed for attorney's fees in the circumstances.

8. By letter dated November 29, 2011, Ms. Collins served Respondent with a "safe harbor" letter pursuant to Fla. Stat. Sec. 57.105 along with a copy of the Former Wife's Motion Attorney's Fees Pursuant to Florida Statutes Section 57.105 [Bar Exhibit 4], (hereinafter referred to as the "57.105 Motion"). Ms. Collins followed up with a January 10, 2012 email wherein she requested Respondent provide her with the "statutory basis" for the Motion for Attorneys' Fees [Bar Composite Exhibit 5]. In her January 11, 2012 email in response,

Respondent stated that her "legal basis" was "set forth in the motion" [Bar Composite Exhibit 5]. After receiving the safe harbor letter, Respondent set the Motion for Attorneys' Fees for hearing in the Domestic Violence case.

9. On December 27, 2011, Ms. Collins filed the 57.105 Motion stating that the Motion for Attorneys' Fees was frivolous because existing law did not allow for attorney's fees to be awarded in domestic violence matters

10. On or about January 23, 2012, Ms. Prieto, through her attorney, filed a Notice of Filing and Correction of Case Number in the Domestic Violence case and therein corrected the case number for the 57.105 Motion [Bar Composite Exhibit 4].

11. Respondent proceeded with the hearing on the Motion for Attorney's Fees. After hearing argument of counsel, the trial court denied the motion by order dated February 1, 2012 [Bar Composite Exhibit 3].

12. Ms. Collins subsequently set the 57.105 Motion for hearing. Respondent testified in these disciplinary proceedings that she argued during the hearing on the 57.105 Motion for an extension of the Equal Protection clause. Respondent's argument of Equal Protection was not raised in her motion [Bar Composite Exhibit 3]. The court found that Respondent failed to provide any case law or statutes at the hearing in support of her argument that Florida Statutes section 741.31 violated the husband's equal protection under the law.

13. On or about June 6, 2014, the court in the Domestic Violence case heard the former wife's 57.105 Motion. On or about July 2, 2014, the court entered its Order and Final Judgment on Former Wife's Motion for Attorneys' Fees Pursuant to Florida Statute § 57.105 (hereinafter referred to as the "Sanctions Order") and ordered Respondent and her law firm pay $6,180.00 in attorneys' fees, with interest, to Ms. Prieto [Bar Exhibit 6].

14. In its July 2, 2014 Sanctions Order, the court made the following findings:

> Ms. Newmark argued at the June 6, 2014 hearing that Respondent's Motion for fees was an argument for the extension of existing law with a reasonable expectation of success. . . However, this argument was not raised in Respondent's Motion.
>
> [U]nder these facts, this Court finds that Ms. Newmark did not have a reasonable expectation of success and that her Motion was and is contrary to the law.

15. The evidence before this Referee shows that when no payment pursuant to the Sanction Order was forthcoming, counsel for the former wife on July 29, 2014, filed a motion for contempt against Respondent [Bar Exhibit 7].

16. On August 25, 2014, Respondent appealed the Sanctions Order to the Fourth District Court of Appeal in the case styled *Tracy Belinda Newmark,*

The Newmark Law Firm, P.A. and Jorge Enrique Prieto v. Vanessa Lynn Prieto, Case No. 4D14-3187.

17. Between October 2014 and April 2015, Respondent sought and was granted five extensions of time to file the initial brief [Bar Exhibit 9]. Despite being granted the extensions Respondent was the subject of two Orders to Show Cause for Lack of Prosecution for not timely filing the initial brief [Bar Exhibit 9].

18. In these disciplinary proceedings, Respondent made various excuses for not having timely filed the brief. She believed that her response time was not properly calendared or that she had not received a copy of the order extending the time for her to reply and she thought her motion for extension was still pending. None was credible.

19. Respondent is a 28-year attorney, who is experienced in appellate work. Nevertheless, with all the motions for extensions of time, Respondent failed to file her brief in a timely manner. It required the appellate court's issuance of a second Order to Show Cause for Respondent to do what she was obligated to do.

20. Respondent filed her initial brief on or about June 1, 2015 [Bar Exhibit 10] and the opposing party filed the answer brief on September 29, 2015. By order dated October 14, 2015, the appellate court sua sponte struck the initial brief and the appellee's answer brief for failure to comply with Florida Rule of

Appellate Procedure 9.210(c)(3) as neither brief contained appropriate record citations. Further, the appellate court ordered Respondent to "omit any extraneous, impertinent or immaterial references" in her amended initial brief [Bar Exhibit 11].

21. After the amended initial brief and amended answer brief were filed, Respondent made two requests for extension of time to file her reply brief.

22. In granting the second request, the appellate court, by order dated July 12, 2016 stated as follows:

> ORDERED that appellants' July 5, 2016 motion for extension of time is granted, and appellants shall serve the reply brief on or before July 15, 2016. In addition, if the reply brief is served after the time provided for in this order, it will be subject to being stricken, or the court in its discretion may impose other sanctions. Appellants are advised that no further extensions will be granted absent a detailed explanation for why the reply brief has not yet been filed and a showing of extraordinary circumstances where, if a further extension is not granted, irreparable and material harm will result to the litigant. (Emphasis added)

23. On or about July 27, 2016, twelve days late, Respondent filed her reply brief.

24. On July 27, 2016, the appellee filed a Motion to Strike based upon Respondent's failure to timely file the reply brief along with a third request for extension of time.

25. On August 3, 2016, the appellate court entered an order finding that not only had Respondent filed her reply brief late, but that the reply brief raised new arguments and exceeded the 15-page limit for reply briefs [Bar Exhibit 15].

26. The appellate court granted the appellee's motion to strike, struck Respondent's reply brief and ordered that "the appeal shall proceed without the reply brief. No motion for rehearing as to this order will be entertained."

27. On September 22, 2016, the Fourth District Court of Appeals upheld the Sanctions Order [Bar Exhibit 16] and issued its mandate on November 4, 2016 [Bar Exhibit 17].

28. After the mandate was issued, Respondent did not timely make payments pursuant to the Sanction Order. By email dated November 4, 2014, Ms. Prieto reminded Respondent that her payment plus interest was due. Respondent replied on November 23, 2014, some 19 days later, and indicated she was "trying to figure out a few things" and would get back with Ms. Prieto as to when she could "commence payment" [Bar Exhibit 17].

29. To try to explain, Respondent testified that things slipped through the cracks and it did not come back on her radar until after the holidays.

30. After no payments were made, the former wife's attorney on February 8, 2017 filed an Amended Motion for Contempt and therein alleged that

Respondent as an officer of the court was well aware of the seriousness and import of the sanction and had chosen to willfully ignore paying the sanction or make a good faith attempt at addressing the sanction [Bar Exhibit 19]. Thereafter on March 14, 2017, the former wife filed a Supplement to the motion for contempt [Bar Exhibit 2].

31. Respondent made her first payment towards the Sanctions Order on March 23, 2017, some six months after the appellate court's order. At the time Respondent made her initial payment she was at least four months behind (the mandate having been issued in November 2017).

32. During these disciplinary proceedings, Respondent argued that the safe harbor letter was flawed. This Referee, like the trial court in the Domestic Violence case, rejects Respondent's argument. Respondent was on notice, having received the 57.105 motion and the Notice of Correction of Case number [Bar Exhibit 6].

33. At the time Respondent filed her Motion for Attorneys' Fees, the only exception under 741.31(6), Florida Statutes provided for attorney's fees in the event of a violation (by the party served with the injunction against domestic violence). Such subsection was plainly inapplicable to facts in the Prieto Domestic Violence case. It was clear that Respondent filed the motion to punish Ms. Prieto at her client's bidding.

34. I find that under the facts, that Respondent did not have a reasonable expectation of success and that her motion was and is contrary to the law. There was a complete lack of justiciable fact or law. Respondent did not act in good faith in filing and pursuing the husband's motion for attorney's fees because she was on notice that there was no dispute that the existing Florida Statutes and case law clearly did not allow attorney's fees and costs in domestic violence cases [Bar Exhibit 6].

35. Like the trial court, I find that Respondent knew or should have known that the Motion for Attorneys' Fees when presented to the court would not be supported by the material facts necessary to establish the claim and would not be supported by the application of then-existing law to those material facts.

36. Further, I find that Respondent, despite her assertions that she did not intend to file a frivolous and bad faith Motion for Attorneys' Fees and that she did not mean to do something unethical, had the requisite intent as defined in the case law. She intended to file the motion. Respondent deliberately and knowingly set the motion for hearing and argued the motion after receiving notice from opposing counsel of the fallacies in her motion and being provided case law "that attorney's fees" could not "be awarded in a domestic violence injunction case" nor under Florida Statutes Section 741.31 [Bar Exhibit 4].

COUNT II

1. During the pendency of the proceedings between the Prietos, Respondent made numerous unprofessional, derogatory remarks against opposing counsel, Kathleen Collins.

2. Specifically, in or about 2014, Respondent posted on her business Facebook page that Ms. Collins, in opposing a trial continuance, engaged in "extreme", "outrageous", and "inhumane" behavior [Bar Exhibit 27]. Respondent posted said comments at a time when there was ongoing litigation between the Prietos. In addition, the Respondent encouraged other attorneys not to accommodate Ms. Collins should she request a continuance. Respondent's comments were designed to humiliate, disparage and embarrass Ms. Collins, her opposing counsel. Respondent knew or reasonably should have known that her comments had the potential to have other attorneys disregard their professional obligations towards Ms. Collins.

3. Also, Respondent posted a negative review about Ms. Collins on AVVO.com, a national website where clients are allowed to rate and post comments about their attorney [Bar Exhibit 28]. On the site, Respondent represented herself as a client of Ms. Collins and posted a "client review." Respondent posted that she "would not recommend this attorney" and gave Ms. Collins one out of five stars. The Respondent knew or reasonably should have

known that Ms. Collins had never represented her in any legal matter and that she was misrepresenting herself as a client of Ms. Collins on the site and with the agent of AVVO.

4. In her client review on AVVO, Respondent cited Ms. Collins "inhumane" behavior in opposing a continuance. She further stated that "I would not want a person with no empathy toward an ill minor child to represent my interests in court." Respondent made it appear on the site that she was a client of Ms. Collins when Respondent was the opposing counsel in an ongoing matter involving the Prietos. Respondent's actions were designed to humiliate, disparage and embarrass opposing counsel.

5. In the post on AVVO, the Respondent went outside the comments of the judge on the record and inferred that the Judge had found Ms. Collins' behavior and comments were inappropriate. The Respondent knew or reasonably should have known this was a misrepresentation as the Judge had never indicated such. Respondent's actions were designed to humiliate and embarrass Ms. Collins.

6. This Referee would note that Respondent in her answer to the Bar's Complaint denied each and every allegation regarding her various social media posts [Answer to Complaint]. However, at the final hearing, Respondent conceded that she made the posts.

7. Ms. Collins testified that when she became aware of the AVVO posting, she contacted AVVO. The Vice President of AVVO responded to Ms. Collins' inquiry and provided, without subpoena, the source of the posting – tracy@newmarklaw.com as it appeared the person making the posting was "attempting to abuse" the system [Bar Exhibit 29]. Ms. Collins testified that she was concerned about the impact this post might have on potential clients. She was so concerned with the social media posts that she sought court intervention by filing Counsel for Former Wife's Motion for No Contact/Non-Disparagement Order Against Tracy "sic Newmark" Counsel for Former Husband [Bar Exhibit 30].

8. During these disciplinary proceeding, Respondent testified that she did not mean to make a misrepresentation when she posed as a client of Ms. Collins. This testimony lacked any credibility. The evidence clearly shows Respondent deliberately and knowingly posted on the AVVO site and that she knew the AVVO site was for clients to leave reviews of their attorney or former attorney. While Respondent chose to post this review under her real name rather than anonymously, she referred to herself as "opposing attorney," which is deceptive [Bar Exhibit 28].

9. Respondent's ethical obligations of honesty are not controlled by her personal beliefs that Ms. Collins had wronged her in opposing a

continuance and by inferring that she was merely the stepmother of the sick child and not the birth mother. While I recognize that concern for her child is compelling, it does not license or excuse dishonesty and unprofessional behavior. Even in one's personal life and even if unrelated to the practice of law, "members of The Florida Bar must conduct their personal business affairs with honesty and in accordance with the law." *The Florida Bar v. Baker,* 810 So. 2d 876, 882 (Fla. 2002). "A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs." Rules of Professional Conduct, Preamble: A Lawyer's Responsibilities.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

COUNT I

4-3.1 [A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.] 4-3.3(a)(1) [A lawyer shall not knowingly (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.]; 4-3.3(a)(4) [A lawyer shall not knowingly offer evidence that the lawyer

knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.]; 4-3.4(c) [A lawyer must not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic].

COUNT II

3-4.3 [The standards of professional conduct to be observed by members of the Bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure

to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis].

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

6.22 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.

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

V. CASE LAW

In looking at the appropriate sanction, I took into consideration the three purposes of lawyer discipline: a judgment must be fair to society, fair to the respondent, and severe enough to deter others who may be tempted to become involved in like violations. *The Florida Bar v. Spear*, 887 So. 2d 1242, 1246 (Fla. 2004), citing *The Florida Bar v. Lord,* 433 So. 2d 983, 986 (Fla. 1983).

I considered the following case law prior to recommending discipline:

The Florida Bar v. Fogarty, 485 So. 2d 416 (Fla. 1986). Supreme Court held that conduct involving violation of disciplinary rules, dishonesty, fraud, deceit or misrepresentation, that is prejudicial to administration of justice, that adversely reflects on fitness to practice law, and neglecting legal matter warrants suspension from practice of law for period of six months.

The Florida Bar v. Shankman, 41 So. 3d 166 (Fla. 2010). Supreme Court held that six-month suspension was warranted for: attorney who failed to provide competent representation to client; attorney who engaged in conflict of interest; and, attorney who engaged in conduct involving dishonesty. Court also held that attorney did not charge client an excessive fee. Referee had recommended 90-day suspension.

The Florida Bar v. Wasserman, 675 So. 2d 103 (Fla. 1996). Supreme Court held that: (1) attorney's conduct in making profane statements to judicial assistant over telephone after receiving unfavorable response to question violated ethical rules; (2) attorney's angry outburst in court and stated intent to advise client to defy court order violated ethical rules; and (3) egregious conduct in court, combined with prior disciplinary record, warranted six-month suspension.

The Florida Bar v. Martocci, 791 So. 2d 1074 (Fla. 2001). Supreme Court held that: (1) evidence supported referee's findings and conclusion that attorney was guilty of violating disciplinary rule prohibiting conduct prejudicial to administration of justice, and (2) attorney's misconduct in making unethical, disparaging, and profane remarks to belittle and humiliate both opposing party and counsel in divorce proceedings warranted a public reprimand and two-year probation.

The Florida Bar v. Germain, 957 So. 2d 613 (Fla. 2007). Supreme Court held that one-year suspension from practice of law was appropriate sanction for attorney's

misconduct, which included lying under oath in connection with ongoing legal disputes he had with his former paralegal and another attorney; attorney had previously been disciplined for making disparaging comments about other professionals, and he lied under oath.

The Florida Bar v. Bischoff, 212 So. 3d 312 (Fla. 2017). Lawyer suspended for one year for violating Rules 4-1.1, 4-3.3, 4-3.4(a), (c), (d) where lawyer knowingly and recklessly pursued frivolous claims, repeatedly engaged in discovery related misconduct, lied to the court and opposing counsel, and failed to comply with court orders and rules.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

A. Respondent shall be suspended for a period of 60 days, to run consecutively with the suspension for Case No. SC18-1525. In order to avoid the appearance of being a lawyer in good standing, Respondent must suspend all indicia of attorney status (social media, telephone listings, stationery, checks, business cards, office signs, etc.) and provide notice of her suspension in such.

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

C. Respondent should also be placed on probation after she is reinstated to the practice for a period of one year. During her one-year probationary period, Respondent shall be supervised by an attorney acceptable to the Bar, who will provide continuous monitoring of her client case files. Respondent shall submit the supervisor's attorney name within 30 days of the Court's order. The

supervisory attorney will provide quarterly reports to The Florida Bar's Tallahassee office on the status of client files and will inform the Bar if she is meeting her deadlines, returning telephone calls, and answering correspondence. The reports shall describe the number of current cases that Respondent is handling, the nature of the cases and what action was taken on those cases during the quarter. Respondent is responsible for submitting the quarterly reports to the Florida Bar's Tallahassee office. The quarters end on March 31, June 30, September 30 and December 31.

D. Within 60 days, Respondent shall attend Practice and Professional Enhancement Programs for (1) Professionalism and Civility and (2) Stress Management. Respondent shall pay the costs for both Professional Enhancement Programs.

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:

Date admitted to the Bar: September 20, 1990

Prior Discipline:

The Florida Bar File No. 96-50,298(17C) - Respondent received a Grievance Committee Admonishment for Minor Misconduct dated 4/12/95. The committee found that Respondent failed to act with reasonable diligence and promptness in post-dissolution proceedings. Specifically, the committee found that Respondent

failed to promptly prepare and forward an income deduction order to the judge for signature.

The Florida Bar File No. 2008-50,947(17C) - Respondent received a Grievance Committee Minor Misconduct dated 1/6/2009. The committee recommended that Respondent receive an admonishment for minor misconduct, conditioned on the payment of restitution in the amount of $1,600.00. The committee found the following: Respondent failed to promptly and diligently pursue her client's case and/or by failing to see that the petition for modification and extension was set for hearing within a reasonable amount of time after the answer was filed; Respondent failed to communicate with her client from about June 2007 until about December 2007 and failed to promptly reply to her client's requests for information; Respondent failed to appropriately issue a refund; Respondent failed to promptly withdraw upon termination.

VIII. AGGRAVATING AND MITIGATING FACTORS

I considered the following factors prior to recommending discipline:

9.22 Aggravating Factors:

b) dishonest or selfish motives;

d) multiple offenses;

g) refusal to acknowledge wrongful nature of conduct. During these disciplinary proceedings, Respondent has not made a true expression of a regretful acknowledgement of an offense or failure. Rather she tried to excuse her behavior and denied a malicious, calculated intent, which was apparent.

9.32 Mitigating Factors:

c) personal or emotional problems;

g) character or reputation. I found her character witnesses credible and believe that Respondent is generally caring, capable and diligent. Despite her

experience, it is evident that Respondent needs a steady, trusted mentor and advisor to provide counsel in times of stress (prior to her acting on impulse) as well as to assist her with practice management to avoid, among other things, neglect and inconsistency perhaps due to excessive case load and other demands on her time and attention. Respondent shall be required to participate with a mentor/advisor for a minimum of two (2) years.

m) remoteness of prior offenses.

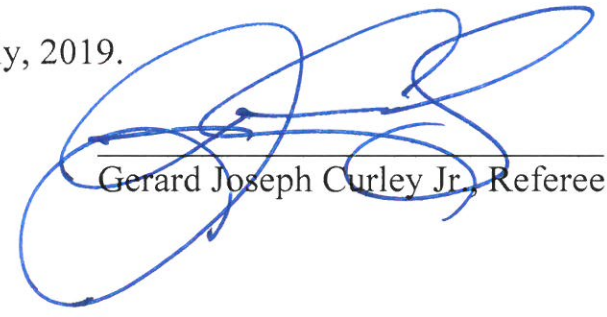
IX. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Bar Counsel Travel Expenses		$153.14
Administrative Fee		$1,250.00
Court Report Costs		$780.00
Witness Costs		$228.03
	TOTAL	$2,411.17

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 25th day of July, 2019.



Gerard Joseph Curley Jr., Referee

Original To:

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

Conformed Copies to:

Kevin P. Tynan, Counsel for Respondent, ktynan@rtlawoffice.com

Frances R. Brown-Lewis, Bar Counsel, fbrownle@floridabar.org

Staff Counsel, The Florida Bar, aquintel@floridabar.org