IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

KEVIN CHRISTOPHER AMBLER,

Respondent.

_____/

Supreme Court Case No.
SC18-1100

The Florida Bar File No.
2016-10,743 (13C)

# REPORT OF REFEREE

## 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 July 6, 2018, The Florida Bar filed its Complaint against Respondent. On July 31, 2018, Respondent filed an Answer to the Bar's Complaint. A final hearing was held in this matter on February 25, 2019, February 27, 2019, and February 28, 2019. A sanction hearing was held in this matter on April 2, 2019. Lisa Buzzetti Hurley appeared as counsel for The Florida Bar. David Robert Ristoff appeared as counsel for Respondent.

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

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.

Narrative Summary of Case.

The Findings of Fact and Recommendations as to Guilt entered on March 26, 2019, contains the findings in this proceeding and is incorporated herein by reference and made part of the record.

## III. RECOMMENDATIONS AS TO GUILT.

As stated in the Findings of Fact and Recommendations as to Guilt, dated March 26, 2019, and incorporated herein, I recommend Respondent be found guilty of violating the following rules regulating the Florida Bar:

A. Rule 4-3.4(c)

B. Rule 4.84(d)

## IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

A. Preliminary Narrative Findings.

At the sanction hearing on April 2, 2019, the Florida Bar introduced, over objection, a letter from US District Court Judge Dalton. This Referee has given Judge Dalton's letter the evidentiary consideration that it merits. The Referee does note that the Referee and the Federal Trial Court have different responsibilities, were presented with different evidence, and have different burdens of proof. The Florida Bar offered no other evidence at the sanction hearing.

Respondent Ambler called the following witnesses:

1. James Rusick. Mr. Rusick met Ambler in the mid 1980's while both were serving as Judge Advocates and stationed at MacDill Air Force base in Tampa, Florida. Mr. Rusick describes their relationship as "business friends" and have consulted on cases "over the years". Mr. Rusick is board certified in Real Estate and has sent his own son to Ambler for legal representation. He states Ambler provides competent representation.

   Mr. Rusick has never known Ambler to violate any of the Bar Rules in the past. Ambler has spoken to him and was

"sincerely apologetic", indicating his remorse. Mr. Rusick describes Ambler to be "thorough and a dynamic advocate" and he believes that Ambler makes "absolutely certain he knows the issues cold".

When referring to the Bar Rules violated, Mr. Rusick stated that he found it "shockingly out of character".

2. Jason Thomassy. Mr. Thomassy was admitted to the Florida Bar in 2015. He is an associate in Ambler's office. Mr. Thomassy sat through all three days of the evidentiary hearing in the Federal Case, *Danubis v. Landmark.* He has read the Referee's initial report and states that the findings are consistent with what actually happened in Federal Court. Mr. Thomassy states Ambler took all of the Federal Court rulings "very seriously". As a result, Ambler made "top to bottom" changes in his practice. The hardware and software in the office were updated and the office procedures were changed to make sure that there were no such future problems. Mr. Thomassy states that he has never seen Ambler "cut corners" or do anything inappropriate.

Mr. Thomassy is not aware of Ambler missing any other court ordered deadlines. He recalls, however, being late on discovery and a Motion to Compel was filed resulting in the taxation of an attorney fee.

3. Weldon "Web" Earl Brennan. Mr. Brennan is a Florida Licensed Attorney, having been admitted to the Florida Bar in 1989. He is a Board Certified Civil Trial Lawyer. Mr. Brennan is a member of the American Board of Trial Advocates (ABOTA), the former president of the Florida Justice Association (formerly known as the Academy of Florida Trial Lawyers) and has been on the Board of Directors of the Florida Justice Association since 1997. Mr. Brennan previously served as president of the Tampa Bay Trial Lawyers Association and remains a member of its Board of Directors. Mr. Brennan's accolades are many.

Mr. Brennan met Ambler in 2004 during Ambler's time in the Legislature. Ambler and Mr. Brennan were both involved with the legislative financial limitations placed upon tort liability. Mr. Brennan states Ambler fought for the injured parties rights. Subsequently, Ambler was

involved in a car accident on his way to the legislative session in Tallahassee and retained Mr. Brennan in his successful civil representation of Ambler. Subsequently, Mr. Brennan co-counseled many cases with Ambler.

Mr. Brennan has observed Ambler in discovery preparation, deposition and in trial and finds him to be more than competent. Mr. Brennan opines that there is not a lawyer who has missed a deadline or did not want to lash out at another attorney. However, Mr. Brennan has never seen any such intentional acts by Ambler. Mr. Brennan states Ambler has admitted and acknowledged his errors to him.

4. Ambler himself testified at the sanction hearing. Ambler stated that not a day goes by that he does not think about the Federal case and tries to use the lessons he has learned. He opines that he believes that he lashed out (making disparaging comments) as a result of his emotional state after having been accused of committing fraud. He has realized his responsibilities include "laying out the facts and letting the Court make its own findings", without making

derogatory statements. As a result of missing the Court ordered deadline, he "changed the whole office". Ambler regrettably had to "retire" his 72 year old paralegal and hired a new paralegal. He updated hardware and software programs in his office.

Ambler states that the whole experience has affected him personally and his whole family. He is most disappointed in himself. He apologized to the Federal Court several times during the litigation, on the record. He states he felt bad that he missed the filing date for the initial disclosures but could not undo what he had already done. He has apologized to his wife (who works at his law office), his colleagues and his client, Mr. Radulovic. He never sought to collect any attorney fees from Mr. Radulovic and, in fact, absorbed approximately $10,000.00 in litigation costs that he personally expended during the litigation. Mr. Radulovic did not file a Bar complaint or a civil action but continues to hire Ambler to do legal work. Ambler timely complied with the paying of the Court ordered attorney's fees.

Ambler states that he is "not perfect" but has tried to show his remorse by improving.

When asked, Ambler stated that in 2008 the Florida Bar awarded him the "Legislature of the Year" award due to his legislative effort to insure proper funding for the legal/judicial system. Ambler was a member of the Budget Committee for the Judiciary and created, among other things, the tier system for mortgage companies to pay higher filing fees for higher valued homes. Ambler spoke out in the legislature for judicial funding and judicial independence.

In 2002, Ambler created a program in Hillsborough County, Florida called "Ask a Lawyer". People could telephone and ask a lawyer a legal question free of charge. Ambler provided three hours of time per month for this purpose. The Hillsborough County Bar awarded Ambler the 2002 Pro Bono Award.

Ambler also created a program for high school students called "Ought to Be a Law", wherein the students learn the legislative process of how laws are enacted. Each

year a student proposed law was actually filed in the legislature. Students came to Tallahassee and lobbied for passing their own bill. Students argued before the legislature as to why their bill should be made into a law. In its third year of existence, a student proposed bill was actually passed by the legislature into law and the then Governor went to Tampa, Florida to sign the bill into law. Ambler oversaw the program the whole eight years he was in the legislature. As a result of the program, Hillsborough County schools eventually received a multimillion dollar grant from the Gates Foundation.

Since 2011, Ambler has been an adjunct professor at the Stetson Law School in St. Petersburg, Florida teaching local government.

In explanation of the Motion to Compel resulting in an attorney fee award, Ambler explained that the case in question contained thousands of pages of documents over a period of in excess of twenty years. To properly categorize the documents took an excessive amount of time. Ambler spoke with opposing counsel stating he would respond to

the Motion to Compel in an orderly fashion and agreed to pay opposing counsel's attorney's fees for his lateness. No Court order was ever missed as the documents were provided prior to any hearing on a Motion to Compel.

B. I considered the following Standards prior to recommending discipline:

Standard 1.1 – PURPOSE OF LAWYER DISCIPLINE PROCEEDINGS.

The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to discharge their professional duties to clients, the pubic, the legal system, and the legal profession properly.

While courts express their views on the purpose of lawyer sanctions somewhat differently, an examination of reported cases reveals surprising accord as to the basic purpose of discipline. As identified by the courts, the primary purpose is to protect the public. Second, the courts cite the need to protect the integrity of the legal system, and

to insure the administration of justice. Another purpose is to deter further unethical conduct and, where appropriate, to rehabilitate the lawyer. A final purpose of imposing sanctions is to educate other lawyers and the public, thereby deterring unethical behavior among all members of the profession. As the courts have noted, while sanctions imposed on a lawyer obviously have a punitive aspect, nonetheless, it is not the purpose to impose such sanctions for punishment.

To achieve these purposes, sanctions for misconduct must apply to all licensed lawyers. Lawyers who are not actively practicing law, but who are serving in such roles as corporate officers, public officials, or law professors, do not lose their association with the legal profession because of their primary occupation. The public quite properly expects that anyone who is admitted to the practice of law, regardless of daily occupational activities, will conform to the minimum ethical standards of legal profession. If the lawyer fails to meet these standards, appropriate sanctions should be imposed.

Standard 3.0

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

a) The duty 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 or mitigating factors.

Standard 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.

Standard 6.23 – Public reprimand is appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference with a legal proceeding.

Standard 6.24 – Admonishment is appropriate when a lawyer negligently fails to comply with a court order or rule, and causes little or no injury to a party, or causes little or no actual or potential interference with a legal proceeding.

Standard 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.

Standard 7.3 – Public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes little or no actual or potential injury to a client, the public, or the legal system.

Standard 7.4 – Admonishment is appropriate when a lawyer is negligent in determining whether the lawyer's conduct violates a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

9.22 Aggravating Factors:

The Bar argues that (c) "pattern of misconduct" is applicable. Mr. Thomassy, Ambler's associate, stated that Ambler's office had been ordered to pay attorney's fees on an unrelated matter. Ambler testified and explained that thousands of documents over a period of twenty years could not timely be produced on a discovery request in an orderly fashion and that he spoke to opposing counsel to inform counsel and agreed to pay opposing counsel's fee for the filing of a Motion to Compel. The documents were produced prior to any hearing on a Motion to Compel and Ambler agreed to a taxation of approximately $700.00 in attorney's fees.

The Referee does not find this to constitute a "pattern of misconduct" and finds this factor is not applicable.

(d) Multiple Offenses. The Referee has found violations of two of the rules governing the Florida Bar, Rule 4-3.4(c) and Rule 4-8.4(d). The Referee finds this factor to be an aggravating factor.

Additionally, the Bar argues that factor (g) "refusal to acknowledge wrongful nature of conduct" is also applicable. Ambler has candidly acknowledged he negligently missed a Rule 26 Initial Disclosure during the Federal Court litigation and later before the Referee herein. Ambler has

additionally acknowledged the statements about opposing counsel were improper. The Referee does not find this factor to be applicable.

(i) Substantial Experience in the Practice of Law. Ambler has been licensed in Florida since 1991 and does have substantial experience and the Referee finds this factor to be an aggravating factor.

9.32 Mitigating Factors: The Referee finds all of the following mitigating factors are applicable:

(a) Absence of a prior disciplinary record. Ambler was licensed in Georgia in 1986, Federal Court (date unknown) and Florida in 1991. He has never been disciplined in any jurisdiction. The Bar stipulated to this mitigating factor.

(b) Absence of a dishonest or selfish motive. There was no dishonest or selfish motive alleged, nor was there any evidence of such. The Bar stipulated to this factor as a mitigating factor.

(c) Personal or emotional problems. The Bar argues this factor does not apply asserting that Ambler's personal problems were resolved by the time the Rule 26 Initial Disclosures were ordered to be filed. The initial disclosure was agreed upon by Ambler and opposing counsel in March of

2014. On March 28, 2014, their stipulation was accepted by the Court and an order followed setting the deadline filing date of May 2, 2014. Ambler's personal and emotional problems, i.e. his father-in-law's medical condition, was imminent during this period of time and Ambler was spending most of his time at the hospital in West Palm Beach and not physically at his Tampa office. This is the period of time that the due date for filing should have been noted/calendared in his office but was not. Ambler's father-in-law was not "out of the woods" until April of 2014. The Referee finds this factor to be a mitigating factor.

(d) Timely good faith effort to make restitution or to rectify consequences of misconduct. The Bar argues that this factor does not apply, asserting that rectifying a discovery issue and paying a sanction are not within the scope of this mitigating factor. However, Ambler missed a filing court date and his failure was part of the enumerated reasons for Magistrate Judge Baker's recommendation and attorney's fee sanction. Plaintiff Danubis was ultimately required to pay a portion of the attorney's fees of the Defendant Landmark. Danubis' principle, Mr. Radulovic, did not initiate a Bar complaint or file a civil action. In fact, Mr. Radulovic continued to use Ambler for legal representation. Ambler did not seek to collect any attorney's fees for his services during the course of the litigation and did not

seek to be reimbursed the approximate $10,000.00 of out of pocket costs expended during the litigation. Ambler, at least, sought to rectify consequences of his negligent misconduct as to the effect on his own client.

Additionally, during the Federal Court litigation when Ambler learned that he had negligently missed the Rule 26 Initial Disclosure filing date by opposing counsel's filing of a Motion to Compel, Ambler acknowledged missing the filing date, apologized to the Court, and agreed to pay attorney's fees as a sanction.

Even though the timely payment of sanction attorney's fees may not be the equivalent of making restitution, Ambler's aforementioned acts are evidence of his timely good faith efforts to rectify the consequences of his misconduct and the Referee finds this factor to be a mitigating factor.

(e) Full and free disclosure to the disciplinary board or cooperative attitude toward proceedings. Mr. Ambler has cooperated with the Bar and provided all of the requested information. This Referee previously noted that Ambler's demeanor and attitude, even faced with accusation, are admirable. The Referee finds and the Bar has stipulated that this factor is a mitigating factor.

(g) Character or Reputation. This factor has been stipulated to by the Bar. The Referee finds it necessary to reiterate the previous findings that

Ambler's career in the military, legal and public service arenas to be otherwise exemplary. The witnesses testifying on Ambler's behalf confirm the Referee's prior findings concerning Ambler's character and reputation. The Referee finds this factor to be a mitigating factor.

(k) Imposition of other penalties or sanctions. The Federal Court Judge sanctioned Ambler and Ambler timely paid the sanctioned attorney fees and costs. Additionally, Ambler did not seek to collect any attorney fees from his own client or to collect the approximate $10,000.00 out of pocket expenses of litigation advanced for his client during the litigation. In addition, Ambler had to hire appellate counsel, an expert witness, and counsel to defend in this Bar proceeding. The Referee finds, and the Bar has stipulated, that this factor is a mitigating factor.

(l) Remorse. The Bar argues that remorse is not applicable because Ambler's "failure to recognize the wrongful nature of his conduct". Ambler's continued belief that the Plaintiff had a viable cause of action and his exercise of his right to challenge the allegations against him herein do not eliminate his expressed remorse for the misconduct he has continually acknowledged. The Referee has recommended Ambler be found not guilty on two of the Bar Rules he was alleged to have violated. Before the Federal Court case was dismissed, Ambler admitted to and apologized to the Federal

Court Judges for his failure to timely file the Rule 26 Initial Disclosure. Ambler again readily admitted to this Referee his negligent failure. Subsequent to the Federal Court's case and before the Bars' complaint, Ambler apologized to his client, his wife, his office staff, and legal colleagues. Ambler readily paid all fees and costs associated with his mistakes. Ambler terminated his paralegal and installed new software and hardware in his office and changed his office procedure in an attempt to ensure that deadlines are not missed in the future. Ambler's associate, Mr. Thomassy, testified that Ambler was "very sick" about what had happened and took all of the Federal Courts findings "very seriously". The Referee finds remorse to be a mitigating factor.

V. CASE LAW

Before arriving at a recommendation as to the disciplinary measures, the Referee considered the following case law:

*The Florida Bar v. Whitney*, 132 So. 3d 1095 (2013)

*The Florida Bar v. Picon*, 205 So. 3d 759 (2016)

*The Florida Bar v. Gersteen*, 707 So. 2d 711 (1998)

*The Florida Bar v. Rubin*, 549 So. 2d 1003 (1989)

*The Florida Bar v. Norkin*, 132 So. 3d 77 (2014)

*The Florida Bar v. Tobkin*, 944 So. 2d 219 (2006)

*The Florida Bar v. Committee*, 136 So. 3d 1111 (2014)

*The Florida Bar v. Rood*, 622 So. 2d 974 (1993)

*The Florida Bar v. Shankman*, 41 So. 3d 166 (2010)

*The Florida Bar v. Head*, 84 So. 3d 292 (2012)

*The Florida Bar v. Rosenberg*, 169 So. 3d 1155 (2015)

*The Florida Bar v. Mavrids*, 442 So. 2d 220 (1983)

*The Florida Bar v. Pincket*, 398 So. 2d 802 (1980)

*The Florida Bar v. Parrish*, 241 So. 3d 66 (2018)

*The Florida Bar v. Wynn*, 210 So. 3d 1271 (2017)

*The Florida Bar v. Herman*, 8 So. 3d 1100 (2009)

*The Florida Bar v. Rotstein*, 835 So. 2d 241 (2003)

*The Florida Bar v. Buckle*, 771 So. 2d 1131 (2000)

*The Florida Bar v. Kavanaugh*, 915 So. 2d 89 (2005)

*The Florida Bar v. Cocalis*, 959 So. 2d 163 (2007)

In *The Florida Bar v. Herman*, 8 So. 3d 1100, 1108 (2009), the Court emphasized that it "has moved towards stronger sanctions for attorney misconduct", in recent years, citing the *The Florida Bar v. Rotstein*, 835 So. 2d 241,246 (2003).

The Florida Bar argues the applicability of the following cases:

i. *The Florida Bar v. Picon*, 205 So. 3d 759 (2016). In *Picon*, the attorney appeared late for court hearings, disregarded the trial court's order to file a pretrial motion by a specific date and repetitively failed to appear. The attorney was held in contempt of court by the trial judge.

In a second case, before a different trial judge, the attorney failed to appear in court, resulting in a bench warrant and incarceration for the attorney's client.

In a third case before a third trial court judge, the attorney appeared in court at the wrong time, a time other than provided by the notice to appear. The attorney misrepresented the client's compliance with the terms and conditions of the client's probation. Later, at the scheduled time of the notice to appear, the client appeared before the trial judge but the attorney did not appear. The client proceeded without the attorney's presence and was successful on her own motion.

The attorney frequently failed to notify the Court and imposing counsel of conflicts in the attorney's own schedule. The attorney could not be contacted by opposing counsel, Judicial Assistants, or

other court personnel when failing to attend hearings to determine the attorney's whereabouts.

The Referee found that the attorney had violated four separate Bar Rules and, further, found the existence of five aggravating factors. The attorney had a prior disciplinary record that included a 10-day suspension for failing to appear in court, and a 30-day suspension for failing to comply with the Court's suspension order and a previous Public Reprimand for failing to timely respond to inquiries from the Florida Bar. Ultimately, the attorney received a one-year suspension.

ii. *The Florida Bar v. Whitney*, 132 So. 3d 1095 (2013). In *Whitney*, the attorney was hired to represent a client on immigration issues. The attorney was retained by a $15,000.00 flat fee plus $5,000.00 for costs. The attorney deposited the money into his personal account to pay personal bills due to his financial problems. The attorney twice travelled to Brazil, the home country of the client, but took no meaningful action with respect to the client's immigration status. After approximately 1 year, the client, not having heard from the attorney, contacted the attorney. The attorney had taken no action in reference to the client's immigration status but required an additional $40,000.00 - $60,000.00 fee to continue. The client terminated the

employment of the attorney and requested a fee refund. The attorney refused the refund stating that the fee was earned, without providing an accounting. The attorney further failed to return the client's documents previously obtained from the client.

The client filed a civil law suit against the attorney. In the civil litigation, the attorney failed to comply with the court order to provide documents and failed to attend his duly scheduled deposition. At a subsequent court hearing, the attorney was admonished by the Court. At the attorney's rescheduled deposition, the attorney produced documents that he was previously ordered to produce and, further redacted the documents without asserting any objection.

The attorney was untruthful in responses to discovery, specifically stating he did not engage in advertising when, in fact, he had a website for advertising. The attorney was further deceptive in that he used at least four different versions of his law firms name but testified only to one.

In addition, the attorney falsely testified that he was involved in only one pending litigation while he was actually named in two different pending litigations. One of the lawsuits was a personal mortgage foreclosure that was pending at the time of the attorney's

deposition but the attorney testified that his home was not in foreclosure.

After motion, the circuit civil court entered sanctions against the attorney, finding the attorney "willfully failed and refused to comply with previous orders of the Court, failed and refused to participate in pretrial discovery, and provided false documents in the civil case". The attorney was ordered to pay attorney's fees, expert fees and costs in the amount of $24,246.00. The attorney paid nothing.

The Court disapproved the Referee's sanction recommendation of a ninety-day suspension and ordered a one-year suspension.

iii. *The Florida Bar v. Tobkin*, 944 So. 2d 219 (2006). In *Tobkin*, the attorney, on several occasions, engaged in objectionable discovery conduct. On one such occasion, the attorney created a disturbance at a cancer center where he tried to prevent opposing counsel from obtaining the attorney's clients medical records pursuant to a subpoena. Opposing counsel ultimately sought a restraining order against the attorney.

The attorney was sanctioned on several occasions by the trial court for discovery abuses, failing to follow the case management order and other misconduct.

The attorney argued before the jury, during an opening statement, a matter that the trial court had specifically instructed was not to be discussed and was the subject of a pending motion in limine.

After the trial court announced the Court was going to grant a directed verdict in favor of the opposing party, the attorney filed an action in a different county, on behalf of the same client/plaintiff, against several of the same opposing parties/defendants. The second action was ultimately dismissed by the Court as a sham pleading.

On appeal, the Fourth District Court of Appeals found that the attorney's actions were contumacious and willfully disobedient to the trial court and that the attorney's action had caused prejudice to the opposing party.

The Referee recommended a ten-day suspension and the Court ordered a ninety-day suspension.

iv. The *Florida Bar v. Committee*, 136 So. 3d 1111 (2014). In *Committee*, the attorney had a money judgment against him personally for $4,527.21, originating in the State of Virginia. After

domestication, a Florida attorney sought to take the attorney's deposition as part of a debt collection suit against the attorney. The attorney moved for a protective order asserting he had out of state plans at the time of his deposition. The debt-collecting attorney rescheduled the attorney's deposition and the attorney then filed a second Motion for Protective Order and did not appear for his rescheduled deposition. The debt-collecting attorney actually set the attorney's Motion for Protective Order for hearing and the trial court denied the motion. The attorney filed a Motion for Rehearing on his motion for protective order which was denied. A third deposition was scheduled and the attorney was duly noticed. The attorney failed to appear for the third deposition but instead, on the same date of the deposition, he filed a third Motion for Protective Order asserting he intended to appeal the trial court's denial of his prior Motion for Protective Order. The debt-collecting attorney filed a Motion for Contempt against the attorney for his non-attendance at the deposition and the trial court found the attorney in contempt, sentencing the attorney to sixty days incarceration. The attorney, however, was allowed to purge within thirty-five days by simply appearing for his newly scheduled deposition. While the contempt motion was still

pending, the attorney filed a Federal action against the debt-collecting attorney asserting over three million dollars in damages. Approximately one year later, while the first Federal case was still pending, the attorney filed a second Federal lawsuit against the debt-collecting attorney with similar allegations as to his first filed Federal lawsuit. The attorney then filed personal bankruptcy, listing the Federal lawsuit as an asset valued at $1,000.00. The attorney offered to settle his Federal lawsuit against the debt-collecting attorney for the same amount, $4,500.00, of his outstanding money judgment even though he had alleged damages of three million dollars.

On June 15, 2001, over three years after the debt-collector attorney had sought to take the attorney's deposition, a Federal Judge granted Summary Judgment in favor of the debt-collecting attorney, finding the attorney's action amounted to an "abuse of legal process". Further, the Federal Court found that the attorney's Federal lawsuits raised frivolous claims with intent to harass the debt-collecting attorney and were brought by the attorney in bad faith.

The Referee recommended a Public Reprimand but the Court imposed a ninety-day suspension following by a one-year probation.

v. *The Florida Bar v. Rosenberg*, 169 So. 3d 1155 (2015). In *Rosenberg*, the attorney stepped into a pending civil case wherein he was representing several businesses being sued for breach of contract. When the attorney became involved, his client's already had been sanctioned and ordered by the trial court to produce documents "within five days". Five months later, the Court's order had not been complied with. After an additional six months, the Plaintiff's attorney filed another Motion for Contempt and to compel. The hearing occurring in April of 2007 was one full year after the Court's first sanction for failure to produce documents. The attorney appeared at the April 2007 hearing and objected to the production that had been ordered one year prior. The attorney's objection was overruled by the trial court and the Court ordered the production of the documents within fifteen days. On May 2, 2007, the attorney filed a Motion for Rehearing, a Motion for Protective Order, a Request for an In-Camera Inspection and a Stay for Appellate Review. At a May 29, 2007 hearing, the trial court overruled the objections and denied the attorney's motions. In June of 2007, Plaintiff's filed their fifth Motion to Compel, Motion for Contempt and Sanctions seeking production of the same documents. At the hearing on Plaintiff's

motions, the attorney was ordered to produce all of the documents within eight days. The attorney responded by filing written responses that raised the same objections already ruled upon by the trial court. Plaintiff's then filed a Sixth Motion to Compel and for Contempt. At a hearing on July 24, 2007, the trial court granted the Plaintiff's motions and the Court ordered that a hearing be held on an Order to Show Cause why the attorney should not be sanctioned for bad faith conduct. On July 30, 2007, the attorney withdrew as attorney of record. The trial court set a show cause hearing for the attorney for August 24, 2007. The attorney filed a Motion to Dismiss the Order to Show Cause, which was denied by the Court. At the order to show cause hearing, the trial court found that the attorney acted in bad faith and found his most egregious act was restating in his June 2007 written discovery responses the same objections which the Court had already ruled upon. Twenty-one months had elapsed from the time of the Plaintiff's initial request to produce documents in 2005 and the documents had not yet been produced. Over twelve months had elapsed since the time the attorney had filed in as attorney of record and the documents had still not been produced.

The trial court awarded attorney's fees against the attorney and the attorney failed to pay any portion of the attorney fee award. The Referee recommended a ninety-day suspension and the Court imposed a one-year suspension.

*The Florida Bar v. Ambler.*

The conduct in the aforementioned cases includes continual, intentional defiance of court orders, repetitive non-appearances at scheduled court hearings and at scheduled depositions, making false statements under oath, refusal to participate in discovery at all, filing sham and frivolous lawsuits in retaliation and for coercive purposes. Ambler was not found to have engaged in any such type of misconduct. In fact, the Referee recommends Ambler be found guilty of negligently, not intentionally, disobeying a court order and making disparaging comments in rebuttal to opposing counsel's allegations of committing fraud upon the court.

Counsel for Ambler suggests that the Bar has agreed to public reprimand as a sanction for attorneys engaged in more egregious conduct than Ambler, citing to prior consent judgments. Because of the Court's decision in *The Florida Bar v. Wynn*, 210 So. 3d 1271 (2017), that an unpublished disposition approving an uncontested Report of the Referee does not constitute "case law" so as to provide a

reasonable basis for the Referee's recommendation, this Referee gives no consideration to the consent judgments.

Standard 6.23 states that a public reprimand is appropriate when a lawyer negligently fails to comply with a court order or rule and causes injury or potential injury to a client or other party, or causes interference with a legal proceeding.

Standard 7.3 states a public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes little or no actual or potential injury to a client, the public, or the legal system.

This Referee finds that although the facts differ, the degree of misconduct by Ambler is more comparable to the *The Florida Bar v. Buckle*, 771 So. 2d 1131 (2000); *The Florida Bar v. Kavanaugh*, 915 So. 2d 89 (2005); and *The Florida Bar v.Cocalis*, 959 So. 2d 164 (2007).

In *Buckle*, supra, a criminal defense lawyer sent a crime victim a humiliating and intimidating letter designed to cause the victim to abandon her criminal complaint. Ambler made disparaging remarks about opposing counsel designed to rebut counsel's allegations of fraud. Buckle received a public reprimand from the Court.

In *Kavanaugh*, supra, the attorney charged a clearly excessive fee in violation of the Bar Rules. The Court found that the presence of aggravating and

mitigating circumstances warranted a sanction of a public reprimand. Ambler's mitigating circumstances are many. The Bar stipulated to five mitigating factors and the Referee found eight mitigating factors exist. In addition, although not an enumerated mitigating factor, the Referee notes Ambler has created two different programs to provide free legal services and educate high school students in the legal process and in State Government.

In *Cocalis* supra, the attorney inadvertently received the opposing parties medical records from a treating physician prior to trial. The attorney did not advise opposing counsel that he had received the records. The records contained notes of a telephone conversation between the treating physician and opposing counsel and were different than the medical records attached to the same physicians prior deposition. Ultimately, the new medical records were damaging to opposing counsels case. The attorney introduced the records into evidence without disclosing he had inadvertently received them and that they differed from those attached to the physicians deposition. The attorney was found to be in violation of Rule 3-4.3 "misconduct and minor misconduct". Even though the attorney's action was intentional, the Court stated, "we do not believe that the two actions at issue, which occurred about six years ago, warrant a thirty day suspension, as the Bar urges" See *Cocalis* at page 167. The Court further stated, at page 168, "based upon the case law and standards, as well as the Referee's findings that Cocalis, a

bar member since 1987, has no previous disciplinary record, cooperated with the Bar throughout the proceedings, including stipulated he would reimburse the Bar's costs, and recognized the impropriety of his conduct, we hold that a public reprimand by the Board of Governors of The Florida Bar and participation in the Bar's Practice and Professionalism Program on the terms recommended by the Referee to be the appropriate discipline in this case". The allegations against Ambler are in excess of five years old and all of the same mitigating findings found by the Court in *Cocalis* have been found by the Referee herein as it pertains to Ambler.

## VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

A. Public reprimand.

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

## VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 58.

Date admitted to the Bar: 1991.

Prior Discipline: None.

## VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

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

| | |
|---|---|
| I. Administrative Fee | $1,250.00 |
| II. Bar Counsel Costs | |
| Lisa Buzetti Hurley, Bar Counsel | |
| Attendance at Final Hearing on 2/25/19 | $27.84 |
| Attendance at Final Hearing on 2/27/19 | $27.84 |
| Attendance at Final Hearing on 2/28/19 | $27.84 |
| Attendance at Sanctions Hearing on 4/2/19 | $27.84 |
| III. Court Reporter Costs | |
| United Reporting, Inc., Court Reporter | |
| Attendance at Status Conference on 10/29/18 | $68.00 |
| Attendance at Case Management Conference on 12/21/18 | $68.00 |
| Attendance and Transcript of Deposition of Kevin Ambler on 1/3/19 | $1,141.90 |
| Attendance and Transcript of Final Hearing on 2/25/19 | $1,874.80 |
| Attendance and Transcript of Final Hearing on 2/27/19 | $1,992.10 |
| Attendance and Transcript of Final Hearing on 2/28/19 | $1,784.50 |
| Attendance and Transcript Excerpt of Sanctions Hearing on 4/2/19 | $437.30 |
| TOTAL | $8,727.96 |

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 24 day of April, 2019.

Daniel Dwight Diskey, Referee

Original To:

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

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