

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant

v.

JULIO CESAR MARRERO,

Respondent

Supreme Court Case Nos.  
SC21-652 and SC21-1427

The Florida Bar File Nos.  
2019-70,382(11L)  
2021-70,391(11L)

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**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 May 4, 2021, The Florida Bar (The Florida Bar or the Bar) filed its Complaint against Respondent as well as its Request for Admissions in *Supreme Court Case No. SC21-652, The Florida Bar File No. 2019-70,382(11L)*. On October 12, 2021, The Florida Bar filed its Complaint in *Supreme Court Case No. SC21-1427; The Florida Bar File No. 2021-70,391(11L)*. On October 12, 2021, The Florida Bar also filed its Motion to Consolidate the two cases. On October 14, 2021, the Court granted the Bar's motion and the two cases were consolidated for review purposes.

The undersigned Referee held a Case Management Conference on October 29, 2021. In accordance with the dates selected and agreed to by The Florida Bar and Respondent, the Case Management Order, signed December 6, 2021, mandated that all discovery would be completed by February 4, 2022.

On February 3, 2022, The Florida Bar filed its Agreed Motion for Default. On that same date, Respondent filed his Motion to Dismiss the Pending Bar Complaints. Also on this date, The Florida Bar filed its Response in Opposition to Respondent's Motion to Dismiss, as well as its Motion for Sanctions.

On March 1 and 2, 2022, a hearing was held on The Florida Bar's Motion for Default and Motion for Sanctions, as well as Respondent's Motion to Dismiss. The undersigned referee made the following findings:

Respondent sought and received multiple extensions of time in which to respond to the Bar's two complaints, and to provide responses to the Bar's First Set of Interrogatories and its Request for Production.

On February 1, 2022, after Respondent missed the January 28, 2022, deadline to respond to the complaints and the Bar's discovery requests, Respondent through his paralegal emailed the Bar and stated, "The Respondent shall file its pending responses to any outstanding discovery, and the Complaints, on or before Wednesday, February 2, 2022, or a default shall be entered by the Court." Respondent attached a proposed order to that effect to the email.

Respondent did not file any response to either the outstanding discovery requests or to the complaints by February 2, 2022. The Bar accepted the offer made by Respondent when it acted in accordance with same and filed The Bar's Agreed Motion for Default on February 3, 2022.

The Rules Regulating the Florida Bar required Respondent to Answer the Bar's Complaints. Respondent was not permitted to simply file a motion to dismiss without an answer. See Rule 3-7.6(h)(2) of the Rules Regulating the Florida Bar. However, even if Respondent had been correct in his unsupported belief that he could file a motion to dismiss in lieu of an answer in a Florida Bar disciplinary action, his Motion to Dismiss was not timely filed. By his express agreement, any such response was due no later than February 2, 2022. Respondent did not file his Motion to Dismiss until February 3, 2022. Moreover, the Motion to Dismiss was heard and orally denied on the merits at the hearing on March 1, 2022. As of the denial of the Motion to Dismiss, no answer had been filed to either of the two complaints.

Respondent did not file an answer to either of the Bar's complaints until March 2, 2022, the day following the hearing on the Bar's Motion for Default and two days prior to commencement of the scheduled March 4, 2022 final hearing.

On March 4, 2022, the undersigned referee entered an order granting the Bar's Motion for Default and Motion for Sanctions, in addition to denying Respondent's Motion to Dismiss. The order also provided that the previously-scheduled final hearing would proceed as to discipline only.

On March 4 and 7, 2022, the sanctions 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

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, Findings of Fact, and Conclusions of Law. In accordance with the default entered herein, the following facts constitute the basis for a recommendation that Respondent is guilty of each of the charged rule violations:

### A. **As to The Florida Bar File No. 2019-70,382(11L)**

The default admits, and the undersigned referee thus finds, the following facts:

#### i. Facts from the Bar's Complaint:

1. On October 21, 2018, Respondent filed a Chapter 11 Petition for Bankruptcy on behalf of his client, Monticello 856, LLC.

2. As a result of a prior foreclosure action, Respondent's client, Monticello 856, LLC, and its personal guarantor, Omar Hernandez, had a deficiency judgment issued against them, jointly and severally. That judgment, and collection thereon, had been assigned by the bank to OH Capital Collections,

LLC, (Capital Collections) who was actively pursuing post-judgment discovery in state court. A deposition of Mr. Hernandez's mother had been set for October 22, 2018.

3. The filing of the federal Chapter 11 Bankruptcy Petition effectively stayed the post-judgment discovery that had been ongoing, including the October 22, 2018 deposition of Mr. Hernandez's mother.

4. It appears that Respondent previously filed a number of bankruptcy petitions and removal actions related to the same debt at issue in the post-judgment collection proceedings referenced above. These had all been dismissed by the bankruptcy court in a number of prior cases. Each of these prior filings coincided with, and obstructed, relevant dates in Capital Collection's state court post-judgment discovery efforts.

5. Both the United States Trustee and Capital Collections filed a motion to dismiss the latest bankruptcy petition filed by Respondent on behalf of Monticello 856.

6. The hearing on the motions to dismiss occurred on November 5, 2018. Neither Respondent nor his client attended the hearing. Respondent stated he had a medical procedure which prevented his appearance.

7. At the hearing, Judge Laurel Isicoff made the following findings: "I find that this entity -- actually, this law firm is participating in an abuse of the

bankruptcy process, and so it is appropriate to dismiss this case with prejudice for a two-year period, and I so find. Moreover, I am going to separately issue an order to show cause why Mr. Marrero should not be sanctioned, including restricting or terminating his right to appear in Bankruptcy Court, for filing what appears to be at least this frivolous bankruptcy.” (Transcript of Hearing, dated November 5, 2018, at 17:9–19:16).

8. The court then entered an Order to Show Cause, which enumerated a number of failings by Respondent, including that he had been representing clients in the bankruptcy court although he was ineligible to do so.

9. The court set the matter for an evidentiary hearing; however, the parties and Respondent agreed to a Stipulated Order concerning the Order to Show Cause. In the Stipulated Order, Respondent relinquished his privilege to practice in the bankruptcy court for five years, agreed to pay \$20,000 in sanctions to OH Capital Collections, LLC, and further agreed to a probationary period of practice for three years following the expiration of the five-year hiatus. The order indicated that no finding was made as to whether Respondent violated any applicable bankruptcy rule.

ii. Findings and Analysis:

10. Based on the foregoing facts contained in the Complaint as to which a default was entered herein, the Bar charged violations of Rules 4-1.1

(Competence), 4-3.1 (Meritorious Claims and Contentions), 4-3.4 (Fairness to Opposing Party and Counsel), 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).

11. I find that Respondent's conduct, as articulated in the Bar's first Complaint, violates the charged Rules.

12. Rule 4-1.1 provides that "A lawyer must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

13. A review of the Comment to Rule 4-1.1 demonstrates that Respondent did not handle the matter with the "thoroughness and preparation" required by the Rule. The Comment defines same as, "... use of procedures and methods meeting the standards of competent practitioners." Judge Isicoff's findings make clear that Respondent did not utilize the procedures and methods of a competent practitioner. Specifically, Judge Isicoff found that Respondent's filings were an abuse of the bankruptcy process, and as a sanction for same she dismissed the case with prejudice. (See paragraph 7, *supra*: "I find that this entity -- actually, this law firm is participating in an abuse of the bankruptcy process, and so it is appropriate to dismiss this case with prejudice for a two-year period, and I so find.") Clearly,

practices and procedures which constitute an abuse of the process are not consistent with the standards of a competent practitioner.

14. Rule 4-3.1 states, in relevant part, that, “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 ...”

15. Here, in determining it appropriate to issue a separate Order to Show Cause, Judge Isicoff made the specific factual finding that the instant bankruptcy pleading was frivolous. (See paragraph 7, *supra*: “Moreover, I am going to separately issue an order to show cause why Mr. Marrero should not be sanctioned, including restricting or terminating his right to appear in Bankruptcy Court, for filing what appears to be at least this frivolous bankruptcy.”)

16. As a referee in a bar disciplinary action, I may rely upon Judge Isicoff’s finding to support my findings and recommendation that Respondent be found guilty of filing a frivolous bankruptcy. *See The Florida Bar v. Gwynn*, 94 So. 3d 425, 428-429 (Fla. 2012)(A referee may rely upon another tribunal’s orders alone to support his or her findings in a disciplinary action).

17. Rule 4-3.4 states, in relevant part, that, “A lawyer must not, (a) unlawfully obstruct another party’s access to evidence . . .;” and “(d) in pretrial procedure, make a frivolous discovery request or intentionally fail to comply with a legally proper discovery request by an opposing party.”



18. In this instant case, the facts as described above demonstrate conclusively that Respondent filed the frivolous bankruptcy in this matter in order to avoid or obstruct the opposing party's discovery request, here a deposition of the client's mother. (*See* paragraphs 1-3, *supra*).

19. Moreover, the instant frivolous filing was one of several previous filings that had coincided with and obstructed state court discovery in the underlying case. (See paragraph 4, *supra*: "These had all been dismissed by the bankruptcy court in a number of prior cases. Each of these prior filings coincided with, and obstructed, relevant dates in Capital Collection's state court post-judgment discovery efforts.")

20. Finally, Rule 4-8.4(d) prohibits, in relevant part, a lawyer from engaging "in conduct in connection with the practice of law that is prejudicial to the administration of justice... ". I find that Respondent's actions of filing a frivolous action in one tribunal, in order to thwart ongoing discovery in another tribunal, clearly prejudiced the administration of justice in both tribunals.

**B. As to The Florida Bar File No. 2021-70,391(11L)**

The default admits, and the undersigned referee thus finds, the following facts:

i. Facts in the Bar's Complaint:

21. On or about March 30, 2021, Chief Judge K. Michael Moore, of the United States District Court for the Southern District of Florida (USDC), referred Respondent to the Court's Committee on Attorney Admissions, Peer Review, and Attorney Grievance in connection with Respondent's misconduct in two matters: *Black River Partners I, LLC v. Conategi, LLC*, 1:21-cv-20912-KMM and *MJM Structural Corp. v. Columbus Apartments, LLC*, 1:21-cv-20631-KMM.

22. There are approximately twenty additional federal court and bankruptcy matters in which Respondent engaged in the same or similar misconduct, as described in the attached chart submitted by the USDC. See a copy of the Chart entitled Attorney Julio Cesar Marrero Recent Removal Cases (2018-Present), attached hereto and incorporated herein as Ex. A.

23. In the two matters recently referred to the Court's Committee on Attorney Grievance, and in the matters referenced in the chart attached hereto, Respondent repeatedly filed frivolous pleadings and engaged in bad faith litigation tactics, gamesmanship, and dilatory tactics by filing notices of removal in the USDC to forestall state court proceedings, primarily to delay foreclosure sales.

24. Respondent's modus operandi is to file a notice of removal without (1) a civil cover sheet, (2) state court records, or (3) paying the filing fee. Respondent then does not respond to the court's orders to show cause.

25. For instance, in the *Black River Partners* matter referred by Chief Judge Moore, Respondent filed the notice of removal on March 8, 2021. On the same date, the clerk notified Respondent that he had not paid the filing fee, had not provided state court records, and had not provided a civil cover sheet, as required by 28 USC § 1446 and the Clerk's Civil Filing Requirements. Respondent was instructed to cure these defects within twenty-four hours.

26. Respondent did not respond to that notice, nor did he pay the filing fee or provide the records or the civil cover sheet.

27. On March 23, 2021, the court issued an Order to Show Cause, setting forth the above and requiring the parties to respond by March 26, 2021 and state why the matter should not be dismissed for failure to comply with the statutory requirements governing removal and the Clerk's Civil Filing Requirements.

28. On March 24, 2021, counsel for Black River Partners, the plaintiff in the underlying action, filed its response to the order to show cause with multiple attachments, requesting the matter be closed and remanded to state court.

29. Respondent failed to file a response to the order to show cause on behalf of himself or his client.

30. On March 30, 2021, the Chief Judge closed the case and remanded it to state court. In his order, the Chief Judge held:

Given Plaintiff's arguments and Defendant's failure to respond to this Court's Orders, the Court finds that remand is warranted. Additionally, *the Court recognizes that this is not Defendant's first attempt to use removal tactics in order to forestall state court proceedings.* See *TCM Fin., LLC v. Conategi, LLC*, No. 21-cv-20640-BLOOM/Otazo-Reyes, 2021 WL 925516, at \*3 (S.D. Fla. Mar. 11, 2021) (collecting cases). Indeed, in *TCM Fin.* the Court found that “[t]hese removals are patently frivolous and reflect pure gamesmanship” and Defendant’s counsel’s “conduct runs contrary to counsel’s duty of candor to the tribunal and serves only to waste limited resources of all parties and institutions involved—both at the state and federal level.” *Id.* at \*4. (emphasis added).

31. In addition to remanding the matter to the state court, Chief Judge Moore admonished Respondent and referred him to the Committee on Attorney Admissions, Peer Review, and Attorney Grievance for investigation.

32. On April 27, 2021, opposing counsel filed Plaintiff’s Verified Motion for Attorneys’ Fees and Sanctions and Incorporated Memorandum of Law. On April 28, 2021 the motion for fees and sanctions was referred to the magistrate judge for hearing. The magistrate judge was also ordered to determine the appropriate sanction for Respondent’s failure to pay the filing fee as ordered in the March 30, 2021 remand order.

33. On April 29, 2021, Respondent filed a notice of appeal of the March 30, 2021 remand order.

34. Similarly, in the *MJM Structural Corp* matter, Respondent filed a notice of removal on behalf of his clients, the defendants in the matter, on February 16, 2021, in the days just prior to a court-ordered foreclosure sale.

35. Respondent again did not pay the filing fee or provide a civil cover sheet. The Clerk ordered Respondent to pay the fee and provide the cover sheet within twenty-four hours of filing.

36. Rather than comply with the clerk's directives, Respondent filed a successive and duplicative notice of removal, causing the scheduled foreclosure sale to be canceled.

37. In both of the removal cases, Respondent failed to pay the filing fee or to provide a civil cover sheet. Accordingly, the clerk was not aware that the two cases referred to the same matter, resulting in the matters being assigned to different judges.

38. On February 17, 2021, Plaintiff's counsel moved the court to strike the removal notices and dismiss the action based on the fact that the alleged grounds for same were moot, and based on Respondent's deficiencies in failing to pay the filing fees or to provide the requisite civil cover sheets. Plaintiff's counsel also delineated the long-standing pattern of abusive delay tactics employed by Respondent, noting Judge Betty Butchko's findings in her July 7, 2020 Order in the underlying state court foreclosure case:

The record has established that Defendants' conduct delayed the proceedings and resulted in undue expense to the Plaintiff; that Plaintiff's ability to prosecute this case has been prejudiced; that Plaintiff's due process rights have been prejudiced; and that the administration of justice has been hampered. Defendants' conduct exhibited an intentional delay tactic, a pattern of refusal to follow rules, and established a lack of good faith. The delay created by Defendant's conduct has created significant problems in judicial administration and resulted in countless hours being spent by the Court.

39. On February 17, 2021, Chief Judge Moore issued an order to show cause as to why the filing fee was not paid and the civil cover sheet not provided.

40. Respondent failed to respond to the order to show cause. Respondent also failed to pay the filing fee or provide the civil cover sheet.

41. On April 5, 2021, Chief Judge Moore issued an order closing the removal case and remanding the matter to the state court.

42. On April 29, 2021, Respondent filed his notice of appeal of the remand order.

43. On April 30, 2021, Respondent filed a motion for reconsideration of the court's remand order, citing an issue with his credit card and the clerk's error as his reason for not paying the filing fee.

44. On the same date, Chief Judge Moore issued a scathing order denying the motion for reconsideration, citing Respondent's long-standing history of the same misconduct in past cases in rejecting Respondent's explanation for his failure to pay the filing fees. Chief Judge Moore again admonished Respondent and

referred him to the Court's Committee on Attorney Admissions, Peer Review and Attorney Grievance for investigation.

45. On May 14, 2021, the Magistrate Judge issued her Report and Recommendation, finding that "Defendants actions and inactions, again, through counsel Marrero, demonstrate a willful disregard of multiple Court orders in this case (ECF Nos. 6,12) as well as a disregard for the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for Southern District of Florida.... As such, the undersigned finds that Defendants and their counsel have acted in bad faith and abused the judicial process to the extent that sanctions are warranted in the form of attorney's fees incurred by Plaintiff as a result of the misconduct."

46. On June 4, 2021, the United States Court of Appeals for the Eleventh Circuit dismissed Respondent's appeal of the remand order because Respondent failed to file a Civil Appeal Statement form within the time fixed by rule.

47. The attached chart demonstrates the intentional nature of Respondent's misconduct, and that he has engaged in these same frivolous, bad faith, and dilatory litigation tactics in multiple cases spanning at least two years.

ii. Findings and Analysis:

48. Based on the foregoing facts contained in the Complaint, as to which a default was entered herein, the Bar charged violations of Rules 4-3.1 (Advocate;

Meritorious Claims and Contentions), 4-3.4 (Fairness to Opposing Party and Counsel), 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).

49. I find that Respondent's conduct, as articulated in the Bar's second Complaint, violates the charged rules.

50. Rule 4-3.1 states, in relevant part, that, "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..."

51. As to both matters specifically addressed in the Bar's Complaint, Respondent failed to pay the filing fee, and failed to comply with basic requirements to open a removal case in federal court, such as to include a civil cover sheet and provide records from the state court action. (See paragraphs 26-27, and 35-38). Respondent did not at any point during the pendency of those actions comply with those basic requirements, despite warnings from the Clerk, and Orders to Show Cause issued by the Chief Judge. (*Id.*, see also paragraphs 28, 30, 40, 41). I find that Respondent's failure to comply with the basic rules governing filing of federal court actions is, in and of itself, indicative of the frivolous nature of Respondent's pleadings.



52. Moreover, Chief Judge Moore specifically found the filings to be frivolous, citing to additional instances in which Respondent was also found to have filed frivolous actions in federal court. (See paragraph 31: “Additionally, the Court recognizes that this is not Defendant’s first attempt to use removal tactics in order to forestall state court proceedings. *See TCM Fin., LLC v. Conategi, LLC*, No. 21-cv-20640-BLOOM/Otazo-Reyes, 2021 WL 925516, at \*3 (S.D. Fla. Mar. 11, 2021) (collecting cases). Indeed, in *TCM Fin.* the Court found that ‘[t]hese removals are patently frivolous and reflect pure gamesmanship . . .’). The undersigned referee may rely upon the findings and orders of other tribunals to support her findings in the instant disciplinary action. *The Florida Bar v Gwynn*, 94 So. 3d 425, 428-429 (Fla. 2012)(A referee may rely upon another tribunal’s orders alone to support his or her findings in a disciplinary action).

53. Rule 4-3.4 states in relevant part, “A lawyer must not: (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.”

54. Here, it is clear that Respondent repeatedly violated his obligations under the rules of the United States District Court for the Southern District of Florida, where he filed actions without the required civil cover sheet, state court records and filing fees in violation of 28 USC § 1446 and the Clerk’s Civil Filing Requirements. Respondent similarly failed to comply with the Clerk’s directives

and failed to respond to the Court's Orders to Show Cause. (See paragraphs 26-28, 30, 35-38, and 40-41). Both of the removal proceedings were closed and the matters remanded to state court as a result of Respondent's failure to comply with his obligations under the rules of the tribunal. (See paragraphs 31 and 42).

55. Moreover, in response to the motion for sanctions filed in the *MJM Structural Corp* matter, the Magistrate Judge issued her report and recommendations finding, "Defendants actions and inactions, again, through counsel Marrero, demonstrate a *willful disregard of multiple Court orders in this case* (ECF Nos. 6,12) as well as a *disregard for the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for Southern District of Florida....* As such, the undersigned finds that Defendants and their counsel have acted in bad faith and abused the judicial process to the extent that sanctions are warranted in the form of attorney's fees incurred by Plaintiff as a result of the misconduct." (Paragraph 46) (emphasis added). These findings clearly demonstrate that Respondent did not comply with his obligations under the rules of the tribunal. Again, I may rely upon the findings of the Magistrate Judge in support of my own findings herein. *See The Florida Bar v Gwynn*, 94 So. 3d at 428-429.

56. Further, the United States Court of Appeals for the Eleventh Circuit dismissed Respondent's appeal of the remand order in the *MJM Structural Corp*

matter for his failure to comply with the rules of that tribunal; specifically, “because respondent failed to file a Civil Appeal Statement form within the time fixed by rule.” (Paragraph 47). *See The Florida Bar v Gwynn*, 94 So. 3d at 428-429.

57. Rule 4-8.4(c) prohibits, in relevant part, a lawyer from engaging “in conduct involving dishonesty, fraud, deceit, or misrepresentation...”.

58. Chief Judge Moore adopted another federal judge’s finding that Respondent’s patently frivolous pleadings in these matters constitute conduct that “runs contrary to respondent’s duty of candor to the tribunal . . .” (Paragraph 31). As stated previously, I may rely upon these findings alone to support my findings herein. *See The Florida Bar v Gwynn*, 94 So. 3d at 428-429.

59. Moreover, in the *MJM Structural Corp.* matter, when Respondent later filed a motion for reconsideration of the Court’s order closing the case and remanding the case to state court, Respondent stated the reason he did not pay the filing fee was a problem with his credit card and the clerk’s error. (Paragraph 44). The Chief Judge rejected this explanation as disingenuous. (Paragraph 45: “Chief Judge Moore issued a scathing order denying the motion for reconsideration, citing Respondent’s long-standing history of the same misconduct in past cases in rejecting Respondent’s explanation for his failure to pay the filing fees.”). I may

rely upon Chief Judge Moore's findings to support my own findings herein. *See The Florida Bar v Gwynn*, 94 So. 3d at 428-429.

60. Finally, Rule 4-8.4(d) prohibits, in relevant part, a lawyer from engaging "in conduct in connection with the practice of law that is prejudicial to the administration of justice...". Chief Judge Moore's orders make clear that Respondent filed the patently frivolous removal actions here and in prior matters in order to forestall state court proceedings. (Paragraph 31). Additionally, the Court found that Respondent's conduct served only to "waste limited resources of all the parties and institutions involved – both at the state and federal level." (Paragraph 31). These findings demonstrate that Respondent's conduct prejudiced the administration of justice in both the state and federal court matters. I may rely upon Chief Judge Moore's findings to support my own findings herein. *See The Florida Bar v Gwynn*, 94 So. 3d at 428-429.

61. Additionally, Judge Betty Butchko made similar findings in the state court proceedings involving the *MJM Structural Corp* matter, that Respondent prejudiced the administration of justice in that case. (Paragraph 39: "The record has established that Defendants' conduct delayed the proceedings and resulted in undue expense to the Plaintiff; that Plaintiff's ability to prosecute this case has been prejudiced; that Plaintiff's due process rights have been prejudiced; and that the administration of justice has been hampered. Defendants' conduct exhibited an

intentional delay tactic, a pattern of refusal to follow rules, and established a lack of good faith. The delay created by Defendant's conduct has created significant problems in judicial administration and resulted in countless hours being spent by the Court."). I may rely upon Judge Butchko's findings to support my own findings herein. *See The Florida Bar v Gwynn*, 94 So. 3d at 428-429.

62. Judge Butchko's findings in the state court were also supported by the testimony of the Bar's witness at the sanction hearing, George Minski, Esquire. Mr. Minski testified that the defendant, represented by Respondent, was sanctioned several times in the trial court, including monetary sanctions and an order striking defendant's pleadings and entering default. (Excerpt of Transcript of Sanction Hearing, dated March 4, 2022, at 6-7)(Hereinafter referred to as "ET" followed by the designated transcript page).

63. There is no evidence in the record to refute, explain or mitigate the above-referenced conduct. At the hearing on sanctions, Respondent elected to present no evidence.<sup>1</sup> Additionally, Respondent's attempt to demonstrate his lack of culpability during his cross examination of Mr. Minski instead proved the opposite.

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<sup>1</sup> Respondent's averments in his opening statement and closing argument are not record evidence in this matter. When the time came for Respondent to present evidence in mitigation at the sanction hearing, Respondent rested without introducing any testimony or evidence in his own behalf. (ET at 42).

64. For instance, Respondent first attempted to demonstrate that the underlying state court sanctions resulted from activity which occurred only during the hearings in state court, not in reference to the pleadings. (ET at 7-9). Mr. Minski refuted same. (ET at 9).

65. Respondent then attempted to demonstrate that he was not involved at all in the underlying state court matter from which the *MJM Structural Corp* federal removal proceedings derived, and ostensibly was therefore not responsible for Judge Butchko's findings quoted at paragraph 39, *supra*. (ET at 10, 27). Mr. Minski refuted same when he responded to Respondent that "I know you signed the pleadings. I know you signed the filings." (ET at 10).

66. Respondent also attempted to demonstrate that Judge Butchko's order, containing the findings that appear herein at paragraph 39, was reversed on appeal. (ET at 14-15). Mr. Minski demonstrated this was not accurate, and that the appellate court instead had dismissed Respondent's appeal for lack of jurisdiction because the order was not yet ripe for appeal. (ET at 14-15).

67. Respondent also attempted during his cross examination of Mr. Minski to demonstrate that Minski - and not Respondent - was the one violating court orders. Respondent inquired as to whether Minski violated the Third District Court of Appeal's order staying the case when he went ahead with the foreclosure sale subsequent to the issuance of the order. (ET at 16-24). Minski successfully

refuted Respondent's attempts by testifying that Respondent filed an emergency motion to stay the trial court proceedings, which was granted, but that Respondent's request did not include a stay of the foreclosure sale. (ET at 17). Further, Mr. Minski clarified that the Third District Court of Appeal's Order did not address the sale, and that in subsequent hearings the Court ruled that the Clerk's sale of the property (which was not stayed) is not a part of the trial court proceedings (which were stayed), but rather the Clerk's sale is a proceeding of the administrative branch of the court. (ET at 24). Finally, Mr. Minski indicated that all of Respondent's appeals were dismissed. (ET at 25).

68. Additionally, Mr. Minski's testimony demonstrated that Respondent had thereafter in September 2021 filed an emergency motion with the Third District Court of Appeal which was not authorized by his clients. (ET at 33, 36). The Court thus subsequently lifted the temporary stay it had entered upon Respondent's filing of the "unauthorized" motion. (ET at 35).

### III. RECOMMENDATIONS AS TO GUILT

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

*As to The Florida Bar File No. 2019-70,382(11L):* Rules 4-1.1 (Competence), 4-3.1 (Meritorious Claims and Contentions), 4-3.4 (Fairness to

Opposing Party and Counsel), 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).

*As to The Florida Bar File No. 2021-70,391(11L):* Rules 4-3.1 (Advocate; Meritorious Claims and Contentions), 4-3.4 (Fairness to Opposing Party and Counsel), 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).

#### IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

##### 4.5 Lack of Competence

(a) Disbarment. Disbarment is appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures and causes injury or potential injury to a client.

##### 6.1 Duties Owed to the Legal System – False Statements, Fraud or Misrepresentation

(a) Disbarment. Disbarment is appropriate when a lawyer:

(1) with the intent to deceive the court, knowingly makes a false statement or submits a false document;

In a motion to reconsider, Respondent asserted he failed to pay the filing fee due to an issue with his credit card and clerk error. (Paragraph 44). Chief Judge Moore rejected that explanation based on Respondent's history of the



same misconduct in past cases. (See Paragraph 45 and the chart prepared by the federal court and attached to the Bar's Complaint). I note that Respondent made misrepresentations in the instant disciplinary action as well.

## 6.2 Abuse of the Legal Process

(a) Disbarment. Disbarment is appropriate when a lawyer causes serious or potentially serious interference with a legal proceeding or knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another and causes serious injury or potentially serious injury to a party.

I find that the courts referenced herein found numerous incidents in which Respondent violated the rules of the tribunal or the orders of the court. These included: failing to pay filing fees and failure to include a civil cover sheet or state court documents upon filing a removal action to federal court, in violation of the US Code and the Clerk's requirements for filing Civil Actions; filing frivolous bankruptcy and removal proceedings; and failure to respond to orders to show cause. (Paragraphs 7, 25, 26-28, 30, 35-38, 40-41, 46, 47). These actions were taken in bad faith, to delay the proceedings and to use federal court proceedings in order to thwart or obstruct state court proceedings, ostensibly to benefit his clients. (Paragraphs 4, 24, 31, 35). Both Judge Butchko in the state court, and Chief Judge Moore in the federal court, stated that Respondent's conduct caused serious injury or harm to the opposing parties and to the court process, as well as the administration of justice. (Paragraphs 7, 31, 39). Moreover, Respondent's actions harmed his clients, who were the subject of sanctions orders based on Respondent's misconduct. (ET at 9-10).

## 8.1 Engaging in Subsequent Same or Similar Misconduct

(a)(2) Disbarment is appropriate when a lawyer has been suspended for the same or similar misconduct and intentionally engages in further similar acts of misconduct.

In the instant disciplinary action, Respondent is charged with dishonest conduct in violation of Rule 4-8.4(c), both for filing patently frivolous removal proceedings with the dishonest intent of thwarting state court

proceedings rather than for a good faith effort to obtain the legal remedy sought; and also for making misrepresentations in a motion to reconsider before Judge Moore. (See ie., paragraphs 31, 39, and 44-45). Respondent was previously suspended for a period of thirty days in a disciplinary action in Supreme Court Case No. SC00-2429, for dishonest conduct, also in violation of rule 4-8.4(c), amongst other rules. (TFB Composite Ex 1 introduced at the Sanction Hearing on March 4, 2022).

## V. CASE LAW

I considered the following case law prior to recommending discipline:

- In making my recommendation as to the proper sanction in this matter, I am mindful of the decision in *The Florida Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015) imposing a one-year suspension.

- In *The Florida Bar v. Marcellus*, 249 So. 3d 538 (Fla. 2018), the Court held that an eighteen-month suspension was warranted for violations of bar rules prohibiting obstructing another party's access to evidence, knowingly disobeying an obligation under the rules of a tribunal, intentionally failing to comply with a legally proper discovery request, and conduct involving dishonesty, fraud, deceit, or misrepresentation, and other rules, where the attorney refused to respond to discovery requests in his own divorce matter, among other violations.

Similarly, Respondent here obstructed opposing parties' state court proceedings, including discovery processes and foreclosure sales, by filing numerous frivolous pleadings in federal court.

- In *The Florida Bar v. Bischoff*, 212 So. 3d 312 (Fla. 2017), the Court held that a one-year suspension from the practice of law was warranted in an attorney disciplinary case where the respondent attorney knowingly and recklessly pursued frivolous claims, repeatedly engaged in discovery-related misconduct, and failed to comply with court orders, in violation of the bar rules.

- In *The Florida Bar v. Rosenberg*, 169 So. 3d 1155 (Fla. 2015), the Court held that a one-year suspension was the warranted sanction for an attorney's conduct in failing for over a year to respond to plaintiffs' request for production and failing to comply with several court orders directing him and his clients to produce requested documents, resulting in the attorney being sanctioned for bad faith conduct and being required to pay attorney fees, and subsequently failing to comply with a sanctions order. The misconduct violated rules requiring the attorney to provide competent representation, prohibiting an attorney from intentionally failing to comply with a discovery request, and prohibiting conduct that is prejudicial to administration of justice.

- In *The Florida Bar v. Committe*, 136 So. 3d 1111 (Fla. 2014), the Court found that a three-year suspension was appropriate for misconduct including filing two frivolous federal lawsuits, failing to comply with discovery requests, and refusing to pay an attorney fee judgment. Committe had violated the same rules in prior disciplinary actions. Significant aggravation was found, including that

Committee made false statements to the referee during the disciplinary process. As a result of the serious aggravation, including respondent's false statements, the Court disapproved the referee's recommended sanction and instead imposed a three-year suspension.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

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

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

The cited case law supports that a lengthy rehabilitative suspension of three years could be considered appropriate in this matter, and no case has been cited to the undersigned referee imposing a disciplinary sanction of disbarment or greater than a three-year suspension on the type of charges against Respondent. However, I am recommending that Respondent be disbarred.

The undersigned referee notes that the Court has moved toward imposing stronger sanctions for unethical and unprofessional conduct. *See Fla. Bar v. Adler*,

126 So. 3d 244, 247 (Fla. 2013) (noting that “this Court has moved towards stronger sanctions for attorney misconduct”); *Fla. Bar v. Rotstein*, 835 So. 2d 241, 246 (Fla. 2002) (noting that many of the cases cited by the respondent were inapplicable “because the cited cases are dated and do not reflect the evolving views of this Court” and that “[i]n recent years, this Court has moved towards stronger sanctions for attorney misconduct”).

In the *Florida Bar v. Parrish*, 241 So. 3d 66 (2018), this Court approved an even stronger sanction than that imposed in *Rotstein*, which was one of the first cases in which the Court recognized this principle. In *Parrish*, the Court stated, “*Rotstein*, however, is not controlling because it was decided over fifteen years ago and in more recent years the Court has imposed even more severe discipline for unethical and unprofessional conduct than in the past”. *Id.* at 80 (citing *Fla. Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015)).

Moreover, none of the cited cases concern the volume of misconduct in which Respondent has engaged in the same or similar actions in approximately 20 cases over a period of at least three years. (See the two consolidated complaints, as well as the chart prepared by the federal court and attached as Exhibit A). Moreover, Respondent continued his misconduct into the instant disciplinary action (as more fully set forth *supra*), requiring that a default be entered in this case. These factors, coupled with the aggravation present, in conjunction with a

lack of significant mitigation, supports a recommendation that Respondent be disbarred. *See* Comment to Standard 2.3 SUSPENSION, Florida Standards for Imposing Lawyer Sanctions (“If the conduct is so egregious that a suspension longer than 3 years seems warranted, the sanction of disbarment should be imposed”.)

## 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: December 23, 1988

### Aggravating Factors:

- 3.2(b)(1) prior disciplinary offenses; (NOTE: I considered only TFB Comp. Ex 1 in finding this aggravating factor, in which Respondent was suspended for 30 days for conduct involving dishonesty; specifically, Respondent was charged with and convicted pursuant to a superseding criminal information charging accessory after the fact to making a false statement on a HUD-1.)
- 3.2(b)(3) a pattern of misconduct; (the pattern of misconduct is evident across the two Complaints filed by the Bar, as well as the chart created by the federal court and attached to the Bar’s second complaint, and TFB Ex. 2, entered into evidence at the Sanction Hearing.

The pattern of misconduct found herein constitutes cumulative and similar misconduct, which “warrants an even more severe

discipline than might dissimilar misconduct.” *The Florida Bar v. Committee*, 136 So. 3d 1111, 1118 (Fla. 2014)(citing references omitted)).

- 3.2(b)(6) submission of false evidence, false statement or other deceptive practices during the disciplinary process; (In the instant disciplinary action, Respondent’s Motion to Dismiss misrepresented - in quotes - the holding of the case ostensibly relied on for support of dismissal. The quoted language did not appear in the opinion, and indeed, the opinion stood for a holding directly contrary to that articulated by Respondent in his motion. The motion to dismiss did not set forth a valid factual or legal basis for the relief requested).
- 3.2(b)(7) refusal to acknowledge the wrongful nature of the conduct; (Throughout his opening and closing statements, Respondent reiterated that he did not do anything wrong and that he was just using the tools available to him in what are difficult cases to defend); and
- 3.2(b)(9) substantial experience in the practice of law.

Mitigating Factors:

3.3(b)(11) imposition of other penalties or sanctions

In a Stipulated Order, Respondent relinquished his privilege to practice in the bankruptcy court for five years, agreed to pay \$20,000 in sanctions to OH Capital Collections, LLC, and further agreed to a probationary period of practice for three years following the expiration of the five-year hiatus. See paragraph 9, *supra*.

As previously stated, Respondent presented no evidence at the sanction hearing. Accordingly, there is no evidence in the record to support any additional mitigating factors. The Bar has conceded to the above-referenced factor.

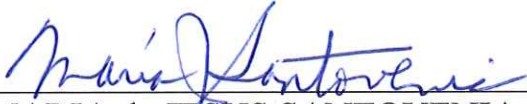
Factors that are neither Aggravating or Mitigating:

3.4(f) failure of a client to complain.

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

The Florida Bar, having been successful in this matter, shall be awarded their necessary taxable costs of this proceeding and shall submit their statement of costs, as well as a motion to assess costs against Respondent.

Dated this 12<sup>th</sup> day of May, 2022.

  
\_\_\_\_\_  
MARIA de JESUS SANTOVENIA  
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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**ATTORNEY JULIO CESAR MARRERO RECENT REMOVAL CASES**  
(2018 – Present)

| Case Number            | Case Name  | Date Filed | Case Type           | Filing Fee Paid         | Case Status  | Motion for Sanctions         |
|------------------------|--|------------|---------------------|-------------------------|--|------------------------------|
| <u>18-cv-21775-RNS</u> | Trinity Financial Services v. Perez Jr.                          | 5/4/2018   | Foreclosure         | Y                       | Remanded – no subject-matter jurisdiction (ECF No. [5])  | N                            |
| <u>18-cv-24376-CMA</u> | OH Capital Collections, LLC v. Hialeah 150, LLC                  | 10/22/2018 | Foreclosure         | N<br>(See ECF No. [16]) | Motion to remand and for sanctions denied without prejudice, cautioning Defendant not to file an unfounded amended notice of removal (ECF No. [12]); Remanded after Defendant indicated its intent not to file an amended notice of removal (ECF No. [14]) | Y (denied without prejudice) |
| <u>19-cv-21726-CMA</u> | First Southwestern Financial Services, LLC v. Dawkins Home, Inc. | 5/2/2019   | Replevin            | Y                       | Remanded – no subject-matter jurisdiction (ECF No. [36])   | N                            |
| <u>19-cv-10125-JEM</u> | Wells Fargo Bank, N.A. v. Buckles                                | 7/23/2019  | Foreclosure         | Y                       | Remanded – motion to remand granted by default (ECF No. [12])  | N                            |
| <u>19-cv-24882-JEM</u> | Deutsche Bank National Trust Company v. Rodriguez                | 11/26/2019 | Foreclosure         | Y                       | Remanded – motion to remand granted by default and no basis for removal found (ECF No. [19])   | Y (withdrawn by consent)     |
| <u>19-cv-25299-CMA</u> | 1220 Broadway, LLC v. Red Koi Corp.                              | 12/27/2019 | Eviction            | Y                       | Remanded for failure to file an amended notice of removal as ordered by the Court (ECF No. [7])  | N                            |
| <u>20-cv-10023-KMM</u> | Wells Fargo Bank, N.A. v. Buckles                                | 3/11/2020  | Foreclosure         | Y                       | Dismissed without prejudice for failing to file the JSR (ECF No. [8])  | N                            |
| <u>20-cv-24178-RNS</u> | 5AIF Maple 2 LLC v. 5725 Lagorce Partners LLC                    | 10/13/2020 | Foreclosure         | Y                       | Remanded – removal was untimely and likely lacking subject-matter jurisdiction (ECF No. [21])  | Y (referred and pending)     |
| <u>20-cv-62342-RS</u>  | Axos Bank v. Chowdhury   | 11/18/2020 | Foreclosure         | Y                       | Remanded – removal was untimely and request for attorneys' fees granted  | N                            |
| <u>20-cv-24768-JAL</u> | First Southwestern Financial Services, LLC v. Dawkins Home Inc.  | 11/19/2020 | Replevin            | Y                       | Remanded – no subject-matter jurisdiction (ECF No. [32])   | N                            |
| <u>21-cv-20298-MGC</u> | 5AIF Maple 2 LLC v. 5725 Lagorce Partners LLC                    | 1/25/2021  | Foreclosure         | Y                       | Motion to remand pending (no response timely filed)  | Y (referred and pending)     |
| <u>21-cv-20365-DLG</u> | AJK LLC v. Crabel Inc.   | 1/28/2021  | Writ of Garnishment | Y                       | Open (no activity since initial filing)  | N                            |
| <u>21-cv-20484-DPG</u> | First Southwestern Financial LLC v. T.D. Bank, N.A.              | 2/4/2021   | Writ of Garnishment | Y                       | Remanded – motion to remand granted by default (ECF No. [8])   | N                            |

**EXHIBIT**  
**A**

|                        |  |           |             |   |   |                             |
|------------------------|--|-----------|-------------|---|---|-----------------------------|
| <u>21-cv-20601-DLG</u> | MJM Structural Corp. v.<br>Columbus Apartments,<br>LLC | 2/12/2021 | Foreclosure | N | Motion to remand pending (no response<br>timely filed)  | N                           |
| <u>21-cv-20631-KMM</u> | MJM Structural Corp. v.<br>Columbus Apartments,<br>LLC | 2/16/2021 | Foreclosure | N | Motion to dismiss or remand pending (no<br>response timely filed); (See also ECF No.<br>[8] re: removing case solely to cancel<br>foreclosure sale) | Y (referred<br>and pending) |
| <u>21-cv-20640-BB</u>  | TCM Finance, LLC v.<br>Conategi, LLC                   | 2/16/2021 | Foreclosure | N | Motion to remand and for sanctions<br>pending (no response timely filed)  | Y (pending)                 |
| <u>21-cv-20795-UU</u>  | Elizon DB Transfer Agent<br>LLC v. CMG Capital, LLC    | 2/26/2021 | Foreclosure | N | Remanded – no subject-matter jurisdiction<br>(ECF No. [7])  | N                           |
| <u>21-cv-20801-BB</u>  | Deutsche Bank National<br>Trust Company v. Valdes      | 2/26/2021 | Foreclosure | N | Open (no activity since initial filing)   | N                           |
| <u>21-cv-20912-KMM</u> | Black River Partners I,<br>LLC v. Conategi, LLC        | 3/8/2021  | Foreclosure | N | Open (no activity since initial filing)   | N                           |