IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.

Supreme Court Case No. SC19-1545

CATHERINE ELIZABETH CZYZ,
Respondent.
_____/

Florida Bar File No. 2017-00,628(2A)

FINAL REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating the Florida Bar, Chapter 3 Rules of Discipline, Rule 3-7.6, the following proceedings occurred.

On September 12, 2019 The Florida Bar filed its Complaint against Respondent. On October 22, 2020, October 23, 2020, November 25, 2020, and December 2, 2020[1] a final hearing was conducted. At the final hearing the Complainant was represented by Shanee L. Hinson, Esq. and the Respondent represented herself *pro se*[2].

The undersigned received testimony under oath from the following witnesses: Erin Neitzelt; Rocky Ludwick; Roy Jeter; Richard Akin, Esq.; Jason Gunter, Esq.; Daniel Tarantur; Scott Atwood, Esq.; and Respondent, Catherine Elizabeth Czyz.

[1] After the close of all testimony, on December 2, 2020, a separate hearing was conducted for the purpose of identifying and marking all exhibits being offered by Respondent.
[2] Although Respondent represented herself *pro se* throughout the majority of this case, including the final hearing, at various times during these proceedings Respondent was represented by counsel, including but not limited to the sanction hearing.

The Referee received the Complainant's Exhibits 1-22 and Respondent's Exhibits A-V.

At the final hearing Respondent presented a renewed motion for summary judgment that was denied as untimely. At the close of evidence presented by The Florida Bar Respondent moved for a directed verdict or involuntary dismissal; that motion was taken under advisement by the court and is hereby denied.

A sanctions hearing was conducted on February 11, 2021. Subsequent to that hearing the Florida Bar requested that the Referee take judicial notice of a filing in Lee County Case No. 2018-CA-1244 involving the Respondent. To allow complete review the court will include the request and attached document in the record. However, because the document was filed after the final hearing and sanctions hearing were concluded, and there was no opportunity for the court to hear argument regarding the significance or context of the document, the Referee in and exercise of discretion will decline to consider the document in making its findings and recommendations herein.

On February 17 and 18, 2021 Respondent filed her notice of appeal and motion for stay pending appeal. Rule 3-7.7(c)(1) is entitled *Notice of Intent to Seek Review of Report of Referee*, and states: "*A party to a bar disciplinary proceeding wishing to seek review of a report of referee shall give notice of such intent within 60 days of the date on which the referee's report is docketed by the Clerk of the Supreme Court of Florida*." Because the Report of Referee had not been filed at the time of the notice and motion to stay, the Referee finds that the notice is premature, and the motion to stay is denied.

The Complaint alleges violations of the following Rules Regulating the Florida Bar:

3-4.3	Misconduct and Minor Misconduct;
4-1.1	Competence;
4-1.2	Scope and Objective of Representation;
4-1.3	Diligence;
4-1.5	Fees and Costs for Legal Services: a) Illegal, Prohibited, or Clearly Excessive Fees and Costs;
4-3.1	Meritorious Claims and Contentions;
4-3.4	Fairness to Opposing Party and Counsel;
4-3.5	Impartiality and Decorum of the Tribunal;
4-8.4(c)	A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
4.8(d)	A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice;
5-1.1(a)(1)	Nature of Money or Property Entrusted to Attorney, Trust Account Required: commingling prohibited;
5-1.2(b)	Trust Account Records' and
5-1.2(d)	Minimum Trust Accounting Procedures.

All pleadings and exhibits received in evidence and this Report constitute the record in this case and have been forwarded to the Supreme Court of Florida.

The legal authority relied upon by the Referee in making the recommendations below is included at the end of this report.

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 Florida Supreme Court.

Narrative Summary of Case. Certain testimony and evidence relied upon by the Referee will be attributed to a specific witness or exhibit, particularly where such testimony or evidence is disputed. Other testimony and evidence will be described in narrative form, particularly where such testimony or evidence is undisputed. Upon the evidence presented, the undersigned makes the following findings of fact:

1. Respondent was admitted to the Florida Bar in 1997.

2. Respondent's law practice is Czyz Law Firm, PLLC. Respondent has been a sole practitioner since 1999.

3. Respondent and Erin Neitzelt were acquainted in high school and had sporadic contacts in recent years via the internet. Ms. Neitzelt initially contacted Respondent in connection with what Ms. Neitzelt perceived as possible misconduct by her former employer, Mariner Middle School in Cape Coral, Florida ("Mariner"). Ms. Neitzelt contacted Respondent because of their shared personal history.

4. Ultimately Respondent undertook representation of Ms. Neitzelt to pursue claims against her former employer, including a claim of employment discrimination.

Erin Neitzelt

5. Ms. Neitzelt began employment at Mariner during August, 2015 and resigned voluntarily from her position during March, 2016 believing that she might be facing termination; this was her first teaching position in Florida. Ms. Neitzelt has previous experience as a school principal from 1997 to 2007.

6. Ms. Neitzelt described various issues she faced during her time at Mariner, including lack of support, lack of access to training and exclusion from a pool for consideration for a principal position.

7. During March, 2016 Ms. Neitzelt contacted Respondent to gather information and eventually sought consultation in connection with her experiences at Mariner. Ms. Neitzelt and Respondent were acquainted as classmates in high school and reconnected in recent years through social media.

8. Ms. Neitzelt recalled that Respondent accepted representation quickly, and would not agree to a contingent fee agreement. Respondent initially indicated that her hourly rate was $750.00 per hour, but could be reduced to $500.00 per hour; Respondent said that she would offer an additional reduction to $350.00 per hour because “she knew me and I was an acquaintance.”

9. Ms. Neitzelt received a written retainer agreement on March 31, 2016, which had been dated March 28, 2016 by hand. Ms. Neitzelt did not immediately sign and return the agreement because of issues surrounding her lack of ready access to her computer and the unavailability of a printer. Ms. Neitzelt eventually saw a signed copy of the agreement during April, 2018 in a separate civil case, but denied having ever signed the document. Ms. Neitzelt believed her signature

on the document had been forged. Despite her concern about the authenticity of the signature on the document, Ms. Neitzelt acknowledged that the retainer agreement was received, and that it was her intention to hire Respondent and pay for her services.

10. The retainer agreement (Florida Bar Exhibit 1) includes a provision for a nonrefundable retainer of $6,000.00, and also states "*The Attorney reserves the right to require the Client to deposit money into the Attorney's Account to be used to pay the Attorney's fees to cover significant expenditures of attorney's fees such as in advance of a hearing, deposition, trial, for research time, for the review or preparation of contracts, or other matters which require an amount of attorney's time reasonably expected to exceed three (3) hours*."

11. Respondent instructed Ms. Neitzelt to make payments via electronic deposit to her law firm bank account and provided an account number, routing number and the name of her firm. Respondent specifically declined to receive payment by check.

12. Ms. Neitzelt paid an initial non-refundable fee retainer in the amount of $6,000.00 and a cost retainer of $1,500.00. These sums were deposited electronically to Respondent's firm account per Respondent's instructions.

13. At the outset of representation Ms. Neitzelt explained to Respondent that she did not know why she was being mistreated at Mariner, but suggested that it could have been because of "the way I looked or the car I drove or because of the jewelry that I wore or where our home was located…"

14. Eventually an EEOC Charge Form Letter was prepared by Respondent and signed by Ms. Neitzelt which claimed discrimination

based on Ms. Neitzelt being a woman, “and more specifically, a good-looking, blonde, white woman with a stellar education (I have a bachelor’s degree and seven years post-graduate work, with only my thesis left for a doctorate, and a 4.0 GPA), and I have a certain amount of wealth from hard work.” Ms. Neitzelt explained that she was embarrassed by the references to wealth and attractiveness, but that Respondent told her “you have to sign this, this is what we have to do to get your case going.” Respondent told Ms. Neitzelt that the grounds set forth in the Letter were a legitimate basis to file suit.

15. Ms. Neitzelt was told by Respondent that additional information would be needed to “start building a case” and that she provided “mountains of information” to Respondent. This information was provided in the form of paper copies mailed to Respondent.

16. By June of 2016 Ms. Neitzelt had already paid Respondent “many thousands of dollars” and expressed concern about her ability to manage the expense of the case; in response Respondent reduced her hourly rate for future billing to $175.00 per hour, and added a contingency fee. This agreement is reflected in an addendum to the original retainer agreement. (Florida Bar Exhibit 5). The addendum requires a monthly “retainer” of $3,000.00 to cover attorneys’ fees; the addendum does not indicate that the retainer is nonrefundable. Ms. Neitzelt instead testified that this monthly sum was understood to be an advance payment against which future fees would be billed. The addendum also requires a monthly cost deposit of $750.00. Respondent’s billing statements (Florida Bar Composite Exhibit 7) show that at certain times during the representation Ms. Neitzelt maintained a credit balance for both fees and costs where her total

payments, retainer deposits and cost deposits exceeded the amount billed; for example, the billing statement dated September 30, 2016 reflects amounts for "*fee retainer remaining*" and "*cost retainer remaining*".

17. In early November, 2016 Ms. Neitzelt revisited the subject of a full contingency arrangement with respondent due her continuing concern about managing the expense of her case. Respondent agreed to proceed on a contingent basis, but did not send a contingency agreement until the end of the month. The contingency agreement did not provide for a credit for previously paid fees against any contingency recovered by Respondent. The agreement was ultimately executed by Ms. Neitzelt. (Florida Bar Exhibit 6)

18. During October, 2016 Ms. Neitzelt received a draft complaint from Respondent against Mariner and its Principal, Rachel Gould. The complaint included references to Ms. Neitzelt's Irish and Italian heritage which were not previously discussed as a basis for relief; moreover, Ms. Neitzelt did not ever tell respondent that she believed her treatment at Mariner was in any way related to her national or ethnic heritage. Despite Ms. Neitzelt's objections, Respondent pressed for these allegations remain in the complaint. Ms. Neitzelt made edits to the draft complaint and returned them to Respondent; when the complaint was ultimately filed, Ms. Neitzelt was shocked to learn that the references to her heritage remained in the complaint.

19. Ms. Neitzelt was informed by Respondent that the complaint could be removed to Federal Court. When the case was eventually removed to Federal Court, Respondent told Ms. Neitzelt that

she was admitted to the Southern District of Florida, but would have to get admitted to the Middle District; Ms. Neitzelt offered to pay the $200.00 fee for Respondent's admission to the Middle District.

20. Respondent told Ms. Neitzelt that she believed she could move the case back to the Circuit Court. Eventually Ms. Neitzelt learned that Respondent filed documents with the Middle District seeking a stay of the proceedings.

21. After the case was removed Respondent told Ms. Neitzelt that she could no longer afford to proceed under the contingency agreement and offered to enter into a new agreement for a monthly retainer. Ms. Neitzelt did not agree to enter into a new fee agreement, and understood that if she did not, Respondent would not continue to represent her.

22. Respondent proposed associating with co-counsel or "local" counsel and both Respondent and Ms. Neitzelt undertook to find an attorney to act as co-counsel or local counsel in the case.

23. Ms. Neitzelt attempted to contact approximately eighteen attorneys to assist in the case; she was able to reach seven or eight, but ultimately spoke to only three or four, including attorney Jason Gunter. Of those Ms. Neitzelt spoke to, all stated that she "did not have any legal basis for a case" and "needed an exit strategy."

24. Ultimately Ms. Neitzelt hired attorney Gunter and her case was settled. Ms. Neitzelt received a "nuisance" payment of $2,500.00 and her claims were dismissed with prejudice. The parties executed a written settlement agreement.

25. After hiring Mr. Gunter Ms. Neitzelt requested a copy of her file from Respondent, but Respondent refused the request.

26. After speaking with other attorneys who suggested she had been overcharged and that her case lacked merit, Ms. Neitzelt requested a meeting with Respondent to review her prior billing statements and discuss a full or partial refund; Respondent declined.

27. Ms. Neitzelt received a bill from Respondent during April of 2018 or 2019 reflecting hourly fees from November 28, 2016 through February 13, 2017 (see Composite Exhibit 17). The bill appears to have a typewritten date of April 20, 2016 that was modified by hand to read April 30, 2017. The bill was received after Ms. Neitzelt's case had been removed to Federal Court on November 28, 2016, and after she filed her complaint against Respondent with the Florida Bar. The bill reflects charges billed at the rate of $500.00 per hour and charges totaling $25,745.81. All time entries reflect fees incurred after Ms. Neitzelt and Respondent entered a contingent fee agreement.

28. On cross-examination Ms. Neitzelt was pressed by Respondent on multiple occasions to admit that she had been lying during portions of her testimony and/or in her complaint to the Florida Bar; on all occasions Ms. Neitzelt denied that she had been untruthful.

29. After her case was removed to Federal Court and she began contacting other attorneys, those attorneys, including Jason Gunter, Esq. and Scott Atwood, told Ms. Neitzelt that her case had no legal merit.

30. Ms. Neitzelt acknowledged that Respondent has requested a copy of her resume, which apparently listed Rachel Gould as a reference; Ms. Neitzelt could not explain precisely why it was not immediately produced to Respondent, but denied that it was intentionally withheld.

31. Ms. Neitzelt was challenged by Respondent on her testimony about the frequency and manner in which payment was demanded by Respondent. Ms. Neitzelt remained steadfast that Respondent insisted on deposits to her firm bank account[3], and recalled at least one occasion called at 10:00 p.m. to demand immediate payment. Ms. Neitzelt also offered a credible explanation for a check deposit that bounced after a cash deposit was denied, and described an "angry" phone call from Respondent seeking immediate payment, despite the fact that Ms. Neitzelt was on the road travelling at the time. Ms. Neitzelt recalled that Respondent indicated on one or more occasions that immediate payment was necessary because she had bills to pay.

32. Ms. Neitzelt acknowledged that after she began to question her professional relationship with Respondent, and just before her bar complaint was filed, she conducted online searches relating to Respondent and testified; "*I found a foreclosure. I found arrest records, things that would apparently be a motive for you to need money quickly. You were in the process of losing a home. You lost another home immediately after this trial closed. You've lost two homes to foreclosure in- one of them being in very close proximity to this court case[4]. And I believed I was your only client because of your seeking payment from me excessively and so desperately*."

[3] Ms. Neitzelt recalled that Respondent initially directed that deposits be made in cash, but after an unsuccessful attempt to deposit cash due to the bank's apparent concern about potential money laundering, subsequent deposits were made by check.

[4] Because the Referee is not bound by the technical rules of evidence, and no objection was raised to this testimony, the Referee has considered this testimony but finds that it deserves diminished weight because it was offered without sufficient detail or context.

33. Ms. Neitzelt was cross-examined at length about various facts that came to light over time through questions that would suggest that these facts impacted the overall strength of her case. These included but are not limited to the existence of a male employee that felt he was also mistreated by the administration Mariner, the existence of Ms. Neitzelt's resume showing Rachel Gould as a reference, and an email using the phrase "*can you come down here before I go ape crap on these kids*" or words to that effect. Ms. Neitzelt was also questioned about why any of this information was withheld from Respondent. Ms. Neitzelt either acknowledged and explained the surrounding context for these facts, or in some cases did not recall the facts in the way they were presented in the question. Ms. Neitzelt explained that certain of these facts were known to Respondent. Ms. Neitzelt denied ever intentionally withholding information from the Respondent and offered a credible account of her extensive efforts to share all relevant information with Respondent. Ms. Neitzelt testified that even after learning of these facts, Respondent never advised her to discontinue the pursuit of her claims.

34. After the attorney-client relationship between Ms. Neitzelt and Respondent ended Ms. Neitzelt requested her file; Respondent refused to provide the file. Ms. Neitzelt denied that Respondent refused on the basis of a claimed attorney lien, but acknowledged that Respondent told her she would have to send the file to Ms. Neitzelt's new attorney.

35. Throughout these proceedings, Respondent has repeatedly urged the court to find that Ms. Neitzelt "is a fraud;" in fact, this is the opening statement of Respondent's written closing

argument. Respondent has insisted that the Referee should find that Ms. Neitzelt repeatedly lied, withheld information, improperly accessed one or more of Respondent's bank accounts and financial information, and that she was part of an elaborate scheme in concert with several lawyers and others within the legal system designed to cause harm to Respondent. The Referee does not find that Respondent's claims about Ms. Neitzelt or an alleged scheme are supported by any record evidence, and to the contrary the Referee finds that Ms. Neitzelt's testimony was genuine, credible and entirely consistent with the other evidence presented in this case.

Rocky Ludwick

36. Mr. Ludwick is a branch manager with Chase Bank. Mr. Ludwick was the branch manager at the Bellaire, Ohio branch during 2017 when Respondent appeared the bank to report that someone previously came to the bank to make a deposit to Respondent's business account, and that the person was given the account balance despite not being an owner or signer on the account. Mr. Ludwick prepared an incident report and notified Chase's privacy team. The only information that Mr. Ludwick had about the alleged information breach came from Respondent.

37. Mr. Ludwick confirmed that in prior years the Bellaire location had a small drive-through and also a large main bank building across the street from the drive through.

38. Mr. Ludwick remembered meeting Respondent during 2017 but was either unaware of or unable to recall additional details of

their interaction, Respondent's account(s) or any investigation conducted by Chase Bank after Respondent's report.

39. The Referee found Mr. Ludwick credible and accepts his testimony as true but finds that his testimony offers little to no value in resolving the issues presented in this case.

Roy Jeter

40. Mr. Jeter is a Certified Public Accountant and has been employed as an auditor for The Florida Bar for six-and-a-half years.

41. Mr. Jeter testified that retainers and cost deposits must be held in a trust account, and that depositing those sums to an operating account would violate Rule 5-1.1(a) of the Rules Regulating the Florida Bar.

42. In the course of employment Mr. Jeter routinely obtains information from the Florida Bar Foundation regarding the existence of IOTA (trust) accounts for attorneys. Mr. Jeter estimated that he obtains such records approximately once or twice per month, and "in every case".

43. Mr. Jeter contacted the Florida Bar Foundation and requested trust account information for "Catherine Czyz, Florida Bar Number 105627." Mr. Jeter received a response from the Florida Bar Foundation showing that the "Czyz Law Firm" had a trust account with Wells Fargo Bank from March 1, 2000 to March 9, 2011. Respondent did not have a trust account during 2016, nor at the time the information was received from the Florida Bar Foundation.[5]

[5] The information pertaining to the existence or non-existence of a trust account is contained in one or more documents received by Mr. Jeter from the Florida Bar Foundation that were received in evidence over Respondent's objections.

44. The court accepts Mr. Jeter's testimony as true and accepts the records of the Florida Bar Foundation as true and accurate, and therefore concludes that Respondent did not maintain a trust account during the time periods relevant to this case.

Richard Akin, Esq.

45. Mr. Akin is a partner at Henderson, Franklin, Starnes & Holt, P.A.

46. Mr. Akin represented the Lee County School District and Rachel Gould in the case filed by Respondent for Ms. Neitzelt.

47. Mr. Akin testified that he filed a motion to dismiss the complaint that he believed identified a number of deficiencies in Ms. Neitzelt's complaint, and that he believed the motion was well taken. Mr. Akin also removed the case to Federal Court because it contained a Title VII claim; relevant Federal law required Mr. Akin to seek removal within 30 days.

48. Mr. Akin described the procedure for removal of the case to Federal Court and relevant local rules for the Middle District

49. Mr. Akin served notice of removal upon Respondent and described subsequent written communications between his office and Respondent, some of which were received in evidence (The Florida Bar Exhibits 16, 17, 18).

50. Mr. Akin became aware that Respondent was not admitted to practice in the Middle District and offered to agree to a specific extension of time to permit Respondent to gain admission. Mr. Akin also offered to file a motion with the court for this purpose. In addition to written communication Mr. Akin recalled several unsuccessful

attempts to reach Respondent by phone to resolve the issue of an extension, including a specific recollection of a voice mail he left for Respondent on December 30, 2016. Respondent did not reply to Mr. Akin's requests to provide a date for the extension and no agreement was ever reached.

51. Mr. Akin received an email from Respondent that included the following language (The Florida Bar, Exhibit 17):

> "*At this point it's just sanctionable it's also an ethical [sic] if you do not withdraw your motions and pleadings. I want to [sic] response from you directly I don't want to hear from your secretary to let me know if you're going to withdraw them today by 5 PM. If not I won't just contact the court I will also contact the Florida Bar next week to make a complaint against you…*"

52. Mr. Akin testified about a motion seeking various relief including sanctions that was filed in the Middle District and included a certificate of service signed by Respondent. (The Florida Bar Exhibit 19). An order was subsequently entered denying the motion. (The Florida Bar, Exhibit 20).

53. During February, 2017 Respondent emailed Mr. Akin to notify him that Ms. Neitzelt had retained new counsel and that Respondent "*can no longer received pleadings from you or from the Court on this case*." (The Florida Bar, Exhibit 16).

54. During the pendency of the case in Federal Court Mr. Akin learned that Ms. Neitzelt was being represented by attorney Jason Gunter. Thereafter, on February 28, 2017 Ms. Neitzelt executed a settlement agreement that called for a $2,500.00 payment to Ms. Neitzelt and contained general and specific releases. (The Florida Bar, Exhibit 9).

55. Mr. Akin was cross-examined, however the Referee does not find that he was successfully impeached or that his credibility was otherwise diminished during cross-examination. The Referee finds that Mr. Akin's testimony was thoughtful and candid, and accepts his testimony as true.

Jason Gunter, Esq.

56. Jason Gunter, Esq. is an attorney practicing primarily in labor and employment law. Mr. Gunter was admitted to the Florida Bar in 1998 and has been board certified in labor and employment law since 1998. Mr. Gunter testified as both a fact witness and an expert witness in the area of labor and employment law. The Referee finds that Mr. Gunter's testimony was straightforward, credible and persuasive and accepts the opinions he offered as an expert.

57. Mr. Gunter was contacted by Ms. Neitzelt in connection with her pending employment discrimination case sometime after the case was removed to Federal Court.

58. After consultation with Ms. Neitzelt and a review of the pleadings in her pending case, Mr. Gunter identified that her pending claims were without merit. Mr. Gunter observed that her claims included discrimination on the basis of sex and national origin, and a claim for retaliation. Mr. Gunter recognized that neither the national origin claim, nor the retaliation claim were included in the original EEOC charge form letter, which would ultimately act as a bar to each of those claims.

59. Mr. Gunter described the necessary elements of an employment discrimination claim and explained that the facts

underlying Ms. Neitzelt's claims based on her sex would not support an such a claim and could not establish a prima facie case, because they were based primarily on a non-protected status related to her "wealth and vehicles and other things."

60. Mr. Gunter discussed the remaining counts in Ms. Neitzelt's complaint and the various reasons that none were viable. Mr. Gunter gave his opinion that Ms. Neitzelt's case should not have progressed beyond an initial consultation, because there was no view of the facts that could support relief or "set an objective" for the client.

61. Mr. Gunter would only agree to represent Ms. Neitzelt with the understanding that his objective would be to settle the case for nothing and obtain a dismissal to avoid exposure to Ms. Neitzelt for opposing party attorneys' fees. Ultimately the case was settled for the "nuisance" value of $2,500.00 paid to Ms. Neitzelt; the parties executed a written settlement agreement and the case was dismissed.

62. Although he generally takes Plaintiff's cases on a contingency fee basis, Mr. Gunter acknowledged that contingency, flat fee, hourly billing, or a hybrid arrangement could be acceptable depending on the circumstances.

63. Mr. Gunter opined that the fees charged by Respondent up to the time he was retained were excessive. He recalled that the fees to that point were in excess of $40,000.00. Mr. Gunter felt the fees charged were "unnecessary" because "there was going to be no viable opportunity ever to succeed on these claims against a public sector entity." Even if the claims had been viable, Mr. Gunter found that the fees charged by Respondent were beyond "not only what I would charge, but that I had ever heard of in my career."

64. Mr. Gunter testified that he was "shocked" by the amounts billed by Respondent and that in the EEOC process the average fee would be $1,500.00 to $2,500.00. Mr. Gunter testified that he could not think of a scenario, even the most complex, where the fees through the EEOC process would exceed $5,000.00.

Daniel Tarantur

65. Daniel Tarantur is a loss prevention advisor at PNC Bank. Mr. Tarantur appeared pursuant to a subpoena from Respondent regarding a trust account associated with Respondent and or her law firm. Mr. Tarantur testified that based upon the information provided PNC Bank was unable to identify any trust account belonging to Respondent or her law firm. Mr. Tarantur further testified that records pertaining to attorney trust accounts are typically retained for a minimum of eleven years.

Scott Atwood, Esq.

66. Attorney Scott Atwood currently represents Erin Neitzelt in a pending civil matter in which the Respondent is the opposing party. The Referee granted the Respondent's request to issue a subpoena to Mr. Atwood for the limited purpose of eliciting fact information that could impeach certain prior testimony in this case. Mr. Atwood complied with the subpoena and appeared with counsel. At various times attorney-client and work product objections were raised and sustained by the Referee. The Referee does not find that Mr. Atwood's testimony resulted in the impeachment of any other testimony.

III. RECOMMENDATIONS AS TO GUILT

Based upon clear and convincing evidence presented at trial, including all permissible inferences derived therefrom, the Referee recommends that Respondent be found guilty of violating the following Rules Regulating the Florida Bar, discussed individually below.

4-1.1	Competence;
4-1.2	Scope and Objective of Representation;
4-1.5	Fees and Costs for Legal Services: a) Illegal, Prohibited, or Clearly Excessive Fees and Costs;
4-3.1	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;
4.8(d)	A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice;
5-1.1(a)(1)	Nature of Money or Property Entrusted to Attorney, Trust Account Required: commingling prohibited;
5-1.2(b)	Trust Account Records' and
5-1.2(d)	Minimum Trust Accounting Procedures.
3-4.3	Misconduct and Minor Misconduct;

The undersigned recommends that Respondent be found not guilty of violating the following rules, which the Referee finds were not proved by clear and convincing evidence, discussed in greater detail below:

4-1.3	Diligence;
4-3.5	Impartiality and Decorum of the Tribunal;

The Referee has reviewed relevant legal precedent, including all cases cited by the parties. Certain legal authority will be specifically cited within the discussion below.

Rule 4-1.1: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

The Referee finds that Respondent, despite substantial experience, accepted representation in an area of law in which she lacked sufficient knowledge and skill. As set forth in the comment to Rule 4-1.1, The Referee recognizes that "*a lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar."* However, in undertaking such representation the Referee finds that a lawyer must engage in a fundamental analysis of the problems that such representation may present, an appropriate and thoughtful analysis of relevant legal precedent, and necessary study to ensure competent representation

The Respondent testified that she had only handled two employment discrimination cases in her career, that neither case went to trial, and neither case was removed to Federal Court. Respondent also testified that she had never handled a case against a School District. The Referee finds that Respondent failed or refused to engage in the necessary preparation and thoughtful analysis to competently represent Ms. Neitzelt, and to the extent any such efforts were made those efforts were misguided and/or insufficient. As a result of Respondent's failure to achieve minimal competence Respondent counseled Ms. Neitzelt, at tremendous expense, to pursue

claims that were unsupported by existing law and lacked merit or any reasonable possibility of success.

During her testimony, Respondent was unable to articulate the necessary elements of a cause of action for employment discrimination. Although it is possible that Respondent learned the elements at some point during her representation of Ms. Neitzelt and simply did not remember them at the time of her testimony, the complaint that Respondent filed for Ms. Neitzelt speaks for itself. Mr. Gunter, an experienced employment attorney, testified that after reviewing the allegations in the complaint and the underlying facts, the representation should not have progressed beyond an initial consultation because the underlying facts could not support a prima facie case of discrimination. Mr. Gunter also recognized that certain claims included in the complaint would have been procedurally barred because they were not included in the original EEOC Charge Form letter. With regard to the procedurally barred claims, Respondent testified that she counseled her client that she would try to "sneak it in" as justification for including them in the complaint. If this statement was merely a cover by Respondent for unknowingly filing barred claims, this would also demonstrate a failure of competence. On the other hand if this statement is accepted as true, then Respondent knowingly filed a claim that was procedurally barred and therefore lacked a sufficient basis in law and fact.

After the case was removed to Federal Court Respondent improperly filed an "emergency motion" with the Middle District of Florida without being admitted to practice before that Court. Amongst the relief Respondent sought was transfer of the case to State court and sanctions against opposing counsel; this relief was not supported by relevant legal authority and was denied by the United States District Judge. In her order the United

States District Judge also outlined various procedural rules that were violated by the filing of the emergency motion, including but not limited to the motion being improperly labeled as an “emergency,” failure to confer with opposing counsel and including a statement in the motion regarding the conference, and by requesting relief in a separate unauthorized letter to the court.

The Referee finds from the testimony and evidence presented that Respondent was aware that the “emergency motion” was not supported by application of existing law and the facts of the case. However, even if the motion were unknowingly filed through ignorance of applicable law and/or rules of court, the filing would constitute further evidence of a failure of competence by Respondent.

Rule 4–1.2. Objectives and Scope of Representation
(a) Lawyer to Abide by Client's Decisions. Subject to subdivisions (c) and (d), a lawyer must abide by a client's decisions concerning the objectives of representation, and, as required by rule 4–1.4, must reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take action on behalf of the client that is impliedly authorized to carry out the representation. A lawyer must abide by a client's decision whether to settle a matter[6].

The Referee's analysis on the preceding section is incorporated by reference. The Referee finds that Ms. Neitzelt initially consulted with Respondent to determine whether the facts of her case would support relief against the School District. The Referee finds that in order to have any meaningful communication and reach an understanding with the client about the objectives of representation, it is the responsibility of the lawyer to understand applicable law and advise the client accordingly. The Referee finds that Respondent failed to understand the necessary elements to support the relief requested by Ms. Neitzelt, and therefore failed to communicate any proper objective(s) of representation. The Referee gives substantial weight to Mr. Gunter's testimony that the representation should not have progressed beyond an initial consultation, because there was no view of the facts that could support relief or "set an objective" for the client.

Rule 4-3.1. Meritorious Claims and Contentions: **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. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.**

[6] In this section, and others that may follow, only the most relevant language of the Rule is cited for discussion.

The Referee's analysis in the preceding sections are incorporated herein by reference. The Referee finds that Respondent filed a complaint on Ms. Neitzelt's behalf that lacked a basis in law and fact, including but not limited to seeking relief for one or more claims that were procedurally barred. Respondent also sought relief in the United States District Court that lacked any basis in law or fact; Respondent's efforts to return the case to state court after its removal to Federal Court was not supported by application of existing law and the Referee finds that these efforts were frivolous. The Referee was not presented with any specific evidence or argument in support of a good faith attempt to extend, modify or reverse existing law, and even if such argument were made, the Referee does not find that such an argument would be supported by the record.

Rule 4–1.5. Fees and Costs for Legal Services

(a) Illegal, Prohibited, or Clearly Excessive Fees and Costs. A lawyer must not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly excessive when:
(1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney; or
(2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a nonclient party, or any court, as to either entitlement to, or amount of, the fee.

The Referee's analysis in the preceding sections are incorporated herein by reference. It is undisputed that Respondent charged Ms. Neitzelt in excess of forty thousand dollars for representation up and through

November, 2016 for services billed by the hour[7]. Respondent's billing statements also reflect fee retainer deposits and fee payments by Ms. Neitzelt totaling $41,708.45[8].

The Referee finds that the fees charged by Respondent were clearly excessive. The Referee gives substantial weight to the testimony of Mr. Gunter, who was "shocked" by the fees charged, both because of the total amount charged, and because the facts and circumstances could never have supported a viable claim. The Referee finds that the billing records, on their face, demonstrate excessive fees; as a single example the Referee notes that Ms. Neitzelt was billed a total of sixty hours or more solely for the drafting her complaint.

Respondent requested that the Referee admit hundreds of pages of documents in evidence, in part to demonstrate that the "mountains of information" provided by Ms. Neitzelt forced respondent to expend substantial amounts of time that were ultimately billed to Ms. Neitzelt. The Referee is not persuaded by this argument. After a review of the billing history it appears to the Referee that the vast majority of fees were incurred for activities other than the review of unsolicited documents furnished by Ms. Neitzelt. Moreover, even if that were the case, the Referee finds that it is the attorney's obligation to bill only for time that is reasonably necessary for the representation, and that a client should reasonably expect an

[7] The billing statements speak for themselves; the Referee has calculated the total fees billed through November (Invoice 101317) as $43,435.00.

[8] Ms. Neitzelt's complaint to the Florida Bar alleged that she had paid $58,395.00 to Respondent, but Ms. Neitzelt conceded on cross-examination that she could not locate canceled checks to support this amount, and claimed that the amount supported by canceled checks was slightly in excess of $47,800.00. Ms. Neitzelt testified that she paid all bills for services rendered through November, 2016 billed at an hourly rate pursuant to the original fee agreement and addendum thereto. Canceled checks or other documentation demonstrating the total sum paid were not received in evidence. Respondent's billing statements are not entirely clear, but appear to reflect at least $41,708.45 for fee deposits and payments were received from Ms. Neitzelt.

attorney to use professional judgment in determining what documents may be relevant, and which documents require extensive review. At the very least, the Referee finds that an informed conversation between the attorney and client should be undertaken before the client is billed excessively for unrestricted review of any and all papers gathered by the client[9].

The Referee also finds that Respondent violated Rule 4-1.5 by entering a contingency fee agreement that failed to provide a credit for or otherwise address the fees previously paid by the client in the case, and by billing the client at an hourly rate for services rendered after the contingency fee agreement was entered. Although the contingency fee agreement contains a provision that would permit Respondent to recover fees on a quantum meruit basis if discharged, the Referee finds that such a right would only accrue after the contingency occurred, and would be limited by the maximum contract fee. Moreover, the amount of the quantum meruit fee would be a matter for determination by the court, considering relevant factors such as time, the recovery sought, the skill demanded and the results obtained[10].

Instead, Respondent billed total fees in the amount of $25,412.50 (Invoice 101423) for "QUANTUM MERUIT SERVICES FROM NOVEMBER 28, 2016 UNTIL FEBRUARY 13, 2017 PER THE CONTINGENCY FEE AGREEMENT." These fees were billed at an increased rate of $500.00 per hour, which the Referee finds was tantamount to a penalty for discharge.

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[9] While lawyers are necessarily entitled to compensation for their services, they are also fiduciaries for their clients… The ethics of the legal profession demand that the attorney's right to bill a client for legal services rendered be exercised with a healthy restraint for the client's economic interests, that doubts be resolved in favor of the client rather than the firm, and that lawyers charge no more than the circumstances and the standards under rule 4-1.5(b) will bear. *Haines v. Sophia*, 711 So. 2d 209, 212 (Fla. 4th DCA 1998)

[10] See, *Rosenberg v. Levin*, 409 So. 2d 1016, 1021 (Fla. 1982) and *The Fla. Bar v. Hollander*, 607 So. 2d 412, 415 (Fla. 1992).

Although they were not ultimately paid by Ms. Neitzelt, the Referee finds that Respondent's attempt to collect the fees charged in Invoice 101423 was prohibited and unethical.

The Referee also notes that Respondent charged Ms. Neitzelt for basic office supplies such as file folders, pads and a hole punch. The comment to Rule 4-1.5 indicates that "*General overhead should be accounted for in a lawyer's fee, whether the lawyer charges hourly, flat, or contingent fees*." The Referee finds that basic office supplies are within the category of general overhead that should be accounted for in the lawyer's fee, and are not properly billed to the client. However, the Referee finds that this conduct is far less consequential than the other violations of Rule 4-1.5 described above.

Rule 4-3.4. Fairness to Opposing Party and Counsel

A lawyer must not:

(h) present, participate in presenting, or threaten to present disciplinary charges under these rules solely to obtain an advantage in a civil matter.

The Referee's analysis in the preceding sections are incorporated herein by reference. In an email communication to Mr. Akin December 30, 2016, after Ms. Neitzelt's case had been removed to Federal Court, Respondent demanded that Mr. Akin withdraw his recently filed "motions and pleadings" and that he contact her personally by 5 p.m. the same day to confirm they would be withdrawn. Respondent threatened that if he failed to comply, she would not only contact the Court, but "will also contact the Florida Bar next week to make a complaint against you…" The Referee finds that the threat of a Bar Complaint to gain compliance in the context of pending litigation is a clear violation of Rule 4-3.4.

Rule 4-8.4(c) Misconduct

A lawyer shall not:
(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation...

(d) 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.

The Referee's analysis in the preceding sections are incorporated herein by reference. The Referee finds that in an email dated December 30, 2016 Respondent accused Mr. Akin of "sanctionable" and unethical conduct for filings he made in the Federal District Court. From the totality of the evidence the Referee finds that Respondent knew that these accusations were without basis or justification at the time they were made and were designed to gain leverage in litigation. Respondent also threatened to file a Bar complaint against Mr. Akin if he failed to comply with her demands within the litigation.

The Referee further finds that Respondent in her "emergency motion" to the Federal District Court alleged that the case should be returned to the Circuit Court because the Circuit Court did not first rule with regard to its concurrent jurisdiction. This allegation was made in contrast to Respondent's December 24, 2016 email to Ms. Neitzelt in which she stated: "…*they do have the right to remove it if it has federal laws in it I just happened to prefer state court because we can make oral arguments*…" Thus the Referee concludes that Respondent was aware that a ruling from

the Circuit Court was not necessary for removal contrary to the allegation in the emergency motion.

Toward the end of her representation of Ms. Neitzelt, and throughout these proceedings, including but not limited to the final hearing, Respondent has repeatedly accused Ms. Neitzelt, Mr. Gunter, Mr. Akin, Mr. Atwood and others of fraud, perjury, unethical conduct and participation in a massive conspiracy intended to harm Respondent. Notwithstanding Respondent's insistence that a wide-ranging conspiracy is obvious and can be easily identified, the Referee finds that there is no evidence in the record whatsoever from which a reasonable person could conclude that Respondent is the victim of a conspiracy. The Referee finds that while insisting that she is the victim of a conspiracy, Respondent has repeatedly minimized her own prohibited conduct, offering unlikely explanations for her failure to maintain an active trust account, her pursuit of claims that lacked any possibility of success, filing frivolous motions, appearing in Federal District Court when not admitted to practice and excessively billing her client. The Referee finds that Respondent has disparaged other professionals knowingly, or with callous indifference to the truth, and has on multiple occasions engaged in conduct that is prejudicial to the administration of justice.

Rule 5-1.1. Trust Accounts

(a) Nature of Money or Property Entrusted to Attorney.
(1) *Trust Account Required; Location of Trust Account; Commingling Prohibited.* A lawyer must hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for fees, costs, and expenses, must be kept in a separate federally insured bank, credit union, or savings and loan association account maintained in the state where the lawyer's

office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account…

The Referee's analysis in the preceding sections are incorporated herein by reference. Respondent did not maintain a trust account at any time relevant to her representation of Ms. Neitzelt, and specifically instructed Ms. Neitzelt to deposit retainer funds, cost deposits and fee payments to her firm's operating account.

The initial retainer agreement called for a nonrefundable retainer of $6,000.00. Aside from the determination of whether the fee was excessive, the Referee finds that a nonrefundable retainer belongs to the lawyer, and is properly deposited to the lawyer's operating account[11].

However the parties subsequently executed an addendum to the retainer agreement that called for an additional monthly fee retainer of $3,000.00 which was "to cover the cost of the fees of the attorney only." The addendum does not identify the monthly retainer as being nonrefundable, and Respondent's billing statements reflect that all payments made by Ms. Neitzelt were credited toward billed attorneys' fees. The Referee finds that any advance fee payments made by Ms. Neitzelt, other than the initial $6,000.00 nonrefundable retainer, remained the property of the client until earned, and should properly have been deposited in trust.

Respondent also collected deposits from Ms. Neitzelt for costs. These sums also remained the property of the client and should have been deposited in trust.

[11] See, *Bain v. Weiffenbach*, 590 So. 2d 544, 545 (Fla. 2d DCA 1991)

Any separate fee payments made by Ms. Neitzelt for fees already earned were the property of the Respondent, and would properly have been deposited to the operating account.

The Referee finds that the deposit of client funds to the firm operating account was a violation of Rule 5-1.1. Also, because all payments and deposits by Ms. Neitzelt were placed in the same account, the Referee finds that Respondent commingled client funds with her firm's funds in violation of Rule 5-1.1.

Respondent in her written closing argument has urged the court to find that any error with regard to her law firm's bank accounts was "*a technical error only*" and has claimed that some ill-defined set of circumstances caused her firm trust account at PNC bank to be closed, when Respondent believed it to be open. The Referee finds that the Florida Bar proved by clear and convincing evidence that Respondent and/or her firm did not maintain a trust account during the relevant time period. Despite Respondent's claim that she believed a firm trust account was open, there is no evidence in the record to support that claim. The only evidence offered by Respondent on this subject was the testimony of Mr. Tarantur of PNC bank, which established that he was unable to locate any trust account belonging to Respondent or her firm. It is clear that Respondent was attempting to provide a reasonable explanation for her failure to maintain a trust account, but the details of that explanation remain entirely unclear and were not supported by any record evidence. The Referee finds that Respondent's actions and communications with her client regarding payment were inconsistent with a genuine belief that she maintained an open and active trust account at a different bank, and the Referee does not accept this explanation as true.

Moreover, even if Respondent had a good faith belief that she maintained a trust account somewhere, her conduct would still constitute a violation of Rule 5-1.1; Ms. Neitzelt was specifically directed to make deposits for costs and unearned fees to a non-trust account, and her funds were commingled with Respondent's funds within that account.

Rule 5-1.2(b) and (d). Trust Accounting Records and Procedures

The Referee's analysis in the preceding sections are incorporated herein by reference. The Referee finds that Respondent is guilty of violating Rules 5-1.2(b) and (d) and that extensive discussion is unnecessary. Despite receiving client money that should have been placed in trust, Respondent failed to maintain a trust account. By virtue of her failure to maintain a trust account, Respondent failed to comply with Rule 5-1.1(b) regarding minimum trust accounting records and 5-1.1(d) regarding minimum trust accounting procedures.

Rule 3-4.3. Misconduct and Minor Misconduct

The standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all-inclusive, nor is the failure to specify any particular act of misconduct to be construed as tolerance of the act of misconduct. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether the act is a felony or a misdemeanor.

The Referee's analysis in the preceding sections are incorporated herein by reference. Without further discussion the Referee finds that Respondent is guilty of violating Rule 3-4.3.

IV. RECOMMENDATIONS FOR FINDING OF NOT GUILTY

The Referee does not find that the following violations were proved by clear and convincing evidence presented at trial, and the Referee therefore recommends that Respondent be found not guilty of violating the following Rules Regulating the Florida Bar, as discussed individually below.

Rule 4-1.3: A lawyer shall act with reasonable diligence and promptness in representing a client.

The Referee's analysis in the preceding sections are incorporated herein by reference. Despite the Referee's recommendations as to guilt for the multiple violations described above, the Referee does not find that Respondent lacked diligence or promptness at any time during the representation.

Rule 4-3.5. Impartiality and decorum of the tribunal

(a) Influencing Decision Maker. A lawyer shall not seek to influence a judge, juror, prospective juror, or other decision maker except as permitted by law or the rules of court.
(b) Communication with Judge or Official. In an adversary proceeding a lawyer shall not communicate or cause another to communicate as to the merits of the cause with a judge or an official before whom the proceeding is pending except:
(1) in the course of the official proceeding in the cause;
(2) in writing if the lawyer promptly delivers a copy of the writing to the opposing counsel or to the adverse party if not represented by a lawyer;
(3) orally upon notice to opposing counsel or to the adverse party if not represented by a lawyer; or
(4) as otherwise authorized by law.
(c) Disruption of Tribunal. A lawyer shall not engage in conduct intended to disrupt a tribunal.

The Referee's analysis in the preceding sections are incorporated herein by reference. This case does not implicate that portion of Rule 4-3.5

which prohibits improper contact with jurors. The Referee does not find that there is clear and convincing evidence showing that Respondent engaged in improper ex-parte communication. Although the Referee acknowledges that Respondent's methods were often ineffective and misguided, and her conduct was at times improper, the Court does not find clear and convincing evidence showing that Respondent engaged in conduct intended to disrupt a tribunal. Respondent's improper filing in the Federal District Court was certainly unauthorized, and without proper motive, but the Court does not find that Respondent made the filing with the intent to disrupt the tribunal nor that the Federal District Court or its proceedings were actually disrupted. Throughout these bar proceedings Respondent has at times appeared disorganized, for example Respondent has frequently been unable to locate documents served electronically; however the Referee has not observed Respondent to be disruptive during these proceedings.

V. RECOMMENDATIONS AS TO SANCTIONS

The Referee has considered The Florida Bar Standards for Imposing Lawyer Sanctions and the legal precedent set forth at the end of this opinion (hereinafter "the Standards").

The Florida Bar seeks a suspension of a minimum length of one year. Respondent has argued for a lesser sanction or no sanction.

The Florida Bar has argued that the Referee should apply the following aggravating factors:

1. Dishonest or selfish motive;

2. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
3. Submission of false evidence, false statements or other deceptive practices during the disciplinary process;
4. Refusal to acknowledge the wrongful nature of the conduct; and
5. Substantial experience in the practice of law.

The Referee finds that the aggravating factors of bad faith obstruction of the disciplinary proceeding and submission of false evidence during the disciplinary process should not be applied. The Referee finds that the remaining aggravating factors identified by the Florida Bar should be applied. The Referee finds that the following additional aggravating factors should also be applied:

1. Multiple offenses; and
2. Indifference to making restitution.

The Florida Bar acknowledges that Respondent's lack of a prior disciplinary record is a mitigating factor and the Referee finds that this mitigating factor should be applied.

As mentioned above, Respondent has at all times maintained that she is the victim of a wide-ranging conspiracy, and has attempted to justify all of her actions with various explanations. With the exception of her concession that her improper handling of client funds may have been a "technical error," Respondent has refused to acknowledge the wrongful nature of any of her conduct.

The Referee finds the following language from *The Fla. Bar v. Rosenberg*, 169 So. 3d 1155, 1158 (Fla. 2015) to be particularly relevant.

In its opinion the Court cited the following language from the report of referee:

> "*The Referee has strong doubts about the Respondent's fitness to practice law. It is obvious Respondent possesses above-average intelligence. It appears, however, that he lacks either the common sense or the intellectual honesty to distinguish appropriate and rational arguments from inappropriate and irrational arguments. The ability to read precedent, while a necessary condition for practicing law, is not sufficient. A lawyer must be able to apply legal principles correctly and honestly. There are times when a lawyer must yield to the facts, precedent, or court orders. Respondent appears incapable of discerning when to yield a legally unsupportable position*."

Like the attorney in *Rosenberg* Respondent appears to be intelligent, but also appears to lack sufficient insight and common sense to distinguish appropriate and rational arguments from those that are inappropriate and irrational.

The Referee also notes that the *Rosenberg* Court cited *Fla. Bar v. Adler,* 126 So.3d 244, 247 (Fla. 2013) for the proposition that the Court has moved toward imposing stronger sanctions for unethical and unprofessional conduct.

In the absence of aggravating or mitigating factors, the Standards indicate that suspension is appropriate when a lawyer knows or should know that the lawyer is dealing improperly with client property and causes injury or potential injury to a client. The Standards indicate that suspension is likewise appropriate when a lawyer engages in an area of practice in which the lawyer knowingly lacks competence and causes injury or potential injury to a client. With regard to excessive fees, 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

The Referee finds that suspension is necessary and appropriate in this case; however the Referee finds that a one year suspension would be insufficient given the nature and number of violations and the application of multiple aggravating factors.

The Referee hereby recommends the following:

1) that Respondent be suspended from the practice of law for a period of two (2) years;
2) that Respondent be required to pay restitution in the amount of $41,708.45 together with prejudgment interest to Ms. Neitzelt as a condition of reinstatement;
3) The she provide proof of rehabilitation as a condition of reinstatement;
4) That Respondent pay the costs incurred by the Florida Bar as more particularly set forth below.

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

The Referee finds that the following costs were reasonably incurred by the Florida Bar:

Administrative Fee	$1,250.00
Investigative Costs	$ 826.00
Court Reporter's Fees	$3,071.75
Witness Costs	$ 244.40
TOTAL	$5,392.15

It is recommended that the above costs be charged to Respondent and that interest at the statutory rate shall accrue and be deemed delinquent within 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.

VII. LEGAL AUTHORITY

The Referee has considered relevant legal authority, including but not limited to the following, in reaching the recommendations made herein:

The Fla. Bar v. Dupee, 160 So. 3d 838, 853 (Fla. 2015) citing *Fla. Bar v. Maynard,* 672 So.2d 530, 540 (Fla.1996); *Fla. Bar v. Neu,* 597 So.2d 266, 269 (Fla.1992); and *Fla. Bar v. Lord,* 433 So.2d 983, 986 (Fla.1983). (The purposes of attorney discipline are: (1) to protect the public from unethical conduct without undue harshness towards the attorney; (2) to punish misconduct while encouraging reformation and rehabilitation; and (3) to deter other lawyers from engaging in similar misconduct.)

The Fla. Bar v. Smith, 866 So. 2d 41, 43 (Fla. 2004) (one year suspension with multiple mitigating factors. Smith deposited clients' $1665 check into her operating account rather than her trust account. She did not offer a valid explanation for depositing the filing fees in the operating account.)

The Fla. Bar v. Wolf, 930 So. 2d 574, 575 (Fla. 2006) (two year suspension. Wolf had deposited funds into his operating account, which should have been held in trust. By placing such funds into his operating account, Wolf used his operating account as a trust account. That account was not an interest-bearing trust account in compliance with The Florida Bar's Interest on Trust Accounts (IOTA) program. During the investigation, Wolf cooperated with the Bar. He waived a probable cause hearing, admitted he placed the funds into his operating account, and admitted he failed to comply with the trust account requirements of the Rules Regulating the Florida Bar.)

Rosenberg v. Levin, 409 So. 2d 1016, 1021 (Fla. 1982) (An attorney employed under a valid contract who is discharged without cause before the contingency has occurred or before the client's matters have concluded can recover only the reasonable value of his services rendered prior to discharge, limited by the maximum contract fee. A cause of action in quantum meruit for payment of fees to the discharged attorney arises only after the successful occurrence of the contingency.)

The Fla. Bar v. Hollander, 607 So. 2d 412, 415 (Fla. 1992) (Unlike *Rosenberg,* the instant case involves an agreement between the client and attorney that allows the attorney to be paid twice for the same work. Additionally, the language of both clauses fails to support

Hollander's argument that the agreement provided for a *quantum meruit* determination of fees between the client and his law firm. Neither clause contains language referring to a court determination of *quantum meruit* in setting fees with clients. Thus, we find that the instant case is distinguishable from this Court's decision in *Rosenberg.*)

The Fla. Bar v. Forrester, 656 So. 2d 1273 (Fla. 1995) (Charging excessive fees, writing check to self from trust account, and failing to timely prepare monthly comparisons and reconciliations of trust account funds that does not involve misappropriation of any funds from trust account warrants public reprimand, and 90–day suspension, and subsequent indefinite suspension until repayment of amount of excessive fees is completed, in light of lack of prior disciplinary violations.)

Fla. Bar v. Dinin, No. SC20-884, 2020 WL 3618889 (Fla. July 2, 2020) (Eighteen month suspension pursuant to consent judgment with several mitigating factors for various violations including competence, fees and costs for legal services, meritorious claims and contentions.)

The Fla. Bar v. Jasperson, 625 So. 2d 459, 463 (Fla. 1993) (one year suspension for attorney who failed to properly advise clients, missed a filing deadline, made fraudulent statements to the bankruptcy court in both cases, improperly entered into a business transaction with his clients, and continued with unnecessary litigation to protect his own interests. As indicated in *The Florida Bar v. Neu,* 597 So.2d 266 (Fla.1992), discipline must protect the public from unethical conduct, must be fair to a respondent yet be sufficient to punish the breach and encourage reformation and rehabilitation, and must be severe enough to deter others who might be

prone or tempted to become involved in like violations. A one-year suspension fulfills those objectives.)

Automatic Data Processing v. Scarberry, 412 So. 2d 927, 928 (Fla. Dist. Ct. App. 1982) (ethical considerations implicated when an attorney advances a position that is unwarranted, or knowingly makes a false statement of fact.)

The Fla. Bar v. Broome, 932 So. 2d 1036, 1044 (Fla. 2006) (one-year suspension followed by probation for three years with conditions for multiple violations.)

The Fla. Bar v. Head, 27 So. 3d 1, 10 (Fla. 2010) (one year suspension for various serious violations with prior admonishment for minor misconduct.)

The Fla. Bar v. Rosenberg, 169 So. 3d 1155 (Fla. 2015) (One year suspension for multiple violations including competence, by attorney with substantial experience who failed to acknowledge the wrongful nature of the misconduct. Also, the Court has moved toward imposing stronger sanctions for unethical and unprofessional conduct. *Id.,* citing *See Fla. Bar v. Adler,* 126 So.3d 244, 247 (Fla.2013).)

The Fla. Bar v. Richardson, 591 So. 2d 908, 911 (Fla. 1991) (Sixty day suspension for violation of 4-3.1 Meritorious Claims and Contentions with no other violations and no disciplinary history.)

The Fla. Bar v. Picon, 205 So. 3d 759, 766 (Fla. 2016) (one year suspension for multiple violations, including competence, with prior disciplinary history.)

The Fla. Bar v. Gwynn, 94 So. 3d 425, 433 (Fla. 2012) (91 day suspension for multiple violations including misrepresentations and making frivolous claims.)

The Fla. Bar v. Watson, 76 So. 3d 915, 922 (Fla. 2011) (In order to satisfy the element of intent it must only be shown that the conduct was deliberate or knowing. The motive behind the attorney's action is not the determinative factor. Rather, the issue is whether the attorney deliberately or knowingly engaged in the activity in question.) citing *Fla. Bar v. Nicnick,* 963 So.2d at 223–24; *Fla. Bar v. Brown,* 905 So.2d 76, 81 (Fla.2005); *Fla. Bar v. Barley,* 831 So.2d 163, 169 (Fla.2002). *Fla. Bar v. Riggs,* 944 So.2d 167, 171 (Fla.2006); *Fla. Bar v. Brown,* 905 So.2d at 81; *Fla. Bar v. Smith,* 866 So.2d 41 (Fla.2004); *Fla. Bar v. Lanford,* 691 So.2d 480, 481 (Fla.1997).

The Fla. Bar v. Carlon, 820 So. 2d 891, 900 (Fla. 2002) (91 day suspension for charging excessive fees, with requirement that excessive fee be paid to client as restitution before reinstatement to the practice of law.)

The Fla. Bar v. Committe, 136 So. 3d 1111, 1119 (Fla. 2014) (three year suspension for multiple violations including meritorious Claims and Contentions with prior disciplinary history.)

The Fla. Bar v. Bischoff, 212 So. 3d 312, 319 (Fla. 2017) (one-year suspension for attorney who failed to comply with the Federal Rules of Civil Procedure, failed to adequately research his client's causes of action to know what elements were required, and filed baseless objections and appeals not supported by applicable law.)

The Fla. Bar v. Bailey, 803 So. 2d 683, 692 (Fla. 2001) (if money is given to a client to be applied to fees when they become earned, much like a retainer, these monies cannot be withdrawn from a trust account and spent until they are earned.)

The Fla. Bar v. Brutus, 216 So. 3d 1286, 1291 (Fla. 2017) citing *Fla. Bar v. Mason*, 826 So.2d 985, 986–87 (Fla. 2002). (One year suspension after recommendation for 91 day suspension. Court finds negligence in maintaining a trust account warrants a lengthier suspension requiring proof of rehabilitation.)

The Fla. Bar v. Nowacki, 697 So. 2d 828, 833 (Fla. 1997) (91 day suspension for multiple violations, and noting that evidence of unethical conduct, not squarely within the scope of the Bar's accusations, is admissible, and such unethical conduct, if established by clear and convincing evidence, should be reported because it is relevant to the question of the respondent's fitness to practice law and thus relevant to the discipline to be imposed.)

Dated this 8th day of March, 2021, in Bradenton, Manatee County, Florida.

/s/ Charles Sniffen .
CHARLES SNIFFEN
Circuit Judge/Referee
Manatee County Judicial Center
1051 Manatee Avenue West, 9th Floor
Bradenton, Florida 34205

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been e-mailed to The Honorable John A. Tomasino, Clerk, Supreme Court of Florida, at e-file@flcourts.org, and mailed to 500 South Duval Street, Tallahassee, Florida 32301; a copy has been e-mailed to Shanee L. Hinson, Bar Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399; a copy has been e-mailed to Catherine Elizabeth Czyz, catherineczyz@icloud.com; and a copy has been e-mailed to Patricia Ann Toro Savitz, Staff Counsel, psavitz@floridabar.org, and The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-6584 this 8th day of March, 2021, in Bradenton, Manatee County, Florida.

/s/ Charles Sniffen .
CHARLES SNIFFEN
Circuit Judge/Referee
Manatee County Judicial Center
1051 Manatee Avenue West, 9th Floor
Bradenton, Florida 34205