

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

BARRY ROBERT GAINSBURG,
Respondent.

Supreme Court Case
No. SC2023-1474

The Florida Bar File
No. 2021-50,006(17A)

REPORT OF REFEREE

I. **SUMMARY OF PROCEEDINGS**

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

On November 23, 2023, the undersigned was appointed to preside as the referee. The Florida Bar was initially represented by Linda Gonzalez, and subsequently represented by Sharla Manglitz and Jennifer Falcone. Respondent was represented by Andrew Teschner.

On October 25, 2023, The Florida Bar filed a two-count Complaint against respondent. On December 11, 2023, the bar filed a Motion for

Partial Summary Judgment.¹ A hearing was held on the bar's motion on January 31, 2024. On February 2, 2024, respondent's counsel filed a Response to the Motion for Partial Summary Judgment.

On March 4th, 2024, the undersigned entered an Order granting the bar's Motion for Partial Summary Judgment finding that there were no material facts in dispute and the bar was entitled to summary judgment on both counts as a matter of law.

On March 21, 2024, Respondent filed a Motion to Correct the Summary Judgment Order. On March 27, 2024, The Florida Bar filed its Response in Opposition, asserting that the motion was disingenuous and evidenced respondent's continuing dishonest conduct in the disciplinary proceedings. On April 1, 2024, this Referee entered an Order concurring with the Bar's position and effectively denying respondent's motion.

On April 10, 2024, a final hearing was held solely on the issue of discipline. The Bar presented evidence demonstrating aggravating factors, including respondent's prior disciplinary history for similar and cumulative misconduct, and Facebook entries evidencing his continuing pattern of misconduct as to Count II of the Complaint. Respondent testified in his own defense, and introduced 19 exhibits generally related to the underlying

¹ The Motion was styled as Partial since the issue of discipline cannot be determined by summary judgment.

criminal matter, his mental health, his efforts to retire from the bar so that he would no longer be under the bar's jurisdiction, and letters of support.

All items properly filed in these proceedings 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 AND CONCLUSIONS OF LAW

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

Narrative Summary of Case. In the Order granting Summary Judgment in favor of The Florida Bar, I found the material facts were not in dispute and that the Florida Bar was entitled to judgement as a matter of law. I found respondent guilty of each of the charged rule violations. I adopt and incorporate those findings in their entirety herein by reference. A copy of the Order Granting the Bar's Motion for Partial Summary Judgment is Attached as Exhibit I for the Court's easy reference.

A summary of the pertinent findings follows:

Count I:

A. Respondent's Failure to Report Institution of Felony Charges:

On April 5, 2020, respondent was arrested for Exhibition of a Dangerous Weapon. At the time of respondent's arrest, he was on probation pursuant to a prior disciplinary action and under contract with Florida Lawyer's Assistance, Inc. On June 22, 2020, respondent was charged by information with three felonies. Pursuant to R. Regulating Fla. Bar 3-7.2(c), respondent's notification to the Executive Director of The Florida Bar, with a copy of the information, was due on or before Thursday, July 2, 2020.

Respondent does not deny he was arrested and charged with three felonies on June 22, 2020. Respondent also does not deny he failed to comply with the notice requirement contained in Rule 3-7.2(c). Rather, at various times throughout these proceedings respondent submitted conflicting explanations for his failure to notify the Bar of the institution of felony charges. I rejected each of those explanations in my order granting the Bar's Motion for Partial Summary Judgment, and now find those conflicting explanations to be evidence of his dishonesty within the instant disciplinary process, and additional evidence of a pattern of misconduct and multiple offenses, which shall be applied as aggravating factors in this

matter. I found that respondent's failure to comply with the notice requirement violated Rule 3-7.2(c) of the Rules Regulating The Florida Bar.

B. Respondent's Conviction for Improper Exhibition of a Dangerous Weapon

On October 28, 2022, respondent was acquitted of the above referenced felony charges and found guilty by the jury of Improper Exhibition of a Dangerous Weapon, in violation of Florida Statute Section 790.10, a first-degree misdemeanor. The dangerous weapon that was the subject of the criminal conviction was a baseball bat. On October 31, 2022, respondent was adjudicated guilty. He was sentenced to five days in jail and six months of probation. The special conditions of probation included that respondent submit to a mental health evaluation, that he comply with any recommended treatment, and that he have no contact with the victim or her family.

Respondent's conviction is conclusive proof of guilt. See R. Regulating Fla. Bar 3-7.2(b). During the criminal trial, respondent did not testify. Jordana Harrison, the victim who observed respondent brandish the bat, testified at the criminal trial. In summary, Ms. Harrison testified that on April 5, 2020, she observed respondent driving his vehicle erratically. He pulled into a circular driveway, at which time she took a picture of his vehicle and license plate. Respondent, who appeared extremely agitated,

yelled vulgarities and threats at her as he got out of the vehicle, and opened the trunk. He took a bat out of the trunk and brandished it at her in a threatening manner. Ms. Harrison was very scared and called 911 as she attempted to leave the scene. Respondent ran after her vehicle, continuing to threaten her and brandish the bat. When respondent finally turned to go back to his vehicle, Ms. Harrison took a picture of respondent swirling the bat and hitting a tree and a sign.

When the police arrived, they transported Ms. Harrison to where they had apprehended respondent so that she could identify him. She could hear respondent screaming and making threats that he was Covid positive, and he was going to spit on the officers. She identified respondent as the person with the bat.

Respondent's adjudication of guilt of the criminal offense of Improper Exhibition of a Dangerous Weapon constitutes conclusive proof of guilt in a subsequent Bar disciplinary action. Accordingly, I found respondent guilty of violating Rules 3-4.3 and 4-8.4(b) of the Rules Regulating The Florida Bar.

During the Bar's investigation into the above referenced misconduct, respondent engaged in incivil, unprofessional, and harassing conduct, leading to a second count in the instant proceedings.

Count II

C. Respondent's Disparaging Statements and Email Addresses

During the instant disciplinary proceedings, respondent engaged in abusive, harassing, unprofessional conduct directed at bar counsel. An example of same was respondent's creation of two email addresses containing bar counsel's name:

lindagonzalezissatin71@gmail.com

lindagonzalesissatan71@gmail.com

Respondent intentionally created these email addresses containing bar counsel's name and stating she is satin and she is Satan, in response to notification that his previously designated email address, bay-dude@yahoo.com was not accepting bar emails. By making "lindagonzalezissatin71" his record bar email address, Respondent attempted to force Ms. Gonzalez and others involved in this action, including my own JA, to utilize these harassing email addresses to communicate with him. The record evidence demonstrates respondent sent and received emails from the "lindagonzalezissatin71" email address, and that he copied the "lindagonzalesissatan71" email in various pieces of correspondence in these proceedings.

In his answer to the bar's complaint, respondent admitted he sent the emails referenced above, but argued that he should not be found guilty of this offense because it amounts to entrapment. Respondent argues that the bar refused his petitions to permanently retire, but had same been granted, there would be no violation of the Disciplinary Rules because a non-lawyer cannot violate the Rules of Professional Conduct. I rejected this defense. For purposes of this Report of Referee, I note that respondent's "defense" is itself indicative of his lack of remorse and refusal to acknowledge the wrongfulness of his conduct, which I find to be aggravating factors to be considered in recommending the appropriate sanction in this matter.

Respondent further argued that satin is a fabric and by nature not defamatory or disparaging and that the email address lindagonzalesissatan71@gmail.com was an error. I similarly rejected this defense. The totality of the evidence demonstrated respondent's intent to disparage, bully, and harass Ms. Gonzalez, both with these email addresses and his other actions.

In response to the notice that the grievance committee would also be considering his behavior with respect to the disparaging and unprofessional email addresses, respondent replied in an email dated September 21,

2023, stating in pertinent part, “Freedom of Speech. 1st Amendment Of US Constitution, And Truth is an absolute defense.” In the body of the email, respondent accused bar counsel of playing “tricks” on him, and stated:

Give praise and glory to Jah. Your email is exactly why I am filing my federal complaint against you as an individually named Defendant. **You are vindictive. And you behave like Satan** because you don't follow Jah's commandments – **you ae [sic] a liar and you serve injustice – an abomination and perversion of the law.** And by the way you are emotionally reacting demonstrates to all copied hereon [sic] that **you have very thin skin and you should seek FLA counseling for your overt mental illness.** Actually I'd recommend Dr. Weinstein instead. **You seem to have anger issues and be a control freak** in my humble opinion. [Emphasis supplied.].

Exhibit 5, p. 4 to The Florida Bar's Complaint.

After providing further notice to respondent that all similar correspondence going forward would be provided to the grievance committee for their consideration, using the email address lindagonzalezissatin71@gmail.com, respondent wrote:

For all future correspondence please use this account. It will not be changed.

It is not misogynistic, racist, of a sexual nature or physical disability, it's not an American or even Jamaican word of Clott derivation. It's an innocuous email address that incorporates my religious freedom as I believe you are a source of negative energy trying to harm me and my right to free speech utilizing a [sic] email naming convention. You would never cut it in Brooklyn or Jamaica but that's beside the point.

Obviously please forward this to the GC. I real [sic] like the Chairman. He seems pleasant and responsive. That's all I ever sought – Raspect (respect).

I'm in the midst of discontinuing my bellsouth and yahoo emails [sic] accounts so this is my email address going forward. I don't believe there is any rule, law, pr [sic] statute that limits my ability to chose [sic] an email address. But I'm sure you will try and prove me wrong.

Thank you for your continued professionalism and I hope you are feeling better than this morning. I was sincerely concerned about you.

Jah blessings

(Emphasis added). Exhibit 5, pp. 1-2 to The Florida Bar's

Complaint.

After informing respondent the bar would not be sending correspondence to his newly designated email address using the email address lindagonzalezissatin71@gmail.com, respondent created and began to copy himself at lindagonzalesissatan71@gmail.com in correspondences with the bar. See Exhibit 5, p. 1 and Exhibits 6 and 7 to The Florida Bar Complaint.

Using these email addresses, respondent wrote:

Greetings Ms Gonzales, ("Putative Defendant in Federal law Suit) [sic] Please use my designated Putative Defendant TFB email address as you are required to do [sic] This is not a matter of discretion. I also think you and the ED had been blocking my emails. That is perhaps why it appears **you are just rude.**

Well, I guess I can send an email to you but I can't make you read. I can explain stuff to you but history shows I just can't make you Ovastand (understand) it. Perhaps that's my failure. But it isn't I know. It's yours.

Candidly, I'm **concerned about your mental well being [sic] Ms. Gonzales.** As a member of the Bar I believe it's my duty and in fact obligation to alert you [sic] what seems to be emotionally influenced behaviors. The fact that a simple email address change could stir the passionate and vindictive responses indicates you should perhaps engage in more self care [sic] **In our history I've found you to be more cunning and crafty than emotional.** That is a profound change in your behavior. Please look after yourself and **seek counseling** to deal with the stress and pressures of your position and life choices.

Jah love and guidance

(Emphasis added). Exhibit 5 to The Florida Bar Complaint.

On October 4, 2023, respondent wrote an email to the grievance committee members, using the same email addresses, stating in pertinent part:

I would add that in terms of the email that an innocuous naming convention of not her name and satin - a shiny almost silky fabric v. Satan which in Hebrew means adversary. **I didn't call her Satan** (and only she and Jah and perhaps her parish priest really knows she is a devil or succubus)but as Brother Bob used to sing 'if the cap fit' [sic] This is exactly the petty type of behavior I predicted in my Federal Complaint. It just goes to show Ms. Gonzales lack [sic] a moral center or compass [picture of a compass] to guide her on the righteous path. I also believe she should be evaluated by FLA. this [sic]

position just seems out [sic] her worst behavioral traits. I lot of anger. [sic]

(Emphasis added). Exhibit 6 to The Florida Bar Complaint.

On October 4, 2023, respondent wrote another email addressed to bar counsel and the Executive Director of The Florida Bar (and others), containing religious references and the following veiled threat:

"Fyah burn [picture of fire] pan Descendants. Vegence [sic] is Jah's. I just watch the show. Perhaps a lesson that will allow you to share your wisdom should you live long [sic] enough to be considered an unwise elder." (Emphasis added).²

Respondent does not dispute he created the emails containing bar counsel's name, and saying she is satin and Satan. Furthermore, he does not deny he sent emails referring to bar counsel or suggesting bar counsel is:

- vindictive
- behaving like Satan
- a devil or succubus
- a liar and serves injustice
- a source of negative energy
- an abomination and perversion of the law
- having very thin skin
- having an overt mental illness
- cunning and crafty
- rude
- needing counseling

² TFB's Exhibit 7 attached to the Complaint.

- lacks a moral center or moral compass
- should be evaluated by FLA, Inc.

Exhibits 5 and 6 to The Florida Bar Complaint.

I find respondent's emails to be facially abusive, intimidating and disparaging. These were copied to respondent's co- counsels, five members of the grievance committee including the Chair, the Executive Director of the bar and the Designated Reviewer of the grievance committee.

At the hearing on the Bar's motion for Partial Summary Judgment, respondent argued his conduct does not violate rule 4-8.4(d) because it was not "in connection with the practice of law." Respondent is mistaken. Disciplinary proceedings are indeed in connection with the practice of law. See *The Florida Bar v. Norkin*, 183 So. 3d 1018, 1022 (Fla. 2015). In *Norkin*, the respondent sent bar counsel three offensive and threatening emails referring to her as 'evil' and 'despicable' and called the proceedings against him 'the most unjust act in judicial history'; stated that bar counsel had no conscience; and stated, 'I'm preparing the lawsuit against you. Keep an eye out.'" Norkin asserted his 'right to speak freely and to express his beliefs in the manner of his choosing'...." *Id.* at 1022. The Florida Supreme Court found Norkin's unprofessional behavior towards bar

counsel violated rule 4-8.4(d). *Id.* at 1020. See also *The Florida Bar v. Hefty*, 213 SO. 2d 422 (Fla. 1968) (Conduct while not acting as an attorney can subject one to disciplinary proceedings). And, *The Florida Bar v. Hooper*, 507 SO. 2d 1078 (Fla. 1973). (As this court has stated before, “an attorney is an attorney is an attorney.”).

Accordingly, I found that respondent’s conduct described in Count II of the Complaint violates rules 3-4.3 and 4-8.4(d) of the Rules Regulating The Florida Bar.

III. RECOMMENDATIONS AS TO GUILT.

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

- 3-4.3 (Misconduct and Minor Misconduct);
- 3-7.2(c) (Notice of Institution of Felony Criminal Charges);
- 4-8.4(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects); and
- 4-8.4(d) (A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including knowingly, or through callous indifference, disparage, humiliate,

or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline. I note that the presumptive sanction in this matter is disbarment, pursuant to three of the applicable standards. *See The Florida Bar v. Schwartz*, No. SC2019-0983, 2024 WL 188335, at *5 (Fla. Jan. 18, 2024), reh'g denied, No. SC2019-0983, 2024 WL 927415 (Fla. Mar. 4, 2024) (“Prior to making a recommendation as to discipline, referees must consider the Standards for Imposing Lawyer Sanctions, which discuss the presumptive sanctions in relation to the misconduct established and are subject to aggravating and mitigating factors, and this Court's existing case law.):

5.1 FAILURE TO MAINTAIN PERSONAL INTEGRITY

(b) Suspension. Suspension is appropriate when a lawyer knowingly engages in criminal conduct which is not included elsewhere in this subdivision or other conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

6.1 FALSE STATEMENTS, FRAUD, AND 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.

I found respondent made numerous false statements in the instant proceedings. These included but are not limited to: (1) the facially conflicting “explanations” respondent provided for his failure to notify the Bar of his criminal felony charges; (2) respondent’s defense that he never intended to call bar counsel “satan” when he created the “lindagonzalesissatin71” email address, but rather it was simply a typographical error, which defense was refuted by the numerous emails and correspondence in which respondent did in fact refer to Ms. Gonzalez as satan, a succubus, etc., and was also refuted when respondent spontaneously stated in open court in the instant Final Hearing, “There’s also no evidence she’s not Satan either.” (Transcript of Final Hearing at 191, lines 13-14); and (3) statements and documents contained in respondent’s disingenuous motion to amend the summary judgment findings, in which he submitted a “returned as undeliverable” email sent to the “lindagonzalesissatan71” email address, dated prior to his first use of the email in these proceedings, and which he labeled “newly discovered evidence” despite the fact he had it in his possession through the duration of the pertinent time period. Respondent’s statements that he never created or used this email address were demonstrably false as he copied himself on same in emails in these proceedings.

7.1 DECEPTIVE CONDUCT OR STATEMENTS AND
UNREASONABLE OR IMPROPER FEES

(a) Disbarment. Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another and causes serious or potentially serious injury to a client, the public, or the legal system.

I find that respondent's actions in Count II, and his continuing course of conduct as evidenced by his Facebook entries, introduced as TFB Composite Exhibit 2 at the Final Hearing, clearly evidence respondent violated his duties owed as a professional, such as the Oath of Civility, and the duty to behave with professionalism. His public commentary and disparagement of bar counsel, as well as the disciplinary process, violated Rule 4-8.4(d) and are per se harmful to the legal system, and same denigrate the public's confidence in the legal system and the disciplinary process. It is apparent that respondent took these actions to benefit himself, in an effort to bully, harass and intimidate bar counsel in these proceedings.

8.1 VIOLATION OF COURT ORDER OR ENGAGING IN
SUBSEQUENT SAME OR SIMILAR MISCONDUCT

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

I find this to be the most persuasive and significant Standard.

Respondent was on probation for a prior disciplinary infraction at the time

of these offenses. The Florida Supreme Court ordered that respondent be suspended for 90 days, and that he serve a three year period of probation for his prior offense. See The Florida Bar Composite Exhibit 1.

Significantly, respondent's prior disciplinary offense was for the same or similar misconduct as that which is at issue in the instant proceedings. (For further discussion on this point, see the discussion of aggravating factor 3.2(B)(1), *infra*.)

V. CASE LAW

I also considered the following case law prior to recommending discipline:

- *The Florida Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015). 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”).

- *The Florida Bar v. Norkin*, 183 So.3d 1018 (Fla. 2015). Norkin engaged in multiple instances of disparaging, insulting comments towards opposing counsel. Respondent had been previously disciplined for the same or similar misconduct. The Court suspended respondent's license to practice law for two years, and in a subsequent case he was disbarred.

- *The Florida Bar v. Jacobs*, 370 So.3d 876 (Fla. 2023). The Court suspended Jacobs for 91 days for abusive, disruptive and harassing litigation tactics, and for denigrating the judiciary. In its Opinion, the Court declined to impose a longer suspension, distinguishing this case from *Norkin* by citing to Norkin's prior disciplinary sanction for similar misconduct.

- *The Florida Bar v. Patterson*, 330 So.3d 519 (Fla. 2021). The Court imposed a two year suspension for respondent's denigration of the judiciary, where respondent had a prior disciplinary history.

- *The Florida Bar v. Ratiner*, 238 So.3d 117 (Fla. 2018). The Court disbarred respondent for abusive, disruptive litigation tactics employed by respondent in his cases over a long period of time. Ratiner had been previously disciplined for the same or similar misconduct in a stepping stone approach. In this case, the Court noted the prior offenses, and respondent's continued denial of any wrongdoing. In that

circumstance, there was no basis to believe that respondent would refrain from similar misconduct in the future, despite the imposition of discipline.

This is similar to the case at bar, where respondent similarly refuses to acknowledge the wrongfulness of his behavior. Respondent engaged in the conduct at issue in Count II while he was serving a probation period for the same type of misconduct. Respondent even called on his followers to similarly harass and abuse Ms. Gonzalez. Indeed, respondent submitted a petition for permanent retirement, because he would continue to engage in the abusive actions, but would no longer be under the jurisdiction of the Bar. In these circumstances, I have no choice but to recommend a similar sanction as that imposed in *Ratiner*.

VI. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

A. Personal History of Respondent:

Age: 55

Date admitted to the Bar: 1993

B. Aggravating Factors (according to Florida Standards for Imposing Lawyer Sanctions):

- 3.2(b)(1) prior disciplinary offenses: At the time of the instant

offenses, respondent was still on probation for his prior misconduct. In the previous bar discipline case, this Referee described respondent's conduct, generally as:

The conduct referenced in each of the files results from Respondent's personal behavior either in e-mails, Court filings, Court documents, texts, internet postings or telephone calls. The communications are replete with threats to file lawsuits and Bar grievances, personal insults, and compulsive actions such as multiple texts in a short period of time.

This is exactly the same type of misconduct respondent exhibited in Count II, and in his Facebook posts where he exhorted his followers to similarly harass Ms. Gonzales, and even in the rantings described by Ms. Harrison in her trial testimony at respondent's criminal jury trial. In the prior action, the Court imposed a 90 day suspension followed by three years of probation, among other conditions.

- 3.2(b)(2) dishonest or selfish motive; I found that respondent engaged in multiple acts of dishonesty in the instant proceedings, as described at page 15-16 *supra*. Additionally, I find that respondent's conduct was designed to bully and harass bar counsel to manipulate her actions in the instant case.

- 3.2(b)(3) pattern of misconduct; the pattern of misconduct is evident across the two counts at issue in the instant Complaint, as well as in his prior disciplinary matter. Respondent's prior offense constitutes similar and cumulative misconduct. Significantly, respondent was still serving a period of probation for the same misconduct at the time he committed the instant offenses. As the Florida Supreme Court made clear in *The Florida Bar v. Schwartz*:

[T]he Court "also considers prior misconduct and cumulative misconduct as relevant factors, and deals more severely with cumulative misconduct than with isolated misconduct." *Fla. Bar v. Wolfe*, 759 So. 2d 639, 645 (Fla. 2000) (citation and internal quotation marks omitted). As a matter of our discretion, we can impose a combined sanction for all cases and determine "the appropriate discipline from the totality of the conduct as though all of the charges had been presented to the Court in one proceeding." *Strems*, 357 So. 3d at 90 (quoting *Fla. Bar v. Greenspahn*, 396 So. 2d 182, 183 (Fla. 1981)).

The Florida Bar v Schwartz, No. SC2019-0983, 2024 WL 188335, at *5 (Fla. Jan. 18, 2024), reh'g denied, No. SC2019-0983, 2024 WL 927415 (Fla. Mar. 4, 2024).

- 3.2(b)(4) multiple offenses; In addition to the two counts at issue in the instant Complaint, each instance in which respondent bullied, harassed, or abused Ms. Gonzalez is considered a separate offense for purposes of this aggravating factor. See *The Florida Bar v. Orta*, 689 So.

2d 270 (Fla. 1997)(Each individual act of dishonesty is treated as a separate offense).

- 3.2(b)(6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; I found that respondent engaged in multiple acts of dishonesty in the instant proceedings, as described at page 15-16 *supra*.

- 3.2(b)(7) refusal to acknowledge the wrongful nature of the conduct; Respondent has given no indication to this Referee that he understands his conduct is wrong. Rather, he blatantly changed his record email address to one that would be a constant source of harassment and abuse of bar counsel in this case, insisting that all involved in the process use that email. He engaged in this conduct while he was serving a period of probation for exactly the same type of misconduct. While this matter was pending, he made Facebook posts exhorting his followers to assist him in his abusive tactics. Clearly, nothing this Referee or the Florida Supreme Court can do will deter respondent from future acts, nor will it demonstrate to respondent that the conduct is wrong.

- 3.2(b)(9) substantial experience in the practice of law; Respondent was admitted to practice law in Florida in 1993 and has been licensed for 31 years. He is also licensed in New York.

C. Mitigating Factors (according to Florida Standards for Imposing Lawyer Sanctions);

There is no record evidence to support a finding of any of the mitigating factors delineated in the Florida Standards for Imposing Lawyer Sanctions.

I do however, find it to be a mitigating factor that respondent's misconduct occurred in a personal matter, and not in the course of his representation of a client.

VII. 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.

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 16 day of May, 2024.



Judge Ted Booras, Referee

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