IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v.

SCOT STREMS,

Respondent.

_____/

Supreme Court Case
No. SC20-806

The Florida Bar File
Nos. 2018-70,119 (11C-MES)
2019-70,311 (11C-MES)
2020-70,440 (11C-MES)
2020-70,444 (11C-MES)

REPLY IN OPPOSITION TO RESPONDENT'S RESPONSE TO THE ORDER TO SHOW CAUSE

Petitioner, The Florida Bar, by and through undersigned counsel, files this Reply in Opposition to Respondent's Response to the Order to Show Cause (the "Reply"), and in support sets forth the facts and argument below:

I. Introduction and Standard of Review

A. Respondent's objections are rooted in a misapprehension regarding the relevant standard of review

In the Order to Show Cause dated July 15, 2020 (the "Show Cause Order"), this Court invited respondent to show cause as to "why the referee's recommendations should not be approved." On July 30, 2020, respondent filed his Response to Order to Show Cause (the "Response"), which did not engage the Court's inquiry as much as it found fault with the Court's June 9, 2020 Order of Suspension (the "Suspension Order"). Respondent does not, for example, raise any

substantive or procedural objections to the proceedings at issue, which took the shape of a generous twenty-hour evidentiary hearing spanning July 8, 9, and 10, 2020 (the "Hearing").[1] Likewise, respondent does not appear to find particular fault with the July 15, 2020 Report of Referee (the "Report") beyond disagreement with the Referee's weighing of the evidence and her ultimate conclusion. In truth, it appears that respondent is most interested in relitigating nearly all of the same issues put forward in his June 29, 2020 Motion to Dissolve Order of Suspension Dated June 9, 2020 (the "Motion"). Such a direct appeal is perhaps not within the scope of the Show Cause Order, but in any case, The Florida Bar will engage this exercise gladly.

Most of the arguments advanced by respondent fall into the following categories: (i) the affidavits of Judges Barbas and Holder are flawed or insufficient; (ii) the Petition and supplemental filings[2] are not adequately supported by the affidavits of Judges Barbas and Holder; (iii) The Florida Bar has not alleged or shown sufficiently recent misconduct to justify the Suspension Order; and (iv) The Florida Bar has not alleged or shown a sufficiently grave or immediate public harm to justify the Suspension Order. These arguments are all directed at

---

[1] For the Court's reference, The Florida Bar is separately filing the transcripts of the hearings. This Reply contains references to those transcripts in the format "Day # Tr.," in which Day 1, Day 2, and Day 3 correspond to the hearing transcripts from July 7, July 8, and July 10, 2020, respectively.

[2] Here, The Florida Bar refers to two submissions: its Response in Opposition to the Motion (the "Opposition"), dated July 2, 2020; and its Supplemental Memorandum in Support of the Opposition, dated July 6, 2020 (the "Supplement").

the requirements of the Petition under Rule 3-5.2(a)(1); they are not relevant to the Referee's review under Rule 3-5.2(i).[3]

As explained in the Report, the inquiry on respondent's Motion was limited to Rule 3-5.2(i). *See* Report, p. 3. This rule required respondent to show that The Florida Bar "cannot demonstrate a likelihood of prevailing on the merits on any element of the underlying rule violations." Rule 3-5.2(i). By its plain language, Rule 3-5.2(i) does not contain any temporal language or immediacy requirements. By entering the Suspension Order on June 9, 2020, the Court implicitly determined that the Petition satisfied all requirements of Rule 3-5.2(a)(1)—among them, issues of immediacy and public harm. Respondent cannot use Rule 3-5.2(i) now to second-guess that decision. Rather, the analysis described in the rule requires a weighing of The Florida Bar's case on the rule violations, not an exercise in measuring the time between the alleged misconduct and the date of respondent's suspension.

Respondent's argument on this issue is rooted in a misguided reading of *The Florida Bar v. Guerra*, 896 So. 2d 705 (Fla. 2005). *Guerra* concerns an attorney whose license was suspended under Rule 3-5.2 for his misuse of trust funds in a Ponzi-like scheme. *See id.* at 706. When he learned The Florida Bar had begun its investigation, he ceased this conduct and hired an accountant to bring his trust

[3] References to "Rule X-Y.Z" refer to the Rules Regulating the Florida Bar, as amended.

accounts into compliance. *See ibid.* The attorney then moved to dissolve the suspension order for essentially the same reason as the respondent—the alleged conduct was supposedly no longer continuing. *See ibid.* The Court rejected that argument, reasoning:

> In these proceedings, Guerra admits that he violated trust accounting rules, but argues that the emergency suspension should be dissolved because he is no longer engaged in this misconduct. This is simply not a valid basis for dissolution of the emergency suspension. If it were, the purpose of the emergency suspension would be entirely defeated. We expect that when one is discovered violating trust requirements, he or she most assuredly will immediately discontinue the conduct.

Id. at 706-707 (emphasis supplied). To be clear: the Court did not decline to lift the suspension because the conduct was interrupted by the suspension order; the Court declined to dissolve the suspension because the issue of immediacy was "not a valid basis for dissolution" in the first place. *Ibid.*

Guerra provides for even further relevant comparison with the instant case. In *Guerra*, the attorney repaid his clients prior to moving for dissolution, but the harm in this case by its nature cannot be repaid. Respondent cannot restore lost time and resources to the courts that have sanctioned it, nor can his clients resurrect lawsuits that have been dismissed with prejudice due to their misconduct. Furthermore, it bears noting that the attorney in *Guerra* ceased his misconduct when he learned of The Florida Bar's investigation. The instant case is based upon four separate files dating back to 2018, and the respondent received notice of the

most recent complaint months before the Petition was filed. As demonstrated in the written submissions and at the Hearing, the alleged pattern of misconduct continued into the present, with at least one substantial sanction being incurred against respondent's firm during respondent's 30-day wind-down period. Accordingly, both the facts and law of *Guerra* militate in favor of the conclusions ultimately reached in the Report.

The operative test of Rule 3-5.2(i) is whether The Florida Bar can prove a likelihood of succeeding on the merits of the alleged rule violations. That is precisely what happened in the Hearing, as stated in the Report.

B. Respondent raises other baseless and formalistic challenges to the Report

Additionally, respondent argues that the Report should be rejected because it "did not reference any specific rule violation and accordingly, did not find that Respondent had violated the elements of the rule violations alleged by the Bar." Response, p. 4. This statement misconstrues several things. For one, there is no requirement in Rule 3-5.2(i) requiring a referee's report to include a specific roadmap for itemized rule violations, and in any case, bar counsel provided exactly such a recitation in the closing remarks at the Hearing. *See* Day 3 Tr. 26:20-37:4. Furthermore, for purposes of respondent's Motion, there need be no finding that respondent in fact violated the rules alleged at this stage. Again, what Rule 3-5.2(i)

requires is a demonstration of a *likelihood* of The Florida Bar's success on the alleged rule violations. That is precisely what the Referee found. *See* Report, p. 6.

Finally, respondent criticizes the Report for "rel[ying] entirely on the testimony of...the Honorable Gregory Holder and the Honorable Rex Barbas, to support the broad finding that Respondent's firm persisted in bad faith litigation tactics to the detriment of their clients and despite warnings and monetary sanctions." Response, p. 4. That mischaracterization is simply not borne out on the record, which consists of some 2,500 pages of evidence from The Florida Bar, which the Referee thoroughly reviewed and followed throughout the hearing, as evidenced throughout the Hearing transcripts. Furthermore, Judges Holder and Barbas are unquestionably qualified to testify to the broad pattern of misconduct perpetrated by respondent and his firm, the Strems Law Firm, P.A. ("SLF"). These jurists have individually presided over (and still preside over) several dozen SLF cases, and each gave thorough testimony explaining how each of them came to recognize this pattern of misconduct.

For example, Judge Barbas testified that he was personally aware of 29 instances where respondent and SLF had been sanctioned, which "shows a definitive pattern of obstruction," in his opinion. *See* Day 2 Tr., 30:23-31:20. Judge Holder testified at length to a "disturbing pattern" in his cases with SLF, involving the failure to comply with post-loss obligations, dilatory tactics, obstruction, and

other misconduct. *See* Day 2 Tr., 136:12-129:23. In fact, Judge Holder's affidavit discusses over three dozen cases involving that very pattern, and he testified about several of these at the Hearing. *See* Petition, Ex. U, pp. 3-5. Given the breadth and depth of these witnesses' knowledge, it is difficult to understand how any reliance on their testimony would be ill-placed.

II. Judges Barbas and Holder clearly explained why respondent is accountable for the pattern of conduct alleged in the Petition

A. Judge Holder's findings in Perez v. Homeowners Choice Prop. & Cas. Co. *are characteristic of the misconduct alleged in the Petition*

In the Hearing and again in the Response, respondent and his counsel attacked Judge Holder's handling of *Perez v. Homeowners Choice Prop. & Cas. Co.*[4] *See* Response, pp. 6-7; *see generally* Day 2 Tr., 340-354. Specifically, respondent avers that Judge Holder disposed of the case by granting dismissal and 57.105 sanctions where the insurer had not requested such relief. He states that "the insurance company had not filed a motion for sanctions under Florida Statutes, section 57.105" and that "Judge Holder *sua sponte* dismissed the case on his own motion." *See* Response, pp. 6-7. These statements are untrue and contradict the plain record of that case.

[4] The *Perez* case is discussed at length in paragraph 14(j) of the Petition.

The hearing at issue concerned a "Motion to Lift Abatement and for Sanctions" which was filed on August 1, 2017, and dismissal was expressly requested as relief in that motion. Earlier in the case, on March 22, 2017, the insurer had also filed a motion for sanctions under Fla. Stat. § 57.105, which was still pending at the time of the hearing. In any case, Judge Holder possessed the discretion to impose 57.105 sanctions *sua sponte*. *See Moakley v. Smallwood*, 826 So. 2d 221, 226 (Fla. 2002) ("We thus hold that a trial court possesses the inherent authority to impose attorney's fees against an attorney for bad faith conduct.").

Furthermore, it bears noting that respondent persists in this mischaracterization of the facts in the Response after The Florida Bar clarified these issues during the hearing. During the closing remarks, bar counsel specifically discussed the dismissal and sanctions issued by Judge Holder, correctly explaining that "that precise relief was pending for consideration at the time of the September 28th, 2017 hearing. By that point, the insured had already requested precisely that relief in motions dated August 11th, 2017 and March 22nd, 2017." Day 3 Tr., 43:19-24. In the end, respondent's attacks on Judge Holder do not comport with the facts, and neither does Mr. Drake's testimony regarding the very proceedings in *Perez*.

Finally on this point, respondent alleges that Judge Holder "routinely expressed displeasure and irritation with plaintiffs' lawyers who pursued insurance

claims against insurance companies and the insurance defense bar." Response, p. 14. This is part of respondent's continuing effort to paint Judge Holder as some sort of hostile bully against first-party plaintiffs' counsel generally and Mr. Drake specifically, but this argument is entirely baseless, particularly in the context of the *Perez* case. In the hearing at issue, Judge Holder was considering whether to lift an abatement he had entered nearly four months earlier for the express purpose of giving Mr. Drake and his client an opportunity to complete an EUO and otherwise comply with the insurance policy's post-loss obligations regarding an alleged loss that occurred in May 2016. *See* Petition, Ex. J-1, 5:8-25. In short, respondent's client had failed to comply with the policy's post-loss conditions after nearly eighteen months, and in doing so violated Judge Holder's order requiring precisely that compliance. He offered ample opportunity for SLF to achieve that compliance, to no avail. Under the circumstances, there is simply no merit to the idea that the *Perez* case evidences some sort of hostility on the part of Judge Holder.

B. Judge Barbas's orders in Rivera, et al. v. Security First Ins. Co. *and* Ramirez, et al. v. Heritage Prop. & Cas. Ins. Co. *thoroughly describe SLF's pattern of ongoing misconduct*

To a lesser extent, respondent takes issue with Judge Barbas's orders in the Petition. Regarding *Rivera, et al. v. Security First Ins. Co.*,[5] respondent loosely describes the procedural history of that case, including Judge Barbas's sanctions

[5] The *Rivera* case is discussed at length in paragraph 14(i) of the Petition.

order directing respondent to pay $37,000 in fees and defense costs. Respondent goes on to say that "the court vacated the order to hold an evidentiary hearing." Response, p. 9. This characterization is not entirely accurate. Judge Barbas did in fact issue a blistering 10-page sanctions order in which he found that SLF's conduct was "deliberate and contumacious and designed to prevent the orderly movement of this litigation," and in which Judge Barbas famously grieved the *entire* Strems Law Firm to The Florida Bar. Petition, Ex. I-1, ¶¶ 45, 59. Later, Judge Barbas vacated *only* the monetary portion of the sanctions; the findings of fact remained untouched. *See generally* Petition, Ex. I-2. Indeed, that was his testimony at the Hearing. *See* Day 2 Tr., 8:20-22. ("[S]ubsequently, I withdrew, not the contempt cite, but I withdrew the amount that I was assessing against him …"). Accordingly, respondent provides no basis for disregarding Judge Barbas's past findings or his testimony at the Hearing.

Respondent's criticism of Judge Barbas's decision in *Ramirez et al. v. Heritage Prop. & Cas. Ins. Co.*[6] is likewise baseless. Respondent relies solely on his rote assertion that he did not "handle" this matter, and that the *Kozel* dismissal did not allege specific acts of misconduct on his part personally. These bare affirmations are not supported by the facts, and for the reasons discussed at the Hearing and elsewhere in this Reply, they offer respondent no defense.

---

[6] The *Ramirez* case is discussed at length in paragraph 14(n) of the Petition.

III. Respondent continuously breached his duty to supervise his subordinates, and he is responsible for their misconduct due to his knowing participation in the same

Respondent's defense in this proceeding rests upon the categorical denial that he had a hand in his firm's own cases. Setting aside the fact that the record proves otherwise, and setting aside the minutiae of the ethical rules, respondent's theory of the case warrants further exploration. Between the Petition and the Hearing, The Florida Bar has developed undeniable evidence of a years-long torrent of rule-breaking conduct frequently punctuated by some of the most powerful sanctions available in Florida courts. Respondent, who is the president and sole partner of his firm, claims that he had no knowledge of this conduct and practice, and had no opportunity or obligation to put an end to it. For the reasons stated below, respondent's contentions are neither believable nor meritorious.

A. Respondent utterly failed in his obligations under Rule 4-5.1(a) and (b)

Rule 4-5.1(a) obligates a partner in a firm to "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct." Rule 4-5.1(b) similarly provides that a supervisory lawyer "shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct." As the sole partner and president of the firm, respondent is bound by both of these rules, and based upon the expansive evidence presented by The Florida Bar, it

strains credulity for respondent to argue that he somehow satisfied his obligations under Rules 4-5.1(a) and (b). Apparently, respondent would have the Court believe that he had no knowledge of the repeated and devastating sanctions that his firm incurred, or he was powerless to stop them. Neither explanation is characteristic of a partner who has effected "reasonable assurances" or taken "reasonable efforts" to ensure the ethical practice of his subordinates. Neither explanation was borne out by the evidence developed at the Hearing.

B. Respondent made himself instrumental to the litigation and settlement of his firm's cases, and is consequently accountable for the misconduct of his subordinates

Naturally, respondent denies responsibility for his subordinates' misdeeds under Rule 4-5.1(c). *See* Response, p. 11. Principally, respondent argues that he is not accountable under Rule 4-5.1(c)(1), which makes an attorney responsible for the ethical violation of another attorney if "the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved." According to respondent, he had no knowledge of the misconduct of his associates and did nothing to ratify their actions. Neither of these positions comport with the facts.

Throughout their testimony, both respondent and Mr. Drake made it clear that respondent was timely apprised of all serious sanctions, bar complaints, and other ethical issues. Accordingly, respondent was well-apprised of the mounting ethical challenges his firm faced. While he testified that the firm took measures to

improve its practice and compliance, any such efforts were obviously ineffective, as evidenced by the ceaseless stream of court sanctions, the most recent of which came during the pendency of these proceedings.

Fortunately, the Court need not guess at respondent's knowledge or his involvement in his firm's conduct. In its Opposition to respondent's Motion and throughout the Hearing, The Florida Bar produced extensive evidence showing that respondent was indispensable to the filing and settlement of his firm's cases. More specifically, The Florida Bar produced reports showing that respondent personally served nearly 2,500 lawsuits on insurers since January 1, 2019, and that he was counsel of record in over 200 cases in the 13th Judicial Circuit (including four cases discussed in the Petition). Respondent signed the civil cover sheet in nearly every lawsuit filed by his firm. Respondent further testified in a separate matter that he regularly became involved in his firm's cases during the pretrial and settlement phases. None of this was contradicted in the Hearing. While respondent may not have actively litigated discovery issues in all of his cases, he made himself indispensable to the filing and settlement of his firm's claims. This facilitation of his subordinates' conduct—in the face of of mounting sanctions and scrutiny from the bench—clearly demonstrates that respondent knowingly participated in this conduct and in fact facilitated it.

Respondent further argues that he never ratified the conduct of his subordinates as required by Rule 4-5.1(c)(1), but that assertion is likewise unbelievable. The same attorneys appear time and again in the cases that underpin the Petition, incurring dramatic sanctions that frequently resulted in the termination of their clients' cases. Every time, respondent sent them back out to practice. There is no proof that any SLF attorney was suspended, terminated, or otherwise internally disciplined for this conduct. Accordingly, the Court is left with the inescapable conclusion that respondent did ratify their conduct by continuing to send them back to court.

The analysis under Rule 4-5.1(c)(2) follows a similar pattern, with the same outcome. This rule holds an attorney responsible for another attorney's conduct if "the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices...and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take remedial action." *See id*. As discussed above, respondent surely became aware of his firm's egregious and long-running record of sanctions at some point. As the record shows, each sanctions order served as a preview for the next, and respondent had an opportunity (and an obligation) to intervene and reform the practices of his subordinates with each successive sanction and *Kozel* dismissal. The record of this

case illustrates that he never once did so; SLF's pattern of gross misconduct has never meaningfully slowed.

C. *The judges' testimony further developed the issues regarding respondent's accountability for his associates' actions*

During the Hearing, the testimony of Judges Barbas and Holder explored the issues of respondent's knowledge and his approval of his subordinates' misconduct. Judge Holder testified to various efforts to counsel SLF attorney Jonathan Drake regarding his litigation practices and his professional obligations. While Mr. Drake would later object to this characterization, Judge Holder couched those discussions in terms of mentorship. More specifically, Judge Holder recalled one such discussion in 2017 where he privately confronted Mr. Drake regarding his punctuality and filing practices, among other issues. *See* Day 2 Tr., 158:5-18. During that conversation, Judge Holder testified that:

> [Mr. Drake] indicated Mr. Strems, as the owner and managing partner of the firm, basically instructed him with respect to his obligations.
>
> We're not talking about him being late to hearings. We're talking about the dilatory tactics. The failure to have the client sit for an EUO, the failure to allow the defense to inspect the property. The failure to allow the defendant to conduct their appraisal. The failure to allow the defendant to exercise their option to repair. The failure to allow defendant to exercise their choice of contractor.

Id., 159:14-160:3.

Respondent insists that this conversation described by Judge Holder never happened. On this point, respondent's position rests entirely upon the word of his former managing partner Jonathan Drake, who he called to rebut Judge Holder's testimony. While the Response describes Mr. Drake's testimony as "clear, cogent, and direct," The Florida Bar does not share that assessment. During cross-examination and questioning from the Referee, Mr. Drake's testimony might be more accurately characterized as challenging and conflicted on critical issues. In one instance, Mr. Drake challenged a basic question about his discovery practice: "What's your next step" after receiving interrogatories propounded on his client? Day 2 Tr., 305:12. Instead of answering, for example, that he notified the client or drafted responses, he gave a roughly nine-sentence explanation of why he would not respond to that line of questioning, which he ultimately dismissed as "silly." *Id.*, 305:13-306:18. In another telling instance, The Florida Bar asked Mr. Drake whether he generally considered his clients' property damage to be "serious," and he challenged that characterization at length. *See id.*, 301:12-302:12. In fact, Mr. Drake testified that he only considered his client's damages to be serious "[i]f the property is 100 percent unlivable." *Id.*, 302:4-6. "If it's something less than that, then just kind of based on our line of work, I don't know that I would necessarily say that they're serious." *Id.*, 302:6-9. The Florida Bar's question no doubt left room for interpretation, but this is a noteworthy distinction

Mr. Drake draws in the context of these ethical proceedings against his former firm.[7]

Mr. Drake denies that his alleged confession to Judge Holder never took place. In fact, Mr. Drake categorically denied having any sort of mentoring or counseling relationship with Judge Holder. These denials, however, are contradicted by his own testimony. On direct examination, Mr. Drake answered the following question:

> Q: Based on the kind of conduct that you have been subjected to on hearings with Judge Drake -- with Judge Holder. I apologize, Mr. Drake -- would you, under any circumstances confide in Judge Holder as a mentor to help you learn how to better practice law?
>
> A: No, I never believed that his intentions were to have my best interest at heart. And so I've always taken what he says respectfully, but with a grain of salt. And never have I seen him approach me in a mentoring-type role.

Id., 358:10-21 (emphasis supplied). Later, in examination by the Referee directly, Mr. Drake answered the following question:

> Q: Did you ever go to the judge privately and apologize for any behavior?
>
> THE WITNESS: I mean, I had private conversations with Judge Holder. I had approached him and talked with him privately in chambers related to, again, attempts to seek advice and improve our practice.

[7] Naturally, these proceedings reflect on Mr. Drake's practice as well as respondent's. In his testimony, Mr. Drake acknowledged that he "ha[s] an interest" in these proceedings. Day 2 Tr., 297:4.

Id., 372:3-10 (emphasis supplied). In the same hearing Mr. Drake is testifying that he "never" sought Judge Holder's advice to "learn how to better practice law," and also that he recalled multiple conversations in which he "approached him and talked with him privately in chambers related to, again, attempts to seek advice and improve our practice." These statements cannot be reconciled with one another, and this conflict cuts to the core of Mr. Drake's testimony. After all, the entire purpose for which he was called was to rebut testimony regarding his relationship and conversations with Judge Holder. Accordingly, The Florida Bar must respectfully disagree with respondent's assessment of the weight and credibility of Mr. Drake's testimony.

During the Hearing, and again in the Response, respondent made much of the fact that Mr. Drake's alleged confession to Judge Holder was not described in his affidavit or in the Petition. *See* Response, p. 13. Of course, The Florida Bar does not control the statements that its affiants include in their affidavits. Furthermore, while Judge Holder's testimony in this vein is damaging to respondent for obvious reasons, it is hardly scandalous or surprising. It is undisputed that respondent was the sole owner and president of the firm, and it is not disputed that he was Mr. Drake's direct supervisor. Junior attorneys commonly take instruction and guidance from their supervisors and learn from their examples. The various subdivisions of Rule 4-5.1 are premised on exactly such a relationship.

Consequently, it would hardly be remarkable for one of respondent's associates to admit that respondent had such a relationship with his subordinate attorneys.

In any case, the Referee did not need to accept Judge Holder's testimony regarding the alleged confession in order to reach the decision in the Report. As explained above, the written record is replete with evidence establishing respondent's personal and indispensable involvement in his associates' cases. Throughout these proceedings, respondent has sought to insulate himself with terms such as "file responsibility" and "primary attorney," which may have had some unelaborated significance within SLF, but such terms do not appear in the Rules Regulating the Florida Bar. In this way, respondent advances highly technical and self-serving terminology to absolve himself of responsibility. While The Florida Bar has refuted these arguments extensively, the common-sense explanation of Judge Barbas perhaps most aptly explains why respondent must be held responsible for the pattern of misconduct described in the Petition. During the Hearing, Judge Barbas was questioned regarding the proceedings in *Rivera, et al. v. Security First Ins. Co.*, in which he famously grieved respondent's entire firm to The Florida Bar. During that testimony, bar counsel asked why Judge Barbas did not simply refer the SLF attorneys appearing before him. He gave the following answer:

> A: Because one, Mr. Strems was the partner and owner of the law firm, as Mr. Drake had informed me.

> Two, as partner or owner of a law firm, he has a responsibility to oversee the actions of his law firm.
>
> Three, there appeared to be a pattern irrespective of where this was occurring in the state of Florida, whatever circuit it was. Not only the 13th Judicial Circuit, but my demonstration in paragraph 55 [of Exhibit I-1 of the Petition] would be different. Circuits involved would indicate that there was some pattern going on, irrespective of which attorneys were appearing in front of which judges on behalf of Mr. Strems. Mr. Strems, up until this point, minus anyone other than Mr. Strems, my review of the documents, Mr. Strems signed all complaints and signed all the cover sheets.
>
> Here were all these lawyers appearing for him in all these circuits. He initiated it. He is the one responsible for it as the one, the signing attorney. And two, as the owner and senior partner of the firm. So there's a pattern throughout the firm, throughout the state.

See Day 2 Tr., 26:15-27:15. Judge Barbas's common-sense explanation of the issue cuts through respondent's attempts to distance himself from his subordinates. There was a consistent and long-running pattern of misconduct that existed statewide irrespective of which SLF attorneys appeared as local counsel. That pattern could not perpetuate itself without the knowledge or approval of respondent as the firm's president. Accordingly, accountability can ultimately lie on no one else.

IV. Respondent's blanket denials regarding SLF's duplicitous filing practice are not supported by the evidence developed at the Hearing

Respondent criticizes the presentation of evidence that the Strems Law Firm was coordinating a duplicitous filing scheme alongside the Fernandez Trial Firm,

P.A. (the "Fernandez Firm"). *See* Response, pp. 15-17. As alleged in the Petition, it was SLF's practice to file multiple separate first-party lawsuits in circuit court relating to the same event, while the Fernandez Firm would file multiple corresponding AOB lawsuits on behalf of AIRS. *See* Petition, ¶¶ 24-34. Respondent does not appear to argue that the filings did not happen as described in the petition, but instead refutes the notion that this was a coordinated or collaborative effort between SLF and the Fernandez Firm. To that end, respondent contends that there is no meaningful relationship between the firms.

The respondent's position conveniently ignores the remarkable overlap between SLF and the Fernandez Firm. It is undisputed that the sole partner of the Fernandez Firm is a former SLF attorney, and that the firm uses SLF's pleading templates. Furthermore, Judge Barbas explains how the cases of SLF and the Fernandez Firm often "involve the same parties or assignees of the same parties, the same issues of fact, the same insurance contracts, the same property, the same or virtually the same dates of loss, and the same issues of law." Petition, Ex. V, ¶ 6. During the hearing, The Florida Bar also explored the fact that Mr. Fernandez still appeared on SLF fee sheets in early 2019 when he had begun his own firm nearly a year earlier. *See* Day 1 Tr., 292:6-295:5. Furthermore, since the Hearing, The Florida Bar has learned that respondent (through a holding company) has leased the Fernandez Firm its current office in Miami since late 2018. The numerous

connections between SLF and the Fernandez Firm are still being developed in these proceedings, but even now it is apparent that these law practices are not arm's-length strangers to one another. Accordingly, the record provides ample support for the Referee's Report on this issue.

In this duplicitous filing scheme, SLF filed separate lawsuits for each individual insurance claim, irrespective of whether those claims involve the same parties, the same events, the same policies, the same property, the same loss consultant, or the same timeframe. In almost every case, SLF would file these separate lawsuits without notifying the court that the cases may be related. Judge Holder explains that "[a]s a result of those cases being filed separately, the possibility of conflicting rulings arises and duplication of legal services resulting in an absolute duplication of attorney fees and a complete waste of judicial time and effort." Petition, Ex. V, ¶ 6. Judge Barbas naturally felt the same, and he testified at length regarding the strain that SLF's practice placed on the time and resources of the 13th Judicial Circuit. *See* Day 2 Tr., 23:23-25:2. He further testified that if a plaintiff filed separate, related cases, those cases would each be randomly assigned to a judge, and the judges would have no way of knowing that their respective cases were related absent some kind of notice. *See id.*, 56:19-57:17. Consequently, the judges would not know that their cases may be ripe for consolidation. *See id.*, 57:18-22.

In the end, SLF's filing practice denied judges the opportunity to manage their own caseloads; it kept them in the dark regarding related cases that may be subject to consolidation. Judge Barbas testified that he typically learned that separate SLF cases were related by "defense counsel bringing it to the Court's attention or the Court finding out about it. I do not have any recollection of the Strems Law Firm ever telling me about a related case." *Id.*, 58:3-8. This problem became so extensive that Judge Barbas and the clerk's staff searched through all SLF's cases to identify which might be related and subject to consolidation. *See id.*, 59:11-24. He further testified that they found many such cases, and that the judges were largely unaware that those cases were related. *See id.*, 59:25-60:10.

Respondent does not particularly dispute the testimony that SLF's filing practices resulted in considerable burden and waste for the judiciary. Rather, respondent takes the position that his firm was exempt from filing related case notices, even in light of Administrative Order S-2019-047, which provides that "[p]laintiffs have an affirmative obligation to notify the court of any related cases at the beginning of the first hearing on any matter in the case." Respondent's position is rooted in his highly technical definition of what constitutes a "related case" under this administrative order, which unsurprisingly contradicts the interpretation of Judge Barbas—the Administrative Judge for the entire General Civil Division in the 13th Judicial Circuit. As Judge Barbas testified, it is the

presiding judge's interpretation of the administrative order that controls over that of a litigant. *See* Day 2 Tr., 126:11-16. Accordingly, respondent's position must be rejected for what it is: a self-serving interpretation of a court order designed to keep the court in the dark.

In any case, this dispute over Administrative Order S-2019-047 is largely academic, since there is no real dispute that respondent and SLF knew that the judges of the 13th Judicial Circuit generally considered its separately-filed cases to be related. In both of Judge Barbas's cases discussed in the Petition, SLF had brought separate suits which were subsequently consolidated. *See generally* Petition, ¶14(i) and (n) (discussing *Rivera, et al. v. Security First Ins. Co.* and *Ramirez v. Heritage Prop. & Cas. Ins. Co.*, respectively). In both of those instances, SLF's cases had been consolidated long before Administrative Order S-2019-047 was ever issued. Judge Barbas testified that from at least August 2017 forward, SLF was on notice that the court considered SLF's similarly-situated lawsuits to be subject to consolidation, but that SLF still did not file related case notices. *See* Day 2 Tr., 126:17-127:16. Furthermore, on a May 1, 2019 hearing in *Vera v. Am. Security Ins. Co.*, Judge Lamar Battles admonished SLF regarding precisely this conduct, stating: "A long time ago in this very hearing room on numerous occasions, Mr. Drake of The Strems Law Firm has been ordered and

required to file the notice of related cases." Petition, Ex. P-1, 3:23-4:1. To resolve any doubt, Judge Battles went on to explain:

> I don't know how to do it, but I'm going to say one more time, counsel, pursuant to the administrative order and pursuant to specific instructions to senior people in The Strems Law Firm, you have been directed in all cases in Division H, I haven't taken it upon myself to do it for the whole Civil Division, although the administrative order covers that, you've been directed to file notices of related cases.
>
> …
>
> I think I've seen at least one other case in there where we had a complaint on one day, a kitchen leak; a day later, bathroom leak; a month later, Hurricane Irma leak. These are related cases, same property, same plaintiffs, same defendant, same repairs, all manner of things. Those are required to be -- to make courts aware because they're all in different divisions. And the Court's not ignorant as to why that would occur. ...

Id., 10:1-10. Accordingly, both before and after the issuance of Administrative Order S-2019-047, the judges of the 13th Judicial Circuit placed respondent and SLF on clear and unequivocal notice that the firm had to file related case notices. Nonetheless, SLF persisted in its refusal to do so. This course of conduct can only be characterized as a willful repudiation of the court's authority and directives. Accordingly, there can be no fault in the Report to the extent that it finds merit in The Florida Bar's allegations regarding SLF's filing practices.

V. SLF's Evasion of Consolidation Evidences an Unethical Intent

In an effort to vindicate himself, respondent points to the March 16, 2018 letter from The Florida Bar Diversion/Discipline Consultation Service ("DDCS"), which made several recommendations to help SLF address its apparent client relations problem. Respondent holds this letter up in an apparent attempt to convince the Court that his firm in fact acted on those recommendations, and that in doing so the firm came to operate more ethically. The first of these points finds scarce support in the record, and the second is plainly untrue.

Respondent has yet to produce any significant evidence identifying specific policies or practices used to ensure that SLF's attorneys would litigate their cases ethically. During the Hearing, respondent only testified in broad, vague terms that he helped enact and administer policies and procedures to help his attorneys behave ethically. There was no meaningful discussion as to what these policies and procedures were, nor was there testimony about how they were brought to bear in the context of any of the specific sanctions identified in the Petition. The indistinct policies attested to by respondent do not appear in any document in the record. Consequently, we are left with nothing beyond respondent's bare assurances that the DDCS letter resulted in any meaningful reform within the firm.

Even if SLF had acted on the DDCS letter, its efforts did nothing to slow the tide of sanctions against the firm and its clients. Respondent asserts that since the

issuance of the DDCS letter, "The Florida Bar produced one (1) order, entered June 2020." This is simply untrue. The DDCS letter is dated March 16, 2018. Five months later on August 23, 2018, Judge Barbas issued his 20-page *Kozel* dismissal in *Ramirez v. Heritage Prop. & Cas. Ins. Co.*, in which he expressly found that SLF "demonstrated a 'deliberate and contumacious disregard of this Court's authority and [] bad faith, [and] willful disregard and gross indifference to the applicable rules of civil procedure.'" Petition, ⁋ 14(n) and Ex. N, p. 20 (quoting *Mack v. Nat'l Constructors, Inc.*, 666 So. 2d 244, 245 (Fla. 3d DCA 1996)).

In November of that same year, Judge Raiden delivered his *Kozel* dismissal in *Rodriguez v. Am. Sec. Ins. Co.*, in which SLF's "client" testified (and Judge Raiden found) that she had neither hired SLF nor authorized the lawsuit. *See* Petition, ⁋ 14(o) and Ex. O. Judge Battles entered his sanctions order in *Vera v. Am. Security Ins. Co.* on May 2, 2019, which required respondent's personal appearance on further proceedings—a measure which SLF fought tooth and nail. *See* Petition, ⁋ 14(p) and Ex. P-2. Between the Petition and supplemental proceedings, The Florida Bar cites seven more recent cases involving egregious misconduct—from the filing of false affidavits to the submission of false time sheets—which include the June 22, 2020 sanctions order against SLF in *Mojica v. United Prop. & Cas. Ins. Co.*, issued during the 30-day wind-down period in the Suspension Order.

Furthermore, the bar complaint that triggered the 2018 DDCS letter was opened in 2016, as respondent himself admitted. *See* Day 1 Tr., 249:9-23. Accordingly, respondent and SLF were on notice that the firm faced systemic problems from 2016 forward, meaning that all or nearly all of the orders discussed in the petition were issued after SLF was on notice of the bar investigation. Respondent's notion that the DDCS letter effected a meaningful change in SLF simply does not comport with the facts.

In a further disingenuous characterization of the Petition, respondent states that "[w]hile failures to meet discovery deadlines are not excused under the Rules Regulating The Florida Bar, they are not comparable in scale or gravity to ongoing conversion of client funds...warranting emergency suspension… ." Response, p. 18. While the misconduct of SLF has often come to light during the discovery process, this matter touches on far, far more than the failure to satisfy discovery deadlines. The record is replete with evidence that: SLF repeatedly and willfully violated procedural rules; SLF repeatedly and willfully violated court orders; SLF made false representations to the court; SLF spoliated or failed to disclose material evidence; SLF advanced false testimony from its clients; respondent submitted false affidavits; and SLF filed lawsuits on behalf of individuals who did not authorize them, and who were unaware that they had retained SLF. These issues are absolutely "comparable in scale or gravity" to the theft of client funds,

particularly in light of the fact that the courts were a party to (and a victim of) this conduct, which so frequently resulted in dismissal and other sanctions against the firm's clients.

VI. The enormous record of evidence supports the Report, even if final findings of misconduct were not made in every case

The Petition references 18 separate cases, a number of which respondent attempts to dismiss because they "do not contain final determinations of discovery violations or adverse conduct by Strems Law Firm attorneys." Response, p. 19. Simply put, this is not a basis to dismiss or diminish any allegations relating to these cases. There is no requirement in the Rules Regulating the Florida Bar that wrongdoing must be reduced to a final court order before discipline may be imposed. While most of the cases resulted in a *Kozel* dismissal or some other manner of final disposition, the remaining cases are still replete with evidence of rule-breaking conduct that the Court may, of course, consider.

Respondent comments extensively on the fact that Judge Schurr ultimately declined to find a fraud on the court in *Robinson v. Safepoint Ins. Co. See* Response, p. 19-20. Such a ruling hardly absolves respondent or SLF of any ethical wrongdoing—particularly the several alleged rule violations that do not concern fraud. In any case, the Referee had a far more vivid context in which to view the underlying facts of Robinson, and that context includes the separate, related case

also captioned *Robinson v. Safepoint Ins. Co.*[8] There, Judge Santovenia examined precisely the same conduct—the numerous and dramatically conflicting sworn statements by the plaintiff—and found a fraud upon the court, dismissing the case with prejudice.

Respondent makes much of the fact that the monetary sanctions in *Rivera, et al. v. Security First Ins. Co.* and *Frazer, et al. v. Am. Security Ins. Co.* were set aside, but that is not overly relevant to these proceedings. *See* Response, p. 20. As described in the Petition, the monetary sanctions in those cases were vacated or reversed for procedural reasons, and the remaining sanctions and factual findings remained untouched by those decisions. *See* Petition, ¶¶ 14(i) and 14(m).

Respondent also protests the outcome of *Rodriguez v. Am. Security Ins. Co.*, in which the court entered a *Kozel* dismissal based, in part, upon the plaintiff's in-court testimony that she never hired the firm and never authorized them to file the lawsuit. *See* Response, p. 20 (discussing Petition, ¶ 14(o)). Respondent complains that the court dismissed the case without considering certain "evidence" that contradicted their supposed client's testimony—copies of a retainer agreement and a copy of the plaintiff's driver's license. These retainer agreements do not appear on the record in this case, although respondent did tender a letter of representation

[8] The first *Robinson* case is Case No. 2015-019927-CA-01 in the 11th Judicial Circuit in and for Miami-Dade County, Florida, and it is discussed at paragraph 14(d) in the Petition. The second *Robinson* case is Case No. 2015-019932-CA-01 in the 11th Judicial Circuit in and for Miami-Dade County, and it is discussed in Section III.A of the Opposition.

(signature redacted) and a copy of the plaintiff's driver's license. The possession of a copy of a person's driver's license does not create an attorney-client relationship, however, nor does it authorize the filing of a lawsuit. This meager offering does nothing to upset the sworn testimony of SLF's supposed client in this case, the credibility of which is described at length by Judge Raiden in his order. *See generally* Petition, Ex. O.

Respondent further urges the Court to ignore *Vera, et al. v. Am. Security Ins. Co.*, *Courtin v. Homeowners Choice Prop. & Cas. Ins. Co.*, and *Watson v. Homeowners Choice Prop. & Cas. Ins. Co.* on the basis that they "did not contain any final findings of misconduct." *See* Response, p. 21. While this may be the case, the Petition includes a rich record of evidence of misconduct in these cases, as detailed in motions, hearing transcripts, orders, and other filings. *See* generally Petition, Exs. P-1 through P5; Exs. Q-1 through Q-3; Ex. R.

In the end, even though a minority of the cases discussed in the Petition lack final, express findings of misconduct against SLF, they all clearly evidence the same continuous pattern of unethical practice by respondent and his firm. Much of these issues were developed in the Hearing, and there is certainly nothing on the record to suggest that the Referee did not give this material due consideration. Accordingly, respondent fails to state any meaningful basis for setting aside the Report.

VII. The Florida Bar's supplemental filings clearly show that the pattern of misconduct described in the Petition extended into the present

Respondent attacks The Florida Bar's supplemental filings on a number of baseless grounds. The first of these is that the Opposition and the Supplement were not accommodated by additional affidavits required under Rule 3-5.2(a). That rule expressly imposes requirements for a petition for emergency suspension; there is no affidavit requirement for responses to motions, or supplements to the same.

In any case, the Opposition and the Supplement concern the same pattern of conduct alleged in the Petition, which the Court has already found is adequately supported under Rule 3-5.2(a)(1). These supplemental filings discuss five additional SLF lawsuits that are part of the same pattern of conduct alleged in the Petition, and involve the familiar issues of discovery violations, false client testimony, the obfuscation of evidence, and fraud on the court, to name just a few. This is the same pattern attested to by Judges Holder and Barbas, and it is the same pattern sanctioned by several other judges as described in the Petition and the Opposition. Respondent's Motion had criticized the Petition on the basis that the alleged conduct was not recent enough, and The Florida Bar obliged that challenge. Respondent cannot now claim that the matters in the supplemental proceedings are improperly raised.

The first of these five cases is the second case captioned *Robinson v. Safepoint Ins. Co.* discussed in the previous section. Respondent claims that no

fault lies with SLF relating to that case because the firm's client—not the firm itself—was the subject of the fraud sanction. While respondent is no doubt satisfied to wash his hands of his client's fraud, the outcome of that case does not resolve the surrounding ethical issues. Respondent makes a similar claim about *Clay v. SafePoint Ins. Co.*, but at the dismissal hearing in that case, Judge Coates openly wondered whether SLF had a professional responsibility to disclose evidence that the repairs its client allegedly needed had already been done at no cost to her. As respondent states, the case was successfully mediated as an alternative to Judge Coates's promised *Kozel* decision. Whatever the outcomes of these cases, both stand as examples of SLF permitting its clients to perpetrate fraud and misrepresentation upon the courts. At best, SLF did not put forth sufficient effort in investigating their case before filing suit, and it did not put forth sufficient evidence to ascertain the truth during discovery. At worst, SLF orchestrated this obfuscation. In either case, there is sufficient basis for the Referee to find evidence supporting the alleged rule violations in these two lawsuits.

Respondent's defense is even more tenuous regarding the sanctions handed down by Judge Frink in *Mojica v. United Prop. & Cas. Ins. Co.* In that case, the court found—by clear and convincing evidence—that the plaintiff had not, in fact, paid for the repairs for which he sought reimbursement from the insurer. *See* Opposition, pp. 11-13. In separate orders, he dismissed the case for this fraud and

sanctioned SLF under Fla. Stat. § 57.105. Notably, the last of those orders was issued June 22, 2020—thirteen days after the Suspension Order was entered. Respondent's only defense is that the order found no fault with his conduct personally, and respondent did not "handle" the case. *See* Response, p. 24. Again, respondent was the sole capital partner of the firm, and had an obligation to prevent his attorneys from perpetuating false statements and fraud in the courtroom.

As for the fourth case, *McEkron, et al. v. Security First Ins. Co.*, respondent somewhat mischaracterizes the issues as a "dispute over attorney's fees." Response, p. 24. While that case does involve an ongoing fee dispute (currently subject to the insurer's pending motion to strike fee claim), it also involves deeply troubling issues of client communication as it pertains to settlement. On the eve of trial in this case, the insurer offered a proposal for settlement of $40,500.00 against alleged damages of approximately $33,000.00. *See* Opposition, pp. 13-14. This was the last of numerous, increasing proposals from the insurer, and it excluded SLF's fee claim, which would need to be resolved by hearing (as it is now). This home run settlement offer represented an approximate 123% recovery for the plaintiffs, and it was sent to respondent personally. The offer was rejected, however, and the case went to trial where SLF's clients obtained a jury verdict of $10,000.00—less than a quarter of the proposed settlement. Respondent was

questioned about this settlement offer during the Hearing, and he amazingly testified that he had no recollection of the offer, and he could not say whether it had been communicated to the clients. *See* Day 1 Tr., 261:19-263:12. These events alone evidence—at a minimum—a wholesale recklessness as to the clients' interests that rather expectedly yielded a disastrous result.

Nonetheless, SLF's nominal victory at trial triggered fee-shifting under Fla. Stat. § 627.428, and six months later (following a court order and a motion to enforce the same) SLF submitted a fee claim in excess of $320,000. During the ensuing discovery on this claim, SLF's attorneys made a number of alarming admissions. Trial counsel Orlando Romero—who signed the affidavit verifying the firm's fee sheets—testified that: he discarded physical time records before the fee sheet was prepared; the timesheet was based upon guesswork and gross exaggeration; tens of thousands of dollars were billed by an attorney who did no work on the file; and tens of thousands of dollars were billed by attorneys who could not remember basic facts about the case. Former SLF attorney Christopher Aguirre further testified that the fee sheets were replete with entries for strategy meetings, internal memoranda, and other work that was never performed. Respondent (who himself billed over $50,000.00 on this case) now argues that these matters are inconsequential to the instant proceedings because there has been no final hearing or adjudication as to any ethical issues in the *McEkron* case. That

argument is unavailing here, where the evidence so decisively indicates a callous disregard for the clients' interest and a clear intent to manufacture a fee claim.

Finally, respondent takes issue with the inclusion of *Cameron v. Citizens Prop. Ins. Corp.* There, SLF's putative client and his wife called Citizens during the pendency of the case and unequivocally explained that they did not know who SLF was, they did not authorize a lawsuit against Citizens, and they did not want to proceed with any claim or suit against the company. Respondent argues that their "client" and his wife were simply confused when they called Citizens, and that they had intended to call SLF instead. *See* Response, p. 26. Respondent's argument is based upon two bare-bones affidavits purportedly signed by the client and his wife, which were conspicuously never filed in the lawsuit. Respondent's explanation and the contents of these affidavits are simply absurd when compared to the transcript and audio of the client's telephone call to Citizens—both of which were naturally provided to the Referee. Furthermore, in their affidavits, the client and his wife explicitly state a desire for SLF to continue their lawsuit, even though the affidavits were dated the exact same day that SLF dismissed their case. Respondent's excuses defy belief.

In sum, The Florida Bar's supplemental filings—and the matters discussed therein—are appropriately considered in the context of the Referee's decision. They detail the same dishonest, dilatory, and abusive pattern of conduct described

in the Petition, which may have actually grown in severity over time. The Referee gave due consideration to all of these materials—as well as respondent's own arguments and exhibits—and respondent elaborates no meaningful basis for upsetting the Referee's Report.

VIII. The allegations in the *Ortiz* lawsuit provide valuable context for the instant case

With its Petition, The Florida Bar included a copy of the amended complaint in the class action suit against respondent and SLF in *Ortiz v. The Strems Law Firm, P.A., et al. See generally* Petition, Ex. T. To a great extent, this lawsuit alleges a scheme in which Contender Claims Consultants, Inc. and/or other third parties deceptively enroll homeowners into SLF's client base. *See* Petition, Ex. T, ¶¶ 41(a)-(h). The *Ortiz* lawsuit is the subject of some discussion in Judge Holder's affidavit. *See* Petition, Ex. U. In his Motion and throughout the Hearing, respondent urged the Referee not to consider this matter because in its present posture it is nothing more than unproven allegations. *See* Response, p. 27. Naturally, the documents offered by The Florida Bar speak for themselves, but for clear reasons, the allegations in the *Ortiz* complaint provide valuable context for the broader case against respondent.

As he testified in the Hearing, Judge Holder discussed the *Ortiz* lawsuit in his affidavit because its allegations comported with his own firsthand experience presiding over SLF cases. When asked what specifically led Judge Holder to give

credence to the *Ortiz* allegations, he testified: "[t]he various sworn EUO testimony that I have received and presented to this Court, as well as deposition testimony in various cases. Those were my conclusions based upon the evidence presented to me, and they were consistent with the allegations within that class action lawsuit." Day 2 Tr., 229:22-230:4.

Furthermore, the record includes at least two matters where a putative SLF client has expressly disavowed a relationship with the firm—*Rodriguez v. American Security Ins. Co.* and *Cameron v. Citizens Prop. Ins. Corp.*, discussed above in Sections V and VII, respectively. In the former case, Judge Raiden expressly stated that he believed Ms. Rodriguez's testimony that she never retained SLF or authorized them to file suit. *See* Petition, Ex. O, ¶ 13(a). At the Hearing, Mr. William Schifino—who himself represents respondent in the *Ortiz* lawsuit—testified that Mr. Cameron's transcribed telephone call "certainly [] appears to be consistent" with the allegations of solicitation against respondent and SLF. Day 1 Tr., 104:21-107:22.

With those dots now connected, the persistent allegations of solicitation against respondent and SLF provide valuable context for the pattern of misconduct described in the Petition. In this pattern, SLF historically had difficulty securing their clients' presence when it is required (*e.g.*, for EUO's or depositions), and likewise had difficulty obtaining documents from their client (*e.g.*, sworn

statements of loss, jurat pages, documents requested in discovery). If some of SLF's clients are in fact being unwittingly coaxed into retaining the firm, then those individuals would no doubt express denial or confusion to learn that SLF purports to represent them in a lawsuit. If those individuals are unaware of the representation and unaware of the lawsuit, then it is no wonder that they are absent from the discovery process. Furthermore, it would not be surprising for individuals thusly situated to ignore or dismiss communications from a law firm that they—to their knowledge—did not retain.

IX. The record and posture of this case do not support respondent's request for interim probation

Late in the Response, respondent makes an appeal for interim probation in lieu of suspension. The posture of these proceedings cut against such relief. As per the Report, The Florida Bar has already demonstrated a likelihood of success on the merits sufficient to keep the Suspension Order in place. With this substantive decision as to the merits now on the record, it makes little sense to loosen the restrictions in the Suspension Order. What respondent requests is in essence a dramatic modification of the Suspension Order, which the Referee has already rejected as per Rule 3-5.2(i). The Court should not entertain this request.

X. Conclusion

In sum, respondent offers a muddled interpretation of the relevant standard of review in order to ask the Court to second-guess the Suspension Order.

Otherwise, respondent provides no meaningful basis for upsetting the Referee's Report. The Florida Bar has carried its burden of showing a likelihood of prevailing on the merits of the underlying rule violations. For these reasons, and those explained above, the Court should approve the Report and all findings therein.

XI. No oral argument is necessary

The Florida Bar does not agree with respondent's request for oral argument. As explained herein, respondent largely seeks to re-litigate the very issues that were considered during the Hearing. To that end, the record is already well-documented, and the issues have been thoroughly developed in the parties' written submissions. Accordingly, oral argument is unnecessary.

Respectfully Submitted,

John Derek Womack
Bar Counsel
The Florida Bar – Miami Branch Office
444 Brickell Avenue, Suite M-100
Miami, Florida 33131
(305) 377-4445
Florida Bar No. 93318
jwomack@floridabar.org

CERTIFICATE OF SERVICE

I certify that this Reply in Opposition to Respondent's Response to the Order to Show Cause has been E-filed using the Efiling Portal with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided to the Honorable Dawn V. Denaro, Referee, via email at ddenaro@jud11.flcourts.org; to Natasha Zellner, Judicial Assistant, via email at nzellner@jud11.flcourts.org; to Scott K. Tozian, Attorney for Respondent, at stozian@smithtozian.com; to Benedict P. Kuehne, Attorney for Respondent, at ben.kuehne@kuehnelaw.com; to Mark A. Kamilar, Attorney for Respondent, at kamilar@bellsouth.net; to Kendall Coffey, Attorney for Respondent, at kcoffey@coffeyburlington.com; and to Patricia Ann Toro Savitz, Staff Counsel, at psavitz@floridabar.org this 10th day of August, 2020.

John Derek Womack
Bar Counsel