IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

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| THE FLORIDA BAR,<br><br>Complainant,<br><br>v.<br><br>SCOT STREMS, ESQ.,<br><br>Respondent.<br>_____/ | Supreme Court Case<br>No. SC20-806<br><br>The Florida Bar File Nos.<br>2018-70,119(11C)(MES)<br>2019-70,311(11C)(MES)<br>2020-70,440(11C)(MES)<br>2020-70,444(11C)(MES) |

# REPORT OF REFEREE

## I. SUMMARY OF PROCEEDINGS

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

On June 5, 2020, The Florida Bar filed its Emergency Suspension Petition against Respondent, Mr. Strems in these proceedings. On June 9, 2020, the Florida Supreme Court entered its Order suspending Respondent's license on an emergency basis. On July 7, 8, and 10, 2020, a three-day evidentiary hearing was held on Respondent's Motion to Dissolve Emergency Suspension (the "Dissolution Hearing"). On July 15, 2020, this Referee issued a report recommending that the

suspension remain in effect. This Referee's decision was affirmed and the report was accepted by the Florida Supreme Court on August 27, 2020.

From September 8, 2020 through September 16, 2020, a trial was held in this case (the "Trial"). In these proceedings, Respondent appeared with counsel, Scott K. Tozian, Esq., Mark A. Kamilar, Esq., Kendall Coffey, Esq., Benedict P. Kuehne, Esq., and Gwendolyn Daniel, Esq., and The Florida Bar was represented by John Derek Womack, Esq., Arlene Kalish Sankel, Esq., and Patricia Ann Toro Savitz, Esq. This Referee's Oral Ruling on Liability was pronounced on September 23, 2020 and on September 24, 2020, a Sanctions Hearing was held in this matter.

All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence, and the Report of Referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

## II. FINDINGS OF FACT

The testimonial and documentary evidence has established that Scot Strems, the sole named partner of the Strems Law Firm (SLF) caused a variety of problems for the judiciary, attorneys, and members of the public across the State of Florida. Under Mr. Strems' authority, guidance, and control, SLF grew significantly from 2016 through 2018. SLF lawyers had approximately seven hundred cases on their individual dockets which was impossible to properly manage. The result was the

mishandling of numerous cases which resulted in a plethora of court sanctions ranging from five to fifteen thousand dollars a week, case dismissals, neglected clients, and a frustrated judiciary.

Mr. Strems was involved in virtually every aspect of his firm's law practice, including litigation decisions, strategies, and the settlement of cases. Although, Mr. Strems implemented remedial measures related to case and office management at the urging of Christopher Aguirre, Esq. (former associate and litigation managing attorney at SLF) and The Florida Bar (LOMAS), those efforts proved to be insufficient due to the remaining volume of approximately five hundred cases per two attorney teams and the amount of new cases taken on weekly. Eventually, Mr. Strems was able to get the caseload down to about three hundred fifty cases per six or seven member team which included two attorneys and paraprofessionals. Some of the problems which plagued Respondent and his law firm remained as of the date of his June 9, 2020 suspension.

Mr. Strems could have possibly mitigated the harm which he caused to the judiciary, attorneys, and members of the public across the State of Florida by refraining from taking in twenty to fifty new cases per week for a period of time, identifying problematic cases, and working to stabilize them.

***Witness Testimony***

During these proceedings, a total of twenty witnesses gave testimony. The

following table provides a list of those witnesses, the offering party, and the proceeding at which they testified.

| WITNESS | PROCEEDING | OFFERING PARTY |
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| Scot Strems, Respondent | Dissolution of Emergency Suspension Hearing and Sanctions Hearing | Respondent |
| William Schifino, Esq., counsel for Respondent and SLF | Dissolution of Emergency Suspension Hearing | Respondent |
| Jonathan Drake, Esq., former SLF Attorney | Dissolution of Emergency Suspension Hearing | Respondent |
| Hon. Gregory Holder, 13th Judicial Circuit Court Judge | Dissolution of Emergency Suspension Hearing | The Florida Bar |
| Hon. Rex Barbas, 13th Judicial Circuit Court Judge | Dissolution of Emergency Suspension Hearing | The Florida Bar |
| William Hager, Esq., Expert | Trial | Respondent |
| Ana Maria Pando, Esq. | Trial | Respondent |
| Raul Rivero | Trial | Respondent |
| Cynthia Montoya, former COO of SLF | Trial | Respondent |
| Cecile Mendizabal, Esq., former SLF Attorney | Trial | Respondent |
| Hunter Patterson, Esq., former SLF Attorney | Trial | Respondent |
| Orlando Romero, Esq., former SLF Attorney | Trial | Respondent |
| Melissa Giasi, Esq., attorney and principal of Giasi Law, P.A. | Trial | Respondent |
| Jelani Davis, Esq., former SLF Attorney | Trial | Respondent |
| Ursula Sabada, former SLF Client | Trial | The Florida Bar |

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| Mary Jane Lockhart, former SLF Client | Trial | The Florida Bar |
| Carlton McEkron, former SLF Client | Trial | The Florida Bar |
| Tom Reilly, The Florida Bar Investigator | Trial | The Florida Bar |
| Christopher Aguirre, former SLF Attorney | Trial | The Florida Bar |
| Thomas Duarte, Esq., The Florida Bar Auditor | Sanctions Hearing | The Florida Bar |

The Florida Bar called several witnesses to testify on its behalf during trial. Christopher Aguirre, Esq. is a former associate and litigation managing attorney of SLF who left the firm amicably in August 2018. Both sides, including this Referee found Mr. Aguirre to be a credible witness. Mr. Aguirre testified that when he initially started working at SLF as an associate in March of 2016 his caseload consisted of approximately seven hundred cases and there were only three litigation attorneys. The average indemnity demand on SLF cases would range from twenty to forty thousand dollars.

Mr. Aguirre testified that he "developed a presentation on developing essentially a deadline calendar and a way to keep track of deadlines, ideas on improving discovery department and ideas on improving communication between attorneys and their staff, which eventually evolved into the team system." Hr'g Tr. 34:15–21 (Sept. 8, 2020). In addition, Mr. Aguirre drafted several policies and

procedures for SLF in an effort to make the firm more efficient. Those policies and procedures included:

- Strems Law Firm Pleading Organization Policy, Organizational Requirements for Pleadings, Documents and All Materials Uploaded to the "ACT" Case Management Software;

- Strems Law Firm Introduction to Litigation, Instructional Guide to the Basics as to the Process of Litigation in General. "The rules and deadlines are just as critical to bringing a successful claim as the actual details of the loss."; and

- Strems Law Firm Coverage, Organizational Structure, Responsibilities, and Expectations of Any and All Coverage Attorneys (Inclusive of Team Attorneys).

Scot Strems Mitigation 98 – 117.

By October 2017, a year and a half after Mr. Aguirre was hired, the total number of litigation attorneys had increased to eighteen. Hr'g Tr. 104:19–105:9 (Sept. 8, 2020). In addition, the structure of the firm changed to five or six member teams with two attorneys and staff assigned to handle approximately five hundred cases per team, due in part to Mr. Aguirre's suggestions, efforts, and insight as litigation managing attorney. Hr'g Tr. 104:19–106:13 (Sept. 8, 2020).

Mr. Aguirre testified he kept Respondent up to date on firm metrics. Specifically, regarding firm metrics, he stated:

> . . . discovery was extremely important and deadlines. So I believed in what the firm was doing, and I believed in bringing processes that could essentially keep track of the metric that would ensure that we weren't missing court ordered deadlines. That we were doing our best to essentially answer discovery on a timely basis. By that point, we

> were already over the 30-day deadline on a lot of cases, so there was a lot of groundwork to make up on. So the metrics was essentially me following up daily with the discovery department, seeing how the numbers are looking, seeing if they were going down, seeing what was happening with that. Other metrics were checking on the deadline calendar and making sure other deadlines were being met, such as a proposal for settlement deadline or deadlines regarding depo requests. Everything in general. I can't recall them, but there were a lot that got put in there. Those are the type of metrics I would keep. It was a lot of numbers and a lot of discussions.

Hr'g Tr. 35:12-36:13 (Sept. 8, 2020).

He estimated SLF was accepting twenty to fifty new cases per week. Mr. Aguirre stated that Mr. Strems had not set a mandate or target figure for new cases; however, Mr. Strems would be interested in and question slowdowns in the acceptance of new cases.

Mr. Aguirre testified that settlements were in Respondent's purview, and that Respondent would negotiate potential settlements. He testified that from 2016-2017 SLF was accumulating court sanctions ranging from five to fifteen thousand dollars weekly, as the client base expanded. These sanctions orders were brought to the attention of Respondent who was unhappy when such orders were entered against SLF. Moreover, Mr. Aguirre testified that Mr. Strems would admonish and speak with the attorneys regarding sanction orders. *Id.* at 62:10–63:4 (Sept. 8, 2020). Mr. Aguirre was very clear that in the 2.4 years that he was at the firm, neither Mr. Strems nor any of the attorneys intentionally violated court orders. He was also clear that Mr. Strems never directed him or any other attorney

to violate any Rule Regulating the Florida Bar. He was never instructed by Mr. Strems to file nor prosecute cases without proper authority. *Id.* at 141:3-143:9. The SLF attorneys who testified confirmed that Mr. Strems never asked them to violate the Rules Regulating the Florida Bar.

In addition, Christopher Aguirre testified he was not aware of any Miami-Dade County requirement for case consolidation and that there was nothing sinister about assignment of benefits cases. *Id.* at 101:1-18 (Sept. 8, 2020).

On direct-examination, attorney Womack on behalf of The Florida Bar questioned Mr. Aguirre regarding client Mary Lockhart's case. Mr. Aguirre acknowledged his signature in the complaint's signature block; however, he did not recall the case. Mr. Aguirre stated he was proud of the work he did at SLF.

Ms. Mary Jane Lockhart was a client of SLF. She testified that no one had a discussion with her regarding the strengths and weaknesses of her case. In Ms. Lockhart's case, the defendant filed a motion for summary judgment. An SLF attorney did not file a response to the motion. As well, Jack Krumbien, Esq., a former attorney with SLF, failed to appear at the summary judgment hearing before Judge Rodolfo Ruiz on December 3, 2018. Judge Ruiz stated, in pertinent part:

> [n]ow, for the record, the Court is beginning this special set hearing at 11:00; it was originally set for 10:30. In the last fifteen minutes, the Court has been placed on hold with counsel for the plaintiff, The Strems Law Firm, after I engage in a courtesy call to see where they

> are so that they can proceed on this special set hearing. I will note also, for the record, that this hearing has been confirmed twice; both at calendar call and at motion calendar. This [trial] was continued with this hearing, a summary judgment hearing, on a motion filed by the defendant has been on the calendar and initially coordinated for quite some time and the Court is going to be proceeding at this time with the hearing given that no one from plaintiff's firm has gotten on the line. They continue to keep me on hold, and so we're going to proceed with the hearing at this time.

TFB Trial Exhibits B, Hr'g Tr. 4:11-5:3.

On December 3, 2018, the court granted the defendant's motion for summary judgment. (2017-021296-CA-01). Witnesses, Cecile Mendizabal (former SLF managing attorney) and Melissa Giasi, Esq. described the nonappearance of Mr. Krumbien (former SLF attorney) as excusable neglect, due to a calendaring error. On December 12, 2018, SLF filed "Plaintiff's Verified Motion to Vacate Order Granting Defendant's Final Summary Judgment and for Rehearing on Defendant's Final Summary Judgment." The motion to vacate was denied on February 11, 2019.

Melissa Giasi, Esq. filed a notice of appeal on March 11, 2019, thereby appealing the order granting the defendant's motion for summary judgment (rendered on December 3, 2018). The appellate case was *per curiam* affirmed. *Lockhart v. Citizens Prop. Ins. Co.*, 3D19-512, 2020 WL 5032477 (Fla. 3d DCA Aug. 26, 2020). The Third District Court of Appeal ruled in favor of the insurance

company on the basis that the insurance policy did not cover the damage to Ms. Lockhart's property.

Ms. Ursula Sabada was a repeat client of the SLF. She had a total of three claims with SLF. Two of her three cases settled. She was unwilling to move out of her home temporarily for the needed repairs to be completed by the insurance company's contractors in the third case. As such, the third claim remains delayed and unsettled.

In addition, Ms. Sabada testified she had difficulty getting through to a person on the SLF phone line. Her wait time would be from thirty-five to forty-five minutes on average. However, she acknowledged having communication problems due to her ex-husband allegedly hacking her personal emails and issues with her cell phone reception.

Mr. Carlton McEkron is a former client of SLF. His total damages as per an estimate were $32,952.88. Although, Mr. McEkron received several settlement offers, he did not remember some of them. Mr. McEkron stated that at mediation the attorney representing his insurance company offered him fifty-five thousand dollars and that the insurance company would pay SLF's attorney's fees. Mr. McEkron testified that Orlando Romero, Esq. (former SLF attorney) told him not to speak to them. Mr. Romero then countered with three hundred and sixty-five thousand dollars which included attorney's fees. Mr. McEkron testified that the

three hundred and sixty-five thousand dollar counteroffer was not discussed with him prior to it being made and that the defense left the mediation without a settlement.

Mr. McEkron's case went to trial with Orlando Romero, Esq. and Jelani Davis, Esq. (former SLF attorneys) representing Mr. McEkron. Mr. McEkron testified that both attorneys were prepared for trial and that the jury awarded him ten thousand dollars. Jelani Davis, Esq. testified that after the trial Mr. McEkron thanked Mr. Romero and Mr. Davis for giving him a voice.

Respondent called several witnesses to testify on his behalf during trial.

Melissa Giasi, Esq. is a Florida licensed attorney that is board certified in real estate and appellate practice. She testified that she provided trial support and appellate services for SLF. She made appearances in court at times as co-counsel for SLF on various matters, including motions for summary judgment, appeals, and sanctions. Her involvement included the *Lockhart*, *McEkron*, *Mojica*, and *Mora* cases.

Hunter Patterson, Esq. is a dual licensed attorney in Florida and California. He was valedictorian of his law school graduating class. He has a background in the insurance industry where he held the positions of insurance claims adjuster, litigation specialist, and litigated claims manager. His experience as a designated corporate representative includes his testifying on behalf of corporations. He has

earned the insurance industry's Charter Property Casualty Underwriting Designation (CPCU). Also, Mr. Patterson has worked as a litigation attorney on both sides of first party insurance litigation, as both a plaintiff's attorney and a defense attorney. Most recently, Mr. Patterson was the managing attorney for SLF's Orlando and California offices. This Referee finds that Mr. Patterson is both a credible and qualified witness.

During his testimony, Mr. Patterson stated he initially met Respondent in December 2016. During the conversation, Respondent discussed with him issues he was having with the firm. Those issues included "growing pains," sanctions, and discovery violations. Respondent shared with him his vision for the future of the firm. Respondent's vision was to have the firm more client centered, expanding resources, and increasing the number of attorneys. At the end of the conversation, Respondent offered him a position with SLF. Mr. Patterson began working for SLF on or about December 15, 2016.

From late 2019 to 2020, more teams were created. Mr. Patterson testified the goal was to have around three hundred fifty cases per team. During that time period, the seven-person team structure consisted of two attorneys and five paralegals.

Mr. Patterson explained during his testimony that a major insurance carrier he formerly worked for would assign different claim numbers to each loss within a

home, thereby allowing for separate deductibles to be taken out for each covered loss.

William "Bill" Hager, Esq. was proffered and accepted as an expert witness in insurance on the behalf of Respondent. Mr. Hager's prior experience includes, but not limited to, being an Assistant Attorney General in Iowa assigned to the Department of Insurance, an administrative law judge where he heard first party claims against insurers and disputes between two insurers, and the Iowa Commissioner of Insurance. In addition, Mr. Hager was the Chief National Counsel on compensation insurance, which is regulated by the Florida Office of Insurance Regulation. Mr. Hager was elected to the Florida House of Representatives for Palm Beach County, Florida for eight years and served as Vice Chair of the Insurance and Commerce Committee. Also, Mr. Hager is an attorney admitted in Iowa, Illinois, and Florida. Mr. Hager has testified as an expert approximately fifty times in Florida.

He testified that because there is a division of benefits between a homeowner claim and a remediator claim, the claims are separate and independent. He explained that remediators do the work in exchange for an assignment of benefit. Then, the remediator files a claim with the insurance company. Mr. Hager testified that assignment of benefit claims are common and lawful.

***Affidavits of Judge Rex Barbas and Judge Gregory Holder***

The affidavits of Rex Martin Barbas, Circuit Judge and Gregory P. Holder, Circuit Judge, set forth the violations of Rule 4-8.4(d) Misconduct, that is conduct "in connection with the practice of law that is prejudicial to the administration of justice."

The Affidavit of Rex Martin Barbas, Circuit Judge states, in pertinent part:

> 4. In my position as Administrative Judge, I hold meetings with the eleven Judges of this Division and often discuss cases with other Judges in all the Civil Divisions of the County and Circuit Court. In my personal experience presiding over Strems Law Firm cases, I have personally witnessed the severe and continued violations of the Rules Regulating the Florida Bar committed by Scott [sic] Strems and The Strems Law Firm. Moreover, in my discussions with my judicial colleagues, they have uniformly reported to me similar experiences involving the Strems Law Firm.
>
> 12.a. The most basic discovery, Plaintiffs' depositions were deliberately delayed, and the Plaintiffs failed to provide any credible or reasonable justification for the delays. Plaintiffs' lawyers have willfully disregarded the Florida Rules of Civil Procedure and the Rules of Professional Conduct and have engaged in bad faith litigation conduct. The actions of Plaintiffs' lawyers have caused substantial problems of judicial administration and not only this case, but this Circuit Court. The delays and violations of Court Orders by the Strems Law Firm, P.A. are not isolated. The Strems Law Firm, P.A. has evidenced a pattern of litigation delays and frequently violates Court Orders. This Court previously sanctioned Plaintiffs' counsel and/or Plaintiffs in this case for failing to comply with a Court Order.
> . . .

The Affidavit of Judge Gregory P. Holder states, in pertinent part:

> 2. During my over three years now assigned to this Division, I have had many conversations with my judicial colleagues concerning the pattern and practice of Scott [sic] Strems and the Strems Law Firm. Universally, these discussions have noted his absolute violations of

> the Rules of Professional Responsibility and blatant obstruction of justice in virtually every case where he and his firm enter an appearance.
>
> 5. My research into the Strems Law Firm and Mr. Strems has disclosed the fact that Mr. Strems engages in dilatory tactics in virtually every case. The Strems Law Firm refuses to participate in discovery, fails to attend properly notice [sic] hearings, violates court orders resulting in additional litigation and hearing time before the Court. The Strems Law Firm and Mr. Strems engage in mendacious, bad-faith conduct in violation of both the Rules of Professional Conduct and the sworn oath taken by every attorney licensed to practice law within the State of Florida.

***Duplicitous Filings***

Previously, at the hearing on Respondent's Motion to Dissolve Emergency Suspension, Judge Barbas testified on behalf of The Florida Bar. This Referee finds that Circuit Court Judge Rex Barbas is a credible and qualified witnesses.

Judge Barbas testified as to Respondent's and/or SLF's failure to abide by local rules of procedure, pertaining to notice of related cases and duplicitous filings with the court. Judge Barbas testified that he was giving his interpretation of the Thirteenth Judicial Circuit's administrative orders in his affidavit, he did not quote directly from the administrative orders, he told SLF verbally what he "believed related cases were," and he did not publish his interpretation of the administrative order generally to other lawyers that practiced before the court. Trial Tr. 84-90 (July 8, 2020).

In paragraph 10 of his affidavit, Judge Barbas stated:

> 10. Pursuant to local Administrative Order S 2019-047 paragraph 7 and Administrative Order 2019-44 paragraph 12, attorneys for plaintiffs are required to notify the court when there are other related cases. A "related" case is defined as any case with one or more of the following: the same plaintiff(s) or defendant(s) name(s), the same property address, the same policy of insurance and/or the same or similar dates of alleged loss.

The Florida Bar, Exhibit V.

Paragraphs 6 and 7 of Administrative Order S-2019-007 of the Thirteenth Judicial Circuit of Florida state:

> 6. Related Cases.
> Plaintiffs have an affirmative obligation to notify the court of any related cases at the beginning of the first hearing on any matter set in the case. A case is "related" if it is a pending civil case filed in the Thirteenth Judicial Circuit Court or the Hillsborough County Court involving the same parties and same legal issues.
>
> 7. Consolidation of Cases.
> When two or more civil cases, regardless of the nature, involving common questions of law or fact, are pending in the Circuit Civil Division, which might be appropriately considered or tried together, but which are assigned to different divisions of the Circuit Civil Division, the judge assigned to the division which has the lowest case number may, upon appropriate motion or on the judge's own motion, transfer the case(s) with the higher number(s) to the division with the lowest case number. Upon any transfer, the clerk will make appropriate notation upon the progress docket. Thereafter, the issues in all the cases will be heard, tried and determined by the judge assigned to the division consolidating the cases. Any transfer will remain permanent regardless of whether the cases are ultimately tried together. After consolidation, each pleading, paper or order filed in a consolidated action must show in the caption, the style and case number of all of the transferred cases that have been consolidated.

The language in Judge Barbas' affidavit does not comport with the verbatim language of Administrative Order S-2019-007 regarding the requirement to "notify the court of any related cases at the beginning of the first hearing on any matter set in the case," where the court has defined a case as "related" if it is a pending civil case filed in the Thirteenth Judicial Circuit Court or the Hillsborough County Court involving the same parties and same legal issues. AO S-2019-007. Additionally, he did not publish his interpretation to other attorneys that would practice before him, only to SLF. Trial Tr. 89-90 (July 8, 2020). This Referee finds The Florida Bar was unable to prove Judge Barbas' allegations by clear and convincing evidence of a duplicitous filing scheme on the part of Respondent and/or SLF.

***Kozel Dismissals***

Dismissal of a case with prejudice based on an attorney's failure to adhere to filing deadlines and procedural requirements should be examined in the context of six factors, known as the *Kozel* factors.

The six factors are:

> 1) whether the attorney's disobedience was willful, deliberate, or contumacious, rather than an active neglect or an experience;
> 2) whether the attorney has previously been sanctioned;
> 3) whether the client was personally involved in the act of disobedience,
> 4) whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion;

> 5) whether the attorney offered reasonable justification for the noncompliance; and
> 6) whether the delay created significant problems of judicial administration. Upon consideration of these factors, if a sanction less severe than dismissal with prejudice appears to be a viable alternative, the trial court should employ such an alternative.

*See Kozel v. Ostendorf*, 629 So. 2d 817, 818 (Fla. 1993).

In each of the eight cases cited below, found within the instant Record provided to the Florida Supreme Court, each trial court justified their dismissal order by identifying the particular instance or instances within each *Kozel* factor regarding the violation of court filing deadlines or procedural requirements by an attorney for the Strems Law Firm. Mr. Strems was not the attorney of record in any of the eight *Kozel* cases cited below.

- TFB Petition, Exhibit A, *Laurent v. Federated National Insurance Co.*, 14 CA 003012, Lee County, March 2, 2016. Copies furnished to: Gregory Saldamando, Esq. (former SLF attorney).

- TFB Petition, Exhibit E, *Santos v. Florida Family Insurance Co.*, 2015 CA 2791, Osceola County, April 18, 2017 (court sanctioned bad faith litigation conduct when it granted motion for rehearing). Copies furnished to: Christopher Aguirre, Esq. (former SLF attorney).

- TFB Petition, Exhibit G, *Iran Rodriguez v. Avatar Property and Casualty Insurance Co.* 2016 CA 00575, Hillsborough County, July 14, 2017. (the misrepresentations in this case involved scheduling matters and did not address the substantive matters of the case). Copies furnished to: Gregory Saldamando, Esq. (former SLF attorney).

- TFB Petition, Exhibit H, *Reese v. Citizens Property Insurance Corp.* 2017 001281 CA 01, Miami-Dade County Florida, July 28, 2017 (Judge Rebull's

case). Copies furnished to: Christopher Aguirre, Esq. (former SLF attorney) Michael Perez, Esq. (former SLF attorney) and Scot Strems, Esq.

- TFB Petition, Exhibit L, *Collazo v. Avatar Property and Casualty Insurance Co.,* 2016 CA 001883, Hillsboro County Florida, March 16, 2017. Copies furnished to: Gregory Saldamando, Esq. (former SLF attorney).

- TFB Petition, Exhibit M, *Frazer v. Avatar Property and Casualty Insurance Co.,* 2016 015798, Broward County Florida, March 14, 2018 (the court ordered Gregory Saldamando, Esq. and SLF to pay the client's claim with jointly and several liability. Ms. Melissa Giasi, Esq. testified that Fourth District Court of Appeal reversed the monetary sanction because it was imposed without due process). Copies furnished to: Gregory Saldamando, Esq. (former SLF attorney).

- TFB Petition, Exhibit N, *Ramirez v. Heritage Property & Casualty Insurance Co.* 2016 CA 3258 and 2016 CA 3262, Hillsboro County, August 23, 2018 (Rex Barbas, J.). Copies furnished to: Jonathan Drake, Esq. (former SLF attorney).

- TFB Petition, Exhibit O, *Brenda Rodriguez v. American Security Insurance Co.,* 2017 CA 002051, Polk County Florida, November 14, 2018. Copies furnished to: Hunter Patterson, Esq. (former SLF attorney).

The testimony is unrefuted that upon receiving sanction motions, SLF attorneys brought them to Mr. Strems' attention for guidance. Both Mr. Strems and his senior trial attorneys testified to this fact. Specifically, Mr. Aguirre testified that Mr. Strems was consulted concerning cases involving sanctions, such as the *Kozel* cases and those matters involving section 57.105, Florida Statutes sanctions (for the filing of frivolous or meritless lawsuits).

This Referee considers that the dismissals in the aforementioned cases constitute violations of Rule Regulating the Florida Bar 4–1.3 Diligence (a lawyer shall act with reasonable diligence and promptness in representing a client). Although Respondent instituted a system to manage discovery as identified in the testimony of attorneys Hunter Patterson and Christopher Aguirre, the problems persisted. Thus, this Referee finds that Respondent has violated Rule Regulating the Florida Bar 4–5.1(c)(2), Responsibilities of Partners, Managers, and Supervisory Lawyers, by virtue of the instituted systems' failure concerning these cases (a lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action). This Referee finds that the mitigation action implemented by Respondent concerning filing deadlines and procedural requirements was not reasonable in light of the mounting caseload at SLF. More staff was needed to keep up with the volume of cases.

***Section 57.105, Florida Statutes (2019)***

Section 57.105, Florida Statutes (2019) states, in pertinent part:

57.105 Attorney's fee; sanctions for raising unsupported claims or defenses; exceptions; service of motions; damages for delay of litigation.

(1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:
(a) Was not supported by the material facts necessary to establish the claim or defense; or
(b) Would not be supported by the application of then-existing law to those material facts.

(2) At any time in any civil proceeding or action in which the moving party proves by a preponderance of the evidence that any action taken by the opposing party, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, the assertion of any claim or defense, or the response to any request by any other party, was taken primarily for the purpose of unreasonable delay, the court shall award damages to the moving party for its reasonable expenses incurred in obtaining the order, which may include attorney's fees, and other loss resulting from the improper delay.

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(7) If a contract contains a provision allowing attorney's fees to a party when he or she is required to take any action to enforce the contract, the court may also allow reasonable attorney's fees to the other party when that party prevails in any action, whether as plaintiff or defendant, with respect to the contract. This subsection applies to any contract entered into on or after October 1, 1988.

The court in *Martin County Conservation Alliance v. Martin County*, 73 So. 3d 856, 865 (Fla. 1st DCA 2011) explained:

> [s]ection 57.105 does not require a finding of frivolousness to justify sanctions, but only a finding that the claim lacked a basis in fact or law. *See AvMed,* 14 So. 3d at 1265 [*Long v. AvMed, Inc.*, 14 So. 3d 1264 (Fla. 1st DCA 2009)] (noting section 57.105 does not require a party to show complete absence of a justiciable issue of fact or law) (citing *Gopman,* 974 So. 2d at 1210 [*Gopman v. Dep't of Educ*., 974 So. 2d 1208 (Fla. 1st DCA 2008)], and *Wendy's of N.E. Fla., Inc. v. Vandergriff,* 865 So. 2d 520, 523 (Fla. 1st DCA 2003)).

In *Pappalardo v. Richfield Hospital Services, Inc*., 790 So. 2d 1226, 1228 (Fla. 4th DCA 2001), the court stated:

> [w]hether fees should have been awarded in this case depends upon whether the underlying cause of action, which was dismissed by the trial court, was so clearly and obviously lacking as to be untenable.

The Florida Bar discipline proceedings operate with a higher standard of proof than civil court sanctions proceedings. Section 57.105(2), Florida Statutes requires proof "by a preponderance of the evidence" while the Court in *The Florida Bar v. Rayman*, 238 So. 2d 594 (Fla. 1970) determined that the standard of proof of violation of bar rules is clear and convincing evidence. Therefore, the standard of proof for sanctions is considerably lower than the standard of proof in The Florida Bar disciplinary cases.

On August 25, 2020, Judge Alexander Bokor entered an order granting the defendant's motion for sanctions pursuant to section 57.105, Florida Statutes in a former SLF client's case. *Mora v. United Prop. & Cas. Ins. Co.*, Case No. 2017-010198 in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. Judge Bokor's order and the hearing transcripts are TFB Composite Exhibit F.

The Florida Bar has argued that although the order was rendered after SLF was no longer operational due to Respondent's June 9, 2020 emergency suspension and the case was subsequently handled by The Property Advocates law firm, the conduct was SLF's conduct, although Mr. Strems was not the attorney of record.

When testifying on behalf of Respondent and being questioned by The Bar regarding the *Mora* case, Melissa Giasi, Esq. stated that the defendant in *Mora* argued that there were not two separate claims, but concealment of a prior 2011 claim with identical damage. SLF represented Mr. Mora in the 2011 case. In addition, Ms. Giasi explained that at the section 57.105, Florida Statutes hearing that the defense had abandoned the fraud and concealment arguments, and instead pursued a frivolous suit claim.

On August 12, 2020, Ms. Giasi argued the following at the evidentiary hearing regarding the defense's expert witness' report:

> [d]efendants and expert found it is possible that water infiltration occurred on the reported date of loss due to wind driven rain infiltrating through locations of shingle debugging, roof, membrane deterioration and flashing separation and contributed to the ceiling damage identified at multiple occasions. And I understand at that point, the expert goes on and says, however, you know, based on the age, based on the coloration of the stains that it is more likely that it started on the order of many years prior to the date of loss, but I think that it is very significant
> that the Defense expert recognizes that the Plaintiffs theory of the case is plausible.

TFB Trial Exhibit F, Hr'g Tr. 7:11-23 (Aug. 12, 2020).

Judge Bokor's order in the *Mora* case stated, in pertinent part:

> . . . [i]n other words, the Plaintiffs and their counsel knew or should have known that the Plaintiffs' claim presented no justiciable question and the Plaintiffs' claim was so devoid of merit on the face of the record that there was little to no prospect that it would succeed. [*J.P. Morgan Chase Bank, N.A. v. Hernandez*, 99 So. 3d 508, 513 (Fla. 3rd DCA 2011).]
>
> . . . The conduct of the Plaintiffs and their counsel in this litigation is a textbook example of the appropriateness of Fla. Stat. 57.105, to punish and discourage the unfettered pursuit of frivolous lawsuits. The Plaintiffs and their counsel had multiple opportunities to dismiss this lawsuit but refused despite that the Plaintiffs themselves admitted that there was a history of pre-existing damage at the property. Plaintiffs and their counsel knew that the property had pre-existing and ongoing damage to the same areas of the property claimed in this lawsuit. This left no reasonable question that the damages reported by the Plaintiffs in this lawsuit were not covered under the policy. The Court orders that the transcript of the evidentiary hearing held on the Defendant's Motion for Sanctions Pursuant to Fla. Stat. 57.105 be ordered and submitted to the Florida Bar for consideration in their ongoing proceedings involving similar conduct by Scot Strems and participating members of the Strems Law Firm (or successor firm).

TFB Composite Exhibit F. On August 19, 2020, Ms. Giasi appealed the Final Judgment to the Third District Court of Appeal on behalf of the plaintiffs.

On June 22, 2020, Judge Frink entered an Order Granting Defendant's Motion for Sanctions Pursuant to Florida Statute 57.105 in a former SLF client's case. *See Carlos Mojica v. United Property & Casualty Ins. Co.*, Case No. CACE 16-011382 in the Seventeenth Judicial Circuit in and for Broward County, Florida.

In the *Mojica* case, Mr. Mojica's ex-wife testified that the condition of the kitchen claimed to be damaged pre-existed the alleged loss date. The court found Mr. Mojica's deposition testimony, sworn answers to interrogatories, and responses to requests for admissions regarding repairs made to the bathroom untruthful. Judge Frink stated, in pertinent part in the Order:

> [t]he Court has considered all of the points raised by both parties and concludes that the Plaintiff made deliberate misrepresentations and gave false information regarding the cause of the condition to the bathroom and repairs made to the bathroom. These deliberate misrepresentations show a total disregard for the integrity of the judicial system. The Court finds that the Plaintiff and the Strems Law Firm knew or should have known at the time Plaintiff made the above referenced claims that the claims were not supported by the material facts necessary to establish those claims. Therefore, sanctions are warranted against the Plaintiff and the Strems Law Firm.

TFB Composite Exhibit C-2.

At the hearing on the defendant's motion for sanctions, on June 5, 2020, Christopher Narchet, Esq. (former SLF attorney) and Melissa Giasi, Esq. appeared before the court on behalf of Mr. Mojica.

Judge Frink stated the following regarding SLF at the hearing, in pertinent part:

> [w]ith respect to the Strems Law Firm, his counsel, the Court does not find that sufficient evidence exists to impose sanctions upon the Strems Law Firm. Although arguably, Strems may have wanted to reconsider its position during the course of litigation. Strems was relying upon the representations of its client. I don't know what type of investigation Strems did on its own to verify or challenge the testimony and allegations made of its client.

> It may be negligence, at best, on behalf of Strems, but I don't find it reaches the level necessary for the Court to award sanctions against Strems for 57.105. But the Court does note that the actions taken by Strems in this case, again, may arise to negligence, but I don't think it rises to the level of 57.105.

*Mojica* Hr'g Tr. 105:14-109:8 (Strems Mitigation Exhibits).

Judge Frink further stated:

> [s]o the Court, again, will grant the Motion against Mr. Mojica, deny it with respect to Strems, and the Court will award sanctions to the Defense based on the 57.105 Motion, the amount to be set at a later date, at hearing upon that.

*Mojica* Hr'g Tr. 110:9-13 (Strems Mitigation Exhibits).

The *Mojica* case is currently under appeal and Respondent was not the attorney of record.

***Affidavits and Incomplete Emails***

The *Courtin* and *Watson* cases were part of a global settlement offer received from Homeowner's Choice Property & Casualty Insurance on July 14, 2014 that was comprised of one hundred and fifty-seven (157) claims. TFB Petition Exhibit Q-1, Exhibit A; *Courtin v. Homeowners Choice Prop. & Cas. Ins. Co.*, Eleventh Judicial Circuit, Miami-Dade County, Florida, Case No. 2016-CA-6419, Honorable Pedro P. Echarte, Jr.; *Watson v. Homeowners Choice Prop. & Cas. Ins. Co., Inc.*, Seventeenth Judicial Circuit, Broward County, Florida, Case

No. 2016-3269 COCE (53), Honorable Robert W. Lee. Petitioner has alleged that Respondent submitted false or misleading affidavits that were personally signed by him to the courts. Respondent testified he was attempting to negotiate the settlement.

The *Courtin* and *Watson* cases display the judiciaries' concerns regarding this allegation against Respondent and SLF. In the *Courtin* case, Judge Echarte rendered an Order on Defendant's Motion for Sanctions for Fraud Upon the Court against SLF and Scot Strems, on February 27, 2020. TFB Petition Exhibit Q-2. In the defendant's motion, the insurer argued, in pertinent part:

> 22. The email correspondence appears to include a chain of emails between Scot Strems and attorneys for the Defendant, however, a reading of the emails in their totality are somewhat confusing and the emails are out-of-order in parts. *Id.*
>
> 23. The email correspondence attached mainly includes emails sent from Scot Strems, with only a few emails from Aaron Ames that simply include attempts to schedule a settlement conference and pending Examinations Under Oath of 156 [sic] claims mentioned by Scot Strems that were part of the settlement negotiation. *Id.*
>
> 24. The confusion of the email string was subsequently clarified by the Defendant in preparation for the hearing on Defendant's Motion for Final Summary Judgment as it was discovered that Scot Strems removed numerous emails sent from Aaron Ames that directly conflict with the allegations he alleges in his affidavit filed as Exhibit "A".

TFB Petition Exhibit Q-1.

At the hearing on the motion, Chastity Delgado, Esq. (former SLF attorney) and Melissa Giasi, Esq. appeared on behalf of Plaintiff. During the hearing, Judge Echarte stated, in pertinent part:

> THE COURT: The lack of candor that Mr. Strems has exhibited in this affidavit – are you shaking your head as I'm addressing you?
>
> MS. GIASI: No, your Honor.
>
> THE COURT: I thought you were.
>
> MS. GIASI: I apologize. I was not.
>
> THE COURT: It's stunning lack of candor. I'm flabbergasted that a lawyer would risk his or her career to make false claims.
>
> MS. GIASI: Your Honor –
>
> THE COURT: It's false. What else do you want me to say?
>
> MS. GIASI: Respectfully, I think that the Court needs to look at this from the 30,000-level view. There were EUO's requested –
>
> THE COURT: What on earth does that mean?
>
> MS. GIASI: Let's look at the big picture.
>
> THE COURT: Oh. I was looking at the small picture?
> …
>
> THE COURT: I'm going to defer ruling on the Motion to Dismiss for Fraud upon the Court in view of the fact that I have already granted a summary judgment. I will revisit this motion should the 3rd District Court of Appeals choose to reverse the granting of the

> motion for summary judgment. In the meantime, I'm going to direct you to refer Mr. Strems to the Florida Bar.

TFB Petition Exhibit Q-3, Hr'g Tr. 17:20-18:15; 19:7-14 (Feb. 27, 2020).

Judge Echarte deferred ruling on the sanctions issue until the resolution of the appeal on his prior decision granting summary judgment in the insurer's favor. TFB Petition Exhibit Q-2 (Order Feb. 27, 2020) and Q-3 (Hr'g Tr. Feb. 27, 2020).

In the *Watson* case, Judge Lee rendered an Order on April 2, 2018. In said Order, the court stated, in pertinent part:

> [a]dditionally, although ultimately not necessary to the Court's decision in this case, the Defendant has some support for its contention that the email relied on by Plaintiff that purports to waive the EUO requirement has been doctored to eliminate the reply email in which the Defendant responds forcefully that it is not waiving the EUO from its Motion to Strike the Plaintiff's affidavit on this ground, the Defendant argues that the filing of the incomplete email is a violation of Rule 1.5 1 0(g), and as a result, the Defendant seeks mandatory sanctions under the Rule.

TFB Petition Exhibit R.

And, the Court reserved ruling on the issue of Defendant's request for sanctions.

At the March 26, 2018 the hearing on the Defendant's Amended Motion for Summary Final Judgment, Jennifer Jimenez, Esq. (former SLF attorney) appeared on behalf of Ms. Irma Watson. In the hearing a pertinent part of the exchange between Judge Lee and attorney Jimenez was as follows:

THE COURT: Ms. Jimenez, I would like you to respond to that now.

MS JIMENEZ: Yes. I will definitely respond, Your Honor So, I would I'm going to try to respond to each one of the points.

THE COURT: No. I want to respond to that, because that's what… I am the Judge. I just asked you to respond to that. Did you submit to the Court an incomplete e-mail that had been doctored and omitted the reply?

MS. JIMENEZ: Your Honor, the only e-mail that I was provided, that I had was that specific e-mail because what I was told –

THE COURT: By whom?

MS. JIMENEZ: By Scot Strems.

THE COURT: Okay.

MS. JIMENEZ: --was that these were oral communications, and so he was just confirming exactly what was being told to him. And, I was saying—

THE COURT: So, you are saying that Mr. Strems did not advise you that they received an e-mail back contesting that that was the case?

MS. JIMENEZ: I only received that e-mail which I attached it to my affidavit it was not an intentional misrepresentation to the Court and additionally—

THE COURT: Mr. Strems is no longer involved in this case?

MS. JIMENEZ: Your Honor, no. He was involved into the negotiations initially, and I would like to point out

that opposing Counsel also did not include any of these negotiations e-mails in his motion to –

THE COURT: But why would he have to? All he has to do is to demonstrate his prima facie case for summary judgment. He doesn't have to project that you are going to submit a seemingly doctored affidavit. Why should he have to expect that somebody is going to do that? He shouldn't have to—

MS. JIMENENZ: Your Honor—

THE COURT: So, this is to me, I just want to be clear since there is a Court Reporter here; this is an – this is a fraud on The Court if he gave you part of an e-mail and not the whole chain. Okay? So, I am going to task you with responding to me by tomorrow the result of your communication with him, showing him specifically this, and having either claim that Mr. Goldfarb is doctoring it by creating something that doesn't exist, or, "Yes, I didn't send you that part of the e-mail." So, that's your responsibility, ma'am to do.

MS. JIMENEZ: Yes, Your Honor. I particularly only in searching through the e-mails – I was only –I only had access to that e-mail myself. Mr. Strems did not represent to me—

THE COURT: Okay. But the fact of the matter is under rule 1.510, the only evidence that can be used to demonstrate a disputed issue of material fact is that that would be otherwise admissible in the Court. That e-mail, under this chain, would not be admissible because its clearly settlement negotiations. That is clearly what that is, so—

MS. JIMENEZ: Your Honor, may I respond—

THE COURT: So, you could not get that in before jury unless there was something subsequent to this that clarified that this was in fact the settlement.

MS. JIMENEZ: Your Honor, may – if I may respond to this. Now, the rule of Florida Statute does say that settlement negotiations are inadmissible to prove liability or absence of liability for the claim or its value. This is only to show that there is in fact a genuine issue of material fact in this case even though it's not a burden to prove that in this case. It's not intended to show that –

THE COURT: You can't pull out an isolated comment in a chain of e-mails and try to use that to demonstrate a disputed issue of material fact. It appears his motion is well taken, if in fact what he says is true. And as of right now, since you don't know, that's why I'm saying I am not making a decision on that point, but I am tasking you with going back and saying, "Judge Lee was presented this e-mail, Judge Lee wants to know that –if this is an accurate e-mail, or if Mr. Goldfarb is misleading the Court by making up something", which would be very novel, since it has a date and a time on it but that's not to say that it couldn't happen.

MS. JIMENEZ: No, Your Honor, I am – I am absolutely not disputing that he is fabricating an e-mail. I unfortunately only had access to that e-mail.

TFB Petition Exhibit Q-1, Hr'g Tr. 17:13-21:13 (March 26, 2018).

## III. RECOMMENDATIONS AS TO GUILT

In *The Florida Bar v. Bischoff*, 212 So. 3d 312, 316 n.2 (Fla. 2017) (citations omitted), the Court stated that "the referee in a disciplinary proceeding may

consider judgments entered in other tribunals, and may properly rely on such judgments to support his or her findings of fact."

**Charged Rules Regulating The Florida Bar Not Violated.**

I recommend that Respondent be found **not** guilty of violating the following Rules Regulating The Florida Bar:

3-4.3, Misconduct and Minor Misconduct, [The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of a lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the State of Florida, and whether the act is a felony or a misdemeanor, may constitute a cause for discipline]; 4-1.3, Diligence, [A lawyer shall act with reasonable diligence and promptness in representing a client.]; 4-3.4(c), Fairness to Opposing Party and Counsel, [A lawyer must not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.];[1] 4-3.4(d), Fairness to Opposing Party and Counsel, [A lawyer must not, in pretrial procedure, make a frivolous discovery request or intentionally fail to comply with a legally proper discovery request by an opposing party.]; and 4-

[1] This Referee in her oral pronouncement found Respondent had violated RRTFB 4-3.4(c) and 4-3.4(d) by clear and convincing evidence. Upon further consideration and review of the voluminous record, this Referee finds that The Florida Bar has failed to prove these two Rule violations by clear and convincing evidence.

8.4(a), Misconduct, [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.].

The Florida Bar has failed to prove by clear and convincing evidence that Respondent violated the above Rules Regulating The Florida Bar in this matter.

**Charged Rules Regulating The Florida Bar Violated.**

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

**RULE 4-1.4 COMMUNICATION**

4-1.4(a) Informing Client of Status of Representation. A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

This Referee relies on the *McEkron* case as clear and convincing evidence which demonstrates this Rule violation, particularly the failure of SLF's attorney to explain to Mr. McEkron relevant settlement offers, counter offers, and the benefits and liabilities pertaining to them.

**RULE 4-3.1 MERITORIOUS CLAIMS AND CONTENTIONS**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous,

which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

This Referee relies on the information presented in the *Mora* decision as clear and convincing evidence which demonstrates violation of this Rule.

**RULE 4-3.2 EXPEDITING LITIGATION**

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

This Referee relies on aforementioned cases that were dismissed based on *Kozel v. Ostendorf*, 629 So. 2d 817, 818 (Fla. 1993) (the *Kozel* cases) which demonstrates a violation of this Rule by clear and convincing evidence. Respondent knew that there was not enough staff at his firm to properly service his clients, and he did not expand quickly enough to meet the volume of cases he was accepting. This led to delays in litigation.

**RULE 4-3.3 CANDOR TOWARD THE TRIBUNAL**

4-3.3(a) False Evidence; Duty to Disclose. A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client; (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (4) offer evidence that the lawyer knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the

tribunal. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

This Referee relies on the documents submitted in the *Courtin* and *Watson* cases and the section 57.105, Florida Statutes sanctions orders (including the *Mora* decision) to demonstrate violations of this Rule by clear and convincing evidence.

**RULE 4-3.3 CANDOR TOWARD THE TRIBUNAL**

4-3.3(b) Criminal or Fraudulent Conduct. A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

This Referee relies on the documents submitted in the *Mora* case, including the section 57.105, Florida Statutes sanction order by Judge Bokor in *Mora* to prove the violation of this Rule by clear and convincing evidence.

**RULE 4-3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL**

4-3.4(a) *A lawyer must not:* (a) unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act.

This Referee relies on the materials submitted in the *Mojica* and *Mora* cases as clear and convincing evidence of this Rule violation.

**RULE 4-5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS**

4-5.1(a) Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall 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.

This Referee relies on the *Kozel* cases as clear and convincing evidence of this Rule violation. Additionally, Mr. Strems, as sole partner and owner of The Strems Law Firm, has failed to ensure that the lawyers in his firm comply with Rule Regulating The Florida Bar 4-1.3 which requires that a lawyer shall act with reasonable diligence and promptness in representing a client. Additional clear and convincing evidence which demonstrates this Rule violation is presented in The Florida Bar's submissions in the *Sabada* and *Lockhart* cases. Furthermore, clients and Judge Rodolfo Ruiz indicated that callers simply could not get through to any attorney when they called the firm. The testimony in the record is that it took anywhere from forty-five to sixty minutes before a paraprofessional would answer the phone. While on the phone callers would hear "you are number twenty in line, you are number fifteen in line." This inability for clients and judges to reach an attorney demonstrates a failure of the firm's infrastructure put in place by Mr. Strems.

**RULE 4-5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS**

4-5.1(b) Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

This Referee relies on the *Kozel* cases to support this Rule violation. Additionally, Mr. Strems, as sole partner and sole owner of The Strems Law Firm, failed to ensure that the lawyers in his firm comply with Rule Regulating The Florida Bar 4-1.3 which requires that a lawyer shall act with reasonable diligence and promptness in representing a client. Mr. Aguirre shared that he and the lawyers were frequently double-booked due to the volume of cases. This violation occurred over a span of years.

**RULE 4-5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS**

4-5.1(c) Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

The Court relies on the *Kozel* cases in support of this Rule violation. Additionally, Mr. Strems, as sole partner and owner of The Strems Law Firm, failed to ensure that the lawyers in his firm comply with Rule Regulating The Florida Bar 4-1.3 which requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

The evidence showed that weekly sanction orders were brought to the attention of Mr. Strems and were ongoing in nature. Mr. Aguirre testified that the weekly sanctions were five to fifteen thousand dollars a week during the years 2016-2017.

Additionally, Mr. Aguirre testified to remedial actions taken by Mr. Strems, but such actions were insufficient and unreasonable for mitigation purposes in light of the fact that the firm was signing twenty to fifty new cases a week. Mr. Aguirre testified that Mr. Strems considered more cases to be better and consequently his attorneys could not properly administer the volume of cases.

**RULE 4-8.4 MISCONDUCT**

4-8.4(c) *A lawyer shall not:* (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule.

This Referee relies on the documents submitted in the *Courtin* and *Watson* cases and the section 57.105, Florida Statutes sanction order in the *Mora* case as clear and convincing evidence of this Rule violation.

**RULE 4-8.4 MISCONDUCT**

4-8.4(d) *A lawyer shall not:* (d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not

limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

This Referee relies on the *Kozel* cases as clear and convincing evidence of this Rule violation. Furthermore, this Referee relies on the cited excerpts from the Judge Barbas and Judge Holder affidavits to demonstrate conduct in the practice of law that is prejudicial to the administration of justice.

In conclusion, I find that The Florida Bar has met its burden by clear and convincing evidence that the Respondent has violated the above mentioned Rules Regulating The Florida Bar. This Referee relied on the *McEkron*, *Courtin*, *Mora*, *Sabada*, *Lockhart*, *Mojica*, and *Watson* cases, the *Kozel* cases, arguments and evidence concerning aggravation and mitigation, the section 57.105, Florida Statutes sanction orders, witness testimony, the affidavits of Judges Barbas and Holder, and documents submitted into evidence. *See Bischoff*, 212 So. 3d at 316 n.2 ("the referee in a disciplinary proceeding may consider judgments entered in other tribunals and may properly rely on such judgments to support his or her findings of fact.").

## IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards to be applicable:

**4.6 LACK OF CANDOR**

Absent aggravating or mitigating circumstances, and on application of the factors to be considered in imposing sanctions, the following

sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

---

**(b) Suspension.** Suspension is appropriate when a lawyer knowingly deceives a client and causes injury or potential injury to the client.

**(c) Public Reprimand.** Public reprimand is appropriate when a lawyer negligently fails to provide a client with accurate or complete information and causes injury or potential injury to the client.

I find this standard is relevant in evaluating the allegations contained in the *Courtin* and *Watson* matters.

**6.1 FALSE STATEMENTS, FRAUD, AND MISREPRESENTATION**

Absent aggravating or mitigating circumstances, and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation:

---

**(b) Suspension.** Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld and takes no remedial action.

**(c) Public Reprimand.** Public reprimand is appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld.

I find this standard is relevant in evaluating the allegations contained in the *Courtin* and *Watson* matters.

**6.2 ABUSE OF THE LEGAL PROCESS**

Absent aggravating or mitigating circumstances, and on application of the factors to be considered in imposing sanctions, the following

> sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:
> ---
> **(b) Suspension.** Suspension is appropriate when a lawyer knowingly violates a court order or rule and causes injury or potential injury to a client or a party or causes interference or potential interference with a legal proceeding.
>
> **(c) Public Reprimand.** Public reprimand is appropriate when a lawyer negligently fails to comply with a court order or rule and causes injury or potential injury to a client or other party or causes interference or potential interference with a legal proceeding.

I find this standard applicable in analyzing the *Kozel* cases and the section 57.105, Florida Statutes sanction orders.

## V. AGGRAVATING AND MITIGATING FACTORS

I considered the following factors prior to recommending discipline:

1. **Aggravation:**

    a. Multiple offenses, Standard 3.2(b)(4).

I found Respondent violated multiple Rules Regulating The Florida Bar.

    b. Submission of false evidence, false statements, or other deceptive practices during the disciplinary process, Standard 3.2(b)(6).

The Florida Bar has alleged that during the July 7, 2020 Dissolution Hearing the Respondent was untruthful: 1.) when he denied any relationship between the SLF and Fernandez Trial Firm (including any financial relationship) and 2.) testified that Mr. Fernandez had resigned from SLF at some point in 2019. At the

Sanctions Hearing on September 24, 2020, the Bar produced bank records which showed that Mr. Fernandez had received bi-monthly checks for $6,538.46 from SLF and that he was still a W-2 employee of the SLF and receiving benefits in 2020. When Mr. Strems was asked at the Sanctions Hearing why he did not mention that information at the Dissolution Hearing, he stated that he had candidly answered his questions based on The Florida Bar's allegations regarding filing schemes and double dipping. Mr. Strems should have answered the questions directly and completely on direct-examination at the Dissolution Hearing; however, his redirect examination references the fact that on some occasions SLF and Mr. Fernandez were co-counsel on cases.

Mr. Kuehne (Respondent's Counsel) on direct-examination of Respondent:

Q. Is there any relationship at all, other than perhaps being lawyers admitted to practice in the state of Florida?

A. Well, only that once upon a time Mr. Fernandez was employed at our firm. However, he then decided to resign and start his own practice.

Q. So he, is it fair to say, was one of the lawyers who learned this area and struck out on his own?

A. Correct.

Q. So you know him?

A. Yes.

Q. Do the two of you engage in any compact or act complicitly to bring cases in violation of the law?

A. No, sir.

Q. Do you share fees with the Fernandez Trial Firm?

A. No, sir.

Q. Do you bring on the Fernandez Trial Firm as a colleague in your cases?

A. There have been some cases where Mr. Fernandez will co-counsel with us for trial purposes.

Q. And in those situations, is the co-counseling arrangement a matter of record?

A. Yes.

Hr'g Tr. 214:21-216:19 (July 7, 2020).

Mr. Womack (TFB) on cross-examination of Respondent:

Q. Okay. Thank you. I'd like to talk about Carlos Octavio Fernandez. Can you tell me how you know him.

A. Sure. As I stated earlier, he once upon a time worked with our firm.

Q. Does he go by Chuck?

A. He does, yes.

Q. When did he work for Strems Law Firm?

A. The exact dates I'm not sure of.

Q. Can you give me a month, season?

A. I'd say 2018, perhaps part of 2017, but I am not sure.

Q. So by 2019 he was on to bigger and better things; is that correct?

A. I believe that sounds right, yes.

Hr'g Tr. 289:6-20 (July 7, 2020).

Mr. Womack (TFB) on cross-examination of Respondent:

Q. So by January 7th, 2019, Mr. Fernandez was out. He was with his own firm. He was no longer with Strems Law Firm, correct?

A. That seems accurate, yes.

Hr'g Tr. 291:3-7 (July 7, 2020).

At the July 7, 2020 hearing, the dialogue between Respondent and his attorney Benedict Kuehne, Esq. on re-direct was, in part, as follows:

Q. You were asked some questions about a bill. And that involved Mr. Fernandez and Fernandez Trial Firm. Remember that?

A. Yes.

Q. You had testified on direct that Fernandez was, on some occasions, co-counsel with the Strems Law Firm providing representation in a case; is that right?

A. That's right.

Q. When Mr. Fernandez left the firm, was it your understanding that he had been responsible at a fairly significant level for a number of cases working their way through the law firm?

A. Yes.

Q. Did the law firm make a decision that, to protect the clients, it was best to continue with, on the appropriate occasion, Mr. Fernandez as co-counsel, rather than require the client's case to be completely relearned by another lawyer?

A. Yes.

Hr'g Tr. 334:1-23 (July 7, 2020). This Referee finds that Respondent's answers regarding his financial relationship with Mr. Fernandez were not completely forthcoming. Respondent attempted to rehabilitate his answers during re-direct examination by noting that the answers were contextual in relation to the line of questioning; however, this Referee concludes that his explanations regarding their financial relationship were not completely candid.

c. A pattern of misconduct, Standard 3.2(b)(3).

Several of the underlying court orders describe a pattern of misconduct occurring before The Florida Bar filed the Petition. Judges Bokor and Echarte directed opponents of Mr. Strems to refer him to the Florida Bar in the *Courtin* and *Mora* cases.

d. Substantial experience in the practice of law, Standard 3.2(b)(9).

Mr. Strems has been a licensed attorney with The Florida Bar for 13 years and has had substantial litigation experience at both of his previous Public Defender positions and at his own firm.

**2. Mitigation:**

The Respondent submitted a multitude of documents in support of mitigation of the sanctions. This Referee considers the following documents in support of mitigation:

1. Israel Reyes Letter, dated September 23, 2020 (Scot Strems Mitigation 1);

2. The Florida Bar DDCS Administrative Management Review Letter, dated March 16, 2018 (Scot Strems Mitigation 2-12);
3. Strems Law Firm Procedural Reforms (Scot Strems Mitigation 13-14);
4. U.S. Sailing Center, Miami Letter (Scot Strems Mitigation 15);
5. Shake-A-Leg Miami Letter (Scot Strems Mitigation 16);
6. Young Women's Preparatory Academy Letter (Scot Strems Mitigation 17);
7. Breathe Life Miami Letter (Scot Strems Mitigation 18).
8. Strategic Workshop Report Prepared for Strems Law Firm (Scot Strems Mitigation 19-96);
9. Email from Cynthia Montoya, dated October 31, 2017 (Scot Strems Mitigation 97);
10. Strems Law Firm Pleading Organization Policy (Scot Strems Mitigation 98-102);
11. Strems Law Firm Introduction to Litigation (Scot Strems Mitigation 103-113);
12. Strems Law Firm Coverage (Scot Strems Mitigation 114-117);
13. Email from Cynthia Montoya, dated February 22, 2017 (Scot Strems Mitigation 118-119);
14. Email from Scot Strems, dated February 19, 2018 (Scot Strems Mitigation 120-121);
15. Email from Scot Strems, dated January 17, 2018 (Scot Strems Mitigation 122);
16. Email from Scot Strems, dated March 27, 2018 (Scot Strems Mitigation 123-125);
17. Email from Christopher Aguirre, dated October 3, 2017 (Scot Strems Mitigation 126);
18. Email from Christopher Aguirre, dated December 21, 2017 (Scot Strems Mitigation 127);
19. Welcome to Strems Law Firm Training, Litigation Department (Scot Strems Mitigation 128-140);
20. Welcome to Strems Law Firm Training, Pre-Litigation Department (Scot Strems Mitigation 141-149);
21. Strems Law Firm Meeting Cadences (Scot Strems Mitigation 150-151);
22. Strems Law Firm Team Organizational Charts (Scot Strems Mitigation 152-163);

23. Brenda Subia Letter, dated September 22, 2020 (Scot Strems Mitigation 164);
24. Email from Carlos Izaguirre, dated September 21, 2020 (Scot Strems Mitigation 165-166);
25. Christopher A. Narchet, Esquire, Letter (Scot Strems Mitigation 167);
26. Cynthia Montoya Letter, dated September 21, 2020 (Scot Strems Mitigation 168-169);
27. Danny Jacobo, Esquire, Letter (Scot Strems Mitigation 170);
28. Deborah Guzman, CMHC, Letter (Scot Strems Mitigation 171-172);
29. Diana M. Zapata Letter (Scot Strems Mitigation 173);
30. Edwin Grajales Letter (Scot Strems Mitigation 174-175);
31. Georgina Rojas Letter, dated September 21, 2020 (Scot Strems Mitigation 176);
32. Hunter Patterson, Esquire, Letter (Scot Strems Mitigation 177);
33. Jacklyn Espinal Letter, dated September 22, 2020 (Scot Strems Mitigation 178);
34. Jacqueline Sosa Letter (Scot Strems Mitigation 179);
35. Jelani Davis, Esquire, Letter, dated September 23, 2020 (Scot Strems Mitigation 180);
36. Johana Espinal Letter (Scot Strems Mitigation 181);
37. Luz Borges, Esquire, Letter, dated September 22, 2020 (Scot Strems Mitigation 182-183);
38. Maria Mondragon Letter, dated September 22, 2020 (Scot Strems Mitigation 184);
39. Michael Patrick, Esquire, Letter, dated September 23, 2020 (Scot Strems Mitigation 185);
40. Michelle Cardona Letter, dated September 23, 2020 (Scot Strems Mitigation 186-187);
41. Monica Rodriguez Letter, dated September 22, 2020 (Scot Strems Mitigation 188);
42. Nelson Crespo, Esquire, Letter, dated September 22, 2020 (Scot Strems Mitigation 189);
43. Nicolle Barrantes, Esquire, Letter, dated September 22, 2020 (Scot Strems Mitigation 190);
44. Pandora Castro Letter, dated September 22, 2020 (Scot Strems Mitigation 191);
45. Romina Mesa, Esquire, Letter (Scot Strems Mitigation 192-193);
46. Rosalyn Leon Letter, dated September 22, 2020 (Scot Strems Mitigation 194);

47. Shavelli Calvo Letter (Scot Strems Mitigation 195);
48. Vanessa Rodriguez Letter, dated September 22, 2020 (Scot Strems Mitigation 196);
49. Xochitl Quezada, Esquire, Letter (Scot Strems Mitigation 197);
50. Annette Goldstein Letter, dated September 20, 2020 (Scot Strems Mitigation 198);
51. Affidavit of Carlos O. Fernandez, Esquire, dated September 23, 2020 (Scot Strems Mitigation 199-201);

This Referee finds the following mitigating factors:

a. Absence of a prior disciplinary record, Standard 3.3(b)(1).

There was no evidence of any financial irregularities concerning Mr. Strems and any client trust accounts.

b. Absence of dishonest or selfish motive, Standard 3.3(b)(2).

Respondent continuously stated that his goal was to supply good legal counsel for his clients to defend their rights against insurance companies with vast resources.

c. Timely good faith effort to make restitution or rectify consequences of misconduct, Standard 3.3(b)(4).

All monetary sanctions imposed by courts were paid in full.

d. Character or reputation, Standard 3.3(b)(7).

*See above* – submitted letters referencing substantial charitable donations.

e. Interim rehabilitation, Standard 3.3(b)(10).

"The education provided by law schools today does not typically include training to run a successful law practice," said J.R. Phelps, LOMAS director.

LOMAS Offers 10 Tips on Improving Office Management, The Florida Bar News, Mar. 1, 2000, at 1. Respondent sought a LOMAS (PRI) evaluation in 2018 to improve firm procedures. LOMAS reviewed internal controls existing within the law firm, including processes that have been established to provide reasonable, but not absolute assurance that data is protected. The consultant also noted where important internal controls, business, and workflow processes should be in place. Mr. Aguirre and Respondent testified regarding the substantial insight and guidance obtained through the LOMAS review and Respondent implemented those recommendations.

Testimonial and documentary evidence presented supports the fact that Mr. Strems was proactive in implementing infrastructure for SLF, a mid-sized firm that litigated an estimated 9,000 cases per year. His goal was to provide the necessary resources to support the efforts of SLF's attorneys in representing clients. Some of Mr. Strems' efforts included:

- He installed a new cutting-edge technology telephone system (VoIP) that included new equipment and additional telephone lines to improve communication with judges, clients, and the public. The judicial office telephone numbers for each circuit were programmed into the telephone system to create a VIP routing line for judges and their staff when they called in to SLF.

- He established a client concierge team to keep in contact with clients that may or may not be have been in a region where a SLF office existed. The concierge team consisted of fifteen to twenty staff members that were led by an attorney. Team members would try to proactively reach out to all of the clients regardless of location, give case updates, and address their concerns. In addition, the team

members would address client questions or concerns as they arose and filter those calls to the appropriate attorney. The protocol was to try to make contact on at least a bi-weekly basis.

- He hired additional attorneys and staff to lower the caseloads, and separated them into teams with assigned cases.

In 2008, Mr. Strems started SLF as a sole practitioner in the criminal defense field after finishing his career as an assistant public defender with the Alachua County Public Defender's Office. About a year and a half later, with additional attorneys hired, SLF moved into first-party insurance plaintiff's practice. At its largest, SLF employed thirty (30) attorneys and over a one hundred (100) staff members. SLF had offices in Miami, Orlando, Tampa, California, and Georgia. Since 2016, The Strems Law Firm has handled 17,000 to 18,000 cases throughout the State of Florida. Hr'g Tr. 128:16-129:3 (July 7, 2020).

f. Remorse, Standard 3.3(b)(12).

Respondent demonstrated remorse through his testimony, which was corroborated by evidence of significant revisions to his practice, including obtaining the assistance of a LOMAS evaluation in 2018, law firm support and training, and implementation of procedures to reduce caseload and provide substantial paraprofessional assistance.

## VI. CASE LAW

I considered the following case law prior to recommending discipline:

The Bar cited *Florida Bar v. Springer*, 873 So. 2d 317 (Fla. 2004), as its most relevant case in support of disbarment. *Springer* addresses extraordinary circumstances of extreme neglect combined with repeated lies to clients and falsification of documents. In one matter, Mr. Springer lied to a client about obtaining foreclosures on twenty-four condominiums and instead, falsified twenty-four certificates of title, which were relied upon in selling the units to innocent third parties. Mr. Springer made up hearing dates that were supposedly scheduled and postponed and no foreclosures were obtained on any of the units. In another matter, Mr. Springer falsely claimed to have obtained a garnishment order, and when the client discovered his misrepresentation but gave him another chance, Mr. Springer continued to lie and claimed he attempted to obtain a garnishment even though there was no judgment to support garnishment.

In another matter, he failed to amend a pleading following an order on a motion to dismiss, resulting in dismissal, but he falsely told the client that he was filing papers to reinstate the case when nothing was actually filed. In another case, Mr. Springer lied to a client, and claimed he had obtained a judgment and was attempting to enforce collection when the clerk of court had actually issued a notice of intent to dismiss for failure to attempt service. And finally, Mr. Springer failed to comply with discovery, resulting in judgment on liability that Mr. Springer did not disclose to the client. Instead, he settled the liability judgment

without the client's consent, paid the money from his own pocket, and then informed the client afterwards. While the Court found that Mr. Springer should be disbarred, these facts are not comparable to the facts and issues before this Referee.

In *The Florida Bar v. Broida*, 574 So. 2d 83, 87 (Fla. 1991), an attorney misrepresented facts to the court and unnecessarily delayed court proceedings by filing frivolous pleadings. The referee found that Ms. Broida had violated the following Rules Regulating The Florida Bar: 4–1.1 (competence), 4–1.3 (diligence), 4–3.3 (candor toward a tribunal), 4–3.4(d) (making a frivolous discovery request or intentionally failing to comply with opposing party's proper discovery request), 4–3.5 (compromising the integrity and decorum of a tribunal), 4–4.1 (truthfulness in statements to others), 4–8.2(a) (making statements known to be false or with reckless disregard of the truth concerning a judge's qualifications or integrity), 4–8.4(a) (violating rules of conduct), 4–8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 4–8.4(d) (conduct prejudicial to the administration of justice). The Court stated: "[w]e also agree with the referee that a one-year suspension is warranted."

In *The Florida Bar v. Venie,* 104 So. 3d 1088 (Fla. 2012), an attorney filed a false affidavit and filed an inappropriate lis pendens. The Court approved the referee's recommendation that the attorney be found guilty of violating Rules Regulating The Florida Bar 4–3.1, 4–8.4(b), 4–8.4(c), and 4–8.4(d). The referee

recommended disciplinary measures of one-year rehabilitative suspension from the practice of law and payment of The Florida Bar's costs in the proceedings. The Court approved the recommended discipline and the attorney was suspended from the practice of law for one year.

In *The Florida Bar v. Gwynn*, 94 So. 3d 425 (Fla. 2012), a bankruptcy judge found that Ms. Gwynn had (1) filed frivolous claims to harass the opponent and opposing counsel; (2) failed to research and verify claims advanced in motions respondent filed; (3) engaged in willful abuse of the judicial system; and (4) continually made allegations, both in pleadings and in testimony before the bankruptcy court, that were incorrect or false. The bankruptcy judge found that Ms. Gwynn's conduct was "objectively unreasonable and vexatious" and "sufficiently reckless to warrant a finding of conduct tantamount to bad faith . . . for the purpose of harassing her opponent." *Id*. at 427.

"The referee found [Ms. Gwynn's] misconduct in the bankruptcy case to be 'intentional, serious and repeated, despite and in defiance of warnings issued to her, and sanctions imposed against her, by a sitting federal judge.'" *Id.* at 433. The referee recommended that the attorney be found guilty of fifteen (15) separate rule violations, including making false statements, conduct involving dishonesty, deceit, and misrepresentation, making frivolous claims, using means with no other purpose but to delay or harass, failing to provide competent representation, failing

to reasonably expedite litigation, and conduct prejudicial to the administration of justice. As for discipline, the referee recommended that Ms. Gwynn be suspended for ninety days. However, The Bar argued that a ninety-one-day rehabilitative suspension, rather than the referee's recommended ninety-day suspension, was required. The Court suspended Ms. Gwynn for a period of ninety-one days.

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

The purposes of discipline, as enunciated in *The Florida Bar v. Poplack*, 599 So. 2d 116, 118 (Fla. 1992) (citing *The Florida Bar v. Lord*, 433 So. 2d 983 (Fla. 1983)) should be considered in evaluating the recommended discipline. These purposes are: (1) "the judgment must be fair to society . . . by protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer;" (2) the sanction "must be fair to the respondent," punishing for ethical breaches and yet encouraging reformation and rehabilitation; and (3) the sanction "must be severe enough to deter others who might be . . . tempted to become involved in like violations." *Id.*

Generally speaking, the Florida Supreme Court "will not second-guess a referee's recommended discipline as long as that discipline has a reasonable basis in existing caselaw." *The Florida Bar v. Lecznar,* 690 So. 2d 1284, 1288 (Fla. 1997).

Upon review of the disciplinary standards, aggravating factors, mitigating factors, and case law discussed above, I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that Respondent is disciplined by suspension for twenty-four (24) months, followed by twelve (12) months of probation. As special conditions of probation, I would require that Respondent have a monitor, approved by The Florida Bar. The monitor will be responsible for meeting with Respondent on a regular basis and overseeing the status of Respondent's legal practice. The monitor will review Respondent's files to ensure discovery compliance, proper communication with clients, proper calendaring, and to check for any sanctions orders. Along with the monitoring activities, the monitor and Respondent are jointly responsible for providing monthly reports to The Florida Bar, Miami Branch, for the first three (3) months, and quarterly reports thereafter until the period of probation has ended. The first report should be due thirty (30) days after the Court's order becomes final. While Respondent must assume primary responsibility for filing the reports with the Bar, the reports must be signed by Respondent and the supervising attorney, and must describe the status of Respondent's practice and his efforts to monitor case management.

Recommended terms of probation include successful completion of The Florida Bar's Ethics and Professionalism School. In addition to paying the Bar's

reasonable costs of this proceeding within thirty (30) days of the date of the Order, Respondent will reimburse the Bar for the costs of supervision and will pay all fees and costs of the required probationary conditions.

I further recommend that Respondent's suspension be imposed *nunc pro tunc* to the effective date of his emergency suspension.

I also request that this Referee retain limited jurisdiction to continue to oversee the receiver's recommended disbursements pertaining to funds held in SLF accounts or other accounts frozen by the Court's June 9, 2020 Emergency Suspension Order.

## VIII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

After the finding of guilt and prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following personal history and prior disciplinary record of the Respondent:

Year of Birth: 1981

Age: 39

Date Admitted to Bar: September 25, 2007

Prior Discipline: None

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

As of the writing of this report, The Florida Bar has not yet submitted a bill of taxable costs, and such filing is not yet due. The undersigned will consider such

motion at an appropriate time and address it by separate order.

## X. CONCLUSION

In conclusion, this Referee finds that her recommended discipline has a "reasonable basis in existing caselaw" and it would appropriately balance the seriousness of the conduct with the rehabilitative measures already taken by Respondent. *Lecznar,* 690 So. 2d at 1288.

Dated this _____ day of October, 2020.

_____

Hon. Dawn Denaro, Referee
MDC Children's Courthouse
155 N.W. 3rd ST, Miami, FL 33128

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing Report of Referee, has been furnished this _____ day of October, 2020, to the Honorable John A. Tomasino, Clerk, Supreme Court of Florida, via eportal filing; and a true and correct copy has been provided by email to: John Derek Womack, Esquire, Bar Counsel, The Florida Bar, jwomack@floridabar.org; Patricia Ann Savitz, Esquire, Staff Counsel, The Florida Bar, psavitz@floridabar.org; Arlene Kalish Sankel, Esquire, Chief Branch Discipline Counsel, The Florida Bar, asankel@floridabar.org; Mark A. Kamilar, Esquire, Counsel for Respondent,

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