IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

LARRY ELLIOT KLAYMAN,

Respondent.

_____/

Supreme Court Case
No. SC23-1219

The Florida Bar File
No. 2020-00,515 (2A)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

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

On August 29, 2023, The Florida Bar filed its Complaint for Reciprocal Discipline against Respondent in these proceedings. Respondent filed an Answer and Affirmative Defenses on November 6, 2023. Respondent also filed a Motion to Dismiss and a Motion to Stay on November 6, 2023. The Florida Bar filed a Reply to Respondent's Affirmative Defenses on November 27, 2023. Respondent's Motion to Dismiss and Motion to Stay were considered by the Referee and both were denied on January 10, 2024.

On March 27-28, 2024, a sanction hearing was held in this matter. The Florida Bar was represented by Shanee' L. Hinson, Esq. Respondent was pro se and his co-counsel[1], Richard Greenberg, Esq., was present on the morning of March 27, 2024. Pretrial motions were heard. One week before the sanction hearing, Respondent filed a Motion for Judgment on the Pleadings. That motion was denied as untimely. At the final hearing, Respondent presented a renewed motion to dismiss and requested that his motion for judgment on the pleadings be treated as a belated motion for summary judgment. Respondent's *ore tenus* motions to dismiss and for summary judgment were both denied.

The Referee received testimony under oath from the following witnesses: Respondent, Frederick J. Sujat, Esq., Stephen L. Sulzer, Esq., Robert Klein, Esq. and Robert Barr, Esq.

The Referee received the following Exhibits into evidence: The Florida Bar's Exhibits 1-8 and Respondent's Exhibits 1-7, 9-11, 13, 15-20, 22-27, 40, 42-46, 49, 51-78, 85, and 87-90. 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.

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1 Co-Counsel entered a notice of limited appearance for the limited purpose of filing and defending prehearing motions and service as co-counsel.

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida. In addition to membership in The Florida Bar, Respondent is also a member of the District of Columbia Bar and the Bar of the Commonwealth of Pennsylvania[2].

Narrative Summary of Case. The basis of this disciplinary proceeding is a two-count reciprocal complaint filed by The Florida Bar after Respondent was sanctioned in the District of Columbia. On June 11, 2020, Respondent received a 90-day suspension and on September 15, 2022, Respondent received an 18-month suspension. The District of Columbia disciplinary cases were based on the following conduct:

Ninety-Day Suspension, June 11, 2020

Respondent founded Judicial Watch in 1994 and served as its in-house general counsel until 2003. During Respondent's tenure at Judicial Watch, Sandra Cobas ("Ms. Cobas") served as the director of Judicial Watch's Miami Regional Office. Ms. Cobas complained to Judicial Watch about her employment conditions, alleging that she was subject to a hostile

2 Currently suspended

work environment during several weeks in 2003. As general counsel, Respondent provided legal advice to Judicial Watch concerning Ms. Cobas's claims.

After both Respondent and Ms. Cobas had ended their employment with Judicial Watch, Ms. Cobas filed a complaint against Judicial Watch in a Florida state court, alleging the same hostile work environment. The Florida trial court granted a motion to dismiss the case.

Thereafter, without seeking consent from Judicial Watch, Respondent entered an appearance on Ms. Cobas's behalf and filed a motion requesting that the trial court vacate its order of dismissal. When the motion was denied, Respondent filed a notice of appeal on Ms. Cobas's behalf and, later, a brief in a Florida appellate court. The appellate court affirmed the dismissal.

In 2002, while still employed by Judicial Watch, Respondent solicited a donation from Louise Benson ("Ms. Benson") as part of a campaign to raise funds to purchase a building for the organization. Respondent was acting as both chairman and general counsel of Judicial Watch when he solicited this donation from Ms. Benson. Ms. Benson committed to donate $50,000 to the building fund, and thereafter paid $15,000 towards that pledge. Judicial Watch did not purchase a building.

In 2006, after Respondent left Judicial Watch, he and Ms. Benson filed a lawsuit against Judicial Watch in federal court, where they were represented by attorney Daniel Dugan. Ultimately, the federal district court dismissed Ms. Benson's claims.

Shortly thereafter, Ms. Benson sued Judicial Watch in the Superior Court of the District of Columbia, alleging unjust enrichment and seeking a return of her donation. Without seeking consent from Judicial Watch, Respondent entered an appearance in the case as co-counsel for Ms. Benson. Judicial Watch requested that Respondent withdraw. When Respondent did not withdraw, Judicial Watch moved to disqualify him. The motion for disqualification was never decided, as the parties stipulated to the dismissal of the case.

In 2001, while Respondent was still employed by Judicial Watch, Judicial Watch and Peter Paul ("Mr. Paul") entered into a representation agreement and modification, under which Judicial Watch agreed to evaluate legal issues emanating from Mr. Paul's fundraising activities during an election campaign for the New York State Senate in 2000, and to represent him in connection with an investigation into alleged criminal securities law violations and possible civil litigation stemming from those fundraising activities.

Respondent drafted, edited, and approved the representation agreement and modification and authorized the signing of both documents as Judicial Watch's chairman and general counsel. Judicial Watch later represented Mr. Paul in a civil lawsuit brought in California state court.

Following Respondent's departure from Judicial Watch, Judicial Watch withdrew from the representation. Thereafter, Mr. Paul sued Judicial Watch alleging, among other theories, that Judicial Watch breached its representation agreement with him. Respondent entered an appearance on behalf of Mr. Paul in the case without seeking Judicial Watch's consent. Judicial Watch moved to disqualify Respondent.

The court granted the motion to disqualify and found that Respondent was representing the plaintiff "in a matter directly arising from an agreement he signed in his capacity as general counsel for the current defendant," and that Respondent's representation of Mr. Paul was "the very type of changing of sides in the matter forbidden by Rule 1.9." The court found that the misconduct was not isolated and that Respondent acted vindictively and was motivated by animus toward Judicial Watch, with which he had developed an acrimonious relationship.

18-Month Suspension, September 15, 2022

Elham Sataki ("E.S.") met Respondent in 2009, while she was covering a story for Voice of America (VOA). E.S. told Respondent that she was being sexually harassed by her cohost and that after she reported the harassment to her supervisor, she was transferred to a different position. In early 2010, Respondent and E.S. agreed that he would represent her in a case against VOA, on a contingent basis, receiving forty percent of any award E.S. won. There was no retainer agreement and Respondent later unilaterally increased his contingent fee to fifty percent.

After negotiations with VOA were unsuccessful, Respondent encouraged E.S. to move from the District of Columbia to Los Angeles, assuring her that he could get her transferred to the VOA office in Los Angeles. Respondent paid for the relocation expenses and for E.S.'s living expenses in Los Angeles. E.S. and Respondent agreed that the money Respondent was providing would be paid out of any award E.S. won, in addition to the contingency fee.

VOA denied E.S.'s request for a transfer, at which point Respondent filed a civil suit against E.S.'s alleged harasser and supervisors. E.S. wanted the case to be "very quietly handled." She explained her concerns about publicity to Respondent. Respondent eventually began to pursue a

strategy designed to draw attention to E.S.'s case. Respondent filed suit against the members of VOA's governing board and the Broadcasting Board of Governors (BBG), which included prominent public figures. E.S. did not agree to the BBG suit and wanted to focus on VOA and her harasser and supervisors.

Respondent subsequently filed motions to disqualify the district court judge who had been assigned to both of E.S.'s cases, arguing that the judge was politically biased against him. Respondent also wrote numerous articles mentioning E.S.'s case and providing confidential information about E.S. Although E.S. was initially "completely against" the articles, she ultimately agreed to the publicity after Respondent explained that it would help her case.

In April 2010, Respondent began to repeatedly express romantic feelings towards E.S. Respondent told E.S. that he loved her, and E.S. replied that he was her attorney, and they could only be friends. For months thereafter, Respondent kept saying that "he wanted to have a relationship with [E.S.] and [she kept] saying no, and it was ongoing and ongoing and it wouldn't stop ... it was very, very, very uncomfortable" for her. Respondent sent an email to E.S. saying "You are ... the only woman I've ever really loved. ... [W]hen I walk down the street ... and see an

attractive woman, my thoughts immediately flip to you. I see no one else... My loving you has given me true meaning in my life."

In one letter, Respondent said that "I do truly love [E.S] ... [A]nd my own emotions have rendered me non-functional even as a lawyer." In an email, Respondent said "It[']s very hard to be a lawyer and feel so much for your client." In a second email, Respondent said that he had "not been able to function lately, because [he was] out there so far emotionally and got nothing back," and that E.S. would "get better legal representation with someone else ... who does not have an emotional conflict and can keep his mind clear."

In July 2010, E.S. wrote to Respondent and directed him to withdraw the case against the BBG, which was the only active case at that time. Several days later, E.S. wrote to an executive at VOA stating that she had "instructed Larry Klayman to withdraw any and all civil actions that he may have filed in my name and that he is no longer representing me." This letter was not sent directly to Respondent, but by the next day he had received a copy. Respondent, however, did not dismiss the entirety of the case against the BBG. Respondent also continued to act on E.S.'s behalf. For example, after the trial court granted defendants' motion to dismiss the BBG case, Respondent filed a motion to reconsider.

In November 2010, because Respondent continued to contact her about her case, E.S wrote another letter to him reiterating his termination. That letter was incorrectly addressed, and Respondent testified that he did not receive it. In January 2011, E.S. wrote to Respondent a third time, stating that he was "not representing [her] in any way or shape." Respondent replied to E.S., implying that she had not written the email and explaining that he "[could not] allow her legal rights and obligations to be compromised or lost altogether." Several days later, Respondent filed a notice of appeal in the BBG case, despite not having had any communication with E.S. about filing the appeal.

Respondent denied having any romantic intentions toward E.S. He also contested the existence of a contingent fee agreement, claiming that he consulted with E.S. about his actions in the case, such as filing the disqualification motion. Finally, Respondent acknowledged E.S.'s initial reluctance to pursue publicity, but testified that she later agreed to do so. He denied pressuring E.S. on the issue.

Respondent's Claims Under *Wilkes*[3] and *Kandekore*[4]

Throughout this disciplinary proceeding, Respondent asserted, among other things, that he was not afforded due process in the District of

3 *The Florida Bar v. Wilkes,* 179 So. 2d 193 (Fla. 1965)
4 *The Florida Bar v. Kandekore,* 766 So. 2d 1004 (Fla. 2000)

Columbia disciplinary proceedings, with the focus on the facts and proceedings related to the 2022 Order. He further asserted that there was a paucity of proof to find him in violation the District of Columbia Rules of Professional Conduct. Respondent's argument centered on the following: 1) laches, 2) statute of limitations, 3) accord and satisfaction, 4) denial of due process and 5) fraud. Those claims will be discussed in further detail below.

Analysis and Findings

What is uncontested and was admitted to by Respondent, are two disciplinary orders. The first one, Complainant's Exhibit 1, the District of Columbia Court of Appeals order dated June 11, 2020; the second one, Complainant's Exhibit 2, the District of Columbia Court of Appeals order dated September 15, 2022. For purposes of this proceeding, they are final. Whether they are subject to some post-judgment attack is not material to this referee; they are final.

In accordance with Rule 3-4.6, of the Rules Regulating The Florida Bar, reciprocal discipline that results in a final adjudication in a disciplinary proceeding by a court or other authorized disciplinary agency of another jurisdiction, state or federal, will be considered as conclusive proof of the misconduct in this disciplinary proceeding under the rule.

Under *Florida Bar v. Kandekore*, 766 So. 2d 1004 (Fla. 2000), in citing *The Florida Bar v. Wilkes*, 179 So. 2d 193 (Fla. 1965), the burden of proof to rebut the presumption of conclusive proof of misconduct is on the accused attorney. The Bar need not make any additional evidence as it relates to the underlying misconduct.

The issue then becomes whether or not the accused attorney has shown that the proceeding in the foreign state was so deficient or lacking in notice or opportunity to be heard; that there was such a paucity of proof; or that there was some other grave reason which would make it unjust to accept the foreign judgment as conclusive proof of guilt of the misconduct involved, upon which, Florida can elect not to be bound thereby.

The first argument is one of lack of notice. There was no lack of notice in this case. The record shows that Respondent was made aware of both disciplinary proceedings in the District of Columbia. He participated in both proceedings and had the opportunity to be heard. Each was heavily litigated. Thus, there was not a lack of notice or opportunity to be heard.

We then turn to whether there was a paucity of proof or some other grave reason that would make it unjust to accept the foreign judgment as conclusive proof of guilt. Respondent made a number of arguments in this

case: originally in a motion to dismiss; subsequently in a motion for judgment on the pleadings; and now after a full evidentiary hearing.

The first argument made by Respondent was a statute of limitations argument, arguing that this proceeding should be time barred. While the Florida Bar has a statute of limitations of six years to file its proceedings, under the District of Columbia Court of Appeals Board of Professionals Board rule 19.1, there is no statute of limitations as to a District of Columbia board action. This referee goes back to the Rules Regulating the Florida Bar, rule 3-4.6, as it relates to discipline by a foreign or federal jurisdiction choice of law provisions under subsection "(b)," the rules of that jurisdiction apply to the conduct. In this case, the orders came from the District of Columbia Court of Appeals, thus the choice of law remains with the laws and board rules of the District of Columbia.

In Florida, a court must look to whether or not the statute of limitations choice of law question is a substantive rule or procedural rule. In *Merkle v. Robinson*, 737 So. 2d 540 (Fla. 1999), the Court in that case looked at the statutory statute of limitations as it related to a tort action. The Court found that the significant relationship test applied to the Florida statute of limitations; and that it would treat the statute of limitations choice of law questions the same as a substantive choice of law question.

As it relates to this reciprocal discipline matter, the statute of limitations being substantive results in the application of the District of Columbia Court of Appeals Board of Professionals Board rule 19.1 as the controlling statute of limitations. Thus, this referee finds that the date of the orders, Respondent's notice to the Florida Bar of the orders, and the initiation of these proceedings were not time barred.

Respondent then argued this matter is time barred because Ms. Sataki filed the original complaint in the District of Columbia; but also filed a complaint in Pennsylvania and Florida in 2010 or 2011, and the Florida Bar failed to investigate or take any action. Under rule 3-7.16 of the Rules Regulating The Florida Bar, an initial investigation must be made after the complainant makes a written inquiry within six years from the time of the matter giving rise to the inquiry or the complaint is discovered or should have been discovered. Rule 3-7.16 also says the Bar must open an investigation within six months from the time the matter giving rise to do an investigation is discovered, or with due diligence, should have been discovered. Rule 3-7.3(c) requires all complaints to be in writing and signed under penalty and perjury. Respondent has the burden to show that the Florida Bar received the complaint.

This referee looked at both complaints in Respondent's Exhibit 7, the first being an Office of Bar Counsel for the District of Columbia complaint form for an incarcerated complainant, which indicates that it is just "true and correct;" there is no indication of it being made under penalty of perjury. Also, there is no indication that the complaint was made in Florida. The form also says, "Have you filed a complaint about this matter anywhere else?" The form says no. Thus, for an argument that this matter is time barred, the date of November 2, 2010, on the form, is not applicable.

The second complaint in Respondent's Exhibit 7 is a typewritten form that says, "it is also filed in Pennsylvania and Florida." Again, this referee will note that there is no indication of the complaint being made under penalty of perjury or that it may or may not have been served in Florida. Respondent's own expert witness testified that this was a reciprocal matter, and this matter did not fall under 3-7.16. Accordingly, this referee finds that Respondent failed to show that the original complaint was ever transmitted to or received by The Florida Bar.

As to paucity of proof, in essence, Respondent is asking this referee to do exactly what Florida case law says it should not – to sit as a backup referee to rehear the underlying action. This referee notes that it will not and cannot re-look at the credibility of Ms. Sataki. The orders themselves

discuss the problems with the testimony elicited and inconsistencies in the evidence in the District of Columbia proceedings. Nonetheless, that court found Ms. Sataki to be more credible than Respondent. As such, the matters asserted by Respondent were considered.

As to the defense of laches, the referee will note that Respondent is a member of the District of Columbia Bar, which has no statute of limitations. He is (and was) on notice in that jurisdiction that he could forever need to defend himself as to actions arising there. It is not for Florida to decide the wisdom of the District of Columbia choosing to have no statute of limitations in attorney discipline matters. Under *Kandekore,* a case must rise to the level such that it was a grave reason that would make it unjust to accept it. As it relates to laches, the question would be…. what was lost and what was the harm? This referee will note that harm flowed in both directions. In fact, in the District of Columbia, the loss of memories also worked against the District of Columbia Bar. The order noted the inconsistencies and the problems with witness testimony. Further, the transcript of that proceeding clearly reflected that the Respondent was able to use those inconsistencies to cross-examine, to poke holes and to show problems in the case. The District of Columbia Court of Appeal took those issues into account.

All the matters argued by Respondent were also subsequently briefed and objected to in the District of Columbia cases. Ultimately, the triers of fact came to decisions that were not the ones Respondent wanted. The fact that Respondent did not receive an order that addressed every single issue he wanted to address does not make the decisions legally deficient, such that there would be a paucity of proof or a grave reason which would make the decisions unjust. This referee will not supplant its judgment for the judgment of the Ad Hoc Committee, the Board of Professional Responsibility, nor the District of Columbia Court of Appeals.

Therefore, this referee finds that Respondent has failed to show, like the attorneys in *Kanderkore* and other cases cited, the requisite need to disregard the findings and orders of another jurisdiction. Accordingly, this referee finds Respondent guilty of the violations as noted in the Bar's complaint. As such, this Referee must now look at Florida's jurisprudence and standards to decide an appropriate sanction recommendation after a finding of guilt; with the Supreme Court being the ultimate decision-maker as to discipline.

In this case, this Referee will note that Respondent has been a member of the Florida Bar since December 7, 1977. He has zealously advocated for clients in cases he sought were just. This referee notes that

Respondent had a number of individuals come in to testify, attorneys that have been members of the Florida Bar and other bars as well, for a long time.

Frederick J. Sujat, Esq. - Mr. Sujat testified to having known Respondent since the late “80s,” having worked with him for a couple of years, and also served as co-counsel in what has been referred to as the Sataki matter in the District of Columbia. He described Respondent in terms commensurate with the service and values held dear to him as a retired colonel in the Air Force National Guard.

Stephen L. Sulzer, Esq. - Mr. Sulzer testified that Respondent had served as a mentor to him. He found Respondent to be ethical and honest. However, Mr. Sulzer thought he was at the hearing to testify for a reinstatement upon an expiration of a suspension. He had no specific knowledge of the underlying District of Columbia cases. Accordingly, this referee reduces the value of Mr. Sulzer’s testimony based on the lack of knowledge about the underlying conduct that occurred.

Robert Klein, Esq. - Over the Bar’s objection, Mr. Klein was tendered and accepted as an expert witness for the purpose of bar discipline matters. He was admitted to The Florida Bar in 1977. He has handled many cases involving professional liability, and specifically bar defense

work. When questioned about whether the District of Columbia's disciplinary case was time-barred, Mr. Klein testified that it would have been a timely complaint if not for the prior investigation and dismissal by the Florida Bar of the same allegations. When he was pressed further, he acknowledged that the District of Columbia had no statute of limitations for disciplinary proceedings. He admitted that his position was based primarily on one line in Respondent's Exhibit 1 (Sataki's DC bar complaint) that stated that she had also filed a complaint with the Florida Bar. He also admitted that the bar's reciprocal complaint was governed by Rule 3-4.6 and was not handled in the same manner as a complaint investigated directly by the bar.

Respondent was unable to produce any evidence to support his position that a complaint has been filed or investigated by the Bar. Further, there is no indication of any address to which it was sent and whether it was sent to the proper place. There is a paucity of evidence for a complaint actually being sent to and received by The Florida Bar. Accordingly, the Referee finds that the matter is not untimely despite Mr. Klein's opinion in the matter, which was based on scant information and no independent corroboration.

Robert Barr, Esq. - Mr. Barr testified that he is a former United States Attorney for the Northern District of Georgia, which is a Senate-confirmed position and a position of special trust and confidence. He testified that he finds Respondent ethical, honest, and a fair and aggressive advocate. However, he had no other knowledge about these proceedings, and he was unaware of Respondent's prior discipline in Florida. In fact, on cross examination, Mr. Barr testified that it would concern him if the court found discipline in other matters. This Referee will discount his testimony on the consideration of not knowing there was prior Florida discipline against Respondent.

This Referee will also note on redirect there was an uncomfortable look on Mr. Barr's face in regard to Respondent's question about "locking horns" and "taking strong positions" with judges. Mr. Barr distinguished being a zealous advocate, making an argument and filing appropriate request for post-judgement relief versus being "strong" with a judge. *See Tr. 118:7-19; 207:10-15.*

Lastly, this Referee considered the testimony of Respondent himself. Respondent took no responsibility or accountability for his conduct in any of the matters outlined in the District of Columbia disciplinary orders. The Referee also notes that throughout this proceeding and during the sanction

hearing, Respondent routinely asserted that his political affiliations and political ideology were the true basis for the District of Columbia disciplinary proceedings against him. He disparaged opposing counsel, judges and generally any court that did not rule in his favor. *See, e.g. Tr. 101:16-17; 112:2.* Respondent held a firm belief that any order or ruling not in his favor was rife with due process violations and was part of a concerted effort to harm his professional reputation.

Likewise, Respondent has attempted to inject the same tenor into this proceeding. The referee finds that there is no basis upon which to formulate a conclusion that Respondent's underlying disciplinary orders, or this reciprocal proceeding, are based on anything other than the misconduct and violations he was found to have committed in his handling of four separate client matters in the District of Columbia. Despite Respondent's insistence, this is not a case about right versus left, MSNBC versus Fox, Democrats versus Republicans, the mainstream versus the lamestream media. This is a case about an attorney admitted to The Florida Bar, the rules regulating the conduct of attorneys in Florida, the rules regarding reciprocal discipline and the case law promulgated by the Florida Supreme Court.

In considering the appropriate recommendation discipline, this Referee has considered several cases as listed herein and discussed further below.

This referee also considered the Florida Standards for Imposing Lawyer Discipline. Specifically, 4.2, failure to preserve the client's confidences and 4.3, failure to avoid conflicts of interest; the referee finds these to be appropriate in this case based on the conclusive findings of the District of Columbia Court of Appeals. The referee also considered 7.1, deceptive conduct or statements and unreasonableness or improper fees based on those findings of the District of Columbia Court of Appeals and as it relates to the matters in this case, finding injury caused to the professional, the client, and the public and legal system.

Contrary to the Bar's request for 5.1, failure to maintain personal integrity and 6.1, false statements, fraud, and misrepresentation, the referee does not find these two standards appropriate based on the facts of the underlying disciplinary cases.

This referee considered both aggravation and mitigation in this matter. In aggravation, this referee considered as an aggravator a prior disciplinary offense. Although Respondent argued that his prior discipline was for minor misconduct and therefore should not be weighed against

him, this referee will note that “minor misconduct” is a term of art as it relates to the rules. Minor misconduct cannot be used after seven years. Complainant’s Exhibit 7 was a consent judgement, report of referee and order approving report of referee. As part of the consent judgment, Respondent consented to being in violation of Rules: 3-4.3 (misconduct and minor misconduct), 4-8.4(a) (A lawyer shall not violate or attempt to violate the rules of professional conduct); 4-8.4(g) (fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency); and 14-5.1(b), (effect of Respondent’s failure to attend or comply with mediation). In this case, the prior misconduct at issue was more than a minor misconduct; Respondent received a public reprimand.

This referee also considered as aggravation: (2) dishonest or selfish motive, (3) a pattern of misconduct, (4) multiple offenses, and (5) bad faith obstruction of the disciplinary proceeding in this case by failing to comply with the rules or order of a disciplinary agency. The transcript in this hearing is rife with examples of this aggravator, as is this record. This referee also considered as aggravation (6) submission of false evidence. The Referee will note the filings of Respondent in this matter about bar counsel tipping off the witnesses [to help them evade subpoenas], “running out the clock,” and many instances of disparaging counsel for the Bar, with

no such evidence to support the allegations. This referee also considered as aggravation (7) refusal to acknowledge the wrongful nature of the conduct and (9) substantial experience in the practice of law. While Respondent claims his innocence, such refusal to acknowledge misconduct is still an allowed aggravator. It is undisputed that Respondent has been a member of this bar since December 7, 1977.

This referee considered mitigation in this matter; specifically, (13) remoteness of the prior offense regarding the consent judgment and (7) character and reputation of Respondent, as exemplified by the character witnesses who were presented through testimony and written documentation.

III. RECOMMENDATIONS AS TO GUILT

In the 2020 Order, Respondent was found to have violated the District of Columbia Rules of Professional Conduct: 1.9 (Conflict of Interest), in three separate instances.

In the 2022 Order, Respondent was found to have violated the District of Columbia Rules of Professional Conduct: 1.2(a) (lawyer shall abide by client's decisions as to objectives of representation and shall consult with client as to means used); 1.4(b) (lawyer shall appropriately explain matter to client); 1.5(b) (requiring written agreement regarding

representation) and (c) (contingent fee agreement shall be in writing); 1.6(a)(1) and (a)(3) (lawyer shall not reveal client confidence or secret for lawyer's advantage); 1.7(b)(4) (lawyer shall not represent client if lawyer's professional judgment will be or reasonably may be adversely affected by personal interest); and 1.16(a)(3) (discharged lawyer shall withdraw from representation).

By operation of Rule 3-4.6, Rules Regulating The Florida Bar, this referee finds that the June 11, 2020 and September 15, 2022 orders from the District of Columbia Court of Appeals serve as conclusive proof of such misconduct in this disciplinary proceeding.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

This referee considered the following Standards prior to recommending discipline:

4.2 Failure to Preserve the Client's Confidences
Suspension is appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

4.3 Failure to Avoid Conflict of Interest
Suspension is appropriate when a lawyer knows of a conflict of interest, does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to the client, the public or the legal system.

V. CASE LAW

This referee considered the following case law prior to recommending discipline:

The Florida Bar v. Clement, 662 So. 2d 690 (Fla. 1995). Referee in Bar discipline case can consider any evidence Referee deems relevant to resolving factual questions.

The Florida Bar v. Tobkin, 944 So. 2d 219 (Fla. 2006). Because attorney disciplinary proceedings are quasi-judicial rather than civil or criminal, the Referee is not bound by the technical rules of evidence; consequently, a Referee has wide latitude to admit or exclude evidence and may consider any relevant evidence including hearsay, transcripts, and judgments in a civil proceeding.

The Florida Bar v. Centurion, 801 So. 2d 858 (Fla. 2000). Hearsay is admissible in attorney disciplinary proceedings.

The Florida Bar v. Whitney, 237 So. 2d 745 (Fla. 1970). Character evidence is not relevant to finding of guilt or innocence.

The Florida Bar v Rush, 361 So.3d 796 (Fla. 2023). Three-year suspension was warranted for attorney's violation of several bar rules by failing to follow his client's directives and placing his personal interests ahead of the client's stated goals, in course of attorney's representation of a client in eminent domain action; attorney repeatedly failed to accede to the client's clear directives, was unwilling to put client's interests over his own interests, exhibited unprofessional conduct to other attorneys involved in eminent domain proceedings, and sought unreasonable attorney fees to detriment of the client.

The Florida Bar v. Lee Segal, SC2023-1067 (Fla. Aug. 10, 2023) [TFB # 2021-10,292(6D), et al.] The pre-complaint conditional guilty

plea and consent judgment for discipline was approved and Respondent was suspended from the practice of law for one year. In three different matters, Respondent engaged in misconduct including conflict of interests with his clients and evasive and misrepresentative statements made to the courts. In mitigation, Respondent had no prior disciplinary history, had no dishonest or selfish motive and had a good character or reputation. In aggravation, Respondent engaged in a pattern of misconduct, engaged in multiple offenses and had substantial experience in the practice of law.

The Florida Bar v Joseph Scott Lanford, SC21-1008 [2016,30, 658(18C)] By Court order dated August 25, 2022, the Court suspended Respondent for three years. Respondent had a prior disciplinary record. Respondent met with a 78-year-old woman in 2015 who, according to Respondent, wished to amend her revocable living trust and change the lawyer for her trust. Respondent drafted an amended revocable living trust that named him as co-trustee with her while she was alive and trustee after her death. Respondent also drafted a power of attorney that named him as her power of attorney. There was no written fee agreement with the client and there is no documentation advising the client to seek the advice of independent legal counsel.

The Florida Bar v. Herman, 8 So.3d 1100 (Fla. 2009). Eighteen-month suspension from practice of law was appropriate sanction for attorney's misconduct in failing to inform client or obtain client's consent before representing client at the same time attorney represented his own company, which was client's competitor, which violated several rules of professional conduct.

The Florida Bar v. Tipler, 8 So.3d 1109 (Fla. 2009). Disciplinary proceedings in foreign state were not deficient in due process, and therefore findings in those proceedings could be relied upon in present proceeding as conclusive evidence of misconduct supporting summary judgment against attorney; attorney was afforded a full opportunity in the prior proceedings to conduct discovery, was afforded a full opportunity to confront witnesses, was represented by competent counsel, and was afforded two appeals to contest his discipline in foreign state.

The Florida Bar v. Mogil, 763 So.2d 303 (Fla. 2000). A foreign jurisdiction's adjudication of guilt is conclusive proof of guilt of the attorney misconduct charged; the burden then rests with the attorney to demonstrate why the foreign judgment is not valid or why Florida should not accept it and impose sanctions based thereon.

The Florida Bar v. Kandekore, 766 So.2d 1004 (Fla. 2000). Under Rule Regulating The Florida Bar 3-4.6, when an attorney is adjudicated guilty of misconduct by the disciplinary agency of another jurisdiction, the adjudication serves as conclusive proof of commission of the misconduct charged. However, in Florida Bar v. Wilkes, 179 So.2d 193, 198 (Fla.1965), this Court noted that it is not automatically bound by an out-of-state determination of guilt by a disciplinary agency, and provided the following standard for determining whether a sister state's adjudication should be accepted as conclusive: [W]hen the accused attorney shows that the proceeding in the foreign state was so deficient or lacking in notice or opportunity to be heard, that there was such a paucity of proof, or that there was some other grave reason which would make it un-just to accept the foreign judgment as conclusive proof of guilt of the misconduct involved Florida can elect not to be bound thereby. Id. The Court expressly noted that “the burden of showing why a foreign judgment should not operate as conclusive proof of guilt in a Florida disciplinary proceeding is on the accused attorney.” Id. (emphasis added).

The Florida Bar v. Hagendorf, 921 So.2d 611 (Fla. 2006). Even when attorney disciplinary proceedings are premised upon an adjudication of guilt in another state, the state Supreme Court is free to impose a more severe punishment than the punishment imposed by the sister state.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

This is the rare case where this referee finds it appropriate to go above the Bar’s requested sanction of suspension for eighteen months.

This decision is not taken lightly. This referee recommends that

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

A. Two-year suspension; and

B. Payment of The Florida Bar's costs.

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

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-4.6 and Rule 3-7.6(m)(1)(D), this referee considered the following:

Personal History of Respondent:

Age: 72

Date admitted to the Bar: December 7, 1977.

Aggravating Factors (3.2):

(2) dishonest or selfish motive;
(3) a pattern of misconduct;
(4) multiple offenses;
(5) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
(6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
(7) refusal to acknowledge the wrongful nature of the conduct; and

(9) substantial experience in the practice of law.

Mitigating Factors (3.3):

(7) character or reputation
(13) remoteness of prior offenses.

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

This referee finds the following costs were reasonably incurred by The Florida Bar:

Administrative Fee		$1,250.00
Investigative Costs		366.83
Court Reporters' Fees		$2,920.10
	TOTAL	$4,536.93

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 3rd day of May, 2024.

/s/_____
Hon. James Lee Marsh, Referee
Leon County Courthouse
301 S. Monroe Street, 365-D
Tallahassee, FL 32301-1861

Original to:
Clerk of the Supreme Court of Florida, e-file@flcourts.org

Copies to:

Larry Elliot Klayman, Respondent, leklayman@gmail.com
Richard Adam Greenberg, Respondent's Co-Counsel, rgreenberg@rumberger.com
Shaneé L. Hinson, Bar Counsel, shinson@floridabar.org
Patricia Ann Toro Savitz, Staff Counsel, psavitz@floridabar.org