IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MICHAEL VINCENT LAURATO,

Respondent.
_____/

CASE NO.: SC09-1953
TFB NO.: 2007-11,274 (13D)

INITIAL BRIEF OF THE FLORIDA BAR

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SYMBOLS AND REFERENCES

In this Brief, The Florida Bar, will be referred to as "The Florida Bar" or the "Bar." The Respondent, Michael Vincent Laurato, will be referred to as "Respondent."

The Report of Referee dated April 30, 2010, will be referred to as the "Report." The Supplemental Report of Referee dated June 30, 2010, will be referred to as the "Supplemental Report."

"Rule" or "Rules" will refer to the Rules Regulating The Florida Bar. "Standard" or "Standards" will refer to the Florida Standards for Imposing Lawyer Sanctions.

STATEMENT OF THE FACTS AND OF THE CASE

Respondent was a defendant in a civil proceeding, *Celebrity Carpets and Interiors, Inc. d/b/a Naffco v. Laurato*, in the Circuit Court of the Thirteenth Judicial Circuit in Hillsborough County, Florida. Report, p. 2. As part of that proceeding, opposing counsel took the deposition of Respondent. Report, p. 3. During that deposition, Respondent testified that he had, "[n]ever been sued once for breach of contract." Report, p. 3. In fact, Respondent had been sued on multiple occasions for breach of contract prior to that deposition. Report, p. 4.

The Florida Bar brought a two-count complaint against Respondent in this proceeding.[1] The Referee found Respondent guilty of violating Rule 4-8.4(c) and Rule 4-8.4(d) for his testimony during the deposition. In addition to that specific false statement, the Referee found that Respondent's testimony was "sarcastic, flippant, argumentative and nonresponsive" and also that Respondent's answers during the deposition, "were often irrelevant, illogical and nonsensical and even included name calling." Report, p.6.

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[1] Count I alleged that Respondent had made a false statement to a process server in the course of the same civil proceeding. The Referee found that the Bar did not meet its burden of proof as to this count; The Florida Bar did not petition for review of that finding.

After making the recommended finding of guilt, the Referee conducted a sanctions hearing on May 24, 2010. After considering the presented evidence, the Referee found two mitigating factors – lack of prior discipline and good character or reputation. Supplemental Report, pp. 2-3. The Referee recommended that Respondent receive a public reprimand, to be administered by the Referee. The Florida Bar petitioned for review of that recommendation and seeks imposition of a 60-day suspension with the additional requirement that Respondent be required to complete The Florida Bar's Ethics School and Professionalism Workshop.

Respondent has cross-petitioned, seeking review of the recommended findings of guilt, the recommended sanction, and the recommended award of costs.

SUMMARY OF THE ARGUMENT

Respondent's conduct of giving false testimony under oath in a legal proceeding is serious misconduct which requires suspension. The relevant authority does not support the Referee's recommendation of a public reprimand; the Referee mistakenly relied on settlements which do not constitute relevant precedent and on older cases which do not reflect this Court's current approach to attorney discipline.

STANDARD OF REVIEW

A referee's recommended sanction in an attorney disciplinary proceeding is persuasive, but this Court has the ultimate responsibility to determine the appropriate sanction. *Florida Bar v. Kossow*, 912 So.2d 544, 546 (Fla. 2005). Generally speaking, this Court will not second-guess a referee's recommended discipline as long as that discipline has a reasonable basis in existing caselaw or in the Florida Standards for Imposing Lawyer Sanctions. *Id*.

ARGUMENT

This Court has long considered dishonesty under oath by an attorney to be an extremely serious offense. "No breach of professional ethics, or of the law, is more harmful to the administration of justice or more hurtful to the public appraisal of the legal profession than the knowledgeable use by an attorney of false testimony in the judicial process." *Dodd v. Florida Bar*, 118 So.2d 17 (Fla. 1960). In this proceeding, Respondent actually provided the false testimony as a witness in a civil proceeding. The Florida Bar contends that this misconduct requires a suspension.

Review of the Standards demonstrates that a suspension is an appropriate sanction for Respondent's misconduct. Standard 6.12 provides that "[s]uspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court … and takes no remedial action." In this instance, Respondent was well aware that a false statement was being presented because he was the one who knowingly and deliberately made a false statement to the court. Report, p. 6. Standard 6.22 provides additional guidance for this situation, providing that "[s]uspension is appropriate when a lawyer knowingly violates a court order or rule, and … causes interference or potential interference with a legal

proceeding." Respondent in this instance did not violate a mere rule or order, but disregarded his own oath in testifying falsely. Furthermore, as the Referee found, Respondent's false testimony was disruptive to the underlying legal proceeding. Therefore, the relevant standards support imposition of a suspension, not a mere reprimand, in this proceeding.

Consideration of similar cases also supports the imposition of a suspension in this proceeding. In *Florida Bar v. Cibula*, 725 So.2d 360 (Fla. 1999), the Court imposed a 91-day suspension on an attorney who testified falsely during his dissolution of marriage proceeding. The attorney claimed his income to be about $3,000 per month, though he had already received $35,200 during the calendar year by the time of his August testimony and had received $44,200 during the calendar year prior to his November testimony. *Id.* at 362. In response to that false testimony, the Court rejected the Referee's recommendation of a 60-day suspension and imposed a 91-day suspension.

The Court also imposed a 91-day suspension in *Florida Bar v. Baker*, 810 So.2d 876 (Fla. 2002). In that case, the attorney forged his wife's name and caused those false signatures to be notarized on legal documents in connection with the sale of real property. *Id.* at 878. At the time, the attorney and his wife

were having marital problems and were separated. *Id.* The Court imposed a rehabilitative suspension despite the finding that the execution of sale documents was done by the attorney in an effort to avoid foreclosure and that the proceeds were used to pay marital debts; therefore, the attorney did not forge the documents in an attempt for personal gain. *Id*. at 882.

Other cases have resulted in even more severe discipline. In *Florida Bar v. Germain*, 957 So.2d 613 (Fla. 2007), this Court suspended an attorney for one year for a pattern of misrepresentations to a court during a dispute with a business partner. In that case, the Court noted that a three-year suspension would have been justified, but for the mental health issues of the attorney, and instead imposed the one-year suspension. *Id*. at 624.

In this proceeding, the more severe suspension of *Germain* is not warranted because Respondent's conduct was not as repeated and extended as that in *Germain*. The Bar acknowledges that Respondent is entitled to consideration for the two mitigating factors found by the Referee. Supplemental Report, pp.2-3. Nevertheless, while not warranting a rehabilitative suspension, Respondent's misconduct does warrant a short suspension. Examination of the authority on which the Referee relied demonstrates that his recommended sanction should not

be upheld.

First, the Referee relied on cases between the Bar and other attorneys which settled by agreement, specifically, *Florida Bar v. Dsouza*, SC07-675, and *Florida Bar v. Young*, SC07-1153. Settlements between attorneys and the Bar may be agreed for a variety of reasons and such settlements do not constitute authority for referees. Such proceedings simply do not provide the full factual and evidentiary information necessary for a meaningful analysis of the proceeding to serve as any guidance. This Court has stated that it will uphold a referee's sanction if it is supported by the Standards and caselaw. *Dsouza* and *Young* are neither. The Referee also relied on *Florida Bar v. Lifsey*, SC 07-747, which, while contested, did not result in an opinion from this Court, and, therefore, cannot serve as precedent on which a Referee may properly rely.

In addition, the Referee's recommendation relies on case law which is outdated. Of the three reported cases cited by the Referee, two are from 1988 and one is from 1993. This Court has noted that in recent years it has moved toward stronger sanctions for attorney misconduct. *Florida Bar v. Rotstein*, 835 So.2d 241, 246 (Fla. 2003). In *Rotstein*, this Court rejected precedent which was then 17 and 24 years old as inapplicable because they did not reflect this Court's current

views. *Id.* at 246. Similarly, the Referee's reliance on precedent from 17 and 22 years ago to support his recommendation is misplaced. This Court should reject that recommendation and impose a 60-day suspension, plus require attendance at The Florida Bar's Ethics School and Professionalism Workshop.

At the sanctions hearing, Respondent argued for a lenient sanction by de-emphasizing the dishonesty aspects of his misconduct and focusing solely on the disruptive and unprofessional nature of his misconduct. Even with this focus, however, a stronger sanction is warranted. Although not yet final, the Court's recent opinion in *Florida Bar v. Ratiner*, ___ So.3d ___, 2010 WL 2517995 (Fla. 2010), demonstrates the seriousness with which this Court is currently treating breaches of professionalism which disrupt the judicial process. In that case, the attorney behaved in a threatening manner toward opposing counsel in a deposition, touching opposing counsel's hand, crumpling up an exhibit sticker, and coming around the table toward opposing counsel. *Id.* at 6. The deponent and the court reporter were each distressed by his behavior. *Id.* at 2. For that misconduct, the attorney was suspended for 60 days, publicly reprimanded, and placed on probation. *Id.* at 6. In other cases, breaches of professionalism have even resulted in the imposition of rehabilitative suspensions. *Florida Bar v. Tobkin*, 944 So.2d

219 (Fla. 2006); *Florida Bar v. Morgan*, 938 So.2d 496 (Fla. 2006). *Tobkin* and *Morgan* both involved more extended and serious misconduct than that at issue in *Ratiner* or this proceeding and each attorney had received prior discipline. Nevertheless, even if this Court were to adopt Respondent's suggestion and ignore the dishonesty and focus only on the disruptive aspects of his misconduct, the Referee's recommendation of a public reprimand should be rejected in favor of the the 60-day suspension sought by the Bar.

CONCLUSION

The Court should reject the Referee's recommended sanction of a public reprimand and impose a 60-day suspension, with the additional requirement that Respondent complete The Florida Bar's Ethics School and Professionalism Workshop.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of this brief have been provided by Overnight Delivery to The Honorable Thomas D. Hall, Clerk, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1925; true and correct copies by regular U.S. Mail to Michael Vincent Laurato, Austin & Laurato, 1902 West Cass Street, Tampa, Florida 33606; Scott K. Tozian, 109 North Brush Street, Suite 200, Tampa, Florida 33602; and Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, this 25th day of August, 2010.

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Troy Matthew Lovell
Bar Counsel

CERTIFICATION OF FONT SIZE AND STYLE

Undersigned counsel does hereby certify that this brief is submitted in 14 point proportionally spaced Times New Roman font.

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Troy Matthew Lovell
Bar Counsel