# APPENDIX

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## APPENDIX A — CORRECTED OPINION OF THE SUPREME COURT OF FLORIDA, DECIDED MARCH 13, 2025

SUPREME COURT OF FLORIDA

No. SC2023-0518

THE FLORIDA BAR,

*Complainant,*

vs.

MALIK LEIGH,

*Respondent.*

Decided March 13, 2025

## CORRECTED OPINION

PER CURIAM.

The Florida Bar seeks review of a referee's report recommending that Respondent, Malik Leigh, be found guilty of professional misconduct in violation of the Rules Regulating The Florida Bar and suspended for 91 days.[1] The Bar challenges the entirety of the report, arguing that the referee's factual findings are insufficient and that the referee either dismissed or overlooked significant acts

1. We have jurisdiction. *See* art. V, § 15, Fla. Const.

of misconduct that support Leigh's disbarment. For the reasons discussed below, we find Leigh guilty of all 24 rule violations charged in the Bar's complaint and disbar him from the practice of law in Florida.

## BACKGROUND

The Bar filed a six-count complaint against Leigh after receiving multiple judicial referrals from the presiding judges in the cases Leigh initiated. Counts I and II pertain to Leigh's conduct while engaged in litigation involving three related cases in the United States District Court for the Southern District of Florida against several named defendants including the Palm Beach County School District (collectively the "School Board litigation"). During the litigation, Leigh made a number of threatening social media posts directed at the opposing parties in the cases, which raised significant security concerns about those involved in the litigation and necessitated the entry of a protective order by the federal court. Leigh also made false accusations about opposing counsel, accusing her in court filings of committing forgery and other offenses without any factual basis for doing so.

In Counts III through VI, Leigh was charged with committing multiple rule violations stemming from his attempt to initiate a toxic tort class action case on behalf of the residents of Stonybrook Apartments in the Circuit Court for the Fifteenth Judicial Circuit. Leigh repeatedly failed to file a viable complaint in the case, despite filing numerous amended pleadings over a two-year period. He also failed to comply with numerous court orders, and he

used a court reporter to question an employee of a party that he knew was represented by counsel. And when the case was eventually appealed to the Fourth District Court of Appeal, Leigh falsely accused the presiding circuit court judge in the case of racial bias.

## ANALYSIS

### A. Findings of Fact and Recommendations of Guilt

The Bar challenges the referee's factual findings, arguing they are vague and deficient, and recommendations as to guilt, arguing that Leigh should be found guilty of 24 violations of the Rules Regulating The Florida Bar. "To the extent that the Bar challenges the referee's findings of fact, this Court's review of such matters is limited, and if a referee's findings of fact are supported by competent, substantial evidence in the record, this Court will not reweigh the evidence and substitute its judgment for that of the referee." *Fla. Bar v. Alters*, 260 So. 3d 72, 79 (Fla. 2018) (citing *Fla. Bar v. Frederick*, 756 So. 2d 79, 86 (Fla. 2000)).

Also, to the extent the Bar challenges the referee's recommendations as to guilt, "the referee's factual findings must be sufficient under the applicable rules to support the recommendations." *Fla. Bar v. Bander*, 361 So. 3d 808, 814 (Fla. 2023) (quoting *Fla. Bar v. Patterson*, 257 So. 3d 56, 61 (Fla. 2018)). As the party challenging the referee's findings of fact and recommendations as to guilt, the Bar has the burden to demonstrate that there is no evidence in the record supporting, or clearly contradicting,

the recommendations. *Id.* (citing *Fla. Bar v. Germain*, 957 So. 2d 613, 620 (Fla. 2007)).

We first note that the referee's report is deficient as the referee failed to make detailed, factual findings for every count. However, upon our review of the record, we find that the evidence in the record clearly supports finding Leigh guilty of all 24 charged rule violations. We discuss our reasons below.

**Count I**

During the School Board litigation, Leigh published humiliating, disparaging, and threatening social media posts directed at those involved in the case, which the federal district court found to have delayed and interfered with the discovery process. Leigh also posted other violent, morbid messages around the same time, although not related to the litigation. These posts included a photo of himself with the text: "After this round if [sic] depos in the next 2 weeks, would love to start a shooting campaign." He also posted a picture of a tommy gun being fired by a movie character from *The Mask* with the message: "Me the next time im [sic] in front of the #Liverpool back line!! YOU GUYS SUCK!!! 4years now! Get it together!" Another post stated: "I can't hate the US and it's [sic] people more right now. Just need a mass extinction event right now!"

When defense counsel learned of the social media posts, he abruptly suspended an ongoing deposition and filed a motion to reschedule the remaining depositions and

for a protective order from the court. The court granted protective relief and ordered the presence of an armed police officer for the remaining depositions. Leigh was sanctioned and ordered to pay the defendants' attorneys' fees for filing and litigating the motion to suspend and reschedule the depositions and for the protective order. Leigh was also suspended from the United States District Court for the Southern District of Florida for two years.

Based on this conduct, we find Leigh guilty of violating rules 4-3.6(a) ("A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding due to its creation of an imminent and substantial detrimental effect on that proceeding."), 4-8.4(a) ("A lawyer shall not violate or attempt to violate the Rules of Professional Conduct . . . ."), and 4-8.4(d) ("A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis . . . .").

**Count II**

Leigh and opposing counsel, Lisa Kohring, were required to submit a joint pretrial stipulation. Leigh and Kohring were working together on the joint stipulation and on the afternoon the stipulation was due, they exchanged

several drafts of the document. Ultimately, Leigh replied to Kohring's last e-mail copying Kohring's paralegal, attaching a copy of a pretrial stipulation with his signature affixed and stating in the body of the e-mail: "Pretrial Stipulation to sign and file." Leigh did not explain in the e-mail that he had made additional changes to the draft stipulation or note that he had signed the document. Shortly after receipt and without reviewing Leigh's attachment, the paralegal filed a pretrial stipulation that was not the version e-mailed by Leigh, and which contained an electronic signature purportedly by Leigh's law partner, Danielle Watson, who was not involved in the drafting of the stipulation but was copied on the e-mail exchanges.[2]

After Leigh realized the stipulation that was filed was different from the version he had e-mailed, he contacted Watson and learned that she had not authorized the filed stipulation. Because it was after normal business hours and Leigh knew Kohring had left the office for the day, Leigh filed his own version of the stipulation in an addendum with Watson's name in the signature block, expressly accusing Kohring of forging Watson's electronic signature. This filing, which was styled as a "Joint PreTrial Stipulation Addendum" contained the following statement:

> [T]he Joint Pre-trial Stipulation [DE 71] by the Defendant's Counsel, Lisa Kohring, not only filed the wrong Pre-trial Stipulation, but

2. Watson's related misconduct was also referred to the Bar. *See Fla. Bar v. Watson*, No. SC2023-0416, 2025 Fla. LEXIS 422 (Fla. Mar. 13, 2025).

> she forged Plaintiff Counsel, Danielle Watson's electronic signature and filed it. The Actual "agreed" or "joint" stipulation which was submitted with Attorney, Malik Leigh, Esq's endorsement and submitted to Defense counsel [f]or filing is attached herein without Defense Counsel's Signature. Counsel will follow up with an official Motion regarding this action.

The next morning, Kohring reviewed the pretrial stipulation and addendum and requested by e-mail that Watson and Leigh retract their statements in the addendum. Leigh and Watson ignored Kohring's e-mails and calls. After receiving no response, Kohring again e-mailed Watson and Leigh, stating that she had tried calling twice and warning that she may seek sanctions. Leigh replied to Kohring's e-mail, claiming that Kohring "forged" Watson's signature and could be subject to sanctions or criminal penalties based on her office affixing Watson's signature to the stipulation without authorization.

Kohring and Leigh each filed a motion for sanctions. Ultimately, the judge denied Leigh's motion but granted Kohring's, finding that Leigh and Watson acted in bad faith and holding them jointly responsible for the defendants' attorneys' fees.

Leigh's conduct resulted in additional proceedings, a court finding that he acted in bad faith, and sanctions. We, thus, find that the record clearly supports a finding that Leigh is guilty of violating rules 4-8.4(a) ("A lawyer shall

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

**Count III**

In the Stonybrook case, Leigh attempted to initiate a proceeding and obtain immediate injunctive relief by filing a "Plaintiffs' Ex Parte Emergency Motion for Preliminary Injunction." Leigh claimed the residents of Stonybrook Apartments were living in inhumane and unsafe housing conditions. The circuit court denied the motion because it did "not allege matters entitled to be heard on an emergency or expedited basis." Nevertheless, Leigh filed a notice of hearing, setting the motion, which had already been denied, for a half-day hearing.

A short time later, Leigh filed an amended motion seeking the same relief. The court again denied the motion because it was procedurally deficient. The court advised Leigh to cure the deficiencies in his filing within 10 days, serve all defendants, and then seek non-emergency, non-ex parte relief in the ordinary course of business.

Counsel for Defendants Millennia Housing Management, Ltd., LLC and Stonybrook FL, LLC filed a limited appearance and response to Leigh's amended

motion and sought to cancel the half-day hearing Leigh set for the motion that had already been denied. Defendant City of Riviera Beach also filed a limited appearance and motion to quash the improper service of the first motion and strike the notice of hearing and the purportedly issued subpoena to the City's Building Official to appear at the hearing. The court cancelled the hearing.

Despite notice that a motion was not the proper vehicle to bring a claim, Leigh filed a "**Corrected** Plaintiffs' Motion for Preliminary Injunction." This third motion contained the same allegations as his first two motions and sought the same emergency relief. Stonybrook filed a motion for sanctions because Leigh filed three motions improperly requesting injunctive relief that contained identical allegations despite the court's rulings. At a hearing on Stonybrook's motion, the court deferred ruling on the motion, pending the filing of a complaint stating a valid claim, and informed Leigh that his motions failed to satisfy certain pleading requirements. The court also granted Riviera Beach's motion to quash because of Leigh's failure to follow Florida Rule of Civil Procedure 1.070 (Process).

Finally, Leigh filed a "Class Action Complaint with Accompanying Request for Class Representation and Demand for Jury Trial (corrected)." Stonybrook filed a motion to dismiss and strike redundant and immaterial portions of the complaint, arguing that Leigh improperly named the defendant as "Stonybrook FL, LLC (aka Millennia Housing Management/Millennia Companies)," when Stonybrook and Millennia are two separate

entities. Furthermore, the counts were commingled against numerous defendants, making it impossible for Stonybrook to frame its defenses, and Leigh failed to meet the threshold of the class certification requirements under Florida Rule of Civil Procedure 1.220 (Class Actions) or the requirements for entitlement to a preliminary injunction. Riviera Beach also filed a motion to dismiss the class action complaint, arguing that it was immune from suit under sovereign immunity. The court held a hearing on Stonybrook's motion and struck several words and phrases from Leigh's complaint as scandalous, immaterial, or impertinent.

Thereafter, Leigh filed an amended class action complaint, which despite the court's earlier ruling, contained many of the same words and phrases that the court had struck from his initial complaint. Riviera Beach and Millennia filed motions to dismiss Leigh's amended complaint, and Defendants GMF-Stonybrook, L.L.C. and GMF-Preservation of Affordability Corp. (referred to collectively as "GMF") filed a motion for involuntary dismissal with prejudice. The motion listed Leigh's violations of the court's orders and claimed that the amended complaint had not been served and was so deficient that responding properly would be nearly impossible because it commingled claims against the several defendants and failed to comply with Florida Rule of Civil Procedure 1.130 (Attaching Copy of Cause of Action and Exhibits). Additionally, GMF attached to its motion copies of social media posts targeting the defendants in the case that were made by Leigh and his law firm's social media account, which included

references to "'Concentration Camp-like' conditions" and allegations that the property was run by "organized crime syndicates."

At a hearing on GMF's motion for involuntary dismissal, the court declined to dismiss the case with prejudice after considering the impact that it would have on the plaintiffs. However, the court ordered Leigh to secure a mentor to assist him in the case and certify that the amended complaint complied with the court's previous orders and that it was well-founded and accurately stated the law. The court also ordered Leigh to take a two-hour professionalism and civility course and imposed a gag order on the parties and attorneys, precluding public discussion of the case and ordering existing social media posts be removed. Thereafter, Leigh filed a second amended complaint, but the filing violated the court's orders because it contained the same language that the court had previously stricken and failed to contain the court-ordered certification from an approved mentor.

GMF, Stonybrook, Millennia, and Riviera Beach all filed motions to dismiss the second amended complaint and a joint motion for sanctions against Leigh for his failure to comply with the court's orders. The court granted Riviera Beach's motion to dismiss on sovereign immunity grounds and granted Stonybrook's, Millennia's, and GMF's motions to dismiss without prejudice. The court held Leigh in contempt for failing to comply with the court's orders, finding that Leigh

> admitted that he has failed to comply with the Court's 57.105 Order and the Court's Sanctions

> Order by: (a) failing to pay the sanctions when due; (b) failing to attend a professionalism class as ordered; (c) failing to obtain a proper mentor and have that mentor certify all substantive pleadings (including the Second Amended Complaint) and significant motions (specifically, Plaintiffs' motion to disqualify the Court); (d) failing to comply with the Court's orders striking certain inflammatory language; (e) failing to comply with the rules of pleading to state a viable cause of action, and (f) failing to comply with the Gag Order by, inter alia: (i) failing to remove references to Defendants and this pending litigation from his website and social media accounts; and (j) posting to his social media account about this pending litigation after the imposition of the Gag Order.

The court disqualified Leigh from representing any interest of the putative class members and ordered him to pay the reasonable costs and attorneys' fees the defendants incurred in connection with the show cause hearing. The court gave Leigh an opportunity to purge his contempt of court orders, but he failed to do so.

Nevertheless, Leigh filed a third amended complaint. This complaint still contained the same language the court previously struck, was uncertified by a mentor, and contained many of the same deficiencies as the prior complaints. The court found that the third amended complaint violated the court's prior orders and dismissed the complaint without prejudice but without further

leave to amend to bring claims by multiple plaintiffs, instead requiring each plaintiff to bring his or her claim individually by commencing new actions. The court ordered Leigh and his law firm jointly and severally liable for the defendants' attorneys' fees totaling $39,989.90.

Ultimately, Leigh was grossly incompetent in trying to initiate the class action lawsuit on behalf of the Stonybrook residents. He repeatedly attempted to bring an action by filing a motion for injunctive relief, even after the court denied the motion as improper. He was also held in contempt for violating numerous court orders and despite the court providing Leigh an opportunity to purge his contempt, he failed to do so. He made several social media posts related to the Stonybrook case, even after the court imposed a gag order to avoid tainting the jury pool. Leigh's conduct covered two years of litigation, during which he was unable to file a complaint that stated a viable claim, resulting in the dismissal of his clients' complaint. His conduct caused costly litigation, and Leigh was sanctioned for payment of the defendants' attorneys' fees.

Thus, we find that the record clearly supports a finding that Leigh is guilty of violating rules 4-1.1 ("A lawyer must provide competent representation to a client."), 4-3.1 ("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 . . . ."), 4-3.4(c) ("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[.]"),

4-3.6(a) ("A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding due to its creation of an imminent and substantial detrimental effect on that proceeding."), 4-8.4(a) ("A lawyer shall not violate or attempt to violate the Rules of Professional Conduct . . . ."), and 4-8.4(d) ("A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis . . . .").

**Count IV**

When Leigh filed the first amended complaint in the Stonybrook case, he received notice that e-service delivery had failed. He sent an e-mail to opposing counsel, acknowledging the error and attaching the complaint but not including any exhibits, which is required for proper service. *See* Fla. R. Civ. P. 1.130(b); 1.070(e). Nevertheless, he filed a motion for default, claiming the complaint was served. In denying Leigh's motion for default, the court specifically found that "there was no legal support for Plaintiffs' Motion for Default either factually or by an application of then-existing law to the facts presented." Additionally, as to Leigh's complaint against the City of Riviera Beach, the court awarded sanctions against Leigh and found that "counsel knew or should have known that

the claims stated in the Complaints against the City were not supported by the application of then-existing law to the material facts alleged in the Complaints." The court awarded Riviera Beach $16,150.00 in attorney's fees to be paid by Leigh and his law firm, jointly and severally.

Therefore, we find that the record clearly supports a finding that Leigh is guilty of violating rules 4-1.1 ("A lawyer must provide competent representation to a client."), 4-3.1 ("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 . . . ."), 4-3.4(c) ("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[.]"), 4-8.4(a) ("A lawyer shall not violate or attempt to violate the Rules of Professional Conduct . . . ."), and 4-8.4(d) ("A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis . . . .").

**Count V**

During the Stonybrook litigation, Leigh contacted Carol Baer, a court reporter, to take the sworn statement of Mayra Lugaro, assistant manager of Millennia, a party represented by counsel. Leigh sent Baer a list of questions to ask Lugaro. Leigh explained to Baer that as an opposing party, he could not be present for the sworn

statement and could not talk to Lugaro. Baer took the sworn statement at Lugaro's home and asked Lugaro Leigh's questions. Leigh traveled to Lugaro's residence and waited outside while the sworn statement was being taken. During the sworn statement, Leigh texted Baer about obtaining internal confidential company documents from Lugaro.

Leigh used the information obtained from the sworn statements and documents to support allegations in his third amended complaint. He also attempted to disqualify defense counsel and have the court impose sanctions on Stonybrook, Millennia, and GMF based on allegations that they were retaliating against his clients. Based on this conduct, the court disqualified Leigh from representing any clients in the litigation or in any other matter against the defendants relating to the Stonybrook Apartments complex.

Based on this conduct, we find Leigh guilty of violating rules 3-4.3 ("The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline . . . ."), 4-4.2(a) ("In representing a client, a lawyer must not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer . . . ."), 4-4.4(a) ("In representing a client, a lawyer may not . . . knowingly use methods of obtaining evidence that violate the legal rights of such a person."), 4-8.4(a) ("A lawyer shall not violate or attempt to violate the Rules of Professional Conduct . . . ."), and 4-8.4(d) ("A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial

to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis . . . .").

**Count VI**

Leigh appealed the circuit court's order holding him in contempt and sanctioning him to the Fourth District Court of Appeal. In the initial brief, Leigh challenged the sanctions imposed against him by labeling these actions as "the trial court's repeated acts of bias and disregard for neutrality in various hearings and positions." Leigh asserted that the adverse rulings entered against him were based on his race rather than for any substantive purpose, stating:

> Third, Plaintiffs' Counsel was accused of violating the Florida Bar, in various areas: communication, candor, and competency. These were not based upon any substantive purpose other than they occurred after a witness (white) accused Plaintiffs' Counsel (Black) of being aggressive with her and calling her a pejorative; one who's [sic] very corroborative witnesses stated was not truthful. . . .
>
> . . . .
>
> Sixth, whether the Court can bypass the Class Certification process set forth in F.R.C.P. 1.220 in retaliation of the Plaintiffs

> finding zero confidence in the trial court judge's ability to adjudicate fairly and without bias (implicit racial bias or any other exhibited) in a way that seeks to destroy both the Plaintiffs' credibility, the credibility of their arguments, and Plaintiffs' Counsel's credibility.

Furthermore, Leigh directly charged:

> What the Plaintiffs in the trial case; Appellants in the instant, are sure of is that the judicial system literally took one look at them and denied them a fair opportunity to be heard. That it all started typically enough: a white woman accused a large scary black man of something he did not do, and there were witnesses to support his side. But those witnesses all looked like him, and those on the other side all looked their way; and in the end, regardless of what was presented to the contrary, this is also what the Court saw.

Leigh made numerous assertions that the trial judge engaged in repeated acts of racial bias, but he failed to establish that he had an objectively reasonable factual basis for making the statements. Although Leigh claimed that adverse rulings entered against him were based on his race rather than for any substantive purpose, the record reflects that Leigh was sanctioned for violating numerous court orders and filing a frivolous complaint against the City, and the complaint against the remaining defendants was ultimately dismissed because despite

numerous opportunities to amend the complaint, Leigh was not able to plead a viable cause of action.

Based on this conduct, we find Leigh guilty of violating rule 4-8.2(a) ("A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge . . . ."). *See Fla. Bar v. Jacobs*, 370 So. 3d 876, 883 (Fla. 2023) (explaining that the Court uses "an objective test, asking if the lawyer had 'an objectively reasonable factual basis for making the statements'" (quoting *Fla. Bar v. Ray*, 797 So. 2d 556, 559 (Fla. 2001))). We also find that Leigh is guilty of violating rules 4-8.4(a) ("A lawyer shall not violate or attempt to violate the Rules of Professional Conduct . . . .") and 4-8.4(d) ("A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis . . . .").

## B. Discipline

We disapprove the referee's recommended sanction of a 91-day suspension. Considering the multitude of offenses and egregious nature of Leigh's conduct, we find disbarment is the appropriate sanction. Leigh exhibited gross incompetence and has demonstrated that he lacks the ability to grasp the most basic, fundamental legal concepts. In failing to follow court orders and rules, he has displayed contempt for the courts, the parties involved,

and the legal system as a whole. Moreover, his repeated actions indicate an unwillingness to learn from his mistakes. We hold that such flagrant misconduct signifies a significant character flaw and merits a severe sanction.

"Prior to making a recommendation as to discipline, referees must consider the Standards for Imposing Lawyer Sanctions, which are subject to aggravating and mitigating circumstances, and this Court's existing case law." *Fla. Bar v. Strems*, 357 So. 3d 77, 90 (Fla. 2022). Our review of a referee's recommended discipline "is broader than that afforded to the referee's findings of fact because, ultimately, it is [our] responsibility to order the appropriate sanction." *Patterson*, 257 So. 3d at 64 (citing *Fla. Bar v. Anderson*, 538 So. 2d 852, 854 (Fla. 1989); art. V, § 15, Fla. Const.).

**Standards**

In looking at the Standards, we find support for disbarment as the presumptive sanction in this case. *See* Fla. Stds. for Imposing Law Sancs. 4.5(a) ("Disbarment is appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures and causes injury or potential injury to a client."); 6.2(a) ("Disbarment is appropriate when a lawyer causes serious or potentially serious interference with a legal proceeding or knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another and causes serious injury or potentially serious injury to a party."); 7.1(a) ("Disbarment is appropriate when a lawyer

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

**Aggravating and Mitigating Factors**

As to aggravation, the referee found three factors under Standard 3.2(b): (1) pattern of misconduct; (2) multiple violations; and (3) indifference to making restitution. The Bar claims that the referee erred in failing to find three additional aggravating factors: dishonest or selfish motive, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law. We find error only in the referee's failure to find a dishonest or selfish motive as an aggravating factor.

"[A] referee's findings of mitigation and aggravation carry a presumption of correctness and will be upheld unless clearly erroneous or without support in the record." *Germain*, 957 So. 2d at 621 (citing *Fla. Bar v. Arcia*, 848 So. 2d 296, 299 (Fla. 2003)). The referee declined to find a dishonest or selfish motive in aggravation because Leigh was providing legal services on a pro bono basis. But Leigh violated several rules involving dishonesty, and his use of a court reporter to ask an employee of an opposing party questions that he was expressly prohibited by rule from asking himself was entirely dishonest. Thus, we find dishonest or selfish motive as an aggravating factor.

As to mitigation, the referee found nine factors under Standard 3.3(b): (1) absence of a disciplinary record;

(2) absence of a dishonest or selfish motive; (3) personal or emotional problems; (4) cooperative attitude towards the proceedings; (5) inexperience in the practice of law; (6) character or reputation; (7) unreasonable delay in the disciplinary process; (8) interim rehabilitation; and (9) remorse. We find error in five of these findings.

First, because we have found that the referee erred in not finding a dishonest or selfish motive in aggravation, we correspondingly disapprove the referee's finding in mitigation of absence of a dishonest or selfish motive.

Next, the Bar challenges the referee's findings that Leigh's personal or emotional problems are mitigating factors. Notably, the Bar does not contest the underlying facts related to Leigh's personal and emotional problems. Instead, the Bar argues that the problems were related to his childhood and young adulthood and unrelated to the events that transpired in this case. We agree. In *Florida Bar v. Schwartz*, 382 So. 3d 600, 612 (Fla. 2024), we found that the mitigating factor did "not apply because at issue is a life-long personality characteristic as opposed to an acute emotional impairment." Similarly, the referee in this case even emphasized that these events in Leigh's life shaped his character, and she did not find that his actions were caused by an acute impairment. Therefore, we hold that the referee's finding of this mitigating factor is clearly erroneous.

The Bar challenges the referee's finding as a mitigating factor that Leigh was inexperienced in the practice of law. This finding is inconsistent with the

referee's analysis of aggravating factors. However, in examining her justification for finding this mitigator, she appears to be referring to Leigh's inexperience in a specific area of litigation. We recently explained that "the substantial experience factor is not parsed by expertise in specific areas of the law, but instead applies to experience related to the capability of determining whether conduct is violative of the rules." *Bander*, 361 So. 3d at 817. Accordingly, we hold that the referee's finding of this mitigating factor is clearly erroneous.

Additionally, the Bar challenges the referee's finding of unreasonable delay as a mitigating factor. To find this mitigating factor, it requires not only that there has been a delay, but also that the respondent demonstrate "specific prejudice resulting from that delay." Here, the referee found no prejudice, stating that "no witness was unavailable due to the delay." Accordingly, we reject as clearly erroneous the referee's finding of unreasonable delay as a mitigating factor.

The Bar also argues that the referee's finding of interim rehabilitation is unsupported by the record. In finding this factor, the referee cited the uncontroverted testimony that Leigh has practiced ethically since 2020. However, at the time of the hearing, Leigh still had not complied with court orders to take professionalism and ethics courses. When asked if he had done anything to help with his mental health or obtain additional education, he gave vague, evasive answers. Also, at the time of the hearing, Leigh had not paid the monetary sanctions imposed against him and his firm. Therefore,

we hold the referee's finding of this mitigating factor is clearly erroneous. *Cf. Fla. Bar v. Irish*, 48 So. 3d 767, 774 (Fla. 2010) (holding that referee's rejection of interim rehabilitation as a mitigating factor was supported when respondent spoke to a doctor for a couple hours but did nothing more); *Fla. Bar v. Valentine-Miller*, 974 So. 2d 333, 336-37 (Fla. 2008) (holding that referee's finding of interim rehabilitation was supported when respondent checked herself into an inpatient rehabilitation facility).

**Case Law**

Finally, in determining the appropriate sanction, we look to prior cases for guidance. In *Florida Bar v. Springer*, 873 So. 2d 317 (Fla. 2004), we held that disbarment was warranted where the respondent engaged in multiple instances of misconduct in six matters, which collectively demonstrated a pattern of failing to provide competent representation, failing to act with reasonable diligence, and misrepresenting the status of the client's matter.

In *Florida Bar v. Committe*, 136 So. 3d 1111 (Fla. 2014), we imposed a three-year suspension on a respondent who filed a frivolous tort action and failed to pay the monetary sanction imposed for the frivolous lawsuit. Then, after receiving two letters requesting payment be rendered, "Committe wrote to the United States Attorney, accusing the defendant of attempting to extort money from him and requesting that she be criminally prosecuted." *Id.* at 1113.

Considering the totality of Leigh's actions and the resulting number of rule violations, we conclude that the case law supports disbarment. We acknowledge that cases where we imposed a lengthy rehabilitative suspension, such as *Committe*, are similar but note that the misconduct at issue in those cases does not rise to the level of Leigh's misconduct in this case. Leigh's misconduct is more comparable to the misconduct that occurred in *Springer*, where, like here, there was a lengthy pattern of misconduct and gross incompetence. We find that the magnitude of Leigh's misconduct signifies a larger issue with Leigh that cannot be remedied by a rehabilitative suspension.

While Leigh has no prior disciplinary record and we typically approach discipline incrementally, we have disbarred attorneys with no prior history when the violations are egregious enough. *See Strems*, 357 So. 3d 77. Here, Leigh's conduct demonstrates a failure to grasp the most fundamental legal doctrines or procedures, and despite numerous warnings, he has demonstrated a propensity to flout court rules and orders. Leigh's refusal to follow multiple court orders demonstrates that he is not amenable to learning or rehabilitation. Further, at the time of the hearing before the referee, Leigh had not yet paid the sanctions, demonstrating a lack of respect for the court's authority in imposing the sanctions and a disregard for the parties to whom the sanctions are owed.

We conclude, based on a review of relevant case law, the Standards, and the aggravating and mitigating factors found by the referee, that disbarment is the appropriate sanction in this case.

*Appendix A*

## CONCLUSION

Accordingly, Malik Leigh is disbarred from the practice of law in Florida. Leigh's disbarment is effective 30 days from the date of this opinion so that Leigh can close out his practice and protect the interests of existing clients. If Leigh notifies this Court in writing that he is no longer practicing and does not need the 30 days to protect existing clients, we will enter an order making his disbarment effective immediately. Leigh must not accept any new business from the date of this opinion, and he is prohibited from engaging in any acts constituting the practice of law in Florida once his disbarment becomes effective.

Leigh must fully comply with Rules Regulating The Florida Bar 3-5.1(h) and, if applicable, 3-6.1.

Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from Malik Leigh in the amount of $3,594.42, for which sum let execution issue.

It is so ordered.

MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS DISBARMENT.

Original Proceeding – The Florida Bar

## APPENDIX B — REPORT OF REFEREE OF THE SUPREME COURT OF FLORIDA, DATED OCTOBER 10, 2023

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

Supreme Court Case
No. SC2023-0518
The Florida Bar File Nos. 2017-50,987 (15F);
2018-50,286 (15F); and 2020-50,322 (15C)

THE FLORIDA BAR,

*Complainant,*

vs.

MALIK LEIGH,

*Respondent.*

Dated October 10, 2023

### REPORT OF REFEREE

### I. SUMMARY OF PROCEEDINGS:

On April 10, 2023, The Florida Bar filed its six-count complaint which addressed actions that primarily occurred between 2017 and 2020. The Respondent, Malik Leigh, served a timely answer to the complaint.

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The undersigned was appointed to preside as referee in this proceeding pursuant to the Supreme Court's March 22, 2023, Order and the March 28, 2023 Order from Chief Judge of the Seventeenth Judicial Circuit of Florida.

During the course of these proceedings, Respondent was represented by Juan Carlos Arias, Esquire, and The Florida Bar has been represented by Linda Ivelisse Gonzalez, Bar Counsel.

The Florida Bar also filed a formal complaint against this Respondent's law partner, Danielle Renee Watson, on March 22, 2023. See Supreme Court Case No. SC2023-0416. The Watson complaint was a one-count complaint that relates to Count II of the Leigh complaint addressing the same core facts. The Bar, when it filed the Leigh complaint, also filed a Notice of Related Cases and the Leigh matter was also forwarded to me to act as Referee.

The Bar desired to try both the Watson and Leigh cases together. Watson filed a Motion to Sever and to Bifurcate, seeking to try her case alone and to bifurcate any presentation on mitigation or aggravation until there was a ruling on whether she had violated the Rules Regulating The Florida Bar. This motion was denied by an order dated July 11, 2023, and the two cases proceeded to final hearing.

The final hearing was held over six days – August 14, 2023 through August 16 2013, August 21, 2023, and August 23, 2023 through August 24, 2023. The pleadings and all other papers filed in this cause, which are forwarded to

the Supreme Court of Florida with this report, constitute the entire record.

## II. FINDINGS OF FACT:

A. *Jurisdictional Statement*: I find that at all times material to this action, Respondent, Malik Leigh, was a member of The Florida Bar subject to the jurisdiction and disciplinary rules of The Supreme Court of Florida.

B. *Narrative Summary of Case*:

### Overview

The Bar has alleged in a complaint with six counts that Leigh violated ten provisions of the R. Regulating The Florida Bar in relation to a pair of unrelated civil litigations. Certain actions occurred in September 2016-2017 in civil actions against the Palm Beach County School District, referred hereto as the *Leigh/Parrish-Carter* cases. The other actions occurred between 2018 and 2020 in the civil case against multiple defendants on behalf of the residents of Stonybrook Apartments.

The Bar presented its case against both lawyers collectively and contended that all evidence introduced at the trial concerning both respondents' conduct and any inferences from said evidence should be accepted collectively against the respondents as law partners. This Report will follow the order of the counts in the complaint.

*Appendix B*

**AS TO ALL COUNTS**

Leigh testified on his own behalf, presented 19 additional exhibits, and used the Bar's exhibits in his testimony. I found Leigh's initial testimony about his upbringing and personal struggles in life to be emotional, candid, and compelling. Leigh's personal testimony in this Court's opinion shed light on his personality traits and provided the Court with relevant insight as to Leigh's personal drive and passions. Specifically, the Court notes that Leigh grew up in a military family confronting the unusual challenges of constant uprooting from their communities and the absence of a father due to military duties. The Court also notes Leigh's testimony as to enduring emotional and physical abuse by his mother, which resulted in his leaving his home and family at the young age of thirteen. Leigh's testimony regarding his early adulthood also left an impression on this Court, specifically: That Leigh had a devastating car accident that derailed his plan to be an athlete in Europe, his rehabilitation and loss of reading skills as a result of the accident, the circumstances of the murder of his girlfriend, the death of the mother of his young child, and two heart attacks – all endured by Leigh before reaching the age of thirty. The Court also notes that, as a result of the car accident, Leigh suffered from an undetected cyst that exploded in his head a decade later which developed into a brain tumor, required surgery. The above mentioned personal struggles, and their influence shaping Leigh's personal traits and character, both positive and negative, are important considerations

to my resolution and were established by clear and convincing evidence. This Court finds particularly compelling that, considering Leigh's life challenges, he was able to muster the discipline and drive to fulfill his dream of becoming an attorney at a later stage in life.

The Court found credible Leigh's testimony as to his legitimate concern for the students and fellow teachers he believed were facing retaliation. The Court also found credible Leigh's testimony as to his legitimate concern for the residents of Stonybrook Apartments and finds by clear and convincing evidence that he felt passionate and sincere empathy for the residents.

The Court also finds by clear and convincing evidence as to all Counts, that with the exception of the two litigations subject to this Final Hearing, Leigh has practice for almost a decade in the areas of family law and dependency in a professional and effective manner. The Court accepts the testimony of Jess Manger and Anubha Agarwal in support of this finding.

**COUNT I and COUNT II**

The operative exhibits presented by the Bar regarding these counts are primarily found at TFB Ex. 1 through TFB Ex. 17. Leigh testified on his own behalf, presented additional exhibits primarily found in Leigh Comp. Ex. 1 through 7, and also used the Bar's exhibits in his testimony, which were all considered in my resolution of the factual disputes herein.

*Appendix B*

The Florida Bar presented the following witnesses regarding Count I (social media postings by Leigh) and Count II (pretrial stipulation) relating to the *Leigh/ Parish-Carter* cases filed both in state and federal court: Shawntoyia Bernard, Esq., Helene Baxter, Esq., Lisa Kohring, Esq., and Ana Jordan.

As to Count I, Leigh acknowledged the impropriety of some of the posts relating to litigation and provided context to some of the post that were personal and unrelated to legal cases. Leigh expressed his belief that some of the social media posts provided as evidence were not true representations of the original posts as they appeared to be cropped and that, to the best of his recollection, he believes that some were not posted in the social media platforms as represented by the cropped posts. Leigh did testify to having written the content of the posts at the final hearing, consistent with his prior admissions in other proceedings as evidence by the multiple admissions introduced in the record by The Florida Bar.

Although the Court, when considering Leigh's personality as shaped by the unfortunate incidents in his life, now better understands Leigh's personality and traits, this Court recognizes that the totality of social media postings made by Leigh, whether intended to be private or public, or whether they were personal or related to his law practice, and regardless of where they were posted, reasonably caused fear on readers and precipitated the safety actions taken by employees of the Palm Beach County School District. In reaching this finding, I also considered the testimony provided regarding Leigh's lack

of criminal or violent record, and Ms. Baxter's testimony in cross-examination that neither her nor her employees ever experienced or witnessed violent behavior by Leigh.

As to Count II, I should note that Kohring and Jordan were very defensive on cross-examination on the issue of the pretrial stipulation and, especially as to Kohring, aggressively attempting to volunteer information outside the questions that were posed to her. In cross-examination Kohring refused to admit that her office made a mistake when they failed to open the pretrial stipulation emailed by Leigh at 5:53 PM on September 5, 2017. Also on cross-examination, Ms. Kohring failed to even entertain the idea that if she had disclosed their mistake to Leigh on September 6, 2017, maybe the issues would have been amicably resolved. I find by clear and convincing evidence that Kohring was not candid with Leigh regarding the facts leading to the dispute over the pretrial stipulation and that an opportunity for a good faith resolution was missed as a consequence of Kohring's lack of candor with opposing counsel.

Also regarding Count II, the *Leigh/Parish-Carter* litigation included a filing in federal court and this was the first case (along with two others) that had been filed by Leigh, with Watson as co-counsel of record. From the testimony presented before me, Leigh and Watson admitted that this was their first case of that kind, that they did not have experience in that area of the law, that Leigh was primary counsel in this case, and that Watson's name was affixed to all pleadings and she was copied on relevant e-mails.

*Appendix B*

One of the principal issues of Count II of the complaint regarding the *Leigh/Parish-Carter* litigation relates to the sanction order directed against Leigh and Watson, which order concerns actions taken regarding Watson's electronic signature being affixed on a pretrial stipulation and Leigh and Watson's reactions thereto. The following timeline and events are important to my resolution and were established by clear and convincing evidence:

1. Prior to the events at issue, the parties to the *Parish-Carter* case were obligated to submit a joint pre-trial stipulation to the court by September 5, 2017.

2. Leigh and counsel for the school board (primarily Kohring) were working together to accomplish this task and had exchanged several drafts of the document between the respective offices.

3. It was uncontroverted that Watson was not involved in any manner in the drafting of the stipulation, but was copied on the various e mails being exchanged between the respective offices.

4. Prior to September 5, 2017, Watson was working as an associate at a different law firm, but was also the co-owner of Watson & Leigh, P.A.

5. On September 5, 2017, Watson worked the bulk of the day at this other law firm and did not return home until late in the afternoon.

6. Prior to the events in question, Watson and Leigh, while working on Watson & Leigh. P.A. matters would

do so from their respective homes and the law firm did not, at that time frame, have an office other than their respective homes.

7. On September 5, 2017 at 4:26 PM, Leigh sent an email to Kohring, her paralegal, Jordan, and Watson providing the recipients of said e-mail a draft of the pretrial stipulation stating "let me know and we will sign it real quick." Leigh Comp. Ex. 1.

8. On September 5, 2017, at 5:13 PM, Kohring sent an email to Leigh, Watson, Bernard, and her paralegal Jordan with a draft of the pretrial stipulation that she desired to file with the court.

9. On September 5, 2017, at 5:20 PM, Kohring sent another email to Leigh, Watson, Bernard, and her paralegal Jordan telling him to disregard the 5:13 PM draft and provided an alternate pretrial stipulation draft that she desired to file with the court, asked Leigh to review same.

10. On September 5, 2017, at 5:25 PM, having now received two separate email drafts from Kohring, Leigh responded to Kohring stating that he had been on the phone and was reviewing the last draft sent (from 5:20 PM and no longer the 5:13 PM draft as requested).

11. On September 5, 2017, at 5:38 PM, Kohring sent an email to Leigh, Watson, Bernard, and her paralegal Jordan telling him to please let Ana know that she can file the pretrial stipulation. She is copied so please reply to all.

Kohring then called Leigh and informed him that Kohring was leaving work because of her wedding anniversary celebration that evening.

12. On September 5, 2017 at 5:35 PM, Kohring sent an e-mail to Leigh, Watson, Bernard and her paralegal, Jordan, providing the recipients of said e-mail with the draft of the pretrial stipulation that she desired to file with the court, asked Leigh to review same and to respond to Jordan if the stipulation could be filed as drafted. TFB Ex. 3, bates 019.

13. At 5:53 PM that same day, Leigh responded to the same individuals via e-mail, provided a copy of a pretrial stipulation which had his signature affixed thereto and in the text of the e-mail stated: "Pretrial Stipulation to sign and file." TFB Ex. 3, bates 021. This e-mail did not explain that Leigh had made further corrections to the draft stipulation or note that he had signed the PDF that was sent to everyone.

14. Shortly after Leigh's e-mail, Jordan filed the pretrial stipulation that was introduced as TFB Ex. 1. This version of the stipulation was not the version of the stipulation that had been forwarded by Leigh and it contained an electronic signature purportedly from Watson. See TFB Ex. 1, bates 14.

15. There was testimony that there were differences between the version of the stipulation filed by Jordan from the previous version provided by Kohring and was different from the version provided by Leigh. That said, these factual disputes are not necessary to resolve herein.

16. Leigh's uncontroverted testimony was that he alone worked with opposing counsel on the pre-trial stipulation and that Watson was not involved in the drafting at any time.

17. Sometime after the stipulation was filed by Jordan, Leigh examined the version of the stipulation that she filed and quickly realized it was not the version he had e-mailed to Kohring in that his signature was not on the document, it did not contain the changes he had made, and his partner's electronic signature had been attached to the document. TFB Ex. 1.

18. The uncontroverted testimony was that Leigh, from his home, reached out to Watson, at her home, to inquire if she had authorized the filing of the stipulation that had in fact been filed. She promptly advised that she had not done so and had not even examined the filed document as of that time.

19. By now it is well after normal business hours, Leigh was aware that Kohring had left the office for an anniversary dinner and did not believe he had any alternative but to file a version of the stipulation with his changes.

20. Late in the evening of September 5, 2017, Leigh filed his version of the pre-trial stipulation. See TFB Ex. 2. It is the second pleading that he filed that is the focus of the dispute between the parties. This second pleading, included in TFB Ex. 2 at bates 022-023, styled Joint PreTrial Stipulation Addendum ("Addendum"), contained in pertinent part the following statement:

> ... the Joint Pre-trial Stipulation [DE 71] by the Defendant's Counsel, Lisa Kohring, not only filed the wrong Pre-trial Stipulation, but she forged Plaintiff Counsel, *Danielle Watson's* electronic signature and filed it. The Actual "agreed" or "joint" stipulation which was submitted with Attorney, Malik Leigh, Esq's endorsement and submitted to Defense counsel or filing is attached herein without Defense Counsel's Signature. Counsel will follow up with an official Motion regarding this action.

21. The testimony introduced at trial and as is evident from the pleading, Leigh drafted, signed, and filed the Addendum, but Watson's name is also affixed in the signature block and in the service information.

22. From the testimony adduced at trial from Watson and Leigh, they were upset and shocked that an opposing counsel would affix a lawyer's electronic signature to a pleading without having secured permission to do so.

23. The next morning, Kohring reviewed the stipulation and Addendum filed by Leigh (TFB Ex. 2), she also became upset and sent several e-mails to Leigh and Watson asking for a retraction of the comments made in the Addendum. Her testimony was that she also placed several calls to the Watson & Leigh law firm on September 6, 2017. The first e-mail she sent on September 6, 2017, at 12:49 PM, was addressed to

Leigh, but was copied to everyone who was on the day's previous e-mails, inclusive of Watson. See TFS Ex. 4, bates 67. In this e mail she demands a retraction of the statements made in the Addendum or that she would file a motion for sanctions. Her next e-mail at 2:29 PM, states that she called Leigh twice that day with no response and included further demands or that she would be seeking sanctions. See TFS Ex. 4, bates 68.

24. At 2:52 PM on September 6, 2017, Leigh responded to Kohring's e-mail in a strident manner repeating the claims made about her office's actions in attaching Watson's signature without authorization as being a forgery and that she could be the subject of a sanction motion, as well as potentially other actions as forgery was a crime.

25. It is uncontroverted that Kohring did not disclose in any of her communications to Leigh and Watson on September 6, 2017, that her office never opened the version emailed by Leigh at 5:53 PM. It is also uncontroverted that the first time Kohring and her office disclosed this mistake was at the hearing held before the Court.

26. On September 7, 2017, Kohring filed the first motion for sanctions seeking sanctions solely against Leigh. TFB Ex. 3, bates 1 (opening paragraph of motion).

27. Leigh filed the second motion for sanctions, shortly thereafter on September 7, 2017, focusing

on the differences between the filed version of the stipulation from prior versions that had been shared with him and the version that he had submitted to the court and also referenced the signature issue. He first used the term "misrepresented endorsement," but later used the terms forgery and explained how he believed that certain ethical rules had been breached, that a crime may have been committed and that Kohring had yet to justify why an opposing counsel had affixed her partner's electronic signature to a court pleading without her permission. TFB Ex. 4. The motion included an explanation of some actions that were being taken by Watson and Leigh relative to the signature issues. This sanction motion was drafted and filed by Leigh, but once again said motion noted Ms. Watson as co-counsel and having been served a copy of the pleading.

28. Watson testified that on September 6, 2017, she worked some of the day at the other law firm, went to the airport to pick up her father, who had come to help prepare her home as Hurricane Irma was descending on Florida. Together, they prepared her home for the hurricane and did not review e-mails until later in the day. Ultimately however, she did review both motions for sanctions.

29. The uncontroverted testimony at trial was that Judge Rosenberg denied both motions without prejudice pending resolution of a motion for summary judgment.

30. Shortly thereafter, Judge Rosenberg entered summary judgment in favor of the school board and on

September 19, 2017, counsel for the school board filed a renewed sanction motion. TFB Ex. 5.

31. Later that same day, Leigh also drafted and filed a renewed motion for sanctions. TFB Ex. 6. Said motion noted Ms. Watson as co counsel and having been served a copy of the pleading.

32. The parties filed various responses to each other's motions and supplements to same. See TFB Ex. 7 through 11.

33. An evidentiary hearing was held before Judge Rosenberg on September 27, 2017, with testimony from several of the witnesses who testified before me, inclusive of Leigh, Watson, Kohring and Jordan. See TFB Ex. 14.

34. On October 2, 2017, Judge Rosenberg entered her order on the competing motions, denied the motions filed by Leigh and granted the motions filed by the school board. TFB Ex. 12. Said ruling included the following commentary:

> For all of the foregoing reasons, the Court finds that Mr. Leigh and Ms. Watson acted in bad faith and grants Defendants' Motion to Strike and grants Defendants attorney's fees. Fed. R. Civ. P. 1 l(c)(I). Mr. Leigh and Ms. Watson shall be jointly responsible for paying said fees.
>
> and

> The Court expresses no opinion on whether Mr. Leigh and Ms. Watson have violated the Florida Bar Rules of Professional Conduct with their actions in this case and, instead, refers Mr. Leigh and Ms. Watson to the Florida Bar for discipline for several reasons.

35. In its case in chief the Bar asserts that Leigh has violated R. Regulating Fla. Bar 4-3.6(a) [Prejudicial Extrajudicial Statements Prohibited. A lawyer shall not make extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding due to its creation of an imminent and substantial detrimental effect on that proceeding.]; 4-8.4 (a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct] and R. Regulating Fla. Bar 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice. . . .].

**Analysis**

As to Counts I and II, in my view of the facts of this case, as to Mr. Leigh, I see a young lawyer, who at the time of the events in question had been admitted approximately six years when he became involved in the Palm Beach County School District litigation with his partner in a new area of the law. Although I find that Leigh's conduct in Count I violates the afore-mentioned rules, I find that Leigh's conduct regarding Count I was the combination of

lack of experience, unprofessional persistence fueled by emotion, and a level of frustration causing obfuscation. There was a personal element to Leigh in this litigation as the conflict arose from his conduct and the consequences quickly affected students and fellow teachers.

Specifically as to Count II, Leigh and Watson should have at least made inquiry of the other law firm to understand why they affixed Watson's signature prior to making said accusations. I also find that Khoring was not candid with Leigh and Watson by failing to disclose that her office never opened the "final" stipulation sent by Leigh and that this disclosure could have toned down the dispute that was raging between the lawyers.

Also specifically as to Count II, I believe Leigh's conduct was the combination of lack of experience, unprofessional persistence fueled by emotion, and a level of frustration causing obfuscation. There was a personal element to Leigh in this litigation as the conflict arose from his conduct and the consequences quickly affected students and fellow teachers.

I see the use of inflammatory language in this isolated instance to be more of a professionalism concern than a violation of the ethical rules and don't find a violation of the afore-mentioned rules.

**COUNTS III Through VI**

The *Stonybrook* litigation was in state court and this was the first case of this nature that had been filed by

Leigh, with Watson as co-counsel of record. From the testimony presented before me, it is uncontroverted that Leigh and Watson admitted that this was their first case of that kind, that they did not have experience in that area of the law, that Leigh was primary counsel in this case, and that Watson's name was affixed to all pleadings and she was copied on relevant e-mails.

The operative exhibits presented by the Bar regarding these counts were primarily found at TFS Ex. 18 through TFS Ex. 105. Leigh testified on his own behalf, presented additional exhibits primarily found in Leigh Ex. 8 through 19, and also used the Bar's exhibits in his testimony, which were all considered in my resolution of the factual disputes herein.

The Florida Bar presented the following witnesses regarding Counts III through VI relating to the *Stonybrook Apartments* case: Katina M. Hardee, Mahra C. Sarofsky, and Christy Goddeau. Leigh presented one factual witness, Adam Wasserman.

County III of the complaint alleges lack of competence and complete disregard of several court orders. Count IV of the complaint alleges Leigh filed a frivolous Motion for Default. Count V alleges that Leigh was disqualified for his participation in obtaining corporate documents and a deposition taken of a Stonybrook employee. Count VI alleges Leigh improperly attacked the integrity of a judge. The following timeline and events are important to my resolution and were established by clear and convincing evidence:

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1. Both Leigh and Wasserman described in detail the deteriorated conditions of the Stonybrook Apartments including fire damage, roof, and structural damages caused by Hurricane Irma. Wasserman testified as to his unsuccessful efforts to secure legal representation for the residents of Stonybrook Apartments.

2. Both Leigh and Adam Wasserman testified consistently as to how Leigh became involved in the Stoneybrook Apartments litigation. Wasserman, involved in the Palm Beach Tenant Union, was advocating on behalf of the residents of Stoneybrook Apartments and reached out to Leigh and invited him to visit Stonybrook.

3. Both Leigh and Wasserman testified consistently as to some of the children living in Stoneybrook Apartments requiring medical treatment due to what they believe were illnesses caused by the conditions at Stoneybrook Apartments. Leigh specifically testified about visiting some children at the hospital.

4. The Court found credible Leigh's testimony as to his legitimate concern for the residents of Stonybrook Apartments and find by clear and convincing evidence that he felt passionate and sincere empathy for the residents. I also considered the testimony of Wasserman describing the sincere concern shown by Leigh toward the residents as proven by Leigh's numerous visits to the Stonybrook Apartments.

5. Leigh testified that his intention was to only get the ball rolling on the injunction on a *pro bono* basis to

immediately prevent further harm to the residents of Stonybrook and that he never intended to remain counsel of record.

6. On July 31, 2018, Leigh filed the first of several Plaintiffs' Ex Parte Emergency Motion for Preliminary Injunction in the 15th Judicial Circuit in and for Palm Beach County that were dismissed by the Court.

7. After the dismissal of the preliminary injunctions, Leigh filed several complaints which were also dismissed by the Court and were the basis for sanctions and assessment of attorney fees and costs against Leigh and his law firm.

8. Both Leigh and Wasserman testified consistently as to the harassment suffered by Leigh and his clients as a consequence of the legal action, namely: Police intervention when Leigh visited the location of Stonybrook Apartments and residents being told that repairs would occur if they terminated Leigh's representation.

9. I considered Leigh's Ex. 9 through 11 showing his efforts to comply with the mentor requirement imposed by the Court.

10. I considered Leigh's Ex. 13 and Ex. 17 regarding his efforts to communicate with opposing counsels about the issue he encountered when filing a complaint on or about August 8, 2019.

11. Leigh and Wasserman testified as to Leigh's efforts to have clients at Stonybrook Apartments comply with the gag order.

12. Leigh and Wasserman testified as to their involvement in the statement taken of Lugaro, and I also considered the testimony and evidence presented by The Florida Bar consistent with Leigh's testimony regarding his inappropriate involvement and correctness of his disqualification.

13. I considered Leigh's Ex. 14, an ethics opinion, and his explanation for disclosing to opposing counsels the statement taken of Lugaro.

14. Leigh testified as to his efforts regarding his social media compliance with the gag order and explained that he was not aware of the Stonybrook resident's press conference until it was already underway.

15. Leigh testified as to his belief that his motion to disqualify the judge was truthful.

16. Leigh and Wasserman testified as to positive developments from Leigh's representation in the case, namely several benefits to the residents of Stoneybrook Apartments, including: Section 8 placements, effect of Notices to Cure in regards to government subsidies held payments to Stonybrook, creation of an evacuation plan for the residents, and free medical testing and treatment for some of the children living at Stonybrook Apartments.

17. Both Leigh and Watson testified about their recent communications with the law firms involved in both litigations to arrange for payment of ordered fees and costs.

18. Leigh testified as to his recent completion of ethics courses.

19. In its case in chief the Bar asserts that Leigh has violated R. Regulating Fla. Bar 3-4.3 [The standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all-inclusive. . . .]; 4-1.1 [A lawyer must provide competent representation to a client.]; 4-3.1 [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.]; 4-3.4(c) [A lawyer must not knowingly disobey an obligation under the rules of a tribunal. . . .]; 4-3.6(a) [Prejudicial Extrajudicial Statements Prohibited. A lawyer shall not make extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding due to its creation of an imminent and substantial detrimental effect on that proceeding.]; 4-4.2(a) [In representing a client, a

lawyer must not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter. . . .]; 4-4.4(a) [In representing a client, a lawyer may not use means that have no substantial purpose other than to embarrass, delay, or burden a third person. . . .]; 4-8.4 (a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct] and R. Regulating Fla. Bar 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice. . . .].

**Analysis**

In my view of the facts of this case, as to Mr. Leigh, I see a young lawyer, who at the time of the events in question had been admitted approximately seven years when he became involved in the Stonybrook litigation. Leigh and his partner were doing their first litigation in this new areas of the law. I find that Leigh's conduct regarding Counts III through VI was the combination of lack of experience, unprofessional persistence fueled by emotion, and a level of frustration causing obfuscation. This finding is further reinforced by the fact that it is uncontroverted that Leigh has practiced in the areas of Family and Dependency competently and ethically for almost a decade.

Also on this issue, I considered the testimony of Leigh's character and fitness witnesses, Jess Manger and Dr. Anubha Agarwal, both Leigh's former clients. Manger and Agarwal testified that Leigh was professional,

compassionate, respectful, and competent at all times during their representations. There is no evidence presented to this Court that, outside the two particular litigations before this Court, Leigh has failed to adhere to the ethics of the legal profession.

## III. RECOMMENDATION AS TO VIOLATIONS OF THE RULES REGULATING THE FLORIDA BAR:

Pursuant to R. Regulating Fla. Bar 3-5.2(h)(2), and consistent with my findings as outlined above, I make findings of guilt as to the potential violation of all the rules referenced in the Bar's complaint.

## IV. RECOMMENDATION TO THE FLORIDA SUPREME COURT:

Having found the Respondent guilty of the violations charged by the Bar I make a disciplinary recommendation. I specifically considered the four questions under Section 1.1 of the Standards for Imposing Lawyer Sanctions before recommending appropriate discipline: Duties violated; the lawyer's mental state; the potential or actual injury caused by the lawyer's misconduct; and the existence of aggravating and mitigating circumstances. I also gave great consideration to the comment under Section 1.1 of the Standards for Imposing Lawyer Sanctions outlining the three objectives for lawyer discipline: Judgment must be fair to society to protect the public but not to deny the public the services of a qualified lawyer; Judgment must be sufficient to

punish and at the same encourage reformation and rehabilitation; and deterrence of others.

In considering all of the evidence in this proceeding, I recommend to the Florida Supreme Court a 91-day suspension followed by a 2-year probation, and that Leigh attends a practice and professionalism enhancement program. Also, as a condition of reinstatement, Respondent must pay all fees and costs imposed in any and all cases including this bar action.

**A. Purpose and Programs which are recommended:**

Pursuant to Rule 3-5.3(h), Rules Regulating The Florida Bar, I recommend that Respondent be required to successfully complete the following practice and professionalism enhancement programs:

A. The Florida Bar's Professionalism Workshop; and

B. The Florida Bar's Ethics School.

The programs are to be completed as a condition to filing for reinstatement.

**V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:**

After making the foregoing findings, but prior to making my diversion recommendation, I considered the following personal history and prior disciplinary record of respondent, to wit:

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Age: 49

Date admitted to The Florida Bar: May 31, 2011

Prior disciplinary record: None.

## VI. AGGRAVATING AND MITIGATING CIRCUMSTANCES

### Aggravating Factors

The Bar argued six aggravating factors from the Fla. Standards for Imposing Lawyer Sanctions ("Standard"); namely Standards 3.2(b) (2), (3), (4), (7), (9) and (10). I find the following:

As to Standard 3.2(b)(2) (dishonest or selfish motive), I find Leigh to not have engaged in dishonest or selfish motive in the Lungaro statement. In weighting this standard I also consider the fact that he represented all clients in both litigations *pro se.*

In Standard 3.2(b)(3) there is a requirement to find a "pattern of misconduct." Leigh's rule violations involve different conduct and, as such, I find there is a pattern.

I am finding Standard 3.2(b)(4) (multiple violations) in that I have found several rule violations.

I also fail to find Standard 3.2(b)(7) [refusal to acknowledge the wrongful nature of the conduct.] The Florida Bar read into the record dozens of admissions

by Leigh owning his mistakes and taking responsibility for his conduct in prior proceedings. As explained above, considering Leigh's character and personality, I find his testimony emotional, remorseful, and apologetic as to his conduct.

I understand that at the time of the conduct in Count I of the complaint, Leigh had been a member of the Bar for approximately six years but also understand that this was his first foray (and now last) foray into federal district court and the underlying areas of the law in the litigations started on 2016 and 2017 respectively. I am not compelled that you can refer to Leigh as an experienced lawyer (nor will I accept as mitigation that he was an unexperienced lawyer). See Standard 3.2(b)(9).

Lastly, I note that at the time of trial no payments had been made against any of the monetary sanctions imposed against Leigh and the Watson & Leigh law firm. I therefore find that the Bar has established Standard 3.2(b)(10).

**Mitigating Factors**

I find that Leigh has established the following mitigating factors by clear and convincing evidence:

Standard 3.3(b(1) (absence of a disciplinary record) – At the time of the first events at issue Leigh was a six-year member of the Bar and is currently a twelve-year member of the Bar with no disciplinary sanction to date.

*Appendix B*

Standard 3.3(b)(2) (absence of a dishonest or selfish motive) – The Court found credible Leigh's testimony as to his legitimate concerns for his fellow teachers and the residents of Stonybrook Apartments. I found that he felt passionate and sincere empathy for all the clients and acted selflessly. I also considered the testimony of Wasserman describing the sincere and selfless concern shown by Leigh toward the residents as proven by Leigh's numerous visits to the Stonybrook Apartments and the adversities he suffered during some of these visits.

Standard 3.3(b)(3) (personal or emotional problems) – I found Leigh's initial testimony about his upbringing and personal struggles in life to be emotional, candid, and compelling. Leigh's personal testimony in this Court's opinion shed light on his personality traits and provided the Court with relevant insight as to Leigh's personal drive and passions. Specifically, the Court notes that Leigh grew up in a military family confronting the unusual challenges of constant uprooting from their communities and the absence of a father due to military duties. The Court also notes Leigh's testimony as to enduring emotional and physical abuse by his mother, which resulted in his leaving his home and family at the young age of thirteen. Leigh's testimony regarding his early adulthood also left an impression on this Court, specifically: That Leigh had a devastating car accident that derailed his plan to be an athlete in Europe, his rehabilitation and loss of reading skills as a result of the accident, the circumstances of the murder of his girlfriend, the death of the mother of his young child, and two heart attacks – all endured

by Leigh before reaching the age of thirty. The Court also notes that, as a result of the car accident, Leigh suffered from an undetected cyst that exploded in his head a decade later which developed into a brain tumor, required surgery. The above mentioned personal struggles, and their influence shaping Leigh's personal traits and character, both positive and negative, are important considerations to my resolution and were established by clear and convincing evidence. This Court finds particularly compelling that, considering Leigh's life challenges, he was able to muster the discipline and drive to fulfill his dream of becoming an attorney at a later stage in life.

Standard 3.3(b)(5) (cooperative attitude towards the proceeding). The evidence presented to this Court is that Leigh participated in good faith at all stages of the investigation. Leigh testified as to his many communications with prior bar counsel assigned to the case.

Standard 3.3(b)(6) (inexperience in the practice of law). I see Leigh as a young lawyer, who at the time of the initial events in question had been admitted approximately six and seven years when he became involved in the Palm Beach County Schools and Stonybrook litigations respectively. Leigh and his partner were doing their first litigation in this new areas of the law. I find that Leigh's conduct was, in part, due to lack of experience.

Standard 3.3(b)(7) (character or reputation). I heard from two character reference witnesses (former clients

Jess Manger and Dr. Anubha Agarwal.) and each of these witnesses presented compelling evidence about Leigh's otherwise exemplary character. Their opinions were based on their personal observations of Leigh through their representations.

Standard 3.3(b)(9) (unreasonable delay in the disciplinary process) warrants discussion. At the time of trial in August of this year the grievances had been pending against Leigh for almost six and three years respectively. No evidence presented that Leigh has caused any delay whatsoever in this matter. It appears that Leigh responded promptly and by admitting to Minor Misconduct, tried to resolve the cases. There is also a large delay between the probable cause finding and the filing of a formal complaint, wherein Bar counsel simply explained the Bar was still investigating without explaining more or providing evidence of same.

The parties presented case law to me on the delay issue. See *Fla. Bar v. Alters*, 260 So. 3d 72 (Fla. 2018) (3-year delay with some of the delay attributable to Alters); *Fla. Bar v. Varner*, 992 So. 2d 224 (Fla. 2008) (4-year delay and Varner petitioned the court for extensions of time) and *Fla. Bar v. Wolf*, 930 So. 2d 574 (Fla. 2006) (2-year delay accepted as a mitigating factor). In *Wolf*, the Court specifically found the delay to be mitigating on these facts:

> The check to Wolfs client bounced in October 2001. In May 2003, the Bar sent Wolf a letter seeking the production of certain documents.

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> In August 2003, the Bar auditor completed a written report regarding the audits of Wolfs operating and trust accounts for various periods from January 2001 through December 2002. Nevertheless, the Bar did not file a complaint with the Court until July 2004. At that point, the Bar's complaint stated that Wolf had already been cooperating with the Bar. Thus, even though Wolf cooperated, his case was delayed for an extensive and detrimental period before the Bar filed the complaint. In light of Wolfs cooperation and his efforts to timely resolve the instant matters, *the Bar's unexplained delay in pursuing this case is a significant factor that affects the disciplinary sanction. Id.* at 579-579 *(emphasis added).*

I find *Wolf* to be more persuasive herein. As such I do find Standard 3.3(b)(9) applies herein but understand the Bar's argument about demonstrable harm (no witness was unavailable due to the delay but having this matter open for six years is unconscionable and not a diligent prosecution by the Bar). Also see *Fla. Bar v. Rubin,* 362 So. 2d. 12 (Fla. 1978).[1]

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1. "The Bar has consistently demanded that attorneys turn "square corners" in the conduct of their affairs. An accused attorney has a right to demand no less of the Bar when it musters its resources to prosecute for attorney misconduct. We have previously indicated that we too will demand responsible prosecution of errant attorneys, and that we will hold the Bar accountable for any failure to do so." *Rubin* at 16.

Standard 3.3(b)(10) [interim rehabilitation]. The uncontroverted testimony is that Leigh has practiced ethically since the last events in 2020. Leigh testified that he only practices in his areas of competence and that Watson became the managing partner in the current version of their law firm and that is a substantial change from 2017.

Standard 3.3(b)(12) (remorse). Leigh provided emotional testimony as to remorse and his desire to abide by the rules and any conditions mandated by this Court.

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

I find the following reasonable costs have been incurred by The Florida Bar:

| | | |
|---|---|---|
| 1. | Administrative Costs | $1,250.00 |
| 2. | Bar Counsel Costs | $ 118.42 |
| 3. | Court Reporter Costs | $2,036.25 |
| 4. | Investigative Costs | $ 189.75 |
| | **TOTAL COST DUE** | **$3,594.42** |

It is recommended that all such costs and expenses, delineated above, be charged to petitioner, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment of this case becomes final, unless otherwise deferred by the Board of Governors of The Florida Bar.

*Appendix B*

DONE AND ORDERED at Hollywood, Broward County, Florida, this 10 day of October 2023.

/s/Allison Gilman
Honorable Allison Gilman
County Court Judge & Referee

# APPENDIX C — CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### U.S. CONST. AMEND. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### U.S. CONST. AMEND. XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Section 2. Congress shall have power to enforce this article by appropriate legislation.

### U.S. CONST. AMEND. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*Appendix C*

Florida Bar Rules Allegedly Violated:

**RULE 3-4.3 MISCONDUCT AND MINOR MISCONDUCT**

The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside Florida and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.

**RULE 4-1.7 CONFLICT OF INTEREST; CURRENT CLIENTS**

(a) Representing Adverse Interests. Except as provided in subdivision (b) a lawyer must not represent a client if:

(1) the representation of 1 client will be directly adverse to another client; or

(2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Informed Consent. Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

(c) Explanation to Clients. When representation of multiple clients in a single matter is undertaken, the consultation must include an explanation of the implications of the common representation and the advantages and risks involved.

(d) Lawyers Related by Blood, Adoption, or Marriage. A lawyer related by blood, adoption, or marriage to another lawyer as parent, child, sibling, or spouse must not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except with the client's informed consent, confirmed in writing or clearly stated on the record at a hearing.

(e) Representation of Insureds. Upon undertaking the representation of an insured client at the expense of the insurer, a lawyer has a duty to ascertain whether the lawyer will be representing both the insurer and the insured as clients, or only the insured, and to inform both the insured and the insurer regarding the scope of the representation. All other Rules Regulating The Florida Bar related to conflicts of interest apply to the representation as they would in any other situation.

*Appendix C*

## 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.

## RULE 4-3.3 CANDOR TOWARD THE TRIBUNAL

(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.

(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.

(c) Ex Parte Proceedings. In an ex parte proceeding a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(d) Extent of Lawyer's Duties. The duties stated in this rule continue beyond the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by rule 4-1.6.

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

A lawyer must not:

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

## RULE 4-3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

(d) Communication With Jurors. A lawyer shall not:

(2) during the trial of a case with which the lawyer is connected, communicate or cause another to communicate with any member of the jury;

## RULE 4-3.6 TRIAL PUBLICITY

(a) Prejudicial Extrajudicial Statements Prohibited. A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding due to its creation of an imminent and substantial detrimental effect on that proceeding.

*Appendix C*

## RULE 4-4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

(a) In representing a client, a lawyer must not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. Notwithstanding the foregoing, a lawyer may, without such prior consent, communicate with another's client to meet the requirements of any court rule, statute or contract requiring notice or service of process directly on a person, in which event the communication is strictly restricted to that required by the court rule, statute or contract, and a copy must be provided to the person's lawyer.

## RULE 4-4.4 RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, a lawyer may not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person.

## RULE 4-8.2 JUDICIAL AND LEGAL OFFICIALS

(a) Impugning Qualifications and Integrity of Judges or Other Officers. A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard

as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member of the venire, or candidate for election or appointment to judicial or legal office.

## RULE 4-8.4 MISCONDUCT

A lawyer shall not:

**(a)** 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;

**(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;

**(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;

## APPENDIX D — ANSWER EXCERPTS OF THE SUPREME COURT OF FLORIDA

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

Supreme Court Case
No. SC23-0518
The Florida Bar File Nos. 2017-50,987 (15F);
2018-50,286 (15F); and 2020-50,322 (15C)

THE FLORIDA BAR,

*Complainant,*

vs.

MALIK LEIGH,

*Respondent.*

### SECOND AMENDED ANSWER & AFFIRMATIVE DEFENSES

1. Admitted.

2. Admitted in part in so far as practicing in Palm Beach in addition to other counties in Florida.

3. Defendant can neither confirm nor deny the allegations in Paragraph 3, therefore it is denied.

*Appendix D*

## COUNT I

4. Admitted in part in so far as Respondent represented himself and representation included a co-counsel.

5. Admitted in part in so far as Respondent represented himself and representation included a co-counsel.

* * *

178. Denied.

## COUNT VI

179. Admitted as to the Filing of an Appeal.

180. Admitted.

181. Admitted.

182. Denied.

183. Can neither confirm nor deny this Order, Respondent has never seen this Order.

184. Denied.

185. Denied.

## AFFIRMATIVE DEFENSES TO COUNT I

**First Affirmative defense to Count I** is that some of the posts attached as exhibits in pages 001 through 020

are not true and accurate representations of the posts under investigation. Specifically, Respondent states that the headings and locations of the posts in social media have been altered and are therefore misleading. The true location of the posts specifically affect the violations alleged since the Complaint in paragraph 8 incorrectly states Respondent used his law firm account and following paragraphs characterize personal posts unrelated to any cases as "unprofessional." Respondent is entitled to personal opinions and is protected by the Constitution.

**Second Affirmative defense to Count I** COMP.Ex 1, 014, is a personal post about the Trump Era "Muslim Ban" which began around February 2017. The Respondent is Muslim and took personal offense to the public support. The "Mass Extinction Event" was from the movie "Deep Impact" and from Respondent's religious teachings when growing up (Noah's flood). Respondent is entitled to personal opinions and is protected by the Constitution.

**Third Affirmative defense to Count I** Comp. Ex 1, 016, Respondent has no relationship with his parents. Respondent's Mother attempted to kill his siblings and has had personal animosity since. This was neither directed to nor related to any litigants. Respondent is entitled to personal opinions and is protected by the Constitution.

**Fourth Affirmative defense to Count I**, Comp. Ex 1, 018, 019, and 020, were personal posts unrelated to cases and not connected to the practice of law. Specifically, 020, was a personal post made by Respondent while watching a football (soccer) match and purely a reference to a position

player. This is something thousands of people do while watching the match together; make funny gif posts trying to up the others. It was not intended to literally shoot or harm anyone. Respondent is entitled to personal opinions and is protected by the Constitution.

**Fifth Affirmative Defense to Count I**, the Order addressed in paragraphs 15 and 16 of the complaint from the Federal Court Judges were based, in part, upon nearly 200 personal social media posts submitted by the Defendants, the vast majority were over a period of 2 years prior to any litigation, were personal, and were wholly unrelated to the practice of law. Respondent is entitled to personal opinions and is protected by the Constitution.

**Sixth Affirmative Defense to Count I**, the Respondent asserts that rule violations cited by The Florida Bar [R. Regulating Fla. Bar 4-3.6(a) stating "if the lawyer knows or reasonably should know," and 4-8.4(d)] stating that "to knowingly . . . disparage, humiliate. . . .) are intent rules and as a predicate and therefore there must be clear and convincing evidence that the Responden "knowingly" engaged in the conduct that allegedly violated such rules and that the Bar will be unable to meet this burden.

**Seventh Affirmative Defense to Count I**, the Respondent asserts that rule violations cited by The Florida Bar [R. Regulating Fla. Bar 4-3.6(a), 4-8.4(a) and 4-8.4(d) require a nexus to the practice of law. Personal statements unrelated to cases are not in connection with the practice of law. Respondent is entitled to personal opinions and is protected by the Constitution.

**Eight Affirmative Defense to Count I**, the newly discovered fact that the posts attached as exhibits in pages 001 through 020 are not true and accurate representations of the posts under investigation raises Respondent's assertion that this action should be barred pursuant to the doctrine of laches. A suit is held to be barred on the ground of laches where the following appear: (1) Conduct on the part of the defendant, or one under whom he claims, giving rise to the situation of which complaint is raised; (2) delay in asserting the claimant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute the suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant. 21 Fla.Jur. Limitation of Actions, Section 94. The Courts of Florida have held these elements necessary to constitute laches. *Niagara Fire Insurance Co. v. Allied Electrical Co.*, 319 So.2d 594 (Fla. 3rd DCA 1975); *Winston v. Dura-Tred Corp.*, 268 So.2d 426 (Fla. 3rd DCA 1972); *Blumin v. Ellis*, 186 So.2d 286 (Fla. 2nd DCA 1966); and *Van Meter v. Kelsey*, 91 So.2d 327 (Fla. 1956). The Respondent asserts that the unavailability of the unaltered original posts result in injury and/or prejudice to the Respondent.

## AFFIRMATIVE DEFENSES TO COUNT II

**Affirmative Defense to Count II**, the Respondent lacked experience in federal practice and asserts that rule violation cited by The Florida Bar [R. Regulating Fla.

Bar 4-8.4(d)] is an intent rule and therefore must be clear and convincing evidence that the Respondent "knowingly" engaged in the conduct that allegedly violated such rules and that the Bar will be unable to meet this burden.

**AFFIRMATIVE DEFENSES TO COUNT III**

**Affirmative Defense to Count III** the Respondent asserts that rule violations cited by The Florida Bar [R. Regulating Fla. Bar 4-3.4(c), 4-3.6(a), 4-8.4(a)] are intent rules and therefore there must be clear and convincing evidence that the Respondent "knowingly" engaged in the conduct that allegedly violated such rules and that the Bar will be unable to meet this burden.

**AFFIRMATIVE DEFENSES TO COUNT IV**

**Affirmative Defense to Count IV**, the Respondent asserts that rule violations cited by The Florida Bar [R. Regulating Fla. Bar 4- 3.4(c), 4-3.6(a) and 4-8.4(a) are intent rules and therefore there must be clear and convincing evidence that the Respondent "knowingly" engaged in the conduct that allegedly violated such rules and that the Bar will be unable to meet this burden.

**AFFIRMATIVE DEFENSES TO COUNT V**

**Affirmative Defense to Count V**, the Respondent lacked experience in this area of the law and asserts that rule violations cited by The Florida Bar [R. Regulating Fla. Bar 4-4.2(a), 4-4.4(a), 4-8.4(a) and 4-8.4(d)] are intent rules and therefore there must be clear and convincing evidence

that the Respondent "knowingly" engaged in the conduct that allegedly violated such rules and that the Bar will be unable to meet this burden.

**AFFIRMATIVE DEFENSES TO COUNT VI**

**Affirmative Defense to Count VI,** the Respondent asserts that rule violations cited by The Florida Bar [R. Regulating Fla. Bar 4-8.2(a) and 8.4(a) are intent rules and therefore there must be clear and convincing evidence that the Respondent "knowingly" engaged in the conduct that allegedly violated such rules and that the Bar will be unable to meet this burden.

**As a Final Affirmative Defense to All Counts in the Complaint,** the Respondent asserts that the allegations and factual conclusions referenced by the Bar in its complaint cannot be accepted as conclusive proof of the matters referenced therein and that the Bar must prove each and every allegation by clear and convincing evidence. See for example *The Florida Bar v. Calvo*, 630 So. 2d 548 (Fla. 1993); *The Florida Bar v. Vining*, 707 So. 2d 670 (Fla. 1998).

By: s/ Juan Carlos Arias
JUAN CARLOS ARIAS, ESQ.
Florida Bar No.: 0076414