IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

MARIE LOUISE HENRY,

Respondent.

_____/

Supreme Court Case No.
SC13-1127

The Florida Bar File Nos.
2012-31,557 (18A)
2013-30,074 (18A)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

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

On June 26, 2013, The Florida Bar filed its Complaint against Respondent. The final hearing in this matter was conducted on November 12, 2013 and November 13, 2013. The parties filed written closing arguments on January 13, 2014 with respondent filing a supplemental corrective statement on January 15, 2014. Thereafter, on February 4, 2014 this referee conducted a telephonic hearing during which my findings as to guilt were rendered. A sanction hearing was initially scheduled to be conducted on February 27, 2014 but was continued to March 17, 2014. After the hearing, each party was directed to file their respective

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

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

Narrative Summary Of Case.

COUNT I: [TFB FILE NO. 2013-30,074(18A)]

The respondent's minor child was arrested in or around October 31, 2009 for the offense of resisting/obstructing a police officer without violence and the state filed its Petition for Delinquency on or about January 25, 2010.

The respondent, who was initially representing her child, filed several motions for the court's consideration, such as an Emergency Motion to Dismiss for Failure to State a Charge and a Motion for Discharge for Lack of Speedy Trial. In respondent's Motion for Discharge for Lack of Speedy Trial, respondent cited to both the juvenile and the criminal rules. Respondent misrepresented the rule as follows:

> Florida Rules of Criminal Procedure provided in Rule 3.191(a) "Speedy trial without demand" that "(a): Every person charged with a crime by indictment or

> information, shall be brought to trial within 175 days for adults and 90 days for a juvenile. If trial is not commenced within this time period, the Defendant shall be entitled to the appropriate remedy as set forth in subdivision (p) below."
>
> Rule 3.191(p) provides "A Defendant not brought to trial within *the specified time period*, on motion of Defendant or the court, shall be forever discharged from the crime." (Emphasis not in the original.)

Respondent failed to notify the court at any time that she had misstated the speedy trial rule in her motion. Because she was quoting the rule, respondent knew or should have known that she failed to accurately quote the language of the rule.

Thereafter, in April 2010, co-counsel entered a Notice of Appearance. On or about April 28, 2010, respondent filed a memorandum of law wherein she quoted language from *Terry* v. *Ohio*, 392 U.S. 1 (1968), indicating such case law was favorable to her position. However, she failed to divulge to the court and/or the opposing party that the quotation she was using was taken from a concurring opinion.

Despite having co-counsel, respondent provided a majority of her child's representation throughout the delinquency hearing. The child was convicted and the conviction and sentence were appealed. The appellate court upheld the conviction and sentence on or about May 20, 2011 but remanded the case back to the trial court to address an error in the sentencing documents. In the interim, on

or about March 1, 2011, respondent advised the child's probation officer that the child had run away. The probation officer drafted an affidavit and pick-up order and presented the same to the judge who had presided over the child's delinquency matter. The basis of the pick-up order was that the child had absconded from supervision.

The pick-up order was signed by the juvenile judge and the child was taken to detention in Ocala, Marion County, Florida. Respondent appeared with newly hired counsel for her daughter at the detention hearing. During that proceeding, respondent falsely testified under oath that she did not advise the probation officer that her child had absconded or that she did not know of her child's whereabouts.

On or about April 12, 2011, respondent filed an Emergency Petition for Writ of Habeas Corpus asserting that her child had been unlawfully arrested and detained in violation of her fundamental rights. She also misrepresented that she had advised the child's probation officer that she and her child had argued, the child had called a friend to pick her up and that the child returned home later that day.

Respondent further asserted that her child had been "overzealously and selectively prosecuted" and had "experienced a pattern of disparate treatment by the trial Court, Prosecutor, and the Department of Juvenile Justice," and that the assistant state attorney cited case law to "illegally detain" her child.

Within approximately two months, on or about June 7, 2011, the respondent contacted law enforcement and filed a missing/runaway juvenile report. She stated that her child was missing and that she did not know her child's whereabouts. A pick-up order was issued and the child was arrested several days later in a county other than that in which the child lived. The respondent filed a Petition for Writ of Habeas Corpus with the Supreme Court of Florida on or about June 16, 2011 in which she stated "[t]he lower Court has demonstrated a proclivity to arrest and incarcerate the defendant at will even if such action is illegal."

Respondent also stated that "[a] petition for writ of habeas was filed with the Fifth District Court of Appeal pertaining to the first illegal detention but the Fifth DCA did not review the supporting brief and memorandum of law but instead simply issued an order of dismissal without comment." She further asserted that her child had been "overzealously, and selectively prosecuted beginning at the very tender age of thirteen, [had] experienced a pattern of disparate treatment by the trial Court, Prosecutor, and Department of Juvenile Justice, specifically because of her race (Black)" and that her daughter had been given a greater sentence after the matter had been remanded by the Fifth District Court of Appeal due to "vindictiveness against [respondent's child] for filing an appeal."

During a hearing on June 24, 2011, respondent asserted the assistant state attorney's prosecution of her child was racially motivated and that a letter

produced to respondent by the prosecutor during discovery from the president of the Mount Dora Historical Society to the Chief of Police served no purpose other than to show the prosecutor's racial bias.

COUNT II: [TFB FILE NO. 2012-31,557 (18A)]

Respondent filed a civil action, Case No. 2009-CA-4537 in Lake County Circuit Court against her mortgage lender on or about August 4, 2009. At all times material respondent represented herself in the civil matter. On or about July 29, 2011, the trial judge that had previously presided over respondent's child's juvenile matter was transferred to the civil division and was assigned to respondent's pending civil matter.

On or about October 12, 2011, respondent and counsel for one of the defendants filed a joint stipulation of voluntary dismissal with prejudice as to that defendant and a proposed order was filed. On or about October 18, 2011 the judge issued his order approving the parties' stipulation. The order was sent to the respondent at her address of record with the clerk's office. However, that address does not appear to have been a valid address for respondent at that time.

On or about February 27, 2012, respondent received an electronic message from opposing counsel seeking to set a hearing before the judge. Based upon that communication, in which respondent implied this was the first time she knew the judge that had presided over her child's juvenile matter was the judge now

presiding over her matter, respondent filed a motion to disqualify the judge within the ten days provided for under the rules.

In the motion, which was based upon the court's actions in the juvenile proceeding, respondent made numerous statements that disparaged the integrity and motivations of the judge. Some examples of these statements are as follows:

> [The Judge] was the trial judge in the criminal juvenile proceeding involving [respondent's] thirteen year old daughter in which the child was illegally convicted, illegally sentenced, treated in an egregious and patently unfair manner. . . . ."
>
> The prejudice of the trial court was so patently unfair, overt and in violation of the law of the United States of America and Florida that it rises to a level of abuse.
>
> Respondent found it "deeply troubling that the Court departed from the essential requirements of Justice purely based on perceived racial animus, profiling and political motives in prosecuting [respondent's daughter's] case."
>
> As a result of the unprecedented conduct of the Prosecutor and the Court towards this innocent child in violation of her first, fourth, and fourteenth Amendment rights, coupled with threats of criminal contempt against [respondent] in [respondent's daughter's case]; it clearly demonstrates bias and ill will against [respondent] and her child.

Respondent failed to serve the motion on the judge as required by Florida Rule of Judicial Administration 2.330(3). Consequently the trial judge did not see the motion nor did he rule on it at the time it was filed.

On or about May 22, 2012, respondent filed a nearly identical motion to disqualify the judge in her civil proceeding which she properly served upon the judge. In her second motion to disqualify, respondent asserted that "[o]n May 9, 2012, [respondent] received an email from [opposing counsel], Attorney for the defendant Bank of America, seeking to set a hearing before [the Judge] in this cause." Respondent failed to inform the judge that she had received prior notice of his involvement in the matter by at least February 27, 2012 and that she had filed a previous motion to disqualify him on March 8, 2012.

As in her initial motion to disqualify the judge, respondent continued to disparage the judge in the second motion to disqualify. Some examples of the disparaging statements found in the second motion are as follows:

> The unprecedented conduct of this Court towards [respondent's] child and violations of her fundamental right under the First, Fourth, Fifth, and Fourteenth Amendments, coupled with threats of criminal contempt against [respondent] clearly demonstrate bias and ill will against [respondent].
>
> . . . objective, disinterested, law observer fully informed of the facts underlying the grounds on which this recusal is sought would entertain a significant doubt about the [Judge's] impartiality towards [respondent] and for this reason this motion meets the legal and procedural sufficiency requiring recusal. In fact, the opinions of neutral third parties having examined [respondent's daughter's] case are that her case is tinged with prosecutorial and judicial vindictiveness.

On or around June 19, 2012 the court entered an order finding respondent's March 8, 2012 motion to disqualify legally insufficient because respondent had failed to comport with the rules. He further found both of the motions to disqualify to be "sham pleadings of scurrilous content" and ordered them to be stricken from the file. Finally, he voluntarily recused himself based upon the fact he felt compelled to make further comment on respondent's motions beyond their mere denial and because he believed the respondent's conduct needed to be reviewed by The Florida Bar.

Discussion of Factual Findings:

During the final hearing, respondent testified she was quoting the essence of the speedy trial rule. I do not find her testimony in that regard to be credible nor do I find her position that it is appropriate, when quoting the rules, to do anything other than quote the exact language to be tenable. The evidence clearly and convincingly establishes that the manner in which respondent chose to change the words of the rule was in an unethical attempt to alter not only the meaning of the rule but also the manner in which the trial court would be required to rule. Despite the fact respondent had only been a member of the bar for approximately nine to ten months at the time, I do not find that her inexperience as an attorney explains and/or excuses her conduct in this regard. Rather, I find that her conduct was

knowing and deliberate and that it was an attempt to improperly affect the posture of the juvenile proceeding.

Similarly, respondent's statement in the Petition for Habeas Corpus, filed with the Supreme Court of Florida, was a misrepresentation of the actions of the Fifth District Court of Appeal. There was no testimony presented that respondent had any objective factual proof the appellate court had failed to review her supporting brief and memorandum of law. Thus her statement in the habeas corpus petition filed with the Supreme Court was a misrepresentation of the appellate court's actions as it relates to their duty of review.

I further find the testimony and evidence presented proved clearly and convincingly that respondent made misrepresentations during her child's juvenile court proceedings regarding her conversations with her child's probation officer. And finally, in regard to the motions to disqualify the trial court in respondent's civil matter, I find respondent deliberately and knowingly made a misrepresentation by omission.

The evidence demonstrated that respondent knew of the trial judge's involvement at least by no later than February 27, 2012 when she was initially contacted by one of the opposing attorneys. Despite, failing to adhere to the rules regarding service, respondent timely moved to disqualify the trial judge. Respondent's failure to notify the court that she had filed the initial motion and her

attempt to lead the trial judge to believe she first learned of his involvement on or about May 9, 2012 cannot be seen as anything other than a deliberate act on her part. Respondent's testimony that she did not believe she needed to inform the judge that she was initially informed of his involvement at least by no later than February 27, 2012 because she had failed to serve the trial judge is not credible.

In addition to finding that respondent made knowing and deliberate misrepresentations during the juvenile proceeding and civil proceedings, I also find that respondent knowingly or with callous indifference disparaged the prosecutor, the trial judge, and the appellate court. The respondent was unable to provide any factual support for her assertions that her child had been illegally arrested and convicted or that the prosecutor and trial court had engaged in misconduct due to racial animus and/or political motivations. Likewise, respondent's assertions that the appellate court failed to perform its duty, without providing any objective factual basis for such assertions, was disparaging to the court. Respondent's actions in this regard were prejudicial not only to the individuals involved, but were also highly prejudicial to the legal system.

The evidence clearly establishes that respondent chose to act as counsel for her child. Consequently, respondent was not only the child's parent, she was also the attorney, and like all other attorneys, she was bound by the rules governing

attorney conduct. As such, she owed a duty to the judicial system that she failed to uphold.

Issues Related to Use of the Juvenile Records

The bar entered Composite Exhibit 1, which consisted of 10 tabs and included the following: (1) fifteen transcripts of proceedings before the juvenile court in the matter of *M.H.R., a Child v. State of Florida*, Case No. 2009-CJ-0001466; (2) correspondence from Chief of the Mount Dora Police Department to one of his law enforcement officers with a copy from a Mount Dora citizen to the Chief; (3) Motion for Discharge for Lack of a Speedy Trial in the matter of *M.H.R., a child v. State of Florida*, Case No. 2009-CJ-001466; (4)Issues Presented in the matter of *M.H.R., a Child v. State of Florida*, Case No. 2009-CJ-001466, with attachments, (5) Juvenile Justice Information System Case Note Report, pages 1 through 4; (6) Emergency Petition for Writ of Habeas Corpus, Case No. 5D10-2108, filed on or about April 13,2011 in the matter of *M-H-R, a Child*, with attachments; (7) *M. H-R, a Child v. Florida,* 61 So.3d 483 (Fla. 5th DCA 2011 (opinion dated: May 20, 2011); (8) Lake County Sheriff's Office, Case Report for Incident 110087404; (9) Petition for Habeas Corpus, filed on or about June 20, 2011 in the Supreme Court of Florida in the matter of *M-H-R, a Child*, with attachments, and (10) order issued June 19, 2012, in the matter of *Marie Henry v. Bank of America, Et Al.*, Case No. 2009 CA 4537, with attachments, into evidence

during the proceeding. The bar's composite exhibit consisted of over 900 pages as well as all other evidence and testimony needed to be reviewed and carefully considered by this referee in order to resolve the factual issues in the case before me.

In respondent's closing argument and during the sanction hearing, respondent asserted that the bar improperly used records from her child's juvenile proceedings and that the information obtained by the bar should not have been made available to the bar. Respondent argued that because protected information was used in the bar's prosecution, the bar's prosecution had to fail as a matter of law. During the sanction hearing respondent, rather than her attorney, asserted to this referee that there was case law directly on point which would indicate the bar was not able to use any of the juvenile records in the bar's proceedings. When this referee asked respondent and/or her attorney for the particular case cite neither was able to provide same for this referee's consideration. Rather, counsel for respondent indicated he did not know of the case, but that there did not appear to be a particular exemption in Florida Statute 985 addressing bar proceedings.

In the written closing argument submitted by respondent, respondent relied on *GG v. Florida Department of Law Enforcement*, 97 So.3d 268 (Fla. 1st DCA 2012) to argue that the juvenile information related to respondent's child was improperly provided to the bar. This referee finds that the case cited in the closing

argument does not support a determination in a bar case that the bar improperly obtained the juvenile's court documents.

Rule 3-7.6(f)(1) of the Rules Regulating The Florida Bar make it clear that a bar proceeding is neither civil nor criminal but rather it is a quasi-judicial proceeding. Based upon the case law presented in the bar's Memorandum of Law – Evidence in Bar Proceedings, referees are not bound by the technical rules of evidence and the Court has found that a referee is authorized to consider any evidence the referee deems relevant to resolving factual questions. *See, The Florida Bar* v. *Rood*, 620 So.2d 1252 (Fla. 1993) and *The Florida Bar v. Jasperson*, 625 So.2d 459 (Fla. 1993). *See also, The Florida Bar v. Head*, 27 So.3d 1 (Fla. 2010) (in bar disciplinary proceedings, the referee is permitted to consider all relevant information pertaining to the alleged misconduct). Moreover, in this instance, either and/or both parties may seek to have the juvenile records sealed if appropriate.

Further, as evidenced by the letter attached to Respondent's Supplemental Corrective Statement, the bar informed respondent's counsel that the bar had sought the court's permission to review the juvenile's record, that many of the documents provided to the bar were provided by the respondent's then counsel, and/or were documents that respondent sought to have the bar review. This representation was not challenged.

I do not find that the bar either inappropriately obtained and/or used the documents admitted into evidence in the instant bar proceeding. I find the documents were relevant to resolve factual issues asserted by both parties in this matter. And finally, I find that the bar did redact pertinent information prior to entering the documents into evidence and that, if necessary, either or both of the parties may move to seal the juvenile records involved.

Finally, as evidenced in the facts and findings related above as to the bar's complaint, I find that respondent's own assertion during the sanction hearing in her case that there was a case, on point, that stated that the juvenile records could not be used by the bar or considered by this referee in a bar proceeding to have been a misrepresentation. When asked to provide the case cite, respondent was unable to do so.

While this referee recognizes the difficulty involved in both the respondent's representation of her child in the juvenile matter and in dealing with the bar proceeding, the evidence clearly and convincingly supports a finding that the misconduct engaged in by respondent is on-going and egregious.

III. RECOMMENDATIONS AS TO GUILT.

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

4-3.3(a)(**1**) A lawyer shall not knowingly 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 a tribunal by the lawyer; **4-8.4**(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; 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 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.

However, I did not find the bar had proven, by clear and convincing evidence, that the respondent violated rule **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. 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; and **4-3.5(c)** A lawyer shall not engage in conduct intended to disrupt a tribunal.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following factors prior to recommending discipline: the duty violated, the lawyer's mental state, the potential or actual injury caused by respondent's misconduct, and the existence of mitigating and aggravating circumstances. I also considered, pursuant to *The Florida Bar v. Liberman*, 43 So.3d 36, 39 (Fla. 2010), that any discipline recommended must be fair to the public and the attorney, that it must protect the public from unethical conduct while not denying the public the services of a qualified lawyer, that the discipline must be sufficient to punish the misconduct while still encouraging rehabilitation, and that it must be severe enough to deter others who might be prone or tempted to become involved in similar violations. In addition to the foregoing, I further considered the fact that the Court has moved toward stronger sanctions for attorney misconduct in recent years, *The Florida Bar v. Herman*, 8 So.3d 1100, 1108 (Fla. 2009) citing *The Florida Bar v. Rotstein*, 835 so.2d 241, 246 (Fla. 2003) and that the Court has indicated its top priority is to ensure that all attorneys strictly follow the boundaries set forth in The Rules Regulating The Florida Bar, *The Florida Bar v. Adorno*, 60 So.3d 1016, 1018 (Fla. 2011).

However, I am also mindful of the unusual circumstances of the matter before me. Respondent was not only the mother of the child involved in the juvenile system, respondent was also, during most of the juvenile proceedings, the

primary attorney for the child and was her own counsel in a civil matter before the court. While I recognize and have fully considered the unusual circumstances involved, I do not find that the circumstances in any way lessens respondent's duty, as a member of the bar, to faithfully adhere not only to the letter of the rules governing attorney conduct, but also to the spirit of those rules. The position I have taken in regard to this issue is supported by *The Florida Bar v. Della-Donna*, 583 So.2d 307, 310 (Fla. 1991). "The practice of law is a privilege which carries with it responsibilities as well as rights. That an attorney might, as it were, wear different hats at different times does not mean that professional ethics can be 'checked at the door' or that unethical or unprofessional conduct by a member of the legal profession can be tolerated."

After careful consideration of the aggravating and mitigating factors as applied to the facts before me, I find the following factors in aggravation: **9.22**(b) a dishonest or selfish motive (respondent's misrepresentations in her pleadings, motions, and testimony before the court were intentional and were dishonest); **9.22**(c) a pattern of misconduct (respondent's continued attack upon and the continued use of disparaging statements regarding the prosecutor and trial judge throughout her child's proceedings and the bar's proceedings); **9.22**(d) multiple offenses (respondent's multiple misrepresentations throughout the proceedings as well as her numerous disparaging statements made in reference to the prosecutor,

trial judge and appellate court); **9.22**(g) refusal to acknowledge the wrongful nature of conduct (addressed more fully below); and **9.22(h)** vulnerability of the victim (the trial judge, prosecutor, appellate court, the judicial system, and the public as a whole are vulnerable when an attorney lodges unfounded and inflammatory attacks of racial animus, political motivations, and other improper conduct which may affect the public's perception of, and trust in, the justice system). In mitigation, I find: **9.32**(a) absence of a prior disciplinary record (respondent has no previous discipline); **9.32**(c) personal or emotional problems (respondent is the mother of a child she believes was wrongfully arrested and convicted and based upon the testimony and evidence presented, the child and family have suffered both financially, physically, and emotionally due to the child's arrest); **9.32(f)** inexperience in the practice of law (respondent had only been a licensed attorney less than one year at the time she began her representation of her child and has only been licensed for a period of approximately five years at this time); and **9.32**(g) character or reputation (David Honig, President and CEO of Minority Media and Telecommunications Council presented correspondence as a character reference on behalf of respondent). [Respondent's Sanction Exhibit 1.]

Prior to determining the aggravating factor **9.22** (g), refusal to acknowledge the wrongful nature of conduct, was applicable to this case, I considered the position taken by the Court as it relates to that particular factor as outlined in *The*

Florida Bar v. Mogil, 763 So.2d 303, 312 (Fla. 2000). It is clear that a claim of innocence cannot be used against an attorney and that it is improper for a referee to base the recommended sanction on the attorney's refusal to admit the alleged misconduct or the lack of remorse which is presumed from such a refusal.

In the instant matter, respondent continued to assert during the final hearing, as well as during the sanction hearing, that the court and the prosecutor violated well established law and that their conduct was based upon racial animus and/or because of political motivations without providing any objective facts in support of her continued allegations. Similarly, during the final hearing, respondent was unable to support her allegations that the appellate court failed to fulfill its duty in her child's case without providing any objective proof. Moreover, after the final hearing, respondent filed with the President of The Florida Bar and the Executive Director of The Florida Bar, a twenty-one page letter, excluding the attachments, wherein respondent continues to challenge the verdict rendered in her child's juvenile case, continues to assert that the individuals involved in the arrest and prosecution of her daughter acted solely based upon improper conduct (racial animus and prosecutorial misconduct) and motivations, and now asserts that the bar's investigation and prosecution of the bar's case was also based upon improper conduct and motivations. [Bar's Sanction Exhibit 1.] Respondent has fully failed to acknowledge and/or show any appreciation for the seriousness of the unethical

conduct she engaged in throughout the juvenile proceeding, the civil proceeding, and/or the bar proceeding.

I additionally considered the following Standards: **6.12** (suspension is appropriate when a lawyer knows that false statements or documents are submitted to the court or that material information is improperly withheld, and takes no remedial action); **6.13** (public reprimand is appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld); **7.2** (suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system); and **7.3** (public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system).

V. CASE LAW

Prior to making my recommendation, I reviewed and considered the following case law: *The Florida Bar v. Russell-Love*, ___ So.3d ___, WL 241916 (Fla.), 39 Fla. L. Weekly S35 (ninety-one day suspension); *The Florida Bar v. Norkin*, ___ So.3d ___, 2013 WL 5878901 (Fla.), Fla. L. Weekly S786 (two year suspension and a public reprimand); *The Florida Bar v. Head*, 27 So.3d 1, (Fla.

2010) (one year suspension); *The Florida Bar* v. *Nunes*, 734 So.2d 292 (Fla. 1999) (three year suspension); *The Florida Bar v. Colclough*, 561 So.2d 1147 (Fla. 1990) (six month suspension); *The Florida Bar v. Adams*, 641 So.2d 399 (Fla. 1994) (ninety day suspension followed by one year probation); *The Florida Bar* v. *Ray*, 797 So.2d 445 (Fla. 2001) (public reprimand); *The Florida Bar v. Martocci*, 791 So.2d 1074 (Fla. 2001) (public reprimand and two years probation); *The Florida Bar v. Graham*, 679 So.2d 1181 (Fla. 1996) (public reprimand); *The Florida Bar v. Clark*, 528 So.2d 369 (Fla. 1988) (public reprimand); and *The Florida Bar* v. *Shimek*, 234 So.2d 686 (Fla. 1973) (attorney required to publicly apologize to the judiciary).

I have determined, due to the on-going and serious nature of respondent's conduct, the Standards and case law that support a suspension are the most applicable to the facts and rule violations found in this case. Respondent not only made material misrepresentations to the court while acting as a lawyer on behalf of the child as well as on behalf of herself, she also disparaged the trial court, the prosecutor, and the appellate court. Moreover, the case law has made it very clear that dishonesty and/or lack of candor cannot be tolerated in a professional that relies on the truthfulness of its members *The Florida Bar v. Rotstein*, 835 So.2d 241, 246 (Fla. 2002) (citing *The Florida Bar v. Korones*, 752 So.2d 586, 591 (Fla. 2000), and that dishonest conduct demonstrates the utmost disrespect for the court

and is destructive to the legal system as a whole. *The Florida Bar v. Head*, 27 So.3d 1, 8-9 (Fla. 2010).

The attorney in the *Russell-Love* case made knowing misrepresentations to the court in regard to her client's immigration matter. Despite the fact the referee found no aggravating factors and found four mitigating factors (absence of a prior disciplinary record, inexperience in the practice of law, character or reputation, and remorse), it was determined that the mitigating factors were insufficient to out-weight the serious nature of the attorney's misconduct.

Similarly, despite finding that several mitigating factors exist in the instant case (absence of a prior discipline record, inexperience in the practice of law, personal or emotional problems, and character and reputation), I do not find that such mitigation is sufficient to out-weigh the aggravating factors found in this case. Respondent, like the attorney in *Russell-Love*, acted intentionally to mislead the court. Respondent misrepresented the plain language contained in the speedy trial rules, she misrepresented, by omission, the date on which she learned of the trial judge's involvement in her civil case, she misrepresented the conduct of the appellate court in the Petition for Writ of Habeas Corpus filed with the Supreme Court of Florida, and she was less than forthcoming in her statements to the trial court regarding her contact with her child's probation officer despite the fact she

was not only an officer of the court, but was also under oath at the time of her testimony.

The attorneys in *Head* and *Colclough* received lengthy suspensions as well for making misrepresentations to the court among other rule violations. In *Head*, the attorney was not forthcoming with the bankruptcy court regarding his receipt of $10,000.00 from refinancing the debtors' mortgage loan, for knowingly filing a suggestion of bankruptcy for his professional association even though no petition for bankruptcy had been filed, and for engaging in a conflict of interest. In aggravation, he had been previously disciplined for filing a frivolous pleading and had substantial experience in the practice of law. In mitigation, he had made a timely good faith effort to make restitution and he had shown good character and reputation. In *Colclough* the attorney made a misrepresentation to a judge and the opposing counsel that a hearing on costs had already occurred when that was not the case. Despite having no prior discipline and numerous letters in the record establishing that the attorney had never given anyone reason to question his credibility or honesty, the attorney was suspended for six months.

Respondent's zeal to protect her child during the juvenile proceeding did not lessen her duty to be honest and forthright with the court in her pleadings, testimony and/or arguments. While this referee recognizes and appreciates the difficulty involved with respondent's duty as a parent juxtaposed against her duty

to the judicial system, respondent's intentional failure to be honest and forthright are among some of the most serious violations of the rules governing attorney conduct.

In additional to making numerous misrepresentations in her child's juvenile matter, as well in her own civil matter, respondent made numerous disparaging statements regarding the trial court, the prosecutor and the appellate court. As it relates to her comments regarding the trial and appellate court, the law, as found in *The Florida Bar* v. *Ray*, 797 So.2d 556, makes it clear when an attorney makes statements, such as those made by respondent, the attorney must have an objectively reasonable factual basis for making the statements. There was no testimony and/or evidence presented during the proceeding which would support a finding respondent had an objectively reasonable factual basis for the statements she made in pleadings and/or during court proceeding which denigrated and/or questioned the motivations and veracity of the trial court and/or the appellate court. Likewise, respondent alleged the prosecutor involved in her child's case had engaged in prosecutorial misconduct and that the motivation behind the child's prosecution was based upon racial animus and political motivations. There was no evidence presented to support a finding the prosecutor engaged in such conduct or that his prosecution of the child was based upon anything other than his duty as an assistant state attorney.

The attorney in *Norkin* engaged in unethical and unprofessional conduct toward judges and opposing counsel. In a move to recuse the judge, the attorney made disparaging comments about the judge and the provisional director of a corporation regarding their qualifications and integrity that he knew were false or with reckless disregard as to the truthfulness or falsity of the statements. Seven aggravating factors and nine mitigating factors were found. The attorney had previously been sanctioned for similar misconduct; therefore he received an increased sanction of a two year suspension and a public reprimand.

Respondent, like the attorney in *Norkin*, engaged in unethical and unprofessional conduct toward the trial court, the prosecutor and the appellate court when she disparaged their integrity and motivations without providing any objective proof whatsoever that the statements she was making had any validity.

Similarly, the attorney in *Nunes*, was suspended for, among other rule violations, making disparaging comments about judges and opposing counsel. In aggravation, it was determined the attorney had a prior discipline history, a selfish or dishonest motive, a pattern of misconduct and multiple offenses. In mitigation the referee found the attorney had shown remorse.

The disparaging and inflammatory language used by respondent in regard to other members of the bar is damaging to the public's confidence in, and perception of, our system of justice. The misconduct engaged in by respondent is extremely

serious and harmful to our judicial system as a whole. Consequently, her conduct warrants a more severe sanction than a public reprimand.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BEAPPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that she be disciplined by:

A. Ninety-one day suspension and until rehabilitation has been shown;

B. Prior to reinstatement, respondent shall be required to be evaluated by a mental health professional, approved by Florida Lawyers Assistance, Inc., and that such mental health professional conclude that respondent is fit to practice law with reasonable skill and safety; and

C. Payment of the bar's costs in these proceedings.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Prior Discipline: None.

Personal History of Respondent:

Age: 54

Date admitted to the Bar: April 24, 2009

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

I find the following costs were reasonably incurred by The Florida Bar:

Investigative Costs	$190.22
Bar Counsel Costs	$553.68
Administrative Fee	$1,250.00
Court Reporters' Fees	$3,305.00
Copy Costs	$296.55
TOTAL	$5,595.45

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

Dated this 30th day of April, 2014.

Thomas Michael Jaworski, Referee

Original To:

Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927

Conformed Copies to:

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