IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

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

REPORT OF REFEREE

I.

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

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

All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence,

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

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

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

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

Mr. Aguirre testified that he "developed a presentation on developing essentially a deadline calendar and a waj 6.3079986(deue2006FAAA.9e2006FAAA.9e2006F

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

> Strems Law Firm Pleading Organization Policy, Organizational Requirements for Pleadings, Documents and All Materials Uploaded to the "ACT" Case Management Software;
>
> Strems Law Firm Introduction to Litigation, Instructional Guide to the Basics as to the Process of Litigation in General. "The rules and deadlines are just as critical to bringing a successful claim as the actual details of the loss."; and
>
> Strems Law Firm Coverage, Organizational Structure, Responsibilities, and Expectations of Any and All Coverage

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

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

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

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

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

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

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

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

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

are so that they can proceed on this special set hearing. I will note also, for the record, that this hearing has been confirmed twice; both at calendar call and at motion calendar. This [trial] was continued with this hearing, a summary judgment hearing, on a motion filed by the defendant has been on the calendar and initially coordinated for quite some time and

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

the Rules of Professional Responsibility and blatant obstruction of justice in virtually every case where he and his

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

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

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

The six factors are:

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

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

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

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

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

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

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

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

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

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

- TFB Petition, Exhibit M, *Frazer v. Avatar Property and Casualty Insurance Co.*, 2016 015798, Broward County Florida, March 14, 2018 (the court ordered Gregory Saldamando, Esq. and SLF to

This Referee considers that the dismissals in the aforementioned cases constitute violations of Rule Regulating the Florida Bar 4–1.3 Diligence (a lawyer shall act with reasonable diligence and promptness in representing a client). Although Respondent instituted a system to manage discovery as identified in the testimony of attorneys Hunter Patterson and Christopher Aguirre, the problems persisted. Thus, this Referee finds that Respondent has violated Rule Regulating the Florida Bar 4–5.1(c)(2), Responsibilities of Partners, Managers, and Supervisory Lawyers, by

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

(1) Upon the court’s initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:
(a) Was not supported by the material facts necessary to establish the claim or defense; or
(b) Would notj ( )Ti0159 cm BT /7at

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

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

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

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

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

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

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

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

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

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

. . . [i]n other words, the Plaintiffs and their counsel knew or should have known that the Plaintiffs' claim presented no justiciable question and the Plaintiffs' claim was so devoid of merit on the face of the record that there was little to no prospect that it would succeed. [*J.P. Morgan Chase Bank, N.A. v. Hernandez*, 99 So. 3d 508, 513 (Fla. 3rd DCA 2011).]

. . . The conduct of the Plaintiffs and their counsel in this litigation is a textbook example of the appropriateness of Fla. Stat. 57.105, to punish and discourage the unfettered pursuit of frivolous lawsuits. The Plaintiffs and their counsel had multiple opportunities to dismiss this lawsuit but refused despite that the Plaintiffs themselves admitted that there was a history of pre-existing damage at the property. Plaintiffs and their counsel knew that the property had pre-existing and ongoing damage to the same areas of the property claimed in this lawsuit. This left no reasonable question that the damages reported by the Plaintiffs in no nthe

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

> [t]he Court has considered all of the points raised by both parties and concludes that the Plaintiff made deliberate misrepresentations and gave false information regarding the cause of the condition to the bathroom and repairs made to the bathroom. These deliberate misrepresentations show a total disregard for the integrity of the judicial system. The Court finds that the Plaintiff and the Strems Law Firm knew or should have known at the time Plaintiff made the above referenced claims that the claims were not supported by the mati0abovesupa0cs that

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

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

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

TFB Petition Exhibit Q-1.

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

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

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

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

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

TFB Petition Exhibit R.

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

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

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

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

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

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

THE COURT: By whom?

MS. JIMENEZ: By Scot Strems.

THE COURT: Okay.

MS. JIMENEZ: --was that these were oral communications, and so

that opposing

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

consider judgments entered in other tribunals, and may an007r

8.4(a), Misconduct, [A lawyer

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

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

RULE 4-3.2 EXPEDITING LITIGATION

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

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

RULE 4-3.3 CANDOR TOWARD THE TRIBUNAL

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

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

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

RULE 4-3.3 CANDOR TOWARD THE TRIBUNAL

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

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

RULE 4-3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

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

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

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

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

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

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

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

RULE 4-8.4 MISCONDUCT

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

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

RULE 4-8.4 MISCONDUCT

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

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

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

In conclusion, I find that The Florida Bar has met its burden by clear and convincing

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

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

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

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

6.1 FALSE STATEMENTS, FRAUD, AND MISREPRESENTATION

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

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

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

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

6.2 ABUSE OF THE LEGAL PROCESS

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

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

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

V. AGGRAVATING AND MITIGATING FACTORS

I considered the following factors prior to recommending discipline:

1. **Aggravation:**

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

I found Respondent violated multiple Rules Regulating The Florida Bar.

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

The Florida Bar has alleged that during the July 7, 2020 Dissolution Hearing the Respondent was untruthful: 1.) when he denied any relationship between the SLF and Fernandez Trial Firm (including disci100098 0 Td (rel 0 Td (1.))78j (Tj 527.20700

Sanctions Hearing on September 24, 2020, the Bar produced bank records which showed that Mr. Fernandez had received bi-monthly checks for $6,538.46 from SLF and that he was still a W-2 employee of the SLF and receiving benefits in 2020. When Mr. Strems was asked at the Sanctions Hearing why he did not mention that information at the

A. No, sir.

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

A. No, sir.

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

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

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

A. Yes.

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

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

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

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

Q. Does he go by Chuck?

A. He does, yes.

Q. When did he work for Strems Law Firm?

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

Q. Can you give me a month, season?

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

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

A. I believe that sounds right, yes.

Hr’g Tr. 289:6-20 (July 7, 2020).

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

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

A. That seems accurate, yes.

Hr’g Tr. 291:3-7 (July 7, 2020).

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

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

A. Yes.

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

A. That's right.

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

A. Yes.

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

A. Yes.

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

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

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

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

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

2. Mitigation:

The Respondent submitted a multitude of documents 6uments

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

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

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

This Referee finds the following mitigating factors:

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

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

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

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

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

All monetary

LOMAS Offers 10 Tips on Improving Office Management, The Florida Bar News,

improve firm procedures. LOMAS reviewed internal controls existing within the law firm, including processes that have been established to provide reasonable, but not absolute assurance that data is protected. The

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

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

In 2008, Mr. Strems started SLF as a sole practitioner in the criminal defense field after finishing his career as an assistant public defender with the Alachua County Public Defender's Office. About a year and a half later, with additional attorneys hired, SLF moved into first-party insurance plaintiff's practice. At its largest, SLF employed thirty (30) attorneys and over a one hundred (100) staff members. SLF had offices in Miami, Orlando, Tampa, California, and Georgia. Since 2016, The Strems

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

In *The Florida Bar v. Broida*, 574 So. 2d 83, 87 (Fla. 1991), an attorney misrepresented facts to the court and unnecessarily delayed court proceedings by filing frivolous pleadings. The referee found that Ms. Broida had violated the following Rules Regulating The Florida Bar: 4–1.1 (competence), 4–1.3 (diligence), 4–3.3 (candor toward a tribunal), 4–3.4(d) (making a frivolous discovery request or intentionally failing to comply with opposing party's proper discovery request), 4–3.5 (compromising the integrity and decorum of a tribunal), 4–4.1 (truthfulness in statements to others), 4–8.2(a) (making statements

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

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

"The referee found [Ms. Gwynn's] misconduct in the bankruptcy casein

to reasonably expedite litigation, and conduct prejudicial to the administration of justice. As for discipline, the referee recommended that Ms. Gwynn be suspended for ninety days. However, The Bar argued that a ninety-one-day rehabilitative suspension, rather than the referee's recommended ninety-day suspension, was required. The Court suspended Ms. Gwynn for a perio341 0 1706 128.79200745 m 314.54299 4

Upon review of the disciplinary standards, aggravating factors, mitigating factors, and case law discussed above, I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that Respondent is disciplined by suspension for twenty-four (24)

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

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

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

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

X. CONCLUSION

In conclusion, this Referee finds that her recommended discipline has a "reasonable basis in existing caselaw" and it would appropriately balance the seriousness of the conduct with the rehabilitative measures already taken by

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