

IN THE SUPREME COURT
OF FLORIDA

CASE NO. SC03-453

THE FLORIDA BAR,

Complainant,

vs.

KEITH DOUGLAS BARON,

Respondent.

On Review of a Report of Referee
in a Florida Bar Disciplinary Proceeding

INITIAL BRIEF

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE AND FACTS	
A. THE CASE	1
B. THE FACTS	2
SUMMARY OF ARGUMENT	14
ARGUMENT	15
THE RECOMMENDATION OF PERMANENT DISBARMENT SHOULD BE REJECTED	
	15
A. <u>THE STANDARD OF REVIEW</u>	15
B. <u>THE CASE LAW DOES NOT SUPPORT</u> <u>THE REFEREE’S RECOMMENDATION</u>	16
CONCLUSION	25
CERTIFICATE OF SERVICE	26
CERTIFICATE OF COMPLIANCE	26
APPENDIX A (Report of Referee)	
APPENDIX B (Firmo Maldonado Affidavit)	

TABLE OF AUTHORITIES

CASES	Page
<i>Florida Bar v. Bailey</i> , 803 So. 2d 683 (Fla. 2001)	15, 22
<i>Florida Bar v. Baker</i> , 810 So. 2d 876 (Fla. 2002)	22, 23
<i>Florida Bar v. Bauman</i> , 505 So. 2d 1326 (Fla. 1987)	18
<i>Florida Bar v. Bauman</i> , 558 So. 2d 994 (Fla. 1990)	17
<i>Florida Bar v. Baron</i> , 767 So. 2d 462 (Fla. 2000)	2
<i>Florida Bar v. Baron</i> , 794 So. 2d 606 (Fla. 2001)	4
<i>Florida Bar v. Brown</i> , 635 So. 2d 13 (Fla. 1994)	19
<i>Florida Bar v. Cimpler</i> , 840 So. 2d 955 (Fla. 2002)	14
<i>Florida Bar v. Frederick</i> , 756 So. 2d 79 (Fla. 2000)	22
<i>Florida Bar v. Greene</i> , 589 So. 2d 281 (Fla. 1991)	17
<i>Florida Bar v. Jones</i> , 571 So. 2d 426 (Fla. 1990)	18
<i>Florida Bar v. Jones</i> , 543 So. 2d 751 (Fla. 1989)	18
<i>Florida Bar v. McAtee</i> , 674 So. 2d 734 (Fla. 1996)	18, 19
<i>Florida Bar v. Murrell</i> , 74 So. 2d 221 (Fla. 1954)	24
<i>Florida Bar v. Pahules</i> , 233 So. 2d 130 (Fla. 1970)	24
<i>Florida Bar v. Roberts</i> , 789 So. 2d 284 (Fla. 2001)	16

TABLE OF AUTHORITIES (continued)

Florida Bar v. Roberts, 689 So. 2d 1049 (Fla. 1997) 16

Florida Bar v. Rood, 678 So. 2d 1277 (Fla. 1996) 20

Florida Bar v. Ross, 732 So. 2d 1037 (Fla. 1998) 19

Florida Bar v. Springer, ___ So. 2d ___,
29 Fla. L. Weekly S184, 2004 WL 905739 (Fla. Apr. 29, 2004) 15

Florida Bar v. Weil, 575 So. 2d 202 (Fla. 1991) 16, 17

Florida Bar v. Winter, 549 So. 2d 188 (Fla. 1989) 18

RULES

Rule 3-6.1, R. Regulating Fla. Bar 1, 14

Standard 9.1, Florida Standards for Imposing Lawyer Sanctions 20

Standard 9.32, Florida Standards for Imposing Lawyer Sanctions 21

STATEMENT OF THE CASE AND FACTS

A. THE CASE

Keith Douglas Baron seeks review of a February 23, 2004 Report of Referee recommending that he be permanently disbarred for practicing law while under suspension, in violation of Rule 3-6.1, R. Regulating Fla. Bar. *See* Appendix A to this Brief (Report of Referee).

The Report and disciplinary recommendation was made *via* summary judgment. The Florida Bar was granted summary judgment based upon a December 5, 2003 sworn statement taken by Bar counsel relating that Baron counseled a party to a divorce (*see* Appendix A, p. 4, ¶ 7) (referencing Dec. 5, 2003 Sworn Statement of Carlos Calle), and a statement by a party to a judge that Baron had prepared a motion for a continuance in a criminal case. *Id.* at 4, ¶ 4-6.¹ Baron had no notice of, or opportunity to be present at, the sworn statement taken by Bar counsel, nor was he present at the proceeding in which it was represented that he had prepared the motion for continuance.

Baron's Response to Order to Show Cause explanation of the circumstances

¹ The August 13, 2002 "Defendant Antoine Ceus' Motion for Continuance" that was drafted by Keith Baron is attached to the Bar's March 12, 2003 Petition for Order to Show Cause, p. 3 ¶ 7 as "Exhibit C."

relating to the continuance document was viewed by the Referee as “an admission of guilt,” that he had “continued to accept new business, hold himself out as a licensed attorney and otherwise engage[d] in the active practice of law,” leading to the Referee’s decision to grant summary judgment to the Bar. Appendix A, pp. 6-7.

The recommendation for permanent disbarment was based upon the fact of Baron’s suspension from practice and the finding that the two incidents constituted intentional engagement in “continuing misconduct.” Appendix A, p. 10.

Baron seeks a lesser sanction.

B. THE FACTS

In June 2000 Keith Baron was suspended from the practice of law for two years, effective July 15, 2000. *See Florida Bar v. Keith Douglas Baron*, 767 So. 2d 462 (Fla. 2000) (table) (No. SC96938).² The suspension was the product of a consent judgment and the resulting Referee’s Report finding that Baron had secured indigent status for clients who were not indigent; had secured cost deposits from some of those clients and did not return those deposits upon securing indigence status for them; that he commingled monies by depositing entrusted funds into his operating

² This Court’s Order was attached as Exhibit A to The Florida Bar’s March 12, 2003 Petition for Order to Show Cause.

account; that

he failed to meet the minimum requirements for trust accounting records and procedures in several ways; that he failed to adequately discharge his responsibilities to two clients. *See* May 19, 2000 Report of Referee (Case No. SC96938), pp. 1-11. The Referee recommended approval of the agreed-to-by-Baron two-year suspension based upon Baron's inexperience, his remorse, and his physical disability or impairment. *Id.* at 14.

In January 2001, The Florida Bar filed a Petition for Order to Show Cause alleging that Baron had practiced law in violation of his suspension of accepting cases prior to his July 15, 2000 two-year suspension that could not have been completed before the effective date of the suspension, and based upon Baron's consent the Referee recommended "an additional two (2) year suspension to run concurrently with the suspension that has been in effect since July 15, 2000." *See* August 10, 2001 Report of Referee (Case No. SC01-191), p. 4. The Referee also made "full and complete restitution of the fees and costs paid by [clients] for matters he was unable to complete" an "express condition of his reinstatement to active membership in the Bar." *Id.* at 4.

Once again, the Referee considered remorse and physical disability or

impairment as mitigating factors. *Id.* at 5. The Court approved the Report and

Recommendation. *See Florida Bar v. Keith Douglas Baron*, 794 So. 2d 606 (Fla. 2001) (table) (No. SC01-191).³

On July 10, 2002 Baron filed his Petition for Reinstatement, which was denied by the Court on June 19, 2003. *See Florida Bar v. Keith Douglas Baron*, No. SC02-1492. On March 14, 2003 The Florida Bar had filed another Petition for Order to Show Cause, docketed as Case No. SC02-453 – the pleading that led to the Referee’s Report now on review. After receiving Baron’s Response and the Bar’s Reply the Court ordered permanent disbarment on June 26, 2003. However, on September 29, 2003 the Court granted Baron’s Motion for Rehearing and vacated the disbarment order, but kept in effect the August 30, 2001 suspension order, and ordered the appointment of the Referee whose decision is now under review.

* * *

The alleged instances of practicing law while under suspension involved a county court motion for a continuance, which Antoine Ceus, when asked by the county court judge, the Honorable Louis Schiff, said was prepared by Keith Baron.

³ The Order is attached as Exhibit B to the Bar’s March 12, 2003 Petition for Order to Show Cause.

The transcript of the court proceeding contained the relevant colloquy:

THE COURT: [Y]ou're charged with theft, driving with a license suspended / revoked, and an unsafe turn.

THE DEFENDANT: I was asking for a continuance.

THE COURT: Sure. Were you going to get a lawyer?

THE DEFENDANT: I have one now, but he was supposed to be here today and he didn't show up.

THE COURT: Who's your lawyer?

THE DEFENDANT: His name is Keith Baron.

THE COURT: Who?

THE DEFENDANT: Keith Baron.

THE COURT: Keith Baron?

THE DEFENDANT: (No verbal response.)

THE COURT: Okay. Now mark this part of the tape. Okay. Let me have the file. Did you pay Mr. Baron to come into court for you today, Mr. Ceus?

THE DEFENDANT: Yes, sir, I surely did.

THE COURT: When did you pay Mr. Baron?

THE DEFENDANT: This — The case with him is since 12/19.

THE COURT: 12/19?

THE DEFENDANT: I think it was from December.

THE COURT: Has Mr. Baron informed you that –

THE DEFENDANT: He couldn't make it.

THE COURT: – he may not have been practicing law? That the Bar suspended him?

THE DEFENDANT: No.

THE COURT: When did you pay Mr. Baron for his services?

THE DEFENDANT: I paid him, looks like way in December.

THE COURT: Okay. There's a motion for continuance. Did you prepare this, sir, or did someone do this for you?

THE DEFENDANT: That's the motion that he gave me to give –

THE COURT: Mr. Baron prepared this for you?

THE DEFENDANT: Right.

THE COURT: When did you pay him to do this? This says August 13th. Did you pay him back in August?

THE DEFENDANT: Yeah.

THE COURT: Okay. When was the last time you had contact with Mr. Baron?

THE DEFENDANT: It was since three weeks ago.

THE COURT: Three weeks ago?

THE DEFENDANT: Yes, Sir.

THE COURT: And he told you he'd be in court?

THE DEFENDANT: It was his – It was last week when he – when he – when I called him. Actually I got in contact with him last week, and he told me that he may not be able to make it.

THE COURT: Why? Did he give you a reason?

THE DEFENDANT: No.

THE COURT: But you paid him. How much did you pay him to be in court?

THE DEFENDANT: Six hundred dollars.

* * *

THE DEFENDANT: By cash.

THE COURT: Did he give you a receipt?

THE DEFENDANT: No, sir.

THE COURT: Okay. Did you sign a contract with him?

THE DEFENDANT: I signed a contract with him.

THE COURT: A contract to represent. In other words, you gave the lawyer \$600. He –

THE DEFENDANT: What he gave me was the papers that you have right there.

THE COURT: Okay. So for \$600 in August he prepared a motion to continue. This isn't your own work. This is the work of Mr. Baron?

THE DEFENDANT: Yes, sir.

THE COURT: Fair enough. I'm more than pleased to give you a continuance, Mr. Ceus. How much time do you need?

THE DEFENDANT: Well, now I'm hearing this, I might need more than a month.

THE COURT: You've got it, Mr. Ceus. I'll be happy to give you a month

Exhibit D to March 12, 2003 Petition for Order to Show Cause (January 23, 2003 Hearing Excerpt, *State v. Antoine Ceus*, No. 02-000682MM20, Fla. 17th Jud. Cir.) (Judge Louis H. Schiff)).

Keith Baron was not present at that hearing.

The second instance involved Carlos Calle. His twenty-minute sworn statement was taken at The Florida Bar office in Fort Lauderdale in December 2003. Baron was neither present nor notified that the statement was to be taken. Calle said that he had domestic problems and had been referred to Baron by a person named Firmo Maldonado. *See* Dec. 5, 2003 Sworn Statement of Carlos Calle, TFB Case No. 2003-

51,093(17E), p. 4 (submitted in support of The Florida Bar’s Motion for Summary Judgment). He went to Baron’s house (*id.* at 5) and Baron quoted him a fee of \$750 (*id.* at 7), which Calle paid. He said that Baron did not say he was suspended from practicing law and that he took two business cards from Baron’s desk that said “attorney.” *Id.* at 9, 11.

Calle said that when he returned to see Baron he asked Calle to sign a letter “saying that he wasn’t an attorney,” that he was employing Baron as a “Document Preparer.” *Id.* at 10, Exh. 1 to Statement. Calle refused to sign them, and refused to sign the document at a later time too. *Id.* at 18. At the second meeting he had with Baron, Calle indicated that Baron said he was not a “fully competent, active attorney,” although he did not say that “he was unable to practice or suspended.” *Id.* at 13. Calle said that Firmo Maldonado called him and said “you know, I told you this guy’s this and that about his license,” but Calle said he did not know that. *Id.* at 16.

Calle stated that Baron said he “had a better chance of winning, showing that I wasn’t represented” and he went alone to several hearings. *Id.* at 19. He signed a Verified Petition for Dissolution of Marriage, Custody, Child Support and Property Rights that was prepared and filed by Baron. *Id.* at 21, Bar Exh. 2 to Statement. Baron also prepared a Family Law Financial Affidavit and a discovery motion for Calle’s signature. *Id.* at 22, 25.

Baron's Response to the Bar's Petition for Order to Show Cause contested the Bar's factual allegations, which were based exclusively on the un-cross-examined Ceus and Calle statements. Baron wrote:

3. Specifically in regard to Antoine Ceus ("Antoine"), Respondent lives at the Apartment Complex where Antoine Ceus and his father Anthony Ceus used to live. Antoine's father worked for the development and introduced his son to Respondent as they lived fifty feet away. Respondent was not suspended at the time and was always the attorney "Mr. Keith."

4. When Antoine Ceus came into some legal trouble, he came to talk to Respondent. Respondent fully explained that he could not work as an attorney, that he was suspended and that all that he could currently do was prepare legal documents if Antoine Ceus gave the information. Antoine appeared to understand, agreed and explained that he had two (2) cases for which he needed responses to be drawn up. Respondent prepared the documents for both cases and again explained that since he could not act as an attorney, that Antoine would have to appear and sign on his own. Antoine agreed and further asked if Respondent knew other attorneys that could assist him. From Respondent's home, Antoine and Respondent called three attorneys] to ask if they could attend a hearing for Defendant Antoine.

5. At no time did Respondent act, represent or mislead Antoine or the Court to believe Respondent was an active Attorney. Respondent never appeared in Court, signed documents or in any way indicated he was an active Attorney. To the contrary, all evidence indicates that

Antoine has always been without an Attorney and the only amount paid to Respondent was for his time and the documents associated with a felony and traffic hearing. Antoine's nerves in Court or apparent misunderstanding do not and should not attribute [sic] the indicia of Attorney conduct for Respondent.

Baron's Response to the Bar's Petition for Order to Show Cause, pp. 1-2.

The Referee found that the statements in paragraphs 4 and 5 above were sufficient to establish violations:

In paragraph 4 of his response to the Bar's Petition, respondent admits that while under suspension from the practice of law, he had direct contact with, imparted legal advice to, and prepared pleadings for one Antoine Ceus, a client. In paragraph 5 of the response, respondent admits that he was paid a fee by Ceus "for his time and the documents associated with a felony and traffic hearing." These affirmations constitute an admission of the conduct which is prerequisite to the relief requested by the Bar in this proceeding.

Appendix A, p. 6.

As to Calle, whose sworn statement was a December 8, 2003 "Supplemental Filing in Support of Summary Judgment" by the Bar, Baron apparently attempted to contest Calle's testimony by filing on December 21, 2003 a Notice of Filing an Affidavit from Firmo Maldonado, but while the record reflects Baron's Notice of Filing the affidavit of Mr. Maldonado, the affidavit itself does not appear in the

Referee's file nor in the pleadings received by the Bar.⁴ Calle's statement itself (p. 16) referred to Maldonado's representation that he had informed Calle about the problem with Baron's license.

The Referee found no basis for denying the Bar's Motion for summary judgment:

The transcripts of the proceedings before Judge Schiff and the sworn statement of Carlos Calle have gone without contradiction or refutation from respondent By virtue of the conduct admitted by respondent and the evidence submitted by the Bar which respondent has failed to refute or contract, there are no existing issues as to any facts material or germane to the determination of this proceeding.

Appendix A, pp. 7-8 (Report of Referee).

The Referee recommended permanent disbarment: "Clear violation of any order of disciplinary status that denies an attorney the license to practice law, absent strong extenuating circumstances, is generally punishable by disbarment." *Id.* at 8 (citations

⁴ The Referee stated that "The record before me is devoid of any affidavits, sworn statements or other evidence refuting or contradicting the proof presented by the Bar" (Appendix A, p. 7), suggesting that he did not consider the Firmo Maldonado affidavit. Since the office of the Referee and counsel for the Bar have both indicated that the affidavit is not in their records, we include it as Appendix B to this Brief, because the Clerk's Office of this Court has confirmed that the Firmo Maldonado affidavit was transmitted with the Report of the Referee, and is in the record on appeal.

omitted). The Referee found that “no extenuating circumstances exist” and “no mitigation has been shown,” and concluded that in view of the conduct and various aggravating factors disbarment was “the appropriate sanction.” Appendix A, pp. 8-10.⁵

Baron seeks review of that recommended sanction.

⁵ The aggravating factors cited by the Referee included a prior disciplinary record, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of his conduct, and substantial experience in the practice of law (since 1992). *See* Appendix A, pp. 9-10.

SUMMARY OF ARGUMENT

The Referee's recommendation that Respondent Keith Douglas Baron be disbarred should be rejected.

Baron violated Rule 3-6.1, R. Regulating Fla. Bar, by accepting legal fees and drafting legal documents for clients while under suspension from The Florida Bar. The Referee concluded that “[c]lear violation of any order or disciplinary status that denies an attorney the license to practice law, absent strong extenuating circumstances, is generally punishable by disbarment.” Appendix A, p. 8. However, the cases cited for that conclusion presented substantially more egregious misconduct than Baron's, as those cases also included proof of dishonesty and deceit, conduct not present here. Nor did those cases present situations of physical disability – a factor present here and acknowledged by the Referee in his prior orders.

There is a spectrum of attorney misconduct, and a corresponding spectrum of disciplinary sanctions available to the Court. This case is neither the alpha nor the omega of the spectrum of misconduct. Accordingly, the appropriate sanction is not the ultimate sanction of permanent disbarment recommended by the Referee, but some lesser sanction, which would be “fair to society . . . fair to the attorney,” and would “sufficiently deter other attorneys from similar misconduct.” *Florida Bar v. Cimpler*, 840 So. 2d 955, 959 (Fla. 2002). A comparison of similar cases should lead the Court

to conclude that permanent disbarment is neither necessary nor proper in this case.

ARGUMENT

THE RECOMMENDATION OF PERMANENT DISBARMENT SHOULD BE REJECTED

A. THE STANDARD OF REVIEW

This Court may reject the Referee's recommendation of disbarment:

In reviewing a referee's recommended discipline, this Court's scope of review is broader than that afforded to the referee's findings of fact because, ultimately, it is our responsibility to order the appropriate sanction. *See Florida Bar v. Anderson*, 538 So.2d 852, 854 (Fla.1989); see also art. V, § 15, *Fla. Const.* However, generally speaking, this Court will not second-guess the referee's recommended discipline as long as it has a reasonable basis in existing case law and the Florida Standards for Imposing Lawyer Sanctions. *See Florida Bar v. Temmer*, 753 So.2d 555, 558 (Fla.1999).

Florida Bar v. Springer, ___ So. 2d ___, 29 Fla. L. Weekly S184, 2004 WL 905739 (Fla. Apr. 29, 2004). In its review, while showing deference to the referee's finding of fact, this Court must make an independent review of the record before imposing disbarment, the harshest of punishments. *See Florida Bar v. Bailey*, 803 So. 2d 683, 690 (Fla. 2001) ("in any Bar disciplinary case, and in particular a case where the recommendation is disbarment, the most severe penalty we can administer to an

attorney, we engage in a careful and thorough review of the record”).

Assuming *arguendo* that Baron’s conduct violated his suspension, on this record the sanction of permanent disbarment is too severe.

B. THE CASE LAW DOES NOT SUPPORT THE REFEREE’S RECOMMENDATION

The Referee recommended that Keith Baron be permanently disbarred. This Court’s cases do not support that extreme sanction.

In *Florida Bar v. Roberts*, 789 So. 2d 284 (Fla. 2001), a suspended lawyer had violated various Bar rules (practicing law while under suspension as a delinquent member, reporting requirements, and conduct involving dishonesty, fraud, deceit or misrepresentation based on his testimony before a grievance committee). Roberts had previously been suspended for ninety days and placed “on probation for three years for negligently representing a client.” *Id.*; see *Florida Bar v. Roberts*, 689 So. 2d 1049 (Fla. 1997).

His new transgressions were sanctioned with a ninety-day suspension. 789 So. 2d at 288. The Court rejected the Bar’s request for a ninety-one day suspension, distinguishing the six-month suspension in *Florida Bar v. Weil*, 575 So. 2d 202 (Fla. 1991), because in *Weil* the conduct was “more egregious . . . the attorney continued

to practice law even though he was suspended . . . failed to respond to the Bar’s request for admissions . . . failed to appear during the Bar’s disciplinary proceedings” and Weil exhibited “willful indifference to the disciplinary hearing.” *Id.* at 288. Weil was not a sporadic suspended lawyer – he was the City Attorney for Sweetwater, Florida while suspended, and he had two public reprimands for neglect of clients. 579 So. 2d at 203-204. So Roberts, who engaged in dishonesty and fraud, and Weil whose misconduct was flagrant and continuous, received far less severe sanctions than disbarment.

On the disbarment end of the spectrum is *Florida Bar v. Greene*, 589 So. 2d 281 (Fla. 1991), in which Greene, a seven-time loser, practiced law while under suspension. The Referee recommendation there was for a two-year extension of the suspension, but the Court disbarred Greene based on a more than twenty-year history of reported disciplinary violations.⁶

One of the cases cited in *Greene* was *Florida Bar v. Bauman*, 558 So. 2d 994 (Fla. 1990), in which the multiple-time practicing-while-suspended conduct was viewed as “egregious,” and on one of the occasions Bauman “was held in contempt by a

⁶ The Court cited “*Florida Bar v. Greene*, 557 So. 2d 35 (Fla. 1990); *Florida Bar v. Greene*, 529 So. 2d 1103 (Fla. 1980); *Florida Bar v. Greene*, 515 So. 2d 1280 (Fla. 1987); *Florida Bar v. Greene*, 485 So. 2d 1279 (Fla. 1986); *Florida Bar v. Greene*, 463 So. 2d 213 (Fla. 1985); *Florida Bar v. Greene*, 235 So. 2d 7 (Fla. 1970).” *Greene*, 589 So. 2d at 282.

circuit judge for holding himself out as an attorney. Yet subsequent to the contempt citation he again represented clients in court.” *Id.* Bauman’s conduct leading to the six-month suspension that he violated was itself egregious. *See Florida Bar v. Bauman*, 505 So. 2d 1326, 1327 (Fla. 1987) (“respondent met with others on numerous occasions to discuss the feasibility of importing cocaine and cannabis”).

Bauman was the benchmark for disbarment in *Florida Bar v. Jones*, 571 So. 2d 426 (Fla. 1990), where a suspended lawyer engaged “in the practice of law on **numerous** occasions,” made false statements of material fact that “knowingly misrepresented his compliance with the suspension order,” and engaged in conduct involving dishonesty, fraud and deceit. 571 So. 2d at 428 (emphasis supplied). Jones’ earlier suspension was for disrespect of his duties both to clients and to the Bar. *Florida Bar v. Jones*, 543 So. 2d 751 (Fla. 1989) (neglect of client matters, intentionally failing to act on client’s behalf, failing to use due diligence, failing to keep client informed, and a “total lack of cooperation with The Florida Bar during these proceedings”).

Permanent disbarment was imposed upon Edward Winter, who engaged in “**twenty-one counts** of engaging in the unauthorized practice of law” after resigning “in the face of impending disciplinary activity.” *Florida Bar v. Winter*, 549 So. 2d 188 (Fla. 1989) (emphasis supplied). James McAtee suffered the same sanction,

based on his having had three prior reported sanctions for, *inter alia*, lack of diligence, failing to return property, trust account shortages, neglect, dishonesty, conflict of interest, lack of communication, disobeying an obligation, fraud, deceit and finally, practicing while suspended. *Florida Bar v. McAtee*, 674 So. 2d 734 (Fla. 1996).

The picture that emerges from the cases is that permanent disbarment for practicing law while suspended has been imposed when the facts show that the lawyer is beyond the pale of hope of being redeemed. *Florida Bar v. Ross*, 732 So. 2d 1037 (Fla. 1998), is emblematic. Ross argued that disbarment was “too severe a sanction,” but the Court disbarred him, likening to bribery his attempt to sell information and to, for a price, avoid being available for discovery, describing it as “attempting to subvert the truth seeking process for his own financial gain,” 732 So. 2d at 1043, disbarred him.

Even *Florida Bar v. Brown*, 635 So. 2d 13 (Fla. 1994), the source of the oft-cited statement, “[c]lear violation of any order or disciplinary status that denies an attorney the license to practice law generally is punishable by disbarment, absent strong extenuating factors,” *id.*, involved violation of an emergency suspension, a voluntary resignation and disrespect of the process by refusing “to accept service in the present action and . . . not responding to the Bar’s complaint.” *Id.* Even so,

Brown was disbarred in April 1994 “for a period of six years, *nunc pro tunc* to November 1992.” *Id.* at 14. He was not permanently disbarred.

Similarly, the twice suspended Edward Rood, who “continued to meet with, represent and advise clients, and continued to receive and disburse client funds from his bank accounts,” was disbarred for five years, not life. *See Florida Bar v. Rood*, 678 So. 2d 1277, 1278 (Fla. 1996).

It is against that background that the Keith Baron sanction must be decided.

First, notably absent from any of the similar cases is the mitigating factor of Baron’s serious physical disability. That factor was noted in the previous Referee’s recommendations and Baron’s handicap has not improved.⁷

The Referee ignored the mitigation that had been recognized previously – remorse and physical disability or impairment. Consideration of mitigation is an essential element of the sanction process. *See* Standard 9.1, Florida Standards for Imposing Lawyer Sanctions (“After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.”) At the least, those prior findings of mitigation needed to be addressed by the Referee because Baron’s remorse and consideration of the effect of his ataxia on his physical,

⁷ Baron suffers from a form of ataxia (movement disorder). The disease impairs both his mobility (he uses a motorized scooter) and his speech.

psychological, emotional and professional well-being were essential to a fair sanction decision. Standard 9.32, Florida Standards for Imposing Lawyer Sanctions, identifies both “personal or emotional problems (9.32(c)) and “physical or mental disability or impairment” (Standard 9.32(h)) as mitigators.

Second, the two instances of practicing while suspended – preparing dissolution documents for Carlos Calle and the motion for a continuance for Antoine Ceus – are a far cry from *Bauman’s* “egregious” repeated conduct, even after a circuit judge held him in contempt, or Jones’ “numerous occasions” of unauthorized practice. And no one has accused Baron of fraudulent or deceitful responses to the Bar’s charges; indeed, his response to the Petition for Order to Show Cause led to the Referee’s conclusion that he had admitted the charged misconduct and no more evidence was necessary to find him in violation of his suspension order.

We do not seek to minimize the importance of compliance with this Court’s orders, nor do we seek to excuse those who violate the Rules Regulating The Florida Bar. But in the universe of lawyer misconduct, Keith Baron’s transgressions do not merit permanent disbarment. Not long ago, this Court disbarred F. Lee Bailey for five years – not life – noting that “each of the rule violations is extremely serious, ranging from trust account violations to misappropriation of funds [\$6,000,000], lying to a federal judge, self-dealing and compromising the position of a client.” *See*

Florida Bar v. Bailey, 803 So. 2d 683 (Fla. 2001). In *Florida Bar v. Frederick*, 756 So. 2d 79 (Fla. 2000), the lawyer received a ninety-one day suspension “given the number and nature of Frederick’s offenses, his disciplinary history, and the extensive aggravation at issue.” *Id.* at 89. The aggravation included several prior disciplines and “submission of false evidence, false statements, or other deceptive practices during the disciplinary process; refusal to acknowledge the wrongful nature of his conduct; and substantial experience in the practice of law.” *Id.* at 84. Baron had been a lawyer for eight years when he was suspended in 2000. We do not stress his youth as an excuse, but it is at least somewhat relevant in determining a sanction, and of course, there is no “false evidence” here.

Finally, a recent case in which the Court rejected a lawyer’s argument that he was entitled to a separate sanction hearing as a matter of due process of law, underscores the reasons why Baron’s permanent disbarment is too severe. In *Florida Bar v. Baker*, 810 So. 2d 876 (Fla. 2002), the referee recommended a five-year disbarment for a lawyer who committed fraudulent acts “including the forgeries of legally significant documents which are crimes prosecutable as felonies” and deceived a notary “to unlawfully notarize documents and caused [an attorney] to close a real estate deal using fraudulent documents.” *Id.*, 810 So. 2d at 879. The Court imposed only a ninety-one day suspension because “he did not commit a fraud on the court”

and the forgeries, corruption of a notary and corruption of a real estate transaction involved the sale of a home owned with his wife and the proceeds were used to pay marital debt. The Court found that *Baker* “more closely resembles *Florida Bar v. Rose*, 607 So. 2d 394, 395 (Fla. 1992) . . . [where] an attorney forged his ex-wife’s signature on client agreement forms, stock certificates, and checks more than two years after the divorce was final” and used the proceeds “for his own account.” *Baker*, 810 So. 2d at 881. *Rose* received a thirty-day suspension. *Id.* If there is room for redemption from forgery, there should be room for redemption for Keith Baron.

It is important to consider here that Baron contested the details of the Ceus testimony and Calle’s statement contains the seeds of doubt about whether he had been forewarned by Maldonado that Baron was not in good standing. Apparently recognizing that, the Referee leaned heavily on Baron’s description of his conduct with Ceus as a basis for the summary judgment. It is true that the possible dispute about the details of Baron’s efforts for Ceus and Calle do not change the outcome here, but they do soften the picture somewhat. Baron’s flawed attempt to help Calle and Ceus was improper, but the evidence does not clearly and convincingly place him beyond the pale of ever being trusted to practice law. If forgery and corruption of legal documents and notaries can be punished with thirty or ninety-one day suspensions, Baron’s punishment merits something far less than permanent disbarment.

The Referee cited *Florida Bar v. Pahules*, 233 So. 2d 130 (Fla. 1970), and its quote from *Florida Bar v. Murrell*, 74 So. 2d 221, 223 (Fla. 1954), to support his disbarment recommendation, but *Pahules* and the *Murrell* quotation favors our submission:

“(D)isbarment is the extreme measure of discipline and should be resorted to only in cases where the lawyer demonstrates an attitude or course of conduct wholly inconsistent with approved professional standards. It must be clear that he is one who should never be at the bar, otherwise suspension is preferable. For isolated acts, censure, public or private, is more appropriate. Only for such single offenses as embezzlement, bribery of a juror or court official and the like should suspension or disbarment be imposed, and even as to these the lawyer should be given the benefit of every doubt, particularly where he has a professional reputation and record free from offenses like that charged against him.”

Pahules, 233 So. 2d at 131-132 (quoting *Murrell*).

Keith Baron’s record of misconduct is obviously serious. But where bribery, embezzlement, forgery, fraud, deceit or disrespect for the Bar’s fact-finding processes do not come into play, the permanent disbarment recommendation should be rejected.

CONCLUSION

For the foregoing reasons, Respondent Keith Baron respectfully asks the Court to reject the Referee’s recommendation of disbarment, in lieu of a lesser sanction, or to remand the sanction question to the Referee to consider the mitigating factors he had previously found.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief has been furnished to the counsel listed below, by U.S. Mail this 28th day of June, 2004:

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