Disapproving Dishonesty: The Florida Supreme Court's Increased Intolerance for Lawyers' Fraud and Misrepresentations in Personal Business

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DISAPPROVING DISHONESTY: THE FLORIDA SUPREME COURT’S INCREASED INTOLERANCE FOR LAWYERS’ FRAUD AND MISREPRESENTATIONS IN PERSONAL BUSINESS

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I. INTRODUCTION

For lawyers who think lighter sanctions result from misconduct related to personal—as opposed to professional—activities, it may be time to think again: the Florida Supreme Court recently disbarred an attorney for fraud and misrepresentation related to her personal dealings.1 The Court has traditionally distinguished dishonest conduct occurring in the representation of a client from dishonest conduct occurring in personal affairs, the latter typically receiving a lighter sanction than the former.2 With its ruling in Hall, the Court has signaled a possible shift away from that distinction, at least in some cases.3

Part II of this Note briefly sets out the Florida Supreme Court’s role in professional discipline, and the standard of review applicable to those cases before the court. Part III puts the Hall case in context with the facts and procedural history, and discusses briefly the arguments on both sides. Part IV analyzes the import of the case, underlying rationales for the result, and the impact on future discipline cases.

II. DISCIPLINE IN THE FLORIDA SUPREME COURT

A case for misconduct filed by the Florida Bar against an attorney is heard in a trial court before a referee, in which the referee hears evidence and the proceedings are governed by the Florida Rules of Civil Procedure.4 If a party does not agree with the referee’s recommendation,

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1 Fla. Bar v. Hall, 49 So. 3d 1254 (Fla. 2010).
2 Compare, e.g., Fla. Bar v. Massari, 832 So. 2d 701 (Fla. 2002), with Fla. Bar v. Temmer, 753 So. 2d 555 (Fla. 1999).
3 See Fla. Bar v. Hall, 49 So. 3d 1254 (Fla. 2010).
4 See id. at 1254; Fla. Bar v. Nunes, 734 So. 2d 393, 397 (Fla. 1999) (“In a disciplinary proceeding, the Florida Rules of Civil Procedure apply . . . .”).
that party may appeal directly to the Florida Supreme Court for review of that decision.\(^5\) The court has announced a “reasonable basis” test for its review of discipline cases, indicating that, “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.”\(^6\) Despite this self-imposed standard, the Court has repeatedly indicated its scope of review is unusually broad since the court is ultimately responsible for determining the proper sanction.\(^7\) Thus, though the Court does pay at least some deference to a referee’s recommendation, that recommendation does not bind the Court and the Court may determine on its own the appropriate discipline to impose.\(^8\)

### III. FLORIDA BAR v. HALL

#### A. Factual and Procedural History

In 2000, attorney Sherry Hall approached Irving and Clara Godwin, wishing to lease a portion of their pasture for Hall’s horses.\(^9\) Both Godwins were senior citizens, and Mr. Godwin suffered from Alzheimer’s.\(^10\) After an agreement was reached, Hall signed a lease agreement at the Godwin home on January 21, 2001.\(^11\) At that time, Hall discussed with the Godwins the possibility she might purchase the entire property.\(^12\) Hall added a handwritten addendum to the signed lease which stated that “[t]he parties will … negotiate an agreement for Hall to purchase” the property.\(^13\) Hall obtained a property appraisal and made an offer the Godwins rejected; the Godwins subsequently obtained their own appraisal and made a counteroffer, which Hall

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\(^5\) See Hall, 49 So. 3d at 1257-58.

\(^6\) Id. (citation omitted).

\(^7\) See, e.g., id.; Fla. Bar v. Cohen, 908 So. 2d 405, 411 (Fla. 2005) (“the ultimate responsibility for determining the appropriate sanction rests with this Court.”).

\(^8\) See Hall, 49 So. 3d at 1258; see also Cohen, 908 So. 2d at 411.

\(^9\) Hall, 49 So. 3d at 1255.

\(^10\) Id. at 1259.

\(^11\) Id. at 1255.

\(^12\) Id.

\(^13\) Id.
rejected.\textsuperscript{14} Hall then contacted the Godwins and for the first time misrepresented that the original lease agreement was an agreement to sell the property.\textsuperscript{15} Though Mrs. Godwin told Hall that Mrs. Godwin’s attorney said she was not obligated to sell, this would not be the end of Hall’s misrepresentations in an attempt to secure the property.\textsuperscript{16}

In May 2002, Mrs. Godwin decided to sell her property and listed it with a realtor.\textsuperscript{17} Though the listing provided that the sale was subject to Hall’s lease agreement, Hall still attempted to drive away other potential buyers.\textsuperscript{18} First, Hall wrote a letter to the realtor and misrepresented to the realtor that her lease agreement was actually a contract to purchase the property from the Godwins.\textsuperscript{19} She then called him, told him he could not sell the property, and threatened “to report him to the real estate commission and have his license revoked” if he sold the property to someone else.\textsuperscript{20} Because of Hall’s actions, the real estate agency directed the realtor to withdraw the Godwins’ listing the month after it was initially posted.\textsuperscript{21}

At around the same time the real estate listing was removed, Hall appeared at the Godwin home and claimed again that she had an agreement to purchase the property, but was turned away by Mrs. Godwin’s daughter, who informed Hall that the Godwins were represented by counsel.\textsuperscript{22} Nevertheless, Hall called the Godwin home a few hours later, attempting to speak with Mrs. Godwin.\textsuperscript{23} After Mrs. Godwin’s daughter once again informed Hall that the Godwins were represented and that Hall should speak with their attorney, Hall “threatened to sue the Godwins and tie them up in court, insinuating that they could lose their property from protracted

\textsuperscript{14} Id.
\textsuperscript{15} Id. at 1258.
\textsuperscript{16} Id.
\textsuperscript{17} Id.
\textsuperscript{18} Id.
\textsuperscript{19} Id.
\textsuperscript{20} Id. at 1259.
\textsuperscript{21} Id.
\textsuperscript{22} Id. at 1258.
\textsuperscript{23} Id.
litigation,” and insisted once again that the Godwins were required to sell the property to her. Though Hall had been told at least twice at that point that the Godwins were represented by counsel, and that she should contact the attorney, she resumed contacting the Godwins directly to make offers for the property.

Hall then fraudulently changed the lease agreement to reflect a title of “Lease Agreement and Agreement for Sale,” and added an additional paragraph not in the original agreement which provided that the parties shall “negotiate a time for conveyance of the property” to Hall. In December 2002, she recorded this fraudulent agreement at the county clerk’s office, clouding the Godwins’ title. After misrepresenting to the Godwins’ attorney that the Godwins had agreed to sell the property to her, the attorney requested in June 2003 that Hall execute a quitclaim deed in favor of the Godwins. Hall did not comply until August 2006.

An investigation by the State Attorney’s Office resulted in Hall being charged with two felonies in 2006: grand theft and uttering a forged instrument. In August, Hall entered into a Deferred Prosecution Agreement which provided, among other things, that she execute a quitclaim deed to the Godwins, pay them $15,000 in restitution, and execute any other documents required to eliminate the cloud on the title of the property.

The Florida Bar filed a disciplinary complaint alleging Hall, by her conduct in this case, violated several rules of professional ethics. The referee found, and the Florida Supreme Court accepted, that Hall was guilty of violating Rule Regulating the Florida Bar 4-8.4(c),

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24 Id.
25 Id.
26 Id. at 1255.
27 Id.
28 Id. at 1259.
29 Id.
30 Id. at 1256.
31 Id.
32 Id. at 1254.
Misrepresentation. The referee recommended a ninety-day suspension, and The Florida Bar sought review in the Florida Supreme Court, arguing that a three-year suspension or disbarment is more appropriate.

B. Majority Opinion

A five-justice majority determined in this case that Hall’s conduct—though not related to representation of a client and notwithstanding the referee’s finding of a violation of only one rule—was so egregious and persistent that it warranted disbarment. The Court’s per curiam opinion focused on the continuous and egregious nature of the conduct in arriving at its conclusion that disbarment is the appropriate sanction. The Court focused on Hall’s continued harassment of the Godwins; her continued misrepresentations to the Godwins, their attorney, and their real estate agent; her recording the fraudulent agreement for sale in the clerk’s office, which put a cloud on the title to the property and cost the Godwins two buyers; her abusing vulnerable senior citizens; and her attempt to avoid guilt. Determining that any mitigating factors simply could not outweigh the seriousness of her conduct, the Court disbarred Hall.

33 Id. at 1256, 1257 n.6. Though Hall was accused of violating Rule 4-8.1, Bar Admission Disciplinary Matters—apparently regarding her claim that she changed the title of the forged document but did not commit the forgery—the referee did not find her guilty of this offense, and the Court apparently considered the conduct only in relation to aggravating factors and her guilt regarding the forgery itself. Id. at 1256, 1260. This is discussed in further detail in Part IV(A)(2).

34 Hall, 49 So. 3d at 1257. The referee’s findings of fact and guilt were not challenged, and the Florida Supreme Court accepted them without discussion. Id. at 1257 n.6.

35 See id. at 1261 (Hall “engaged in ongoing, continuous misrepresentations for several years[,]” and “her misconduct was not one isolated incident . . . .”).

36 See id.

37 Id. at 1260.

38 Id.

39 See id. at 1259.

40 Id.

41 Id. at 1260. Hall admitted she changed the title of the document but denied she forged the signatures of the Godwins, saying it must have been “some unknown person in her office” who forged the documents. Id. However, the Court pointed out that Hall did not have an assistant for clerical work, did most of her work at home herself, was the only one with motive or opportunity to forge the signatures, and that Hall’s signature was the only genuine signature on the document. Id.

42 See id. at 1257, 1263 (acknowledging some mitigation, but nevertheless disbarring Hall).
an officer of the court to deliberately harm others—especially when they intentionally hurt members of the public for their own personal gain.”

C. Dissenting Opinion

Justice Pariente filed an opinion concurring in part and dissenting in part, in which Justice Quince joined. Justice Pariente agreed that forgery and fraud constituted serious misconduct, but was of the opinion that disbarment was an extreme sanction that was not consistent with case law. Justice Pariente reasoned that a lighter sanction was appropriate because there was no attorney-client relationship and no misappropriation of client funds, and that the cases used by the majority were inapposite because they involved misconduct related to the practice of law, lawyers with histories of misconduct, or continuous patterns of misconduct. Instead, Justice Pariente would have imposed a three-year suspension in part because of Hall’s lack of prior discipline.

IV. Analysis

A. A Departure from the “Reasonable Basis” Standard of Review?

At first blush, it appears the Court departed from its traditional “reasonable basis” standard of review in discipline cases, and instead engaged in its own de novo review. However, a closer look at its reasoning, combined with a consideration of the policy goals of attorney discipline, shows the Court did exactly the opposite, adhering to its usual standard. Though the Florida Supreme Court exercises a broader scope of review regarding the appropriate discipline in a particular case, the Court generally does not second-guess a referee’s recommended

43 Id. at 1259.
44 Id. at 1263 (Pariente, J., concurring in part and dissenting in part).
45 Id.
46 See id. at 1264-65.
47 Id. at 1265.
48 See id. at 1257-58 (majority opinion); see also Fla. Bar v. Anderson, 538 So. 2d 852, 853 (Fla. 1989).
discipline unless it has no reasonable basis in case law or the Florida Standards for Imposing Lawyer Sanctions.49

1. Disbarment is Appropriate Under the Proper Standard for Imposing Lawyer Sanctions

The first reason the Court disapproved of the referee’s recommended sanction is that the referee considered Hall’s sanction under Florida Standard for Imposing Lawyer Sanctions 7.2, which is only applicable when the conduct involves the lawyer’s practice.50 In cases where the lawyer’s conduct is centered in personal affairs, Standard 5.0 applies.51 The Court correctly pointed out that Standard 5.1 specifically provides that its sanctions apply to “cases with conduct involving dishonesty, fraud, deceit, or misrepresentation . . . .”52 Furthermore, disbarment is appropriate under the standard when “a lawyer engages in serious criminal conduct . . . which includes . . . misrepresentation [or] fraud . . . .” or “engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyers [sic] fitness to practice.”53 Because the referee erred in relying on Standard 7.2 for guidance in determining the appropriate sanction, the referee’s recommendation of a suspension did not have a reasonable basis in the standards, and the Court properly disregarded the recommendation under the applicable standard of review. Standard 5.11 sets disbarment as an appropriate sanction; since it is applicable to Hall’s case, the Court’s determination to disbar Hall finds support in the standards.

49 Hall, 49 So. 3d at 1258; see also Fla. Bar v. Temmer, 753 So. 2d 555, 558 (Fla. 1999).
50 Hall, 49 So. 3d at 1257.
51 Id. at 1257 n.5.
52 Id. at 1261-62 (recognizing that Standard 5.0, Violations of Duties Owed to the Public, encompasses personal activities where Standard 7.0, Violations of Other Duties Owed as a Professional, is limited by its terms to conduct occurring in the practice of law).
53 Id. at 1262.
54 Id.; see also FLA. STANDARDS FOR IMPOSING LAWYER SANCTIONS § 5.11 (2010).
2. Disbarment is Consistent with Case Law

In support of its decision to disbar Hall, the majority cited *Florida Bar v. Gross*, which involved an attorney who committed several violations of professional ethics involving misappropriations of over $100,000 of client funds, forgery on court orders, fraud, *et cetera*. The Court apparently recognized that most of the violations in *Gross* were practice-related rather than personal, but drew from its statement that each “act[] alone can also constitute independent grounds for disbarment[]” to support its decision that Hall’s fraud was sufficiently serious to warrant disbarment.

The Court also turned to *Florida Bar v. Kickliter*, which involved an attorney disbarred for forging his client’s signature on a will. In *Kickliter*, the client instructed the attorney to draft a new will, but died the same day before being able to sign the new will. Though the Court recognized that the attorney’s motive was not for personal gain, but rather to effect the intent of his client, the Court nevertheless concluded that he should be disbarred because of the “magnitude of [his] misconduct and his failure to correct it.” Indeed, disbarment was appropriate notwithstanding the attorney’s “cooperative attitude, good character and reputation, remorse, and the imposition of criminal penalties.” Though *Kickliter’s* conduct occurred in the context of representation, it is worth noting that in this case, though Hall did not commit a fraud on the court *per se*, Hall abused the legal system by recording a fraudulent document at the

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56 *Id.* at 743.
57 *Hall*, 49 So. 3d at 1262 (quoting *Gross*, 896 So. 2d at 747).
59 *Id.* at 1124.
60 *Id.* at 1123.
61 *Id.* at 1124.
62 *Id.*
63 *Id.* at 1123.
county clerk’s office which clouded the Godwins’ title. Additionally, Hall apparently did not have remorse, was not particularly cooperative, and did not receive the same kind of criminal penalties. Where the Court recognizes substantial mitigation but imposes disbarment anyway, it is entirely consistent to impose disbarment where there is no such mitigation.

The Court also relied on *Florida Bar v. Gold*, where the Court held that an attorney’s forgery of a mortgage satisfaction document, and subsequent recording of that document, warranted disbarment. The Court thus properly analogized *Gold* to this case, and the dissent did not address *Gold* at all.

Finally, among other cases, the Court discussed *Florida Bar v. Cohen*, where the Court disbarred an attorney for conspiring with his client to hide cash and avoid Internal Revenue Service reporting requirements. The Court noted in particular that Cohen had a dishonest and selfish motive, engaged in deceptive practices during the disciplinary process, refused to acknowledge the wrongful nature of his conduct, had substantial experience in practicing law, and was indifferent to making restitution. *Cohen* and Hall’s case are strikingly similar in this respect. Significantly, Justice Pariente, then chief justice, and Justice Quince, both of whom

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64 *Hall*, 49 So. 3d at 1255, 1260.
65 See id. at 1257 (discussing mitigating factors without mentioning remorse).
66 See id. at 1257, 1260 (no mention of cooperation, and discussing her attempt to avoid guilt by making unbelievable claim about who might have forged the signatures.)
67 See id. at 1256. Hall entered a deferred prosecution agreement whereby she needed only to pay $15,000 in restitution, quitclaim any interest in the property, and vacate the land. See id. By contrast, Kickliter was convicted of three felonies and was sentenced to three years’ probation with conditions. *Kickliter*, 559 So. 2d at 1123.
68 Fla. Bar v. Gold, 203 So. 2d 324 (Fla. 1967).
69 Id. at 325.
70 See *Hall*, 49 So. 3d at 1264-65 (discussing other cases but not mentioning *Gold*) (Pariente, J., concurring in part and dissenting in part).
72 Id. at 408.
73 The Court discussed Hall’s dishonest and selfish motive, *Hall*, 49 So. 3d at 1258; deceptive practices during the disciplinary hearings by making an “incredible” claim that someone else must have forged the signatures, id. at 1256; failure to acknowledge the wrongful nature of her conduct, see id. at 1257 (no discussion of remorse in mitigation); substantial experience—twenty-four years—in the practice of law, id.; and indifference to restitution by waiting for three years to execute a quitclaim deed, doing so only after being criminally charged. *Id.* at 1259.
dissented in this case, concurred in the decision to disbar Cohen.\textsuperscript{74} Justice Pariente also did not attempt to reconcile the apparent conflict between her agreement with disbarring Cohen and her disagreement with disbarring Hall.\textsuperscript{75}

In dissent, Justice Pariente attempted to distinguish \textit{Gross} by pointing out that \textit{Gross} involved repeated violations in contrast to “the single instance of forgery involved here . . . .”\textsuperscript{76} But Hall’s violation of Rule 4-8.4(c) included all dishonest conduct involved in this case—including all of her misrepresentations\textsuperscript{77}—and not just the “single instance of forgery.”\textsuperscript{78} Thus, Justice Pariente’s attempt to distinguish \textit{Gross} on this ground is probably unavailing.

Justice Pariente also distinguished \textit{Kickliter} by pointing out that \textit{Kickliter} disbarred an attorney for misconduct “related to the attorney’s practice of law.”\textsuperscript{79} The dissenting opinion discounts the remaining cases and highlights the different treatment accorded attorneys whose misconduct was in personal business, claiming that such misconduct “is to be evaluated differently and \textit{may} warrant less severe sanctions than misconduct committed in the course of the practice of law.”\textsuperscript{80} Justices Pariente and Quince, then, appeared to take the position that because Hall’s misconduct occurred in her personal dealings and not in the course of practicing law, the punishment should be less severe.\textsuperscript{81} As discussed in Part IV(B), however, this position is vulnerable to attack on the ground that serious dishonest conduct—even in personal business—should result in disbarment because the attorney’s trustworthiness and fitness as a lawyer is in question. Additionally, the quote relied upon by the dissenting opinion uses the term “\textit{may},”

\textsuperscript{74} \textit{Cohen}, 908 So. 2d at 412.
\textsuperscript{75} See \textit{Hall}, 49 So. 3d at 1264-65 (failing to mention \textit{Cohen}) (Pariente, J., concurring in part and dissenting in part).
\textsuperscript{76} \textit{Id.} at 1264.
\textsuperscript{77} See \textit{RULES REGULATING THE FLA. BAR} § 4-8.4(c) (2009).
\textsuperscript{78} \textit{Hall}, 49 So. 3d at 1264 (Pariente, J., concurring in part and dissenting in part).
\textsuperscript{79} \textit{Id.} at 1265. Justice Pariente also points out that \textit{Gross} involved misconduct related to the practice of law. \textit{Id.}
\textsuperscript{80} \textit{Id.} at 1264 (citation omitted; emphasis added).
\textsuperscript{81} See \textit{id.} at 1264-65.
indicating misconduct in personal affairs does not automatically indicate a lesser sanction than would be appropriate had the misconduct occurred during the practice of law.\textsuperscript{82}

To support its contention that a three-year suspension was appropriate for Hall, the dissent made a statement to that effect and added a three-case string citation sentence: \textit{Florida Bar v. Hagendorf},\textsuperscript{83} \textit{Florida Bar v. Klausner},\textsuperscript{84} and \textit{Florida Bar v. Rosen}.\textsuperscript{85} The dissent’s reliance on \textit{Hagendorf} was likely misplaced since the Court noted in its opinion that, although it had imposed a two-year suspension, “were it not for the fact that the Bar agreed with the referee’s recommendation, this Court might have disbarred [the attorney].”\textsuperscript{86} Thus, \textit{Hagendorf} likely supports the majority’s position rather than the dissent’s.

\textit{Klausner}, too, likely provides little support for the dissent’s position in this case. The majority opinion in \textit{Klausner}, in approving the referee’s recommendation for a three-year suspension, indicated that the attorney was “sincerely remorseful, [was] young and inexperienced, [and] has been criminally sanctioned . . . .”\textsuperscript{87} In contrast to \textit{Klausner}, Hall was not remorseful, had over twenty years of practice experience, and was, for all intents and purposes, not criminally sanctioned.\textsuperscript{88} Additionally, the \textit{Klausner} court noted that “it is a close case and a recommendation of disbarment also may have been appropriate . . . .”\textsuperscript{89} Finally, and most curiously, in \textit{Klausner} Justice Pariente concurred with the dissenting opinion, which would

\begin{footnotes}
\footnotetext{82}{See \textit{id.} at 1264.}
\footnotetext{83}{Fla. Bar. v. Hagendorf, 921 So. 2d 611 (Fla. 2006).}
\footnotetext{84}{Fla. Bar v. Klausner, 720 So. 2d 720 (Fla. 1998).}
\footnotetext{85}{Fla. Bar v. Rosen, 608 So. 2d 794 (Fla. 1992).}
\footnotetext{86}{\textit{Hagendorf}, 921 So. 2d at 615.}
\footnotetext{87}{\textit{Klausner}, 720 So. 2d at 722.}
\footnotetext{88}{See supra notes 67, 73.}
\footnotetext{89}{\textit{Klausner}, 720 So. 2d at 722.}
\end{footnotes}
have disbarred Klausner. Justice Pariente took the position in *Klausner* that “it is this Court’s responsibility to administer the *severest discipline* to lawyers who commit fraud . . . .”

Lastly, the dissent mentioned *Rosen*, arguing that Hall should be suspended for three years because Rosen was suspended for two years for a forged check and several checks returned for insufficient funds, among other things. Unlike Rosen, however, Hall’s conduct involved a fraudulent document recorded with the county clerk and tying up the victims’ property for years, persistent harassment of the elderly victims even after being instructed they were represented by counsel, and evasion of responsibility, thus, Hall’s conduct is distinguishable from Rosen’s.

The dissent characterized Hall’s disbarment as excessive punishment when compared with similar cases. This characterization is arguable, but a better interpretation of any inconsistency—if one even exists—is that the Florida Supreme Court recognized that Hall’s persistent misrepresentations and harassment so put into question her trustworthiness and fitness as a lawyer in other respects that disbarment was appropriate.

**B. The Need for Stiff Punishment for Egregious Dishonest Conduct**

Implicit in the Court’s opinion is the shift toward harsher punishments for lawyers who engage in serious dishonest behavior. The Florida Supreme Court has recognized three purposes of discipline for attorney misconduct:

First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result

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90 See *id.* at 722 (Wells, J., dissenting).
91 *Id.* (emphasis added). Again, Justice Pariente makes no attempt to reconcile the conflict between the position taken in *Klausner* and the position taken with Hall’s case. It is most perplexing that Justice Pariente’s dissent here would cite *Klausner*, since Justice Pariente’s position in the *Klausner* dissent supports the position advocated by the majority, and runs counter to Justice Pariente’s position, here.
92 *Rosen*, 608 So. 2d at 795.
93 See *Hall*, 49 So. 3d at 1259-60 (majority opinion).
94 *Id.* at 1263 (Pariente, J., concurring in part and dissenting in part).
95 The Court expressly stated as much in *Fla. Bar v. Rotstein*, 835 So. 2d 241, 246 (Fla. 2002) (“In recent years, this Court has moved towards stronger sanctions for attorney misconduct.”).
of undue harshness in imposing liability. Second, the judgment must be fair to the [lawyer], being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations.96

Where an attorney’s misconduct relates to the attorney’s honesty and trustworthiness, the conduct “reflects a flagrant and deliberate disregard for the very laws which [the attorney] took an oath to uphold.”97 Given that the goals of attorney discipline are to protect the public, punish the attorney, and deter others, it seems that serious and persistent dishonest conduct in personal affairs should be punished just as severely as the same conduct related to an attorney’s practice. This is especially true because dishonest conduct “cannot be tolerated by a profession that relies on the truthfulness of its members[,]”98 and because “lawyers are necessarily held to a higher standard of conduct in business dealings than are nonlawyers.”99 If it is the dishonest nature of the conduct which makes it punishable, there appears no justification for a lighter sanction when the dishonest conduct does not occur in the context of legal representation: the dishonesty is nonetheless “basic, fundamental[,]” and “a serious flaw[] which cannot be tolerated.”100

Though not couched in terms of the three purposes of attorney discipline cited above, the dissent’s argument appears to be that a three-year suspension would adequately serve those purposes.101 Such a suspension would indeed encourage reformation and rehabilitation, but would run afoul of the other two purposes of discipline: protecting the public and deterring other attorneys from engaging in like violations. In fact, the statement that the punishment should not deprive the public of a competent attorney “as a result of undue harshness in imposing liability”

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96 Fla. Bar v. Lord, 433 So. 2d 983, 986 (Fla. 1983) (citations omitted).
97 Id.
98 Rotstein, 835 So. 2d at 246.
100 Rotstein, 835 So. 2d at 246.
101 See Hall, 49 So. 3d at 1263.
clarifies the interplay between protecting the public and allowing the public to continue to receive services from competent attorneys.\textsuperscript{102} Disbarment certainly deprives the public of Hall’s competent services. However, as discussed in Part II(A), disbarment likely is not unduly harsh because case law and the Florida Standards for Imposing Lawyer Sanctions support it. Additionally, disbarment is sure to serve as a much better deterrent of future violations, the third goal of attorney discipline. Ultimately, disbarment is the best sanction because, put simply, Hall’s “conduct was cumulative and gross and so far below what we expect of lawyers that [she] should forfeit the privilege of practicing law.”\textsuperscript{103}

\textbf{C. Implications for Future Cases}

The Florida Supreme Court’s decision to disbar Hall might very well indicate that the Court is increasingly intolerant of attorneys who commit fraud, make misrepresentations, and engage in other misconduct—even in their personal business. Discipline cases are somewhat unique in the discretion afforded to reviewing justices, but the trend appears to be that lawyers brought up on misconduct charges relating to their integrity in personal dealings could face disbarment if the misconduct is serious. To be sure, such an increased punishment will not deter \textit{every} attorney from engaging in similar conduct; hopefully, the consequences of losing one’s license to practice law will result in fewer acts of dishonesty among lawyers, and thus fewer discipline cases for dishonest conduct.

\textbf{V. Conclusion}

In disciplinary proceedings, the most persuasive rationale for the distinction between dishonesty in personal business and dishonesty during the course of representation is that a lawyer should be punished more severely for misconduct which harms clients or perpetrates a

\textsuperscript{102} Fla. Bar v. Lord, 433 So. 2d at 986 (citations omitted; emphasis added).
\textsuperscript{103} Id. at 987 (arguing that a lawyer’s failure to file personal income taxes for several years warrants disbarment) (McDonald, J., concurring in part and dissenting in part).
fraud on the court than for misconduct which does not involve client trust or the integrity of the court. Though the argument can be persuasive when the dishonest conduct is minimal, it becomes much less so when the dishonest conduct is severe. In cases like *Hall*, the dishonest conduct is so egregious that even its occurrence in a single overall incident necessarily involves a question of the attorney’s basic character. Because the entire judicial system depends on the integrity and honesty of attorneys practicing within it, disbarment is appropriate for even a single instance of egregious dishonest conduct, regardless of its presence in the context of personal business as opposed to representation of a client.